



W.P.(MD).No.25338 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.25338 of 2024

Vinothkumar

... Petitioner

Vs.

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai.

2.The Inspector of Police,
Devakottai Town Police Station,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the 1st respondent to reissue the petitioner's Passport based on his Passport Application No.MD5076542743924 dated 13.05.2024 within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.G.Hariharan

For R-1 : Mr.P.P.Rajasimman,
Central Government Standing Counsel

For R-2 : Mr.K.Gnana Sekaran,
Government Advocate (Criminal side)



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ORDER

This writ petition has been filed to direct the 1st respondent to reissue the petitioner's Passport based on his Passport Application No.MD5076542743924 dated 13.05.2024 within a stipulated time that may be fixed by this Court.

2. Heard, Mr.G.Hari Haran, learned counsel appearing for the petitioner, Mr.P.P.Rajasimman, learned Central Government Standing Counsel appearing for R-1, Mr.K.Gnanasekaran, learned Government Advocate (Criminal side) appearing for R-2 and carefully perused the materials available on record.

3. The petitioner's Passport Number is K3017120 and his passport expired on 08.03.2022. On 13.05.2024, the petitioner applied for renewal of his passport before the 1st respondent and the application file number is MD5076542743924. The 1st respondent has issued show cause notice on 28.05.2024, calling for explanation about the adverse information of the 2nd respondent regarding pendency of the criminal case in Crime No.146/2023, offences U/s.294(b), 323, 324 & 506(2) of IPC. It was further required to



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furnish proof of clearance of the case and clarify the same in-person before the 1st respondent office. Despite the petitioner having appeared before the 1st respondent office in-person and gave his explanation, the petitioner's application seeking renewal of passport is not considered. Hence, this writ petition came to be filed.

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 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:-



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"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 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



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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."

5. Fully fortified by the aforesaid decision, this Court is of the considered view that the 1st respondent ought to have considered the application for renewal 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 1st 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 1st 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.

6. 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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To

- 1.The Passport Officer,
Regional Passport Office,
Madurai.
- 2.The Passport Officer,
Regional Passport Office,
Trivandrum.



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L.VICTORIA GOWRI, J.

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