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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.16379 of 2024

Mahendran

... Petitioner

Vs

1. The Passport Officer,
Regional Passport Office,
Bangaluru, 8th Block, 80 Feet Road,
Koramangala, Bangaluru-560 095,
Karnataka.

2. The Inspector of Police,
Pattukottai Taluk Police Station,
Thanjavur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent to issue a passport to the petitioner based on his application no. BN2076614761324, dated 04.06.2024 within a time stipulated by this Court.

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For Petitioner : Mr. K.M.Karunakaran

For Respondents : Mr.V.Malaiyendran (R1)
Central Government Standing Counsel

Mr.K.Gnanasekaran (R2)
Government Advocate (Crl.Side)

ORDER

The present writ petition has been filed seeking a direction to the 1st respondent to issue a passport to the petitioner based on his application no. BN2076614761324, dated 04.06.2024.

2.Heard, the learned counsel appearing for the petitioner, the learned Central Government Standing Counsel appearing for the first respondent and the learned Government Advocate (Crl.Side) appearing for the second respondent. Perused the materials available on record.

3.It is submitted by the learned counsel for the petitioner that the petitioner had made an application for issuance of passport No.BN2076614761324. However, the petitioner had received a show-cause notice, dated 02.07.2024 from the first respondent requiring clarification on the adverse police verification report received from the second respondent stating

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that a case in Cr.No.576 of 2021 has been registered against him on the file of second respondent. The petitioner had submitted his explanation on 16.07.2024.

4.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 sald 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 Crl.L.J.257*** *[Mathumari China Venkatareddy and*

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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 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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6.Fully fortified by the aforesaid decision, this Court is of the considered view that the 1st 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.

7.In view of the same, the first respondent is hereby directed to consider the application of the petitioner for issuance of passport without reference to the FIRs lodged against him and issue passport if he is otherwise eligible for the same. The first respondent shall comply with the said direction on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

8.With the above directions, this writ petition stands disposed of. There shall be no order as to costs.

18.11.2024

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

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ORDER IN
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