



W.P.(MD)No.9759 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.06.2024

Pronounced on : 18.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.9759 of 2021
and
W.M.P.(MD)Nos.7452 and 7453 of 2021

J.Joemento Jesubalt

... Petitioner

Vs.

1. The Inspector of Police,
Suchindram Police Station,
Madurai City.
(Crime No.294 of 2019)
2. The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course,
Madurai-625002.

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter Ref. No.SCN/310795743/21 dated 23.03.2021 on the file of the respondent No.



W.P.(MD)No.9759 of 2021

2 and quash the same as illegal and consequently issue a direction, forbearing the respondent No.2 from impounding the passport of the petitioner without following due process of law.

For Petitioner : Mr.G.Anto Prince

For R1 : M/s.M.Aasha
Government Advocate (Crl. Side)

For R2 : Mr.P.Paul Pandi

ORDER

The Writ Petition is directed against the show cause notice dated 23.03.2021 issued by the second respondent to explain why action should not be taken to impound the passport and directed to surrender the writ petitioner's passport and for further directions to the second respondent forbearing them from impounding the writ petitioner's passport without following due process of law.

2. It is not in dispute that the writ petitioner has obtained passport No.P1739793 dated 15.06.2016 from the Consulate General of India-Dubai.



W.P.(MD)No.9759 of 2021

WEB COPY

3. The writ petitioner's case is that the writ petitioner got an opportunity to work in Croatia and hence, he applied for police clearance certificate for getting visa with the second respondent, that the second respondent had issued the impugned show cause notice, by citing the criminal case pending before the first respondent and had directed the writ petitioner to explain why action should not be taken to impound his passport, that the writ petitioner has given his reply to the second respondent on 27.03.2021 and that since the same was not considered and no order has been passed, the writ petitioner was constrained to file the present writ petition challenging the impugned show cause notice dated 23.03.2021.

4. It is not in dispute that on the basis of the complaint given by the writ petitioner's brother, FIR came to be registered in Crime No.294 of 2019 for the offences under Sections 147, 294(b), 323, 341 and 506(2) IPC on the file of Suchindram Police Station.

5. The second respondent, in his counter affidavit, would fairly concede that a computer generated show cause notice dated 23.03.2021



W.P.(MD)No.9759 of 2021

was issued erroneously to the writ petitioner seeking his explanation for having obtained passport by suppressing the material information of criminal case pending against him, instead of issuing a show cause notice to the writ petitioner seeking his explanation for having suppressed the criminal case pending against him in his application submitted for obtaining police clearance certificate. The second respondent has also taken a stand that after the receipt of the writ petitioner's application, a report was called for from the concerned Superintendent of Police, that the Superintendent of Police, Kanyakumari District has sent a adverse police report stating that criminal case in Crime No.294 of 2019 was pending against the writ petitioner and that therefore, police clearance certificate cannot be granted to the writ petitioner.

6. Admittedly, the writ petitioner is now in abroad.

7. The learned counsel appearing for the second respondent would submit that subsequent to the explanation submitted by the writ petitioner, the second respondent has sent a communication dated 07.07.2021 informing that since criminal case is pending against the writ petitioner, police clearance certificate cannot be generated.



W.P.(MD)No.9759 of 2021

WEB COPY

8. As rightly pointed out by the learned counsel appearing for the writ petitioner, the second respondent, in his counter affidavit, has clarified their stand that their office has already decided not to impound the passport and they have not issued any further notices to the writ petitioner to surrender the original passport and that the writ petitioner can utilize the passport No.P1739793 dated 15.06.2016 which is in his custody for his travel abroad.

9. As already pointed out, the second respondent has taken a specific stand that the impugned show cause notice came to be issued erroneously and attempted to call for explanation for suppressing the pendency of the criminal case in his requisition for police clearance certificate.

10. As rightly contended by the learned counsel appearing for the writ petitioner, in view of the decision taken by the second respondent that they have decided not to impound the passport and that the writ petitioner can utilize the passport for his travel abroad, nothing survives for further adjudication in the present writ petition, as the prayer has become infructuous.



W.P.(MD)No.9759 of 2021

WEB COPY

11. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the writ petitioner himself has filed a petition invoking Section 482 Cr.P.C. for quashing the charge sheet, but this Court has directed the learned Magistrate to complete the trial within the time stipulated, that the writ petitioner without getting permission, went abroad and that therefore the writ petitioner may be directed to appear and face the trial before the jurisdictional Court.

12. In the counter affidavit filed by the first respondent, it has been stated that the first respondent, after completing the investigation, has laid the final report before the Court of the Judicial Magistrate No.III, Nagercoil, Kanyakumari District and the same was taken on file in C.C.No.270 of 2021 and is pending, that accused Nos.1, 4, 5 and 6 have entered into appearance, but whereas, case is pending for awaiting summons for the accused 2 and 3 and that the case stands posted to 15.07.2024.

13. It is not in dispute that the writ petitioner has earlier filed a petition in CrI.O.P.(MD)No.13790 of 2021 against the first respondent and his brother Antony Jegan for quashing the charge sheet in C.C.No.270 of



W.P.(MD)No.9759 of 2021

WEB COPY

2021, that this Court vide interim order dated 06.02.2024 directed the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District to dispose of C.C.No.270 of 2021 as expeditiously as possible irrespective of the pendency of the present CrI.O.P.(MD)No.13790 of 2021 and that thereafter this Court has passed a final order on 18.04.2024 that the appearance of the writ petitioner before the trial Court was dispensed with except for his appearance for the purpose of receiving the copy of the proceedings under Section 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and the date of judgment and that the trial Court at its wisdom shall direct the writ petitioner to appear and also directed the learned Magistrate to dispose of the case as expeditiously as possible.

14. Since this Court has already dispensed with the personal appearance of the writ petitioner before the trial Court and also imposed necessary conditions, in case of any violation, the concerned Court has to take necessary action against the writ petitioner.

15. It is pertinent to note that there was no criminal case pending when the writ petitioner was given passport and as such, the question of suppressing the pendency of the criminal case at that time does not arise at all.



W.P.(MD)No.9759 of 2021

16. As already pointed out, FIR came to be lodged only on the basis of the complaint given by the writ petitioner's own brother and the offences against the writ petitioner are also not serious in nature.

17. It is pertinent to note that unjustified and unreasonable impounding of the passport of an individual is a violation of his fundamental right to livelihood guaranteed under Article 21 of the Indian Constitution.

18. Since this Court in Crl.O.P.(MD)No.13790 of 2021 has already issued necessary direction, there is no need or necessity for issuing any direction in the present case against the writ petitioner with regard to facing of the criminal proceedings. Hence, this Court concludes that nothing survives for further adjudication in the present writ petition.

19. With the above observations, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

18.07.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



W.P.(MD)No.9759 of 2021

WEB COPY **To**

1. The Inspector of Police,
Suchindram Police Station,
Madurai City.



WEB COPY



W.P.(MD)No.9759 of 2021

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in

W.P.(MD)No.9759 of 2021

and

W.M.P.(MD)Nos.7452 and 7453 of 2021

Dated : 18.07.2024