



W.P.(MD)No.20357 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.20357 of 2023

and

W.M.P.(MD)No.16792 of 2023

S.Selvaraj

... Petitioner

versus

1. The Government of India,
Ministry of External Affairs,
Rep. by the Regional Passport Officer,
Bharathi Ula Road,
Race Course Salai,
Madurai,
Madurai District.

2. The Inspector of Police,
Koodankulam Police Station,
Koodankulam,
Radhapuram Taluk,
Tirunelveli District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
seeking for the issuance of Writ of Mandamus, to direct the first
respondent to consider the petitioner's application under reference



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ARN : 23-1007701247 dated 26.06.2023 for the issuance of passport to the petitioner forthwith.

For Petitioner : Mr.S.Palanivelayutham
For R1 : Mr.P.Sundaravadivel
Central Government Standing Counsel
For R2 : Mr.P.Kottaichamy,
Government Advocate (Crl. side)

ORDER

The petitioner has applied for issuance of a passport to the first respondent vide an application No.ARN 23-1007701247 dated 26.06.2023. But, the first respondent has issued a notice to the petitioner on 13.07.2023 calling upon him to appear in person and to explain with regard to the criminal case which is pending as against him in Crime No.351 of 2012 on the file of Koodankulam Police Station, Radhapuram Taluk, Tirunelveli District. Hence, the petitioner is before this Court.

2. The learned counsel appearing for the petitioner submits that the petitioner was not aware of the case in Cr.No.351 of 2012 and it



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appears that the criminal case has been registered as against the entire

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Villagers on the agitation made by them, when Koodankulam Power Plant was installed. Further, the respondent Police has not filed any final report for the past 11 years and therefore, the criminal case itself ought to have been closed on limitation. He further submits that the pendency of FIR is not a bar for issuance of a passport.

3. The learned Central Government Standing Counsel appearing for the first respondent submits that based on the Police Verification Report, the first respondent has called upon this petitioner for an enquiry to explain with regard to the stage of the criminal case and he has not rejected the petitioner's application and it is still pending.

4. The learned Government Advocate (Crl. Side) appearing for the second respondent submits that the petitioner is an accused in Crime No.351 of 2012 on the file of the Koodankulam Police Station and admittedly, final report has not been filed so far.



WEB COPY 5. This Court considered the rival submissions made and perused the materials available on record.

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 Criminal Court in India.”



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 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 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 allowed with a direction to the Passport Authority to issue passport to this petitioner, by considering his application, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

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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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