



W.P.(MD).No.26379 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.26379 of 2024
and WMP(MD) No.22349 of 2024

Sankar

... Petitioner

Vs

1. The Regional Passport Officer,
Regional Passport Office,
Barathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

2. The Inspector of Police,
Melur Police Station,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order issued by the 1st respondent dated 17.10.2024 and quash the same as illegal and consequently direct the 1st respondent to issue the passport in file No.MD1076325937524.



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For Petitioner : Mr. R.Paranjothi

For Respondents : Mr.A.Srinivasan (R1)
Central Government Standing Counsel

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

ORDER

The present writ petition has been filed challenging the order issued by the 1st respondent, dated 17.10.2024 and consequently direct the 1st respondent to issue the passport in file No.MD1076325937524.

2.By consent of both parties, considering the limited relief sought for by the petitioner, the Writ Petition is taken up for final disposal at the stage of admission itself.

3.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 on record.



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4.It is submitted by the learned counsel for the petitioner that the petitioner is a Mechanical Engineer, who had made an application for issuance of Passport and his file Number is No.MD1076325937524. Pursuant to his application, the first respondent has issued a show-cause notice to the petitioner seeking clarification for the adverse report filed by the second respondent, with respect to registration of case in Cr.No.737 of 2012. Since the petitioner has failed to submit his explanation, his file came to be closed on 17.10.2024 by informing that the petitioner could make an application for re-issue of passport with all the required documents in original with correct particulars including current residential address proof along with the explanation for adverse police report afresh. However, the same is not done by the petitioner so far.

5. 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*



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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 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



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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."

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 petitioner is further required to make an application afresh before the 1st respondent office within a period of one (1) week from the date of receipt of a copy of this order and along with a written



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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.

7. With the above direction, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To
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L.VICTORIA GOWRI, J.

PNM

**ORDER IN
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