



WP (MD) No.21754 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.21754 of 2023
and
WMP(MD)No.18153 and 18154 of 2023**

H.Mohammed Sulaiman

... Petitioner

Vs

1.The Regional Passport Officer,
Madurai,
Bharathi Ula Veethi,
Race Course Road,
Madurai.

2.Safiya Nasreen

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records relating to the impugned order passed by the 1st respondent in his file NO.SB2074311263320 dated 25.08.2023 and quash the same as illegal.

For Petitioner : Mr.H.Mohammed Imran

For Respondent : Mr.P.Paul Pandi,

No.1 Central Govt.Standing Counsel



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ORDER

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This writ petition is filed challenging the notice issued by the 1st respondent calling upon him to offer is explanation in respect of the criminal case pending against him in Crime No.327 of 2023.

2.The learned Counsel for the petitioner submits that the criminal case has been registered based on the complaint of the 2nd respondent, who is none other than the petitioner's brother's wife due to family dispute. The issue is settled and she has expressed no objection for the petitioner to leave for abroad.

3.The learned Counsel for the 1st respondent submits that based on the police verification report with regard to the case in Crime No.327 of 2023, the petitioner has been called for enquiry. However, the petitioner without approaching the respondents has filed this writ petition.

4.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:-



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“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.”

5.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.

6.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:-



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“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'”

7.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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8.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.”

9.In view of the above decisions, this writ petition is allowed and the impugned order is set aside. No costs. Consequently connected miscellaneous petitions are closed.

07.09.2023

dsk
To
The Regional Passport Officer,
Madurai.



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B.PUGALENDHI, J.

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