



W.P(MD)No.23469 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.23469 of 2023 and
WMP(MD) No.19675 of 2023

Asik Ahamed

... Petitioner

Vs

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

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

3.The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, Certiorarified Mandamus to call for the records pertaining to the impugned notice in Letter Ref.No. SCN/315301835/23 dated 20.07.2023 passed by the Respondent No.1 and quash the same as illegal, consequently directing the respondent no.1 to reissue the



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passport to the petitioner forthwith based on his application in File No.MD1075575178723 dated 14.07.2023.

For Petitioner : Mr.S.Prabha
For R1 : Mr.B.Sundareshwar
Central Government Standing Counsel
For R2 & R3 : Mr.Kottaichamy
Government Advocate

ORDER

The petitioner has applied for issuance of passport on 14.07.2023. The first respondent has issued a notice on 20.07.2023, calling upon the petitioner to offer his explanation with regard to the cases pending as against him. The petitioner has also submitted his explanation on 30.03.2023. Even then, his application has not been considered. Hence, this petition.

2.Mr.B.Sundareshwar, learned Central Government Standing Counsel, who takes notice for the first respondent submits that based on the adverse report received from the respondents 2 & 3 the passport authorities have not considered the petitioner's application.



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3.Mr.Kottaichamy, learned Government Advocate, who takes notice for the respondents 2 & 3 submits that the petitioner is involved in a criminal case in Crime No.124 of 2015 on the file of the Devipattinam Police Station for the offences punishable under Sections 147, 294(b), 336, 427, 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and in another Crime No.146 of 2019 for the offences punishable under Sections 294 b, 323, 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. He further submits that final reports have already been filed in both the crime numbers. However, it was not taken on file.

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.



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6. Similarly, unless and until the Court takes cognizance of the final report filed by the Investigative Agency, it cannot be termed as a proceedings pending before the Criminal Court. ***In Re Narsingh Das Tapadia v. Goverdhan Das Partani & Another [(2000) 7 SCC 183]***, the Hon'ble Supreme Court has observed as follows:-

“8. "Taking cognizance of an offence" by the Court has to be distinguished from the filing of the complaint by the complainant. Taking cognizance would mean the action taken by the court for initiating judicial proceedings against the offender in respect of the offence regarding which the complaint is filed. Before it can be said that any Magistrate or Court has taken cognizance of an offence it must be shown that he has applied his mind to the facts for the purpose of proceeding further in the matter at the instance of the complainant. If the Magistrate or the Court is shown to have applied the mind not for the purpose of taking action upon the complaint but for taking some other kind of action contemplated under the Code Criminal Procedure such as ordering investigation under Section 156(3) or issuing a search warrant, he cannot be said to have taken cognizance of the offence.”



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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. ...”

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



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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.

9. 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.

10. 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 twelve weeks from the date of receipt of a copy of this order. No costs.



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Consequently, connected Miscellaneous Petition is closed.

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NCC :Yes/No

Index :Yes/No

Internet:Yes

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To

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- 2.The Superintendent of Police,
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B.PUGALENDHI, J.

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