



W.P.(MD).No.727 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

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A.Mathilena

... Petitioner

vs.

1.The Passport Officer,
Regional Passport Office,
Tiruchirapalli,
Tamil Nadu.

2.The Inspector of Police,
Meemisal Police Station,
Avudayarkovil Taluk,
Pudukottai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st respondent to renew the passport of the husband of the petitioner viz., Arockiyasamy, son of Arulandu issued by the 1st respondent in Passport No.L7463842 which is going to be expired on 27.02.2024, considering his renewal application dated 25.09.2023 through the High Commission of India Brunei Darussalam.



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For Petitioner : Mr.R.Sevugaraja
For R1 : Mr.D.Saravanan
For R2 : Mrs.M.Aasha
Government Advocate (Crl.side)

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the 1st respondent to renew the passport of the husband of the petitioner viz., Arockiyasamy, S/o. Arulandu issued by the 1st respondent in Passport No.L7463842, which is going to be expired on 27.02.2024, considering his renewal application dated 25.09.2023 through the High Commission of India Brunei Darussalam.

2. By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

3. When the matter is taken up for hearing today, the learned Government Advocate (Crl.side) appearing for the second respondent would submit that only F.I.R., is pending against the petitioner's husband in Crime No.128 of 2022.



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4. The learned counsel appearing for the petitioner has produced a decision of this Court in the case of ***W.Jaihar William and others .vs. The State of Tamil Nadu and others reported in 2014(2) CWC 684***, wherein, it has been observed as follows:

"8.....the applications submitted by the Petitioners for passport were not considered by the third respondent for the reason that FIRs are pending against them. The Superintendent of Police , Tirunelveli, has filed counter affidavits stating that First Information Reports have been filed against the Petitioners for the alleged offences, stated supra, since they are involved in the agitation against the Koodankulam Nuclear Project. So far as the Petitioner in W.P(MD)NO.8349 of 2014 is concerned, the criminal case has been registered under Sections 147, 148, 294(b), 353 and 307 IPC. Since the FIRs are pending against the Petitioners, the third respondent has not considered the applications of the Petitioners, by placing reliance on section 6(2)(f) of the Passports Act, 1967. Section 6(2)(f) reads as follows:

6.Refusal of passports,travel documents, etc---(i)....

(2)subject to the other provisions of this Act, the Passport Authority shall refuse to issue a passport or



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travel document for visiting any foreign country under Clause © of sub section (2) of Section 5 on any one or more of the following grounds and on no other ground namely:

(a) and (b).....

(f)that proceedings in respect of an offence alleged to have been committed by the Applicant are pending before the Criminal Court in India"

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.P.C, it can be construed as "proceedings pending before the Court".

5. This Court and various High Courts had allowed the Writ Petition of this nature on the ground that unless and until the Judicial Magistrate takes cognizance of the offence, the respondents/Officials cannot mechanically refuse to issue passport to the parties, stating that F.I.R., is pending and that mere pendency of F.I.R., cannot be construed as pendency of criminal proceedings and the same cannot be a bar for issuance of passport to the parties concerned.



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6. In view of the above settled position of law, this Court directs the first respondent to consider the application submitted by the petitioner, dated 25.09.2023 and issue appropriate orders regarding renewal of passport, within a period of six weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition is disposed of. No costs.

11.01.2024

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To

1.The Passport Officer,
Regional Passport Office,
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2.The Inspector of Police,
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