



W.P.(MD).No.1946 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :31.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.1946 of 2024

Subbaiah

... Petitioner

vs.

1.The Regional Passport Officer,
Regional Passport Office,
Tiruchirappalli New Municipal Complex,
Thillainagar 7th Cross,
Trichy – 620 018.

2.The Inspector of Police,
K.Pudupatty Police Station,
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 first respondent to issue passport to the petitioner on the basis of his application dated 19.05.2023 pending in File No.TR2075387280323 before the first respondent by accepting his explanation within a stipulated time.

For Petitioner	: Mr.T.Leninkumar
For R-1	: Mr.V.S.Karthi
For R-2	: Mrs.M.Aasha,
	Government Advocate(Crl. Side)



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ORDER

WEB COPY This writ petition has been filed for issuance of a Writ of Mandamus, directing the first respondent to issue passport to the petitioner on the basis of his application, dated 19.05.2023, pending in File No.TR2075387280323 before the first respondent by accepting his explanation, within a stipulated time.

2. The case of the petitioner is that he obtained passport in Passport No.A1499645. As the said passport expired on 18.07.2006, the petitioner applied for renewal before the first respondent vide application No.TR2075387280323, dated 19.05.2023. Thereafter, the first respondent sent a communication, dated 09.06.2023, stating that there are two criminal cases pending against the petitioner on the file of the second respondent police in Crime Nos.367 of 2020 and 43 of 2021. Subsequently, the petitioner gave his explanation. However, till date no steps have been taken by the first respondent to renew the passport of the petitioner. Hence, the petitioner has filed this writ petition with the aforesaid prayer.

3. The learned Government Advocate (Crl.side) appearing for the respondents, on instructions, would submit that there are two cases registered



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against the petitioner. In both the cases, the investigation has been completed and final report has been filed before the learned Judicial Magistrate concerned and the same is not yet taken on file.

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



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Authority shall refuse to issue a passport or 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 the present case, the cases against the petitioner are pending in F.I.R., stage only and the said cases are not taken cognizance by the learned Judicial Magistrate concerned.

7. Therefore, in view of the above settled position of law, this Court directs the first respondent to consider the petitioner's application File No.TR2075387280323, dated 19.05.2023 and pass appropriate orders, regarding renewal and re-issuance of passport, after getting explanation from the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

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

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Index:Yes/No
NCC:Yes/No
PM



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To

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V.BHAVANI SUBBAROYAN,J.

PM

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