



W.P.(MD)No.15977 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.15977 of 2023
and W.M.P.(MD)Nos.13385 and 13387 of 2023

C.Velavendhan

... Petitioner

versus

1. The Regional Passport Officer,
O/o. Regional Passport Officer,
Tiruchirappalli.

2. The Superintendent of Police,
Thanjavur.

3. The Inspector of Police,
Orthanadu Police Station,
Thanjavur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the impugned clarification under Letter Ref.No.FCI/312045323/22, dated 17.01.2022, issued by the first respondent and to quash the same as unwarranted and unlawful and further direct the 1st respondent herein to issue Passport under File No.TR1073178754320 to the



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petitioner herein, within a time frame as fixed by this Court.

For Petitioner : Mr.A.S.Krishnan
For R1 : Mr.C.Nandagopal,
Central Government Standing Counsel
For R2 and R3 : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

The petitioner has applied for passport before the first respondent. The first respondent, after Police verification report, found that the petitioner is involved in a criminal case in Cr.No.152 of 2015, which is registered under Section 3(1) of PPD L Act on the file of the Inspector of Police, Orathanadu Police Station, Thanjavur District. The first respondent, by referring to this adverse inference, based on the police report, has issued the impugned show cause notice. Challenging the same, the petitioner has filed this writ petition.

2. The learned counsel appearing for the petitioner submits that the pendency of a criminal case at the stage of FIR is not a bar for authorities to issue passport to the petitioner. Further, as per Section 6(2)(F) of the Passport Act, the Passport Authority can refuse the



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passport or travel document if any criminal proceedings is pending before a Criminal Court in respect of the offence committed by the applicant. But, in this case, no criminal case is pending as against the petitioner. In order to prove the same, he has also produced an endorsement of the District Munsif cum Judicial Magistrate, Orathanadu, in C.P.No.150 of 2023, that no charge sheet has been filed in Cr.No.152 of 2015. Therefore, he seeks for a direction to the first respondent to issue passport to the petitioner.

3. 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



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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.”

4. 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.

5. 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



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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'”

6. 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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7. 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.”

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

8. 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



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is facing any criminal proceedings, the passport may be issued by restricting the period.

9. 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 twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

10.07.2023

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

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B.PUGALENDHI, J.

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