



W.P.(MD).No.2190 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.2190 of 2021

Manuraj

... Petitioner

Vs.

1.The Passport Officer,
Regional Passport Office,
Madurai.

2.The Passport Officer,
Regional Passport Office,
Trivandrum.

... 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 on the file of the 2nd respondent pertaining to its order dated 28.12.2020 and quash the same and consequently direct the respondents to issue Passport to the petitioner based on the petitioner's Passport Application No.TV3063158854320.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.T.Mahendran,
Central Government Standing Counsel



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ORDER

This writ petition has been filed to call for the records on the file of the 2nd respondent pertaining to its order dated 28.12.2020 and quash the same and consequently direct the respondents to issue Passport to the petitioner based on the petitioner's Passport Application No.TV3063158854320.

2. Heard, Mr.S.Sivakumar, learned counsel appearing for the petitioner, Mr.T.Mahendran, learned Central Government Standing Counsel appearing for the respondents and carefully perused the materials available on record.

3. The petitioner made an application for a passport on 18.12.2020 and he was assigned with a passport bearing application No. TV3063158854320. The 2nd respondent has required a clarification from the petitioner by a letter dated 28.12.2020 on the adverse police verification report received from Kollemcode Police Station in crime No. 458 of 2020 under Section 188, 269 of IPC, Section 3 of Epidemic Diseases Act, 1897, and 51(b) Disaster Management Act, 2005. It was further required to furnish proof of clearance of the case and clarify the same in-person before the 2nd



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respondent office. Despite the petitioner having appeared before the 2nd respondent office in-person and given his explanation, the petitioner's application seeking passport is not considered. Hence, this writ petition came to be filed challenging the impugned communication of the 2nd respondent dated 28.12.2020.

4. The 1st respondent has filed a counter affidavit and Mr.T.Mahendran, learned Central Government Standing Counsel appearing for the 1st respondent, has submitted that the petitioner has not responded to the showcause notice dated 28.12.2020 as to the registration of Crime No. 458 of 2020 as against him in Kollemcode Police Station. It is further contended that a time bound remainder letter dated 03.02.2021 was again sent from the Regional Passport Office, Trivandrum, to the petitioner to furnish his reply within 15 days time either in person or through post.

5. Per contra, the learned counsel appearing for the petitioner submitted that, he had appeared before the 2nd respondent office in-person and made his appropriate explanation. However, the same was not considered and hence, he pressed for allowing the writ petition.



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6. It is a settled proposition of law that the pendency of an FIR is no bar for issuance of passport and this Court in W.P.(MD)No.3252 of 2016 dated 20.03.2017 has dealt with a similar case and the relevant portion of the same is extracted as follows:

*“4. The learned counsel appearing for the petitioner placed on a decision reported in **2014(2) CWC 684** (M.Jaihar William vs. State of 6 Tamil Nadu). According to the said decision, mere pendency of the FIR cannot be construed as pendency of criminal proceedings, unless the Judicial Magistrate takes cognizance of offence on filing of charge sheet of complaint and investigation against accused.*

5. The learned Judge of this Court taking note of various decisions rendered on the subject matter, categorically concluded that mere pendency of the FIR cannot be a bar for consideration of the claim for issuance of passport. The learned Judge has clearly held in paragraph 10 of the said decision as follows:-

*"10. For the same proposition of law, the learned counsel for the petitioners has also relied upon the judgment delivered by the Andhra Pradesh High Court reported in **1994 Cri.L.J.257** [Mathumari China Venkatareddy and others Vs. State of Andhra Pradesh], wherein it has been held that until the charge-sheet has been filed, a Magistrate cannot be said to have taken cognizance of any offence and that the Magistrate can take cognizance of the offence and direct the issue of process*



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only on receipt of a police report and that till that stage is reached, he is said to be acting only as a Magistrate controlling the investigation made by the police. It has been further held in the said judgement follows:-

"The judicial act commences only when the charge-sheet is in order and the Magistrate proceeds further under Chapter XVI. Unless the charge-sheet is in the official custody of the Court together with its accompaniments to be furnished to the accused, it cannot be construed that there is a filing of charge-sheet. Chapter XVI relates to commencement of proceedings before Magistrates, process to be issued when Magistrate takes cognizance of the offence."

Therefore, it is clear that unless the Judicial Magistrate takes cognizance of the offence, on filing of charge-sheet on completion of investigation against the applicant, it cannot be said that the proceedings are pending before the Criminal Court. Therefore, in my considered opinion, the 3rd respondent cannot mechanically refuse to issue passport to the petitioners, merely for the reasons that the FIRs are pending against the petitioners. On receipt of the application for passport, the 3rd respondent shall consider the same and pass appropriate orders."



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7. Fully fortified by the aforesaid decision, this Court is of the considered view that the 2nd respondent ought to have considered the application for issuance of passport submitted by the petitioner without reference to an FIR lodged against him and should have issued a Passport if he is otherwise eligible for the same. In view of the same, the petitioner is further required to appear before the 2nd respondent office within a period of one (1) week from the date of receipt of a copy of this order and make a written explanation in person and through registered post. On receipt of the same, the 2nd respondent is directed to issue a passport by considering the petitioner's application if he is otherwise eligible within a period of four weeks from the date of receipt of the explanation from the petitioner.

8. With the above directions, this writ petition is disposed of. No costs.

04.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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L.VICTORIA GOWRI, J.

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