

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.20058 of 2020

Ahamed Fahath

...Petitioner

.Vs.

1.The Regional Passport Officer,
Royala Towers No.2& 3, IVth Floor,
Old No.785, New No.158,
Anna Salai, Chennai 600 002.

2.The Inspector of Police (L&O)
E3, Teynampet Police Station,
Chennai.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st respondent to re-issue the passport No.J3856691 of the petitioner within a time frame.

For Petitioner : Mr.R.Dinesh Kumar

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Writ Petition has been filed seeking for the issue of a writ of mandamus directing the 1st respondent to reissue the passport of the petitioner on the basis of the representation made by the petitioner on 21.10.2020.

2.The case of the petitioner is that he was issued a passport by the 1st respondent in the year 2010, with a validity period of 10 years. A criminal case came to be registered by the 2nd respondent in Crime No.2814 of 2015 and the petitioner has been arrayed as an accused in this case. According to the petitioner, no final report has been filed by the 2nd respondent till date.

3.The period for which the passport issued was coming to an end in the year 2020 and hence the petitioner made a representation to the 1st respondent. According to the petitioner, the 1st respondent is not renewing the passport due to the pendency of the criminal case. Left with no other

alternative, the present writ petition has been filed before this Court.

4. Heard Mr.R.Dinesh Kumar, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondents.

5.The issue involved in the present writ petition is directly covered by an earlier order passed by this Court in WP(MD).No.18609 of 2018, dt.04.09.2018. The relevant portions in the order are extracted hereunder:

"5. The learned counsel for the petitioner would submit that when the issue, as raised in this writ petition, came up for consideration before this Court on earlier occasions, this Court has consistently held that mere pendency of F.I.R. cannot be a basis for denial of Passport to the citizens of this country. One of such decision relied on by the learned counsel for the petitioner is W.Jaihar William v. State of Tamil Nadu, reported in (2014) 8 MLJ 61. In the said decision, the learned Judge of this Court has dealt with the legal position in extenso and the learned counsel for the petitioner has also drawn the attention of this Court to Paragraph Nos.8 to 11, which are extracted hereunder:

"8. From the materials available on record, this Court finds that the applications submitted by the petitioners for passport were not considered by the 3rd respondent for the reason that FIRs are pending against them. The Superintendent of Police, Tirunelveli, has filed counter affidavits stating that First Information Reports have been filed against the petitioners for the alleged offences, stated supra, since they are involved in the agitation against the Koodankulam Nuclear Project. So far as the petitioner in W.P.(MD) No.8349 of 2014 is concerned, the criminal case has been registered under Sections 147, 148, 294(b), 353 & 307 IPC. Since the FIRs are pending against the petitioners, the 3rd respondent has not considered the applications of the petitioners, by placing reliance on Section 6(2)(f) of the Passports Act, 1967. Section 6(2)(f) reads as follows:
"6.Refusal of passports, travel documents etc (1).....

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for

visiting any foreign country under clause (c) of sub-section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely

(a) & (b)

(c) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before the criminal Court in India. It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of criminal proceedings in respect of the offences alleged to have been committed by the applicant before the Criminal Court. Only after the Court takes cognizance of the offence alleged to have been committed by the applicant, as stipulated under Section 190 of Cr.PC., it can be construed as "proceedings pending before the Court".

9. In this regard, a reference could be placed in the judgment relied upon by the learned counsel for the petitioner reported in Kamal Kumar Narottam Dash Parekh v. Superintendent (Administration), Regional Passport Office, Ministry of External Affairs and Others (supra). In that case, a criminal case was registered against the petitioner therein under Sections 20 (B), 420, 409, 467, 468, 471, 477A of IPC and he was arrested and subsequently, released on bail. When his application for passport was not considered, he approached the High Court and in that case, the Calcutta High Court has held that the proceedings that reaches the Court in the course of investigation cannot be held to be "proceedings pending in Court" and such proceedings remain still at the stage of investigation, and gets transformed into a proceeding pending in a Court" only, and if cognizance thereof is taken by the Court.

10. For the same proposition of law, the learned counsel for the petitioners has also relied upon the judgment delivered by the Andhra Pradesh High Court reported in Mathumari China Venkatareddy and Others v. State of Andhra Pradesh (supra), wherein it has been held that until the charge-sheet has been filed, a Magistrate cannot be said to have taken cognizance of any offence and that the Magistrate can take cognizance of the offence and direct the issue of process only on receipt of a police report and that till

that stage is reached, he is said to be acting only as a Magistrate controlling the investigation made by the police. It has been further held in the said judgment as follows:

"The judicial act commences only when the charge-sheet is in order and the Magistrate proceeds further under Chapter XVI. Unless the charge-sheet is in the official custody of the Court together with its accompaniments to be furnished to the accused, it cannot be construed that there is a filing of charge-sheet. Chapter XVI relates to commencement of proceedings before Magistrates, process to be issued when Magistrate takes cognizance of the offence."

Therefore, it is clear that unless the Judicial Magistrate takes cognizance of the offence, on filing of charge-sheet on completion of investigation against the applicant, it cannot be said that the proceedings are pending before the Criminal Court. Therefore, in my considered opinion, the 3rd respondent cannot mechanically refuse to issue passport to the petitioners, merely for the reasons that the FIRs are pending against the petitioners. On receipt of the application for passport, the 3rd respondent shall consider the same and pass appropriate orders.

11. For the foregoing reasons, the writ petitions are allowed and a direction is issued to the 3rd respondent to consider the applications of the petitioners and to pass appropriate orders regarding issuance of passports to them, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs."

6. The learned counsel for the petitioner would submit that the issue involved in this writ petition is directly covered by the legal principles as enunciated in the above cited decision and therefore, he would pray for allowing the writ petition.

10. As rightly held by this Court, in the decision cited supra, mere pendency of F.I.R. cannot be a legal basis for denial of issuance of a regular Passport to the petitioner. Though the petitioner has approached the

learned Judicial Magistrate, Valliyoor, seeking issuance of Passport, this Court is unable to understand as to what prompted the petitioner to approach the learned Judicial Magistrate, Valliyoor, when no criminal case is pending against him. In any event, though ill-advisedly the petitioner had approached the learned Judicial Magistrate, Valliyoor, nevertheless the first respondent cannot issue Passport to the petitioner only for a limited period of one year, which resulted in negation of right of the petitioner to have a regular Passport in order to secure employment abroad.

6. In the present case, the case is still in the FIR stage and no Final Report has been filed till date. Therefore, it cannot be held that the criminal proceedings are pending against the petitioner. The criminal proceedings commence only after a Final Report is filed before the concerned Court and the same is taken cognizance.

7. In view of the above discussion, there shall be a direction to the 1st respondent, to renew the passport of the petitioner for the regular period for which it is renewed for others as per the rules. This process shall be completed within a period of four weeks from the date of receipt of a copy of this order. The petitioner is directed to make a fresh representation to the 1st respondent along with all the relevant documents and a copy of this order.

8. This writ petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

KP

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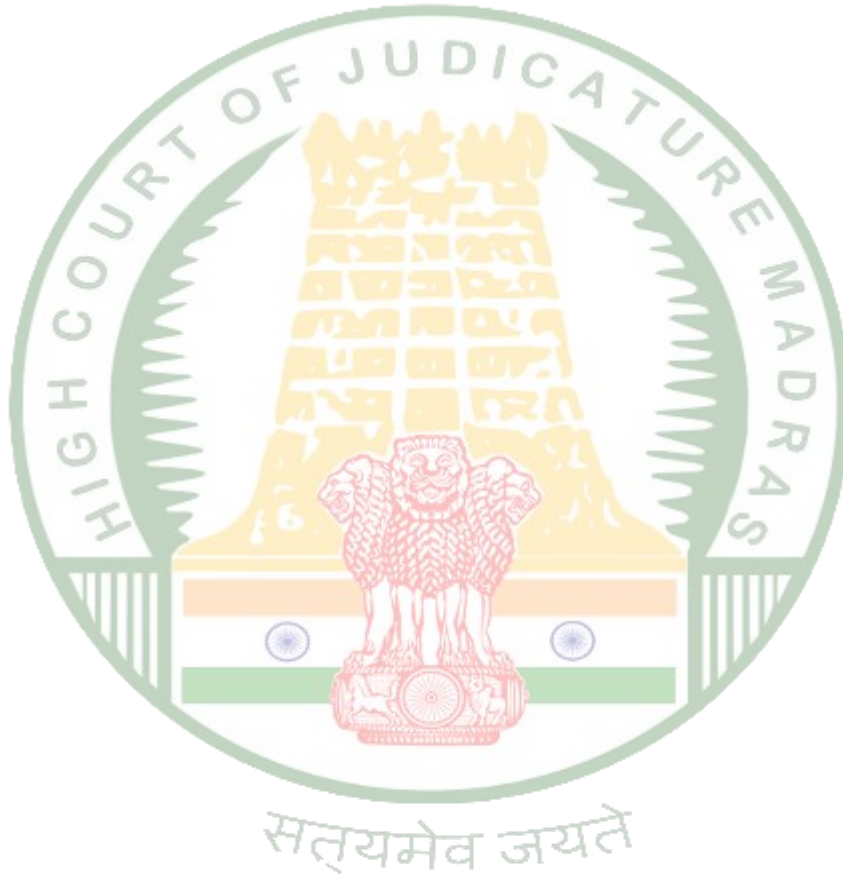
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2. The Inspector of Police (L&O)
E3, Teynampet Police Station,
Chennai.

3.The Govt., Advocate Criminal Side,
High Court, Madras.

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