



W.P(MD).No.20226 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD).No.20226 of 2024

J.Kavitha

... Petitioner

Vs.,

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Madurai 625 002.

2.The Passport Granting/Issuing Officer,
Passport Seva Kendra
Melakkal Main Road,
Kochadai, Madurai 625 016.

3.M.Vimal

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the proceeding of the first respondent by his impugned communication dated 05.07.2024 in letter Ref.No.SCN/318422909/24 and quash the same consequently direct the first respondent to issue passport to the petitioner's son namely Magizhan S/o.Kavitha on the office file number MD1066570544124 dated 21.05.2024.



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For Petitioners : Mr.V.Sasikumar
For Respondents : Mr.S.Paramasivam (for R1 &R2)
Standing Counsel
Mr.B.Muneeswaran (for R3)

ORDER

When the petitioner's applied passport for her minor son, namely Magizhan S/o.Kavitha, aged about one year, the same has been rejected vide letter Ref.No.SCN/318422909/24, dated 05.07.2024, on the ground that there is a matrimonial case pending between the petitioner and her husband. Challenging the same, this petition has been filed by the petitioner.

2. The facts of the case are that the petitioner married the third respondent on 07.09.2022. A male child was born on 29.06.2023 to them. Now, the petitioner wanted to study M.Sc Finance Program for the academic year 2024-2025 in Aston University, United Kingdom and she also applied passport for her minor child. In the meantime, due to some mis-understanding, both the petitioner and the third respondent agreed to dissolve their marriage mutually and filed a petition in HMOP.No.81 of 2024 before the Subordinate Court, Aruppukottai, on 05.06.2024 and now, the case is adjourned to 12.12.2024. At



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this stage, the impugned order has been passed rejecting the application of the petitioner citing the pendency of matrimonial case.

3. The contention of the learned counsel for the passport authority that the pendency of the case has not been disclosed in the application and therefore, the application has been rejected.

4. The main contention of the learned counsel appearing for the third respondent is that having agreed for mutual divorce, if the petitioner leaves the country, she may not be in a position to come to the Court for grant of mutual divorce by the competent Court, whereas the learned counsel for the petitioner would submit that now she is proceeding only towards her education and she will appear before the concerned Court for grant of mutual divorce on the date fixed by the competent Court and in this regard, she also filed an undertaking affidavit before this Court. The said affidavit is taken on file.

5. Merely on the ground of pendency of the mutual divorce application is not disclosed in the application, the same has been rejected. Even assuming that there was pending case, the third respondent/father of the minor is not cooperating



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to sign the application. At any event, the petitioner is proceeding only for her education and she also wants to go with her minor child, aged about one year. Unless the passport is issued to the minor child, the minor cannot be with its mother. As far as the custody of minor child is concerned, the third respondent/father has no serious objection and it is agreed between the petitioner and the third respondent that the custody of minor child shall be with the mother. The only apprehension of the third respondent is that the petitioner/wife may not participate in the divorce proceeding.

6. In such view of the matter, this Court is of the view that the third respondent need not have any apprehension about the petitioner's appearance before the competent Court, as the undertaking affidavit filed before this Court by the petitioner to appear before the concerned matrimonial Court on the date fixed. In the event of any deviation from her affidavit, she will be proceeded for violating the undertaken given before this Court by way of contempt. Accordingly, the impugned order passed by the first respondent in letter Ref.No.SCN/318422909/24, dated 05.07.2024, is here by set aside and the authority concerned are directed to issue passport to the minor child, namely Magizhan, S/o.Kavitha, after getting necessary application from the mother. It is



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open to the petitioner to appear through video conferencing, after getting appropriate order from the concerned Court.

7. With the above direction the Writ Petition stands allowed. No costs.

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NCC : Yes/No

Index : Yes/No

Rmk

NOTE : Issue order copy on 05.09.2024

To

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N.SATHISH KUMAR, J.

Rmk

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