



W.P(MD)No.21760 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.21760 of 2023

and

W.M.P(MD)No.18158 of 2023

Velusamy

... Petitioner

Vs

1.The Regional Passport Officer,
Regional Passport Office,
New Municipal Complex,
Thillainagar,
Trichy-620 018.

2.The Superintendent of Police,
Karur District,
Karur.

3.The Inspector of Police,
Karur Town Police Station,
Karur District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice in Letter Ref.No.TR01C5032665123 dated 17.04.2023 passed by the first respondent and quash the same as illegal, consequently directing the first



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respondent to renew the passport to the petitioner forthwith based on his application in File No.TR01C5032665123 dated 17.04.2023.

For Petitioner	:Mr.S.Gokulraj
For R1	:Mr.Arumugam for Mr.B.Rajesh Saravanan Senior Standing Counsel
For R2 & R3	:Mr.P.Kottaichamy Government Advocate (Crl.side)

ORDER

This writ petition is filed challenging the notice issued by the first respondent dated 17.04.2023 wherein the first respondent has called for an explanation from the petitioner for suppression of the case in Cr.No. 388 of 2018, which is pending against him for the offences under Sections 143, 341 and 188 of IPC.

2. One Mr.Arumugam, learned counsel takes notice for the first respondent on behalf of the learned Senior Standing Counsel Mr.B.Rajesh Saravanan and he requested short accommodation to get instructions from the first respondent.



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3. The learned Government Advocate (Crl.side) appearing for the respondents 2 & 3 submitted that this petitioner has involved in a case in Cr.No.388 of of 2018 on the file of the Inspector of Police, Karur Town Police Station for the offences under Sections 143, 341 and 188 of IPC and the same is still pending.

4. The learned counsel appearing for the petitioner disputed the same that this is only a case which was registered on the protest made by the petitioner as against the Sterlight issue in Tuticorin and the Government has withdrawn all the cases registered against the protesters including the case in Cr.No.388 of 2018, however, without ascertaining the same, the respondent police has intimated the first respondent as criminal case is pending and the first respondent has also proceeded with based on the materials which has been produced by the second respondent.

5. This Court considered the rival submissions made by both parties.



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6. The impugned order has been issued as if the petitioner has suppressed the criminal case which is pending against the petitioner. The order impugned is only notice called upon the petitioner to offer his explanation. The first respondent has also issued this notice based on the report submitted by the third respondent, Inspector of Police, Karur Town Police Station. The third respondent has even now instructed the Government Advocate appearing in this writ petition that this case in Cr.No.388 of 2018 is still pending investigation. This case is registered against the petitioner for the offences under Sections 143, 341 and 188 of IPC. The petitioner claims that these are the protest which was made due to Sterlight company agitation and these cases which were registered against all the protesters including this Cr.No.388 of 2018 were withdrawn by the Government.

7. 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. This Court and the Hon'ble Supreme Court has time and again reiterated the same under the provisions of 6(f) of the Passport Act can be invoked only when the case



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has been charge-sheeted and taken on file before the concerned Court.

Therefore, non-mentioning of the case in Cr.No.388 of 2018 which was also withdrawn by the Government, subsequently, cannot be treated as suppression. The impugned order is set aside. The second respondent shall also conduct an enquiry with regard to the manner in which the instructions has been provided by the third respondent with regard to the case in Cr.No.388 of 2018 which has already been withdrawn by the Government and if the instructions have been provided wrongly, necessary action has to be taken by the second respondent as against the concerned officers, who are responsible for the same.

8. 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 -

...



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(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India.”

9.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.

10.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



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before the Court'”

11.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.”

12.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.

13. 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.

14. Accordingly, this writ petition is allowed with a direction to the



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

NCC : Yes / No.

Index : Yes / No.

Internet:Yes

am

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To

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2.The Superintendent of Police,
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Karur.



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B.PUGALENDHI, J.

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