



W.P(MD)No.9792 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.9792 of 2023

and

W.M.P(MD)No.8629 of 2023

K.Rajesh

... Petitioner

Vs.

1.The Regional Passport Officer,
The Office of Regional Passport Officer,
Claret Plaza, Melakkal Main Road,
Kochadai, Madurai - 625016.

2.The Superintendent of Police,
K.Pudur,
Madurai District.

3.The Inspector of Police,
Melavalavu police station,
Madurai District.

... Respondents

PRAYER :-

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent to issue passport to the petitioner in directing the 1st respondent to issue passport to the petitioner in Application No.MD1069289691916 dated 15.04.2016.



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For Petitioners : Mr.S.Ramsundarvijayraj
Advocate.

For R1 : Mr.K.Govindarajan
Deputy Solicitor General of India

For R2 and R3 : Mrs.D.Farjana Ghoushia,
Special Government Pleader

ORDER

The writ petition has been filed in the nature of a mandamus seeking a direction to the first respondent Regional Passport Officer at Madurai, to issue passport to the petitioner K.Rajesh, aged about, 35 years and son of Kadamban and resident of Madurai, consequent to application in application No.MD1069289691916 dated 15.04.2016.

2. A reading of the aforementioned relief sought in the writ petition, would naturally given an impression that it is a extremely innocuous relief and that the petitioner as a citizen of this country, seeks right to hold an Indian passport, unless he is prohibited by law. In the affidavit filed in support of the writ petition, the petitioner stated that in the year 2004, he had obtained a passport in the name of his brother Sekar.



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3. That one statement itself would imply that the petitioner herein had consciously committed a criminal offence in the year 2004.

4. When the writ petition was filed in the year 2023, the petitioner had, as aforesaid, claimed that he is aged 37 years, in the year 2004, naturally he must be aged about 18 years. It is not a young age where you would not be aware of the offence which he is committing by getting a passport in the name of his brother Sekar. The petitioner herein had justified obtaining a passport in the name of his brother, only because the name of the brother had been included in the ration card.

5. The petitioner had however obtained the passport and had gone over to Abudabi. Thereafter, he further secured a job in Dubai.

6. The petitioner's brother independently wanted to get a passport. He applied for passport in his original name, namely Sekar. When he gave his father's name as Kadamban and also the same address as that of the petitioner, when the first respondent examined that particular application, they found that there was already an existing passport in the name of Sekar S/o.Kadamban in the same address. The brother of the petitioner, Sekar, therefore gave a



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complaint before the Melavalavu police station at Madurai, which was registered as FIR in Crime No.256 on 2016 on 26.07.2016 under Sections 419, 420, 468 and 471 of IPC. The name of the accused therein was the petitioner herein, in his actual name Rajesh. When the petitioner came back to this country, he necessarily had to surrender his passport, since he had obtained the same by impersonating himself as his brother Sekar.

7. Claiming that the petitioner was innocent of commission of any offence, the petitioner and his brother then entered into a compromise. This is only natural since they are both brothers and they would not like one of the other to suffer any conviction. Therefore claiming that the complaint had been withdrawn consequent to compromise, CrI.O.P.(MD)No.1924 of 2022 had been filed before this Court. A joint memo of compromise was also presented. This issue came up for consideration before a learned Single Judge of this Court.

8. I must place on record, my dismay at the Bar for having filed that particular Criminal Original Petition, innocuously claiming that since a memo of compromise had been entered into between the defacto complainant and the accused, the court should record the said compromise and quash the First Information Report.



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9. The order of the learned Single Judge is dated 04.02.2022. The defacto complainant Sekar was presented before the Court through Video conferencing. He was identified by A.Jeyakumar, Special Sub Inspector of Police, attached to the Melavalavu Police Station. It was recorded that the parties had filed a joint compromise memo. The defacto complainant represented that he does not want to pursue the complaint. The learned Judge naturally, went forward to conclude that since the parties had entered into a compromise, it would be a worthless exercise in continuing with investigation of the allegations in the FIR and therefore stated that the Criminal Original Petition was allowed and recorded the memo of joint compromise and also enclosed the same with the order and quashed FIR in Cr.No.256 of 2016.

10. It is clear that the said order had been obtained by misrepresentation and deception. The solemn duty to the Court had been broken and the Court had been deliberately misled into passing such an order.

11. More surprisingly, even the first respondent therein, namely the Inspector of Police, Melavalavu Police Station, represented by the Special Sub Inspector of Police, A.Jeyakumar, did not think it fit to inform the Court that the



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offences involved related to obtaining a passport by impersonation knowingly, and therefore, the offence was not compoundable and could not be compromised and that therefore the investigation into the allegations in the FIR will have to be proceeded with and should reach their logical conclusion. Two individuals have therefore taken not only the Court for granted but have also by this nefarious act of entering into an unlawful and illegal compromise, misled even the prosecution agency.

12. This Court when informed of these facts, cannot keep its eyes closed and condone this particular offence committed by the two brothers.

13. When this writ petition had been pending and these facts were ascertained by the Court, learned counsel for the petitioner, made an endorsement that he is withdrawing this writ petition. Such endorsement is rejected. On two occasions at least, the matter was mentioned along with a string of other matters and adjournments were sought. Even in the morning today, it was mentioned and adjournment was sought. This is just not done.

14. The Bar should realise that they have a duty to the Court. They have a duty to discharge which is solemn in nature. Court trusts advocates. There



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cannot be betrayal of such trust openly by any member of the Bar. The Court has to express its dismay.

15. The learned Judge who passed the aforesaid order, was of the bonafide impression that since a compromise had been entered into, nothing further survives for investigation. But unfortunately, it should have been informed to the learned Judge that the offences involved run deeper and involved impersonation in obtaining a passport and that it was a very very serious offence.

16. In the instant case, it was quite fortunately, between two brothers. If it had been between two miscreants, then the consequence would have been far more dangerous to the security of the Country. The passport could have been misused by anybody and later, they could have entered into a compromise and sought withdrawal of the criminal complaint.

17. In view of these facts, the order in CrI.O.P(MD)No.1924 of 2022 dated 04.02.2022, (K.Rajesh Vs the State represented by Inspector of Police, Melavalavu police station and another) is declared to be *per incuriam* and would not have any binding effect on any of the investigating agencies. The



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order is *non est* and should not be pressed upon for service by any of the parties, particularly, the accused therein, K.Rajesh or by the defacto complainant K.Sekar. The FIR in Cr.No. 256 of 2016 on the file of the third respondent is revived since the order had been obtained by fraud and is *per incuriam*. The effect of the order is only a nullity. Exercising my responsibility under Article 226 of the Constitution of India, I revive FIR in Crime No.256 of 2016 on the file of the third respondent herein.

18. Further, a direction is also given to the Superintendent of Police, Madurai District, to enquire into the entire episode, particularly the dereliction of duty by the then Special Sub Inspector of Police, A.Jeyakumar, Melavalam Police Station, who should have brought to the notice of this Court that the memo of compromise, is *per se* illegal. He had not pointed it out and had not discharged the duty expected of a police official. Necessary departmental action if required, must be initiated by the Superintendent of Police, Madurai against the said Special Sub Inspector of Police, A.Jeyakumar. Said disciplinary proceedings may be initiated after giving due opportunity and fair hearing to the said Special Sub Inspector of Police, after determining the true facts. The security of the country should be guarded by any public servant. Misuse of passport and obtaining a passport by impersonation should have been



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pointed out by the Special Sub Inspector of Police, before the learned Single Judge.

19. A direction is therefore given to the Superintendent of Police, Madurai District, to re-examine the entire issue relating to registration of FIR in Crime No.256 of 2016 dated 26.07.2016 of the Melavalavu Police Station, Madurai and exercise necessary powers to revive the said FIR.

20. A direction is also issued to the jurisdictional Judicial Magistrate to re-examine the entire issue relating to the FIR in Cr.No. 256/2016 of the third respondent police had been quashed and to bring it back to the records and take necessary steps to direct the investigating agency therein to further investigate and file a report before the Court.

21. The presence of the learned Deputy Solicitor General was sought before this Court. There were two or three occasions, when there was no representation on behalf of the first respondent and quite frustrated at that, this Court had directed the presence of the Deputy Solicitor General. The Learned Deputy Solicitor General is present today. A communication addressed by the Passport Officer on 01.07.2015 and reminder on 10.05.2016 was pointed out by the learned Deputy Solicitor General. These were nearly 8 years and 7 years



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back. This shows that neither was the first respondent interested in enquiring further into this offence, which is glaring on the face of the records. There should have been some responsibility shown by the passport authority. There is dereliction of duty also on the part of the Regional Passport Officer at Madurai also in this regard. It was finally realized by the office of the Deputy Solicitor General that this Court is pursuing the matter. It appears that a further reminder had been issued by the passport official to the Commissioner of Police on 27.04.2022. It is stated that a report from the Superintendent of Police, Madurai, had not yet been received. All these facts reveal complete break down of the machinery of both the Police Department and by the Regional Passport Officials. I hope the Bar realises that they have a solemn duty to discharge to the Court. Let me set the records straight and let me not look backwards, but rather direct the Regional Passport Officer to take the issue further with the Superintendent of Police, Madurai District and take the issue to its logical conclusion.

22. These facts reveal why I had stated at the beginning that the relief sought in the writ petition was very innocuously worded. I hold that the petitioner is certainly not entitled for any passport.

23. A direction is given to the first respondent / Regional Passport



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Officer at Madurai that, at no circumstance should he ever issue a passport in the name of K.Rajesh, S/o. Kadamban, resident of Madurai and should also, if there is a passport in the name of his brother K.Sekar, issue notice to the said Sekar and withdraw his passport also. This step is all the more required because both of them had entered into a memo of compromise on a very serious issue between themselves and had misled not only the Court but also every other public servant after committing an offence knowingly and deliberately. Merely because they are two brothers does not mean that they can exercise their privilege of withdrawing a complaint after lodging it. This specific direction is issued to the Regional Passport Officer at Madurai.

24. This Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

22.06.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1. The Regional Passport Officer,
The Office of Regional Passport Officer,



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Claret Plaza, Melakkal Main Road,
Kochadai, Madurai - 625016.

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- 2.The Superintendent of Police, K.Pudur, Madurai District.
- 3.The Inspector of Police, Melavalavu police station, Madurai District.
- 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.



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C.V.KARTHIKEYAN, J.

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