



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE :13.09.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

W.P. (MD)No.15627 of 2021

and

W.M.P. (MD)Nos.12586, 12588 & 12589 of 2021

Vivek Rao

... Petitioner

Vs.

1.The Superintendent of Police,
Trichy District,
Trichy.

2.The Deputy Superintendent of Police,
District Crime Branch,
Trichy District,
Trichy.

3.The Inspector of Police,
All Women Police Station,
Manaparai,
Trichy District.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a **Writ of Certiorari**, calling for the records relating to the impugned communication of the 3rd respondent dated 21.06.2021 with regard to the LOC against the petitioner and quash the same.

For Petitioner	: Mr.B.Prahalad Ravi
For Respondent	: Mr.R.M.Anbunithi
	Additional Public Prosecutor

O R D E R

This writ petition is filed to quash the records relating to the impugned communication of the third respondent, dated 21.06.2021, with regard to the LOC, against the petitioner.

2.The case of the petitioner in brief:-

(i) The petitioner was married to one Vinothini Muthusamy on 28.05.2009 at Bangalore. It was a love marriage. Because of the marriage, they have two female children namely, Spraha Rao and Mrusha Rao. Before the birth of the second child, the petitioner and his family had settled down at Singapore due to the job of the petitioner and his wife as they being the software professionals.



They have running their life peacefully at Singapore till 2018. Due to the frequent visit of the in-laws of the petitioner, problems started between the husband and wife. Because of the torture made by his in-laws and wife, the petitioner, left the home and returned to India.

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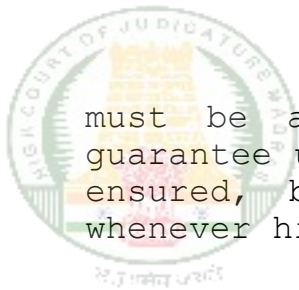
(ii) In such circumstances, the wife of the petitioner filed M.C.No.6225 of 2019 before the Family Court, Bangalore. Subsequently, the petitioner filed O.P.No.6 of 2020 before the Sub Court, Manapparai, seeking divorce. Thereafter, on 04.02.2020, a case has also been registered by the third respondent against the petitioner in Crime No.4 of 2020 for the offences under Section 294 (b), 498(A) and r/w Section 4 of Woman Harassment Act without making any proper preliminary enquiry. Later, on 07.05.2021, final report was filed before the Judicial Magistrate, Manapparai, in C.C.No.26 of 2021 and the petitioner was directed to appear on 01.09.2021. In the mean time, the petitioner was selected in an interview by the Company situated at Poland through online and so, he has to join the Company in the first week of July 2021. So, he filed W.P.No.9757 of 2021 seeking permission to travel abroad and he also moved anticipatory bail application in Crl.OP.No.6528 of 2021 seeking bail and the same was granted on 05.05.2021. Similarly, Crl.OP.No.3014 of 2021 was also filed seeking quashment and the same was dismissed because of the filing of the Charge Sheet. After that, he filed Crl.OP.No.10571 of 2021 seeking quashment of the Charge Sheet. By the order dated 04.08.2021, stay has been granted in that matter and the personal appearance of the petitioner was also dispensed with before the Court, till 01.09.2021.

(iii) In the mean time, the third respondent requested the Passport Authority to issue a Lookout Circular and the same has been issued without proper verification. The intention of the third respondent is to prevent the petitioner from travelling abroad on account of the employment. The above writ petition, filed by the petitioner was withdrawn and later, this petition came to be filed.

3. Heard both sides.

4. It is a matrimonial dispute between the husband and wife. Originally, it was a love marriage and after that, they settled in Singapore. Both are software professionals. Due to the difference of opinion arose between them, the petitioner returned to India and now, the defacto complainant residing in Singapore. The petitioner wants to go to Poland for joining work. The wife is trying to restrain, confine and detain the petitioner in India till the completion of the trial proceedings in C.C.No.26 of 2021, pending on the file of the Judicial Magistrate, Manapparai.

5. When the matter was moved by the petitioner, this Court was of the considered view that the petitioner cannot be detained in India, because of the pendency of the above said criminal case. He



must be allowed to pursue the job in abroad. Which right of guarantee under constitution. At the same time, his presence must be ensured, before the Trial Court, during the trial proceedings, whenever his physical presence, is required.

6. Even though, the matter is very simple, in view of the Office Memorandum issued by the Ministry of External Affairs PSP Division, Government of India, when criminal cases are pending, issuance of passport and travel documents, gave trouble to the parties and authorities. Finally, as per the direction, issued by the High Court of Delhi, a comprehensive circular has been issued, which is extracted hereunder:-

No.VI/401/1/5/2019
Government of India
Ministry of External Affairs
PSP Division

Patiala House Annexe, Tilak Marg

New Delhi, the 10th October 2019

OFFICE MEMORANDUM

Subject: Issue of passports to applicants against whom criminal case are pending before a court of law in India.

Reference is invited to Notification No. GSR 570 (E) dated 25.08.1993 regarding issuance of passports to applicants who have criminal proceedings pending against them and whose applications would attract the provisions of clauses (f) of sub-section (2) of Section 6 of the Passports Act, 1967.

2. GSR 570 (E) dated 25.08.1993 is reproduced below for reference:

GRS 570 (E) - In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. GSR 298 (E) dated the 14th April 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal Court in India and who produce orders from the Court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-Section (2) of Section 6 of the said Act,



subject to the following conditions, namely:-

(a) the passport to be issued to every such citizen shall be issued -

(i) for the period specified in order of the Court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year;

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (I) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

3. It may be noted that applicants may be refused passports only on grounds mentioned under Section 6 (2) of the passports Act, 1967. Section 6 (2) (f) of the Act states that the passport authority shall refuse to issue a passport or travel document to an applicant on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. GSR 570 (E) dated 25.08.1993 was introduced to give relief to such applicants against whom criminal proceedings are pending before any Court of law in India but who may need to travel abroad for some urgent business. With an undertaking under GSR



570(E) and an order from the Court, an applicant could be issued a short validity passport of one year validity of for the period specified by the Court.

4. It has been noticed that there are an increasing number of references being received regarding passport applications attracting Section 6 (2) (f). It has also been brought to Ministry's notice that there are a number of complex issues involved while processing such applications. During the proceedings in a recent court case, the Hon'ble High Court of Delhi in W.P. (CRL.) No.2844/2018/CRL.M.A.48674/2018 has directed that guidelines be issued by the Ministry reiterating the procedure for processing of such applications and emphasizing that such applications need to be processed with due care and diligence.

5. In view of the above, the following instructions may be adopted while processing the passport applications in respect of those applicants who may have criminal proceedings pending before a criminal court in India:

(i) The provisions of GSR 570 (E) may be strictly applied in all case. GSR 570 (E) is a statutory notification and hence, forms part of the Rules. It is to be noted that as per Section 5 (2) of the Passposrts Act, 1967, the passport authority shall be order in writing take a decision whether to issue or refuse a passport, after making such inquiry, if any, as it may consider necessary. Moreover, Section 7 of the Passports Act, provides that a passport or travel document may be issued for a shorter period than the prescribed period if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period. Rule 12 of the Passport Rules, 1980 only states that an ordinary passport shall be in force for a period of 10 years which implies that an ordinary passport cannot be issued beyond a period of 10 years.

(ii) Whenever an applicant is submitting a 'No Objection Certificate' (NOC) from a Court of law in India, the applicant should be advised that undertaking as per GSR 570(E) should be complete in all respects and should mention all the pending criminal cases against the applicant. The undertaking will have a not clearly stating that if any false or



incomplete information is submitted by an applicant, then his passport application is liable to be rejected.

(iii) Extant instructions clearly lay down that such applications should be processed on pre-Police Verification (PV) mode. "Pre-PV" would be mandatory in all cases of applications submitted with GSR 570(E) to ensure that the undertaking submitted by the applicant is properly matched with the criminal cases mentioned in the Police Verification Report (PVR). Hence, such applications should not be accepted under Tatkaal nor such applications be moved to "post-PV" mode or "No-PV" mode without proper justification and approval to be recorded in writing.

(iv) If an undertaking is incomplete or misleading and the applicant is found to have suppressed details of other criminal cases against the applicant, a Show Cause Notice should be issued to the applicant and action initiated against that applicant as per provisions of Section 12 of the Passports Act, 1967. If information that an applicant has obtained a passport by making a false submission or by suppressing material facts comes to light after the passport has been issued, the passport may be impounded or revoked as per provision of Section 10 (3) (b) of the Passports Act, 1967 after following the due procedure.

(v) In case where the first police verification (PV) is 'Adverse', secondary police verification may be generated. While a secondary PV is generated, it should be accompanied by a detailed letter seeking clarification regarding the pending criminal cases against the applicant and the status of these cases. Apart from generating secondary PVR, the passport officers may, if considered necessary, call for discreet enquiry through the police authorities by sending the court order submitted by the applicant or even seek verification from other government agencies/departments, as the case may be.

(vi) In case where the secondary Police Verification is also 'Adverse', it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.



(vii) If the details given in the police report and the undertaking submitted by the applicant are matching, then the 'No Objection Certificate' issued by a Court of law submitted by the applicant would take precedence over any 'Adverse' report submitted by the police. In such cases, the 'Adverse' report may be overruled with the written approval of the Passport Officer.

(viii) If the details given in the PVR and the undertaking submitted by the applicant are at variance, then a notice may be issued to the applicant calling for clarification and advising the applicant to submit details of all pending criminal cases as well as to submit a revised No Objection Certificate (NOC).

(ix) If it is brought to the notice of the authority that an applicant has criminal proceedings arrayed against applicant before several courts of law, then the applicant may be advised to get NOC from all the concerned court (s). Normally, the Court Order would make a mention of the cases pending against the applicant as well as the prayer made by the applicant. This may be examined along with the undertaking submitted by the applicant and complaints or other court orders, if any, that have been received against the applicant.

(x) It may noted that GSR 570(E) only exempts and applicant from the operation of Section 6 (2)(f) and none of the other sub-sections of Section 6(2) of the Passports Act, 1967.

(xi) A revised Undertaking under GSR 570(E) is attached at Annexure 'A'.

(xii) Passport Officers may issue an internal SOP along the above lines so that there is no confusion in handling of applications that would attract provisions of section 6(2)(f) of the Passports Act, 1967.

6. The above instructions may be noted for strict compliance with immediate effect.

(Arun Kumar Chatterjee)
Joint Secretary (PSP) &
Chief Passport Officer

All Passport Issuing Authorities in India and Abroad



UNDERTAKING

(to be submitted on plain paper as per provisions of GSR 570(E) dated 25.08.1993)

I am applying/have applied for passport with the following details:

- (a) Name :
(b) Date of Birth :
(c) Father's Name :
(d) Mother's Name :
(e) Present Address :
(f) File No./ARN No. : Date:.....

2. The Criminal case (s) with following details is/are pending against me:
(if more than one case is pending, details of all cases may be provided.
Additional sheet giving complete information may be attached.)

- (a) Case No :
(b) Name of Court :
(c) Details of Investigating Agency :
(Please provide details of police Station/
Investigating Officer etc)
(d) Last date of hearing :
(e) Next date of hearing :

3. I hereby undertake that I shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued.

4. I am aware that it is an offence under the Passports Act, 1967 to furnish any false information or to suppress any material information with a view to obtaining a passport or any other travel document.

5. The above information given by me in this undertaking and enclosures is true and I am solely responsible for its accuracy.

(Signature of the Passport applicant)

Name

Mobile No.....

Date:.....

Place:.....



7. But, however, the learned counsel for the petitioner would submit that in view of the several orders passed by this Court in several matters, Lookout Circular must be cancelled and for that purpose, he would rely upon the number of judgments. But, I am of the considered view that in view of the above said circular, if permission is granted by the competent Court, where criminal case is pending, the Lookout Circular will become cancelled or ineffective or inoperative automatically. When this specific request was made by the learned counsel for the petitioner to quash the Lookout Circular, I told him that if such Lookout Circular is quashed by this Court, that will not give any relief to him in view of the pendency of the above said criminal case. He has to necessarily get permission from the Judicial Magistrate, Manapparai, to travel abroad. If the learned Judicial Magistrate, Manapparai, permit the petitioner to travel abroad, then Lookout Circular will become non-operational, ineffective and deem to have been cancelled. This observation is placed on record, so that, the petitioner may not experience any trouble in future, due to the issuance of Lookout Circular.

8. I am of the considered view that this matter can be disposed of with the following directions:-

(i) The petitioner is directed to appear before the learned Judicial Magistrate, Manapparai, within a period of 15 days from the date of receipt of a copy of the order and file a proper petition in the prescribed format seeking permission to travel abroad.

(ii) The learned Judicial Magistrate, Manapparai, is directed to consider the same, on merits within a week, thereafter giving notice to all the parties concerned.

9. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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 Judicial Magistrate, Manaparai.

2. The Superintendent of Police,
Trichy District,
Trichy.

3. The Deputy Superintendent of Police,
District Crime Branch,
Trichy District,
Trichy.

4. The Inspector of Police,
All Women Police Station,
Manaparai,
Trichy District.

+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-28988[F] dated
14/09/2021)

W.P. (MD) No.15627 of 2021

13.09.2021

DJ(CO)

TR(14.09.2021) 10P 6C