



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2021

Delivered On: 19.08.2021

CORAM

THE HONOURABLE **MR. JUSTICE G. ILANGO VAN**

Crl.O.P.(MD).No.5920 of 2021

WEB COPY

Mrs.Dhoulath Nisha

... Petitioner

Vs.

1.The Regional Passport Office,
Passport Office,
Melakkal Road,
Kochadai,
Madurai District.

2.The Inspector of Police,
All Women's Police Station,
Ottanchadram,
Dindigul District.

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records from both the respondents and revoke the impound of the Passport, bearing number J6230514 of the petitioner's Husband Mr.Ahamed Kabeer and may order the First respondent to renew his passport at the Indian Embassy at Dubai, atleast for some temporary period like one year, so that the petitioner's husband will return India and will do the needful if his presence is necessary for any enquiry or for any legal proceedings with the second respondent.

For Petitioner : Mr.G.Sreenisha

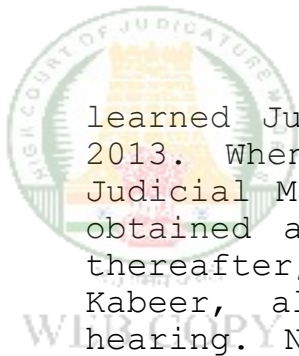
For Respondents : Mrs.L.Victoria Gowri for R1
Assistant Solicitor General

ORDER

This petition has been filed seeking a direction to the respondent to take appropriate steps to release the passport which has been impounded and to renew the passport of the petitioner's husband bearing No.J6230514.

2.The facts in brief are as follows:

The petitioner's husband is one Ahamed Kabeer. He is now in Dubai on the account of his job. The petitioner is the legally wedded second wife of the husband namely Ahamed Kabeer. On the basis of the complaint given by the first wife of her husband a case in Crime No.3 of 2013, on the file of the All Women Police Station, Ottanchathiram, has been registered and it is pending before the



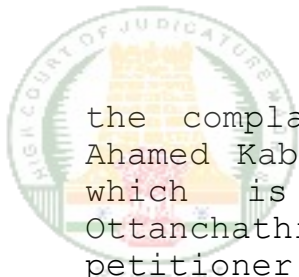
learned Judicial Magistrate Court, Ottanchathiram in C.C.No.89 of 2013. When Ahamed Kabeer was in India, he appeared before the Judicial Magistrate, Ottanchathiram, Dindigul District, on 2014 and obtained an order of permission to go to Dubai for work. But, thereafter, the case has not been disposed of so far. Except Ahamed Kabeer, all other persons are appearing before the Court for hearing. No warrant also has been issued against him. In such circumstances, due to the present pandemic situation, he tried to come to India, but he cannot come to India. Thereafter, now the passport has been impounded on the basis of the letter given by the Inspector of police, All Women Police Station, Ottanchathiram. It has been impounded without giving any intimation or audience to the Ahamed Kabeer. The passport also expired in 2nd May of 2021. Unless the passport is renewed, he may not be in a position to travel to India. On this ground this petition has been filed.

3.The averments made in the Counter affidavit filed by the first respondent are as follows:

It has been stated that a petition has been filed by the first wife namely Mohammed Fatima in W.P.(MD).No.14952 of 2015, seeking direction to impound the passport obtained by Ahamed Kabeer. An order has been passed in this petition to the effect that she has to approach the first respondent with all particulars and there upon, the first respondent shall take action as per law. So on that ground only representation was made by Mohamed Fatima along with a copy of the bailable warrant that has been issued by the Judicial Magistrate Court and the warrant is kept pending for execution. The matter was referred to the Superintendent of Police, Dindigul. He informed that the Criminal case in Crime No.3 of 2013, is pending before the Judicial Magistrate Court, Ottanchathiram in C.C.No.89 of 2013. Because of the absence of the Ahamed Kabeer in the address, summons could not be served. So a notice was issued under the provisions of Indian Passport Act to Aahamed Kabeer to show cause why action should not be initiated to impound passport. But, it was reported as addressee left. Thereafter, only by invoking the provisions of Indian Passport Act, it has been impounded. The only option that is available to the husband of the petitioner is to approach the Indian Consulate in Dubai and obtain a one way travel document to return to India and appear before the concerned Court to complete the criminal proceedings.

4.Heard both sides.

5.A locus standi of the petitioner to file the said petition on behalf of the husband, even though has been questioned by this Court, is not seriously canvassed by the respondent at the time of argument. The passport has been impounded only by following the proper procedure as contemplated under the Indian Passport Act. Only the petitioner's husband was absent in the address mentioned in the passport and because of his absence, notice has been served and



the complainant, this petition has been filed on behalf of the Ahamed Kabeer and it does not deny the case in C.C.No.89 of 2013, which is pending before the learned Judicial Magistrate, Ottanchathiram, against Ahamed Kabeer, the husband of the petitioner. In the petition, it has been stated that as per the law, Ahamed Kabeer appeared before the concerned Court and obtained permission to go abroad for work. No visa documents has been produced to show that before leaving India Ahamed Kabeer obtained proper permission from the concerned Court. So mere averment in the affidavit cannot be taken into account and if it was really so, the Superintendent of Police would have informed the first respondent about the permission granted by the concerned court. So in the absence of any such documentary evidence, the contention on the part of the petitioner that her husband obtained permission cannot be taken as a truth.

6.It is also seen that a bailable warrant has been issued against Ahamed Kabeer due to his absence before the concerned Court. The case is of the year 2013, even after lapse of eight years, it has not ended, mainly due to the absence of Ahamed Kabeer. The petitioner cannot make any grievance against the first respondent in impounding the passport. Passport has been impounded by following due process. So that cannot be found fault. Now a way out has been suggested that a choice is available to the husband of the petitioner to approach the Indian Consulate and get a one way travel document to come to India, face the proceedings and then work out the remedy. When such a choice is available to the husband of the petitioner, seeking revocation of impounding passport is not maintainable. When warrant has been issued against Ahamed Kabeer, this Court is inclined to dispose of the petition with the following directions.

(i)As advised by the first respondent, the husband of the petitioner shall approach the Indian Consulate at Dubai, get a one way travel document, come to India, face the trial and work out his remedy to release the impounded passport and renew the same.

7.With the above directions, this criminal original petition stands disposed of.

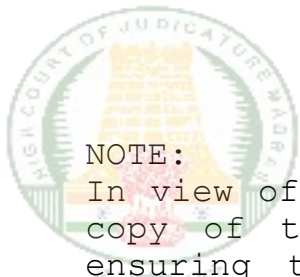
Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)



NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Regional Passport Office,
Passport Office,
Melakkal Road,
Kochadai,
Madurai District.

2.The Inspector of Police,
All Women's Police Station,
Ottanchadram,
Dindigul District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.MAHALAKSHMI, Advocate(SR-26980[F] dated 23/08/2021)

Crl.O.P.(MD).No.5920 of 2021
19.08.2021

RK (01.09.2021) 4P 5C