



WP(MD)No.7942 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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Sangar

... Petitioner

v.

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Street,
Race Course Road,
Madurai District.

2.The Inspector of Police,
R.S.Mangalam Police Station,
Ramanathapuram District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the first respondent to renew the petitioner's passport in No.K0581088 in reference to the File No.MD01C5019245723 dated 02.03.2023 pending on the file of the first respondent, by considering the petitioner's representation dated 30.03.2023.



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For Petitioner : Mr.T.Veerakumar

For Respondents : Mr.V.B.Sundhareshwar,
Central Government Standing Counsel
for R.1

Mrs.D.Farjana Ghoushia,
Special Government Pleader for R.2

ORDER

The petitioner was issued with a passport on 13.12.2011. He has filed an application for renewal of his passport and thereafter, filed this writ petition for a mandamus directing the first respondent to renew his passport.

2.Learned Central Government Standing Counsel appearing for the first respondent / Passport Authority, on instructions, submitted that they have received adverse remarks as against the petitioner that three criminal cases are pending as against him.

3.Learned Special Government Pleader, on instructions, submitted that the following cases are pending as against the petitioner:-



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S.No.	Crime No	Section of Law	Status
1	260/2019, Thiruvadanai Police Station	147, 148, 294(b), 323, 324, 506(ii) IPC, 4 of TNPHW Act	Under Investigation
2	44/2022, RS Mangalam Police Station	160 IPC	Under Investigation
3	146/2022, RS Mangalam Police Station	294(b) IPC, 3(1)(r), 3(1)(s) of SC / ST Act	Charge sheet filed

4.As against the petitioner, three cases are registered, of which, two are in FIR stage and one case is charge sheeted, but the charge sheet is yet to be taken on file. Pendency of an FIR, by itself, cannot be a ground to refuse the passport. This is the position repeatedly held by the Courts. The Passport Authority can refuse the passport and any travel documents under Section 6 of the Passport Act, 1967. Section 6(2)(F) of the Act would be relevant and the same is extracted as under:-

“6.Refusal of passports, travel documents, etc-

...

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



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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 -

...

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India.”

5.The above provision enables the Passport Authority to refuse the 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 is pending before a Criminal Court. Registration of an FIR on the police files, based on a complaint, cannot be construed as a proceeding pending before the Criminal Court.

6.The role of the Court pending the investigation has been discussed by various Courts. In ***W.Jaihar William v. State of Tamil Nadu*** [2014 (2) CWC 684], this Court has held as follows:-

“8. ... 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'."

7. Similarly, unless and until the Court takes cognizance of the final report filed by the Investigative Agency, it cannot be termed as a proceedings pending before the Criminal Court. ***In Re Narsingh Das Tapadia v. Goverdhan Das Partani & Another*** [(2000) 7 SCC 183], the Hon'ble Supreme Court has observed as follows:-

"8. "Taking cognizance of an offence" by the Court has to be distinguished from the filing of the complaint by the complainant. Taking cognizance would mean the action taken by the court for initiating judicial proceedings against the offender in respect of the offence regarding which the complaint is filed. Before it can be said that any Magistrate or Court has taken cognizance of an offence it must be shown that he has applied his mind to the facts for the purpose of proceeding further in the matter at the instance of the complainant. If the Magistrate or the Court is shown to have



applied the mind not for the purpose of taking action upon the complaint but for taking some other kind of action contemplated under the Code Criminal Procedure such as ordering investigation under Section 156(3) or issuing a search warrant, he cannot be said to have taken cognizance of the offence.”

8.A Division Bench of this Court in ***Arumugam v. Regional Passport Officer, Madurai*** [***W.A(MD)No.301 of 2018, dated 27.03.2018***], has held as follows:-

“8. ... mere pendency of the criminal proceedings cannot be construed as pendency of the criminal proceedings. The decisions relied on for reaching the said conclusion in the above cited decision, would also disclose that unless cognizance is taken by the concerned Magistrate, it does not amount to pendency of the criminal proceedings. Admittedly, in the case on hand, the case is in FIR stage and even for the sake of arguments, subsequently, the charge sheet has been filed, as on the date of submission of the application for passport, only FIR is pending and it cannot be construed as pendency of a criminal case and it cannot be said that the petitioner has suppressed the material fact of pendency of the criminal case.”



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9. In fact, the Ministry of External Affairs, Government of India, has issued a Circular dated 10.10.2019, wherein, the following instruction was issued:-

“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:

...

(vi) ... 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.”

10. Ordinarily, the duration of a passport as per Rule 12 of the Passport Rules is for a period of 10 years. In the event if the applicant is facing any criminal proceedings, the passport may be issued by restricting the period. Therefore, the Passport Authority is not justified in not deciding the



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application filed by the petitioner for renewal of passport by referring the criminal case.

11. Accordingly, this writ petition is allowed with a direction to the Passport Authority to renew the passport to this petitioner, by considering his application, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Index : Yes / No
NCC : Yes / No
gk

17.07.2023

To

The Inspector of Police,
R.S.Mangalam Police Station,
Ramanathapuram District.



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B.PUGALENDHI, J.

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