



WP(MD)No.18579 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD).No.18579 of 2023

Robin Nazhren

... Petitioner

Vs

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

2.The Inspector of Police,
Colachel Police Station,
Kanyakumari 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 first respondent to issue passport to the petitioner in accordance with law by processing the Application of the petitioner in File No.MD2074354382122 on 29.06.2022 within the time stipulated by this Court.



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For Petitioner : Mr.G.Aravinthan
For R1 : Mr.C.Nandagopal
Central Government Standing Counsel
For R2 : Mr.P.Kottaichamy
Government Advocate (Crl.side)

ORDER

The petitioner's application for renewal of passport was not considered by the Passport Authority, on the ground that a criminal proceeding is pending as against this petitioner before the Criminal Court.

2. The petitioner was already issued with the passport No.L2317914 on 04.06.2023 and the same is valid up to 03.06.2023. The petitioner was working as Kuwait and returned to India. The petitioner has applied for renewal of his passport on 29.06.2022. Based on the application of the petitioner and also the police verification report, the first respondent has issued a notice to this petitioner on 13.07.2022 calling upon the petitioner to provide explanation with



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regard to the criminal case, which was registered against the petitioner in Cr.No.303 of 2019, on the file of the Colachel Police Station. The petitioner without appearing before the first respondent has filed this writ petition in the year 2023 for a writ of mandamus directing the first respondent to issue passport to this petitioner by considering his application, dated 29.06.2022.

3. The learned Government Advocate (Crl.side) appearing for the second respondent submitted that the petitioner is an accused in Cr.No.303 of 2019, on the file of the Colachel Police Station. The second respondent has filed the final report before the learned Judicial Magistrate, Eraniel on 20.07.2022 for the offences under Sections 448, 294(b), 323, 379 (NP), 506(i) IPC @ 4 of TNWHA @ 448, 294(b), 323, 506(i) IPC @ 4 of TNWHA. The learned Government Advocate (Crl.side) admits that the final report which was filed in the year 2022 has not taken on file.



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4. Pendency of an FIR, by itself, cannot be a ground to refuse the passport. 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 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



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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 proceedings pending before the Criminal Court.

6. 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



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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.”

7.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. ...”

8.In fact, the Ministry of External Affairs, Government of India, has issued a Circular dated 10.10.2019, wherein, the following



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instruction was issued:-

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“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.”

Therefore, the Passport Authority is not justified in not deciding the application filed by the petitioner for renewal of passport by referring the criminal case.

9. 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.



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10. Accordingly, this writ petition is allowed with a direction to the petitioner to submit a fresh application to the first respondent within a period of two weeks from the date of receipt of a copy of this order along with order and on receipt of the application, the first respondent/Passport Authority to renew the passport to this petitioner, by considering his application, within a period of four weeks thereafter.

No costs.

07.08.2023

NCC : Yes / No.
Index : Yes / No.
Internet : Yes
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B.PUGALENDHI, J.

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