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W.P.(MD)NO.5008 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5008 of 2015

and

M.P.(MD)No.1 of 2015

K.Mohamed Rilvan

... Petitioner

vs.

1. The Passport Officer,
Government of India,
Ministry of External Affairs,
Passport Office, Bharathi Ula Veethi,
Race Course Road, Madurai – 625 002.

2. The Superintendent of Police,
O/o.The Superintendent of Police,
Ramanathapuram District.

3. The Inspector of Police,
Thondi police station,
Thondi,
Ramanathapuram District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice in policy ref No.1500334-CRM-MDU, File No.MD1067524506914 dated 24.03.2015 passed by the respondent No.1 and quash the same.



For Petitioner : Mr.S.M.A.Jinnah
For R-2 & R-3 : Mr.N.Satheesh Kumar,
Additional Government Pleader.
For R-1 : Mr.R.Vijayarajan

* * *

ORDER

Heard the learned counsel on either side.

2. 29.07.2014 was the holy day of Ramzan. A group of youngsters including the writ petitioner assembled near the inner staircase of the pallivasal at Thondi beach. On the T-shirts worn by them, the line “we are all ISIS” was inscribed. Photograph was taken and one Abdul Rahman posted the same in his Facebook page.

3. This caught the attention of Thondi police. Crime No.138 of 2014 was registered on 04.08.2014 under Section 7(1)(a) of Criminal Law Amendment Act r/w. Section 120(B) IPC. The petitioner was shown as the second accused.



4. The petitioner had obtained passport on 20.03.2014. His implication in the criminal case came to the notice of the first respondent. The first respondent vide communication dated 24.03.2015 called upon the petitioner to surrender his passport. Questioning the notice, the petitioner filed this writ petition. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to grant relief as prayed for.

5. The learned Standing counsel submitted that the impugned communication is a mere notice. It does not warrant interference. He also pointed out that the first respondent was very much within his power to issue the same. The learned Additional Government Pleader appearing for respondents 2 and 3 submitted that the allegations made against the petitioner are fairly serious. He called upon this Court to take judicial notice of the fact that "ISIS" is a dreaded and banned terrorist organisation. By extending support for such an organisation, the petitioner had disentitled himself to seek any relief. The criminal case against the petitioner is now



pending in C.C.No.3 of 2015 before the Judicial Magistrate, Thiruvadanai. He submitted that the petitioner has to be necessarily relegated to move the jurisdictional trial Court. He called upon this Court to dismiss the writ petition.

6. I carefully considered the rival contentions and went through the materials on record. The impugned communication has been issued under Section 10(3) (e) and (h) of the Passports Act, 1967. The said provision reads as follows :

“10.Variation, impounding and revocation of passports and travel documents

(1)

(2)

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

....

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.

.....

(h) if it is brought to the notice of the passport authority that a warrant or summons



for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.”

The FIR registered against the petitioner and others had culminated in C.C.No.3 of 2015 on the file of the Judicial Magistrate, Thiruvadanai. Since proceedings in respect of an offence alleged to have been committed by the petitioner was pending before the jurisdictional criminal court, the first respondent was justified in invoking Section 10(3)(e) & (h) of Passports Act, 1967. The impugned notice cannot be quashed.

7. I wanted to know from the State Police if the petitioner had come under their adverse notice subsequently. The FIR was registered way back on 04.08.2014. We are now in July 2023. For the last nine years, the petitioner has not



come under the adverse notice of the police. Prior to the registration of the FIR, he was not having any other bad antecedents.

8. The petitioner through his counsel informs the Court that he does not subscribe to ideology of ISIS and that he unequivocally condemns its ideology and activities. He further states that during the relevant time, he was not aware of the true colours of the organisation and that out of boyish enthusiasm, a group of youngsters of the locality had worn the T-shirts with the offending lines. He also affirms that he believes in communal peace and amity.

9. The offence under Section 7(1)(a) of CLA Act is invoked as a preventive measure. I take judicial notice of the fact that invariably, the proceedings are dropped even without filing a charge sheet. But considering the fact that ISIS is a terrorist organisation, the police filed final report by incorporating the offences under Section 153B(1)(a) & 2 IPC, Section 66(A)(a) of IT Act r/w. 120(B) IPC. The Hon'ble Apex Court in *Shreya Singhal v. UOI* (2015) 5 SCC 1 had struck



down Section 66A of the Information Technology Act, 2000.

Before taking cognizance of the offence under Section 153B(1)

(a) of IPC, previous sanction of the Central Government/State Government/District Magistrate is required. In the final report made available before this Court, copy of the previous sanction has not been enclosed. The petitioner in any event had not declared that Muslims will not bear true faith and allegiance to the Constitution of India. He has not stated anything against the sovereignty and integrity of India. He had only been a member of the group that posed for photograph. It was the first accused who caused the photograph to be circulated in the social media. In any event, the petitioner has to face the prosecution and establish his innocence before the criminal court. I am making only some tentative observations.

10. For the last nine years, the petitioner could not avail any overseas employment opportunity. He has suffered enough. He did take a wrong turn. But he did not travel further down. It could have been an irrevocable slide down towards abyss and destruction. The petitioner appears to



have learnt his lessons. In such cases, the approach should be to mainstream them. The petitioner is married and is having one male child. At present he is assisting his father in his bakery business. He is desirous of going abroad. I am sure he would go to places like Abu Dhabi or Qatar and not Syria!!. The impugned communication stands in the way. As already held, the impugned communication was issued within the powers of the first respondent. It cannot be quashed. However, further action need not be taken. I direct the first respondent to issue proceedings closing the issue. If the petitioner's passport had already been surrendered, it shall be returned to the petitioner.

11. The learned Judicial Magistrate, Thiruvadanai is directed to conclude the proceedings in C.C.No.3 of 2015 within a period of six months from the date of receipt of a copy of this order. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

19.07.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
skm

**To:**

1. The Passport Officer, Government of India,
Ministry of External Affairs,
Passport Office, Bharathi Ula Veethi,
Race Course Road, Madurai – 625 002.
2. The Superintendent of Police,
O/o.The Superintendent of Police,
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G.R.SWAMINATHAN, J.

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