



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

WEB COPY

W.A(MD)No.349 of 2022

M.Vino Raja

.. Appellant

Vs

1.A.Arulraj

2.The Secretary,
Ministry of Home Affairs,
North Block,
Central, Secretariat,
New Delhi - 110 001.

3.The Ministry of External Affairs,
B Wing, Jawaharlal Nehru Bhawan,
No.23-D, Janpath,
New Delhi - 110 001.

4.The Home Secretary,
State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai - 600 009.

5.The Honourable First Secretary,
Indian Embassy of Saudi Arabia,
Riyadh, Saudi Arabia.

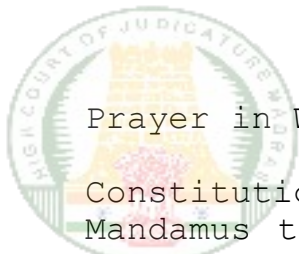
6.The District Collector,
Collector Office,
Vetturnimadam,
Kanyakumari - 629 001.

7.The Superintendent of Police,
Office of Superintendent of Police,
Kanyakumari District,
Kanyakumari.

8.The Inspector of Police,
Nesamani Nagar Police Station,
Nagercoil,
Kanyakumari District.

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 17.03.2022 made in W.P.(MD) No. 4006 of 2022.



Prayer in WP(MD). 4006/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus to direct the 1st respondent to direct the 4th respondent to secure the passport of the petitioners grant children Minor.V.Marc Roshan S/o.Vino Raja Passport Number U0043362 and Michelle Claire D/o.Vino Raja Passport Number U0043153 from the 8th respondent and permit them to move along with their mother i.e., the petitioners daughter Aruna Frank Passport Number T6703693 and facilitate their smooth depart from Riyadh , Saudi Arabia to their home place at Nagercoil, Tamilnadu , India by considering the petitioners representation dated 03.01.2022 and her daughter representation dated 06.01.2022 through online within the period satipulated as prescribed by this Honourable Court

For Appellant : Mr.M.Ajmal Khan, Senior Advocate
for Mr.M.P.Senthil

For Respondents : Mr.Haja Mohideen for R1
: Mr.Veera Kathiravan
Additional Advocate General
assisted by
Mr.K.Balasubramanian,
Special Government Pleader
for R4, R6 to R8
: Ms.L.Victoria Gowri, ASGI
for R2,R3 & R5

JUDGMENT

[Delivered by PARESH UPADHYAY, J.]

1. Challenge in this appeal is made to the order dated 17.03.2022 recorded on W.P(MD) No. 4006 of 2022. This appeal is by the eighth respondent.

2. The matrimonial dispute between the appellant and his wife has percolated to the extent of holding back of passports of their children by the appellant (father). The father in law of the appellant had approached this Court with the writ petition, pointing out difficulties faced by his daughter and grand children. It is this situation, which is handled by learned Single Judge by granting relief, which is challenged in this petition by the father of those two minor children.

3. The prayer clause in the writ petition reads as under:-

"Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of



Mandamus, to direct the first respondent to direct the fourth respondent to secure the passport of the petitioner's grandchildren, Minor.V.Marc Roshan S/o.Vino Raja Passport Number U0043362 and Michelle Claire D/o.Vino Raja Passport Number U0043153 from the eighth respondent and permit them to move along with their mother i.e., the petitioner's daughter Aruna Frank, Passport Number T6703693 and facilitate their smooth depart from Riyadh, Saudi Arabia to their home place at Nagercoil, Tamilnadu, India by considering the petitioner's representation dated 03.01.2022 and her daughter's representation dated 06.01.2022 through online within a period stipulated as prescribed by this Court."

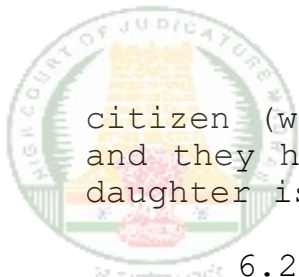
4.1 Mr.Ajmal Khan, learned Senior Advocate for the appellant has made serious grievance that, the impugned order was passed without hearing the present appellant and on that count alone this appeal needs to be entertained.

4.2 Without prejudice to the above, it is further submitted that even on merits, the impugned order is unsustainable. It is submitted that, true it is that, there are certain differences between the present appellant and his wife - the writ petitioner's daughter but that is being taken care of by the law of the country where they are staying (Saudi Arabia). It is submitted that, the children of the appellant are residing with their mother and the appellant is granted visitation right by the competent court there, and according to the appellant father, it is in the interest of children to write their examination which is due this April / May 2022. It is submitted that, handing over of passports of the children to the wife, for travel of children, is to be done but by taking care of the interest of the children, which is to appear in the examination. It is submitted that, under these circumstances, there was no necessity to give direction as contained in the impugned order. It is submitted that, the order of learned Single Judge be interfered with.

5. Learned Additional Advocate General for the State Authorities has also addressed the Court, to the extent necessary. We note that, the learned advocate for the writ petitioner and the representative of learned Assistant Solicitor General of India are also present in the Court. Since we find that, further assistance from these advocates would not be required, they are not called upon and their submissions are therefore not recorded.

6. Having heard learned advocates for the appellant and having considered the material on record and having gone through the order passed by learned Single Judge we find as under.

<https://hcservices.ecourts.gov.in/hcservice341> The daughter of the writ petitioner, who is an Indian



citizen (wife of the present appellant) is staying at Saudi Arabia and they have two children. The son is aged about 17 years and the daughter is aged about 11 years.

6.2 All four of them are residing at Saudi Arabia. Mother and two children are staying together but separate from her / their - husband / father.

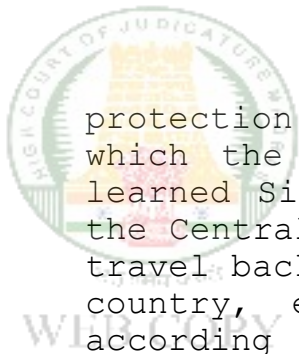
6.3 The father-in-law of the present appellant i.e. the father of the wife of the present appellant took up the cause before this Court, on behalf of his daughter and two grand children, who all are Indian citizen that they want to come to India, which they are unable to do, because the passports of the children are in the custody of their father i.e., the present appellant and they are not in a position to get back those passports and therefore some relief be granted.

6.4 Learned Single Judge has taken note of all these grievances and has satisfied himself even by holding video conference with the mother and children. Satisfaction in that regard is noted in the order under challenge. We have considered the same. The said order inter-alia records as under:-

"7.The petitioner's daughter, Aruna Frank and her two minor Children, Minor.V.Marc Roshan and Minor.Michelle Claire were present through video conferencing. The petitioner's daughter as well as her two minor children have made a categorical statement that they are unwilling to live with the eighth respondent, as he has been continuously harassing them. The minor children also categorically state that they do not want to live with their father."

7. Having considered the totality of the circumstances we find that, the learned Single Judge has, after due verification about the truthfulness of the difficulties faced by the citizen of our country i.e., the mother and her two minor children, has, in exercise of extraordinary powers under Article 226 of the Constitution of India, given certain directions. We find that, the circumstances demanded such a way out. Exercise of powers under these circumstances by learned Single Judge, according to us, can not be said to be any error, much less any error apparent on the face of record, which may call for any interference in exercise of powers under Clause 15 of Letters Patent. This appeal therefore needs to be dismissed.

8. We also note that the concern shown by the appellant is relevant, however he may have remedies under the laws in the country where they are staying, which can not be the subject matter of the writ petition and therefore it can not be subject matter of the writ petition. We find that, citizen of this country asked for the



protection of their fundamental right to freedom of movement for which the passport was the requirement and taking note of this, learned Single Judge has, after hearing the competent authority of the Central Government, given certain directions to facilitate their travel back home. Protecting the fundamental right of citizen of our country, even if they are (at present) beyond the territory, according to us, can not be and need not be interfered with. This appeal therefore needs to be dismissed.

9. We also note that, since the point at issue in the writ petition was only protection of fundamental right of the citizen, the circumstances leading to the situation, including allegations by or against any one is not the relevant factor and the same is treated to be deleted from the findings of the Court, if there is any.

10. For the above reasons, this writ appeal is dismissed. No costs. Connected C.M.P. (MD) No.3433 of 2022 would not survive.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

- 1.The Secretary,
Ministry of Home Affairs,
North Block,
Central, Secretariat,
New Delhi - 110 001.
- 2.The Ministry of External Affairs,
B Wing, Jawaharlal Nehru Bhawan,
No.23-D, Janpath,
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- 3.The Home Secretary,
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Kanyakumari.

7.The Inspector of Police,
Nesamani Nagar Police Station,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-18892[F] dated 18/04/2022)

+1 CC to M/s.SPL.GP. (SR-19165[F] dated 18/04/2022)

W.A(MD)No.349 of 2022
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