



WP(MD)No.17207 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.17207 of 2023

K.Thirugnanam

.. Petitioner

v.

1.The Regional Passport Officer,
O/o.The Regional Passport Officer,
Bharathi Ula Veethi,
Race Course Road,
Madurai – 625 002.

2.The Inspector of Police,
Kalayarkovil Police Station,
Sivagangai 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 consider the petitioner's representation dated 09.06.2023 and consequently, directing the first respondent to renew / issue passport in pursuance of the online application made in File No.MD1073912871322 dated 10.02.2022.



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For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.B.Narayanan Ram,
Central Government Standing Counsel
for R.1

Mr.P.Kottaichamy,
Government Advocate (Crl. Side)
for R.2

ORDER

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

2.Learned Central Government Standing Counsel for the Passport Authority submitted that they have received adverse remarks during police verification. Therefore, they are yet to take a decision on the petitioner's application.

3.Learned Government Advocate (Crl. Side) for the Police submitted that the petitioner has involved in the following cases:-



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S.No	Cr.No	Section	CC / PRC	Court	Stage
1	88/2017, Kalaiyarkovil PS	143, 188 IPC	STC. 575/2017	JM-1 / Sivagangai	Discharged, dated 05.09.2022
2	229/2017, Kalaiyarkovil PS	143, 188 IPC & 11(1)(d) CTA Act	STC. 1347/2017	JM-1 / Sivagangai	Convicted. Fine Rs.5000/-
3	549/2017, Kalaiyarkovil PS	143, 188 IPC & 143 IPC		JM-1 / Sivagangai	Not taken on file
4	224/2018, Kalaiyarkovil PS	143, 188 IPC & 11(1)(d) CTA Act	STC. 781/2018	JM-1 / Sivagangai	Convicted. Fine Rs.781/-
5	231/2019, Kalaiyarkovil PS	143 IPC & 11(1)(d) CTA Act	STC. 2577/2019	CJM / Sivagangai	Discharged, dated 18.08.2022
6	77/2020, Kalaiyarkovil PS	147, 294(b), 323, 506(i) IPC @ 147, 294(b), 323, 325, 506(i) IPC	CC. 170/2020	JM-1 / Sivagangai	Removed from accused list
7	46/2021, Kalaiyarkovil PS	143, 290, 291, 341 IPC & 11(1)(d) CTA Act	STC. 282/2022	CJM / Sivagangai	Convicted Rs.1050/-
8	610/2021, Kalaiyarkovil PS	147, 153A, 353, 506(ii) IPC	CC. 335/2023	CJM / Sivagangai	PT (Summon service pending)



4.From the above, it appears that the petitioner has involved in as many as eight cases, of which, six cases have been ended in one way or other. One case is now pending in C.C.No.335 of 2023 before the learned Chief Judicial Magistrate, Sivagangai and in another case, the charge sheet is yet to be taken on file.

5.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.”

6.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.

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. ...”

9.The Ministry of External Affairs, Government of India, has issued a statutory notification in GSR.570(E) dated 25.08.1993 with certain guidelines by providing relief to those applicants against whom criminal proceedings are pending before the Courts that they can obtain the passport by obtaining No Objection Certificate from the concerned Court and also by filing an undertaking as prescribed in the notification.



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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 application filed by the petitioner for renewal of passport by referring the pendency of any criminal case before the Court.

11. Accordingly, this writ petition is disposed of with the following directions:-

i) The petitioner shall file an affidavit of undertaking along with substantive sureties to ensure his availability for the trial, before the concerned Court where the case in C.C.No.335/2023 is pending. The Court, on satisfaction and after ensuring his availability for the trial, shall issue a No Objection Certificate to the petitioner enabling him to get his passport renewed.

ii) The petitioner, thereafter, shall file an affidavit under GSR.570(E) along with a No Objection Certificate obtained from the concerned Court before the Passport Authority. On such presentation of the application, the Passport



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Authority shall consider the same and renew the passport for a temporary period depending upon the requirement.

There shall be no order as to costs.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

26.07.2023

To

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B.PUGALENDHI, J.

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