



**W.P(MD)No.15753 of 2023**

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 28.07.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**W.P(MD)No.15753 of 2023**

Neethirajan

... Petitioner

**Vs**

1.The Regional Passport Officer,  
Regional Passport Office,  
Municipal Water Tank Building,  
W.B.Road,  
Tiruchirappalli – 620 008.

2.The Inspector of Police,  
Madukkur Police Station,  
Thanjavur 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 reissue the Passport bearing No.R3500523 to the petitioner by processing his application in File No.TR1073152379920/Reopen the file, if any closed based on the explanation/representation dated 09.06.2023 within a time limit stipulated by this Court.



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For Petitioner

:Mr.B.Anandan

For R1

:Mr.P.Subbiah

Central Government Standing Counsel

For R2

:Mr.P.Kottaichamy,

Government Advocate

### **ORDER**

The petitioner was issued with a passport on 25.07.2017.

The petitioner claims that he has lost his passport on 11.11.2020 and has lodged a police complaint. The police has issued a “Lost Document Report”. Therefore, the petitioner has applied for re-issuance of passport and the same was not considered by the respondents so far. Hence, this petition.

2.Mr.Mr.P.Subbiah, learned Central Government Standing Counsel, who takes notice for the first respondent submits that on police verification report, it was found that the petitioner is involved in three cases in Crime Nos.147 of 2020, 556 of 2021 and 243 of 2016 on the file of the Madukkur Police Station. Hence, the first respondent has issued a notification to clarify about the stage of



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the criminal case. However, the petitioner failed to appear before the first respondent and filed this writ petition.

3.Mr.P.Kottaichamy, learned Government Advocate, who takes notice for the second respondent submits that the petitioner is involved in the following cases.

| Sl. No | Name of the police station | Crime Nos   | Offences                                                    |
|--------|----------------------------|-------------|-------------------------------------------------------------|
| 1.     | Madukkur                   | 556 of 2021 | 294b, 307,323, 324, 341 IPC @ 294b, 307,323, 324,34,341 IPC |
| 2.     | Madukkur                   | 147 of 2017 | 294b, 352 IPC                                               |
| 3.     | Madukkur                   | 243 of 2016 | 294b, 324, 506(ii) IPC                                      |

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:-



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*“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 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.



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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.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*



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*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.”*

8. 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*



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*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 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.

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

**28.07.2023**

NCC : Yes / No.  
Index : Yes / No.  
Internet: Yes  
vrn



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**B.PUGALENDHI, J.**

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