



W.P.(MD)No.18558 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.18558 of 2023

and

W.M.P.(MD)Nos.15390 and 15391 of 2023

Sathishkumar

... Petitioner

versus

1. The Regional Passport Officer,
Regional Passport Office,
New Municipal Complex,
Thillai Nagar 7th Cross,
Tiruchirappalli.

2. The Inspector of Police,
Illuppur Police Station,
Pudukottai 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 records of the 1st respondent in Letter Ref.No.OBJ/314189479/23 dated 14.06.2023 and quash the same as illegal and arbitrary and in consequence thereof direct the 1st respondent to issue passport to the petitioner.



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For Petitioner : Mr.P.Ganapathi Subramanian
For R1 : Mr.P.Subbiah,
Central Government Standing Counsel
For R2 : Mr.P.Kottaichamy,
Government Advocate

ORDER

The petitioner has applied for a passport before the first respondent. The first respondent, based on the Police Verification report that the petitioner is involved in a case in Crime No.119 of 2022 for the offence punishable under Sections 379 of IPC r/w. 21(1) of Mines and Minerals (Development and Regulation) Act 1957, has issued a show cause notice on 31.01.2023 calling upon him to furnish his explanation for the criminal case which is pending against him. It appears that the petitioner has not appeared before the first respondent. Therefore, another notice was issued on 14.06.2023 directing the petitioner to offer his explanation within a period of 15 days, which is impugned in this writ petition.



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2. The learned Central Government Standing Counsel appearing for the first respondent submits that the petitioner ought to have appeared before the first respondent and offered his explanation for the criminal case which is pending against him. Instead, he has filed this writ petition before this Court.

3. The learned Government Advocate (Crl. Side) appearing for the second respondent submits that the petitioner is involved in a case in Crime No.119 of 2022 on the file of the second respondent Police Station for the offence under Section 379 IPC r/w. 21(i) of Mines and Minerals (Development and Regulation) Act, 1957 and it is still at the stage of investigation.

4. This Court considered the rival submissions made.

5. The impugned notice in this writ petition is only a show cause notice calling the petitioner to offer his explanation. By the impugned



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notice dated 14.06.2023, the first respondent has called upon the petitioner to offer his explanation to ascertain as to whether a criminal case has been charge sheeted or not. The learned Government Advocate (Crl. Side) submitted that the criminal case, which is pending as against the petitioner, is still at the stage of investigation.

6. 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



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Criminal Court in India.”

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7. 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.

8. 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



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pending before the Court'”

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9. 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.”

10. 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 passport by referring the criminal case.

11. 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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12. Accordingly, this writ petition is disposed of with a direction to the first respondent to issue passport to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

13. At this juncture, the learned counsel appearing for the petitioner expressed his apprehension that by this time, the petitioner's application might have been closed by the first respondent.

14. In the event the petitioner's application has already been closed by the first respondent, the petitioner shall apply for issuance of passport afresh, within a period of 10 days from the date of receipt of a copy of this order. On receipt of such application, the first respondent shall consider the same and issue passport within a period of four weeks from thereon. No costs. Consequently, connected miscellaneous petitions are closed.

01.08.2023

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

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