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W.A.No.2031 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.2031 of 2024

Huzefa Juzar

.. Appellant

Vs

1.The Government of India,
Ministry of External Affairs,
rep. by the Regional Passport Officer,
Regional Passport office,
74, Building #MC VIII/1578/715 A,
S N Trust Complex, Vellapally Nagar,
Kollam,
Kerala-691 001,

2.The State,
rep. by Inspector of Police,
CCB Tiruppur,
Tiruppur.
(Cr.No.5 of 2023)

3.The State,
rep. by Inspector of Police,
CCB Coimbatore,
Coimbatore.
(Cr. No.19 of 2023)

.. Respondents



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Prayer: Appeal filed under Section 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.1461 of 2024, dated 12.4.2024.

For the Appellant : Mr.S.Mohanakrishnan

For the Respondents : Mr.S.Janarthanam
for respondent No.1

: Mr.R.Muniyapparaj
Addl. Public Prosecutor
assisted by
Mr.M.Sylvester John

ORDER

(Order of the Court was made by *D.Krishnakumar, J.*)

Challenging the order of the learned Single Judge dated 12.4.2024 passed in W.P.No.1461 of 2024, the unsuccessful writ petitioner has filed the present appeal.

2. The appellant had filed the writ petition for issuance of a writ of mandamus directing the first respondent to re-issue the passport to the appellant.

3. The learned Single Judge dismissed the writ petition



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holding that criminal cases are registered against the petitioner and the same are under investigation. Therefore, the writ petition filed seeking a direction to re-issue the passport cannot be considered and, only after the disposal of the criminal cases, the appellant has to approach the Regional Passport Officer.

4. Learned counsel for the appellant submitted that though criminal cases, namely, Crime No.5 of 2023 on the file of CCB, Tiruppur and Crime No.19 of 2023 on the file of CCB, Coimbatore, have been registered against the appellant under Sections 406, 420, 120B and 506(1) IPC, the claim of the appellant cannot be rejected at the threshold. By referring to the Official Memorandum dated 10.10.2019 of the Ministry of External Affairs, PSP Division, Government of India, learned counsel for the appellant submitted that in the said Official Memorandum certain guidelines for processing the application for re-issuing the passport pending criminal cases have been given and the same have not been scrupulously followed by the



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respondent passport authority. According to learned counsel for the appellant, the said Office Memorandum has not been considered by the learned Single Judge. Therefore, suitable direction be issued to the respondent passport authority to scrutinize the application of the appellant and re-issue the passport.

5. Learned Additional Public Prosecutor appearing for respondents 2 and 3 submitted that if information that an applicant has obtained a passport by making a false submission or by suppressing material facts comes to light after the passport has been issued, the passport may be impounded or revoked as per the provisions of the Passports Act, 1967, after following the due procedure.

6. Learned counsel for the first respondent submitted that the appellant is yet to furnish proof of clearance or Court order as per GSR 570(E) or documentary proof that the cases have not



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yet been charge sheeted. The procedure followed by the first respondent is in accordance with law. The learned Single Judge, upon consideration of the law, rightly dismissed the writ petition and the same warrants no interference.

7. We have considered the rival submissions and also perused the materials available on record.

8. The grievance of the appellant is that he had applied for re-issue of the passport on 13.11.2023 and, while filing application, he had disclosed the pending criminal cases against him. However, the consideration of application of the appellant was put in mothballs for want of Court order and undertaking.

9. According to the appellant, the learned Single Judge failed to understand that the appellant has not suppressed the pendency of the criminal cases when the application for re-issue was filed by him. In fact, the appellant had appeared before the



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first respondent for enquiry. The learned Single Judge erred in dismissing the writ petition holding that only after the disposal of the criminal cases, the appellant has to approach the Regional Passport Officer.

10. It is also the submission of learned counsel for the appellant that the appellant undertakes to comply with the conditions enumerated in the Office Memorandum dated 10.10.2019 by submitting necessary documents to the first respondent.

11. Sub-Clause (vi) of Clause 5 of the Office Memorandum states that mere filing of FIR 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. Further, sub-clause (ix) states that if it is brought to the notice of the



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authority that an applicant has criminal proceedings arrayed against applicant before several Courts of law, then the applicant may be advised to get NOC from all the concerned Court(s).

12. Thus, the Office Memorandum dated 10.10.2019 clearly enumerates how the passports have to be issued to applicants against whom criminal cases are pending. Mere filing of FIRs and cases pending under investigation do not come under the purview of Section 6(2)(f) of the Act 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. Refusing to re-issue the passport to the appellant till the pendency of the cases, which are now only at the FIR stage, is unjustifiable. The learned Single Judge failed to appreciate that mere pendency of criminal case at the FIR/charge sheet stage will not stand in the way of re-issuance of the passport. In such circumstances, we are of the view that the order of the learned Single Judge is liable



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to be set aside.

13. Accordingly, the impugned order of the learned Single Judge is set aside. The writ appeal is allowed. The appellant is directed to furnish necessary documents to the concerned Regional Passport Officer within a period of one week from the date of receipt of a copy of this order. Upon receipt of the documents, the concerned Regional Passport Officer is directed to consider the appellant's application to re-issue the passport after the following the procedures as contemplated under the office Memorandum dated 10.10.2019 on merits and in accordance with law within a period of six weeks thereafter. There shall be no order as to costs. Consequently, C.M.P.No.14445 of 2024 is closed.

(D.K.K., J.) (P.B.B., J.)
28.10.2024

Index : Yes/No
NC : Yes/No
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To:

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Government of India,
Ministry of External Affairs,
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D.KRISHNAKUMAR,J.
AND
P.B.BALAJI,J.

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