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W.P.(MD)No.23686 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.23686 of 2023
and W.M.P.(MD)No.19857 of 2023

Jerry Robinson Gerold Joseph

... Petitioner

versus

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

2. The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings issued by the 1st respondent in Letter Ref.No.SCN/315688001/23 dated 06.09.2023 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently, direct the 1st respondent to permit the petitioner to retain the petitioner's passport No.Y7267738.



W.P.(MD)No.23686 of 2023

For Petitioner : M/s.T.Wins
For R1 : Mr.K.Kuttalanathan
Central Government Standing Counsel
For R2 : Mr.P.Kottaichamy,
Government Advocate

ORDER

The petitioner was issued with a passport on 31.08.2023. Thereafter, based on the police verification report that the petitioner is involved in a case in Cr.No.2 of 2023 for the offence under Sections 294(b), 406, 420, 506(i) IPC and 67 of IT Act, the first respondent, by impugned proceedings dated 06.09.2023, has directed the petitioner to surrender his passport No.Y7267738 dated 31.08.2023. As against the same, the petitioner has filed this writ petition.

2. The learned counsel appearing for the first respondent submits that the petitioner has suppressed the pendency of the criminal case pending against him and obtained the passport. Therefore, this impugned order has been passed based on the police verification report.



W.P.(MD)No.23686 of 2023

3. The learned Government Advocate (Crl. Side) submits that the case in Crime No.2 of 2023 is pending investigation and no final report has been filed.

4. This Court considered the rival submissions made and perused the materials available on record.

5. The petitioner was already issued with a passport. However, the impugned order has been passed pursuant to the police verification report. Admittedly, the criminal case, which is pending as against the petitioner, is only at the stage of investigation.

6. Section 6(2)(f) of the Passport Act 1967, prohibits the passport authorities from issuing a passport that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India.



7. As per Section 10(3) of the Passport Act 1967, the passport authority may impound or cause to be impounded or revoke a passport or travel document, in the following circumstances:

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport.

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel



document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(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.

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(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.



8. 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 observed that mere pendency of the criminal proceedings cannot be construed as pendency of the criminal proceedings. The relevant portion is extracted as under:

“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.”

9. Further, the Ministry of External Affairs, Government of India, has issued a Circular dated 10.10.2019, wherein, the following



W.P.(MD)No.23686 of 2023

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.”

10. As per the above circular, the pendency of an FIR is not a bar for issuance of passport. Therefore, there is no necessity for the petitioner to inform the pendency of FIR at the time of applying for passport. In the event, if there is any final report filed as against the petitioner and taken on file by a competent Court and if the petitioner has deliberately suppressed the pendency of criminal case, then, his passport can be impounded. In this case, the criminal case registered as



W.P.(MD)No.23686 of 2023

against the petitioner is only at the stage of investigation and no final report has been filed. The first respondent is not justified in passing the impugned order directing the petitioner to surrender his passport.

11. Accordingly, this writ petition is allowed and the impugned proceedings issued by the 1st respondent in Letter Ref.No.SCN/315688001/23 dated 06.09.2023 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.



W.P.(MD)No.23686 of 2023

To

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W.P.(MD)No.23686 of 2023

B.PUGALENDHI, J.

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W.P.(MD)No.23686 of 2023

27.09.2023