



W.P.(MD).No.27887 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.27887 of 2024

D. Karikalan

... Petitioner

Vs

1. The Passport Officer,
Regional Passport Office,
Government of India,
Ministry of External Affairs,
Bharathi Ula Veethi,
Race Course Road,
Madurai – 625 002.

2. The Inspector of Police,
Melur Police Station,
Melur Taluk, Madurai 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 passport to the petitioner by considering his application in File No. 24-1012670775, dated 16.10.2024 and for other reliefs within a period stipulated by this Court.



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For Petitioner : Mr. S.Atham Ali

For Respondents : Mr.K.Gokul Raj (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 passport to the petitioner by considering his application in File No. 24-1012670775, dated 16.10.2024.

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 has made an application for issuance of passport in No. 24-1012670775. However, based on the adverse police verification report received from the second respondent stating that a case in Cr.No.41 of 2019 has been registered against him on the file of second respondent, the first



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respondent has sought for clarification from the petitioner. Though the petitioner has submitted his explanation, the same was not considered by the 1st respondent.

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:-

*“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 Venkatarreddy and***

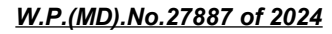


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others Vs. State of Andhra Pradesh], wherein it has been held that until the charge-sheet has been filed, a Magistrate cannot be said to have taken cognizance of any offence and that the Magistrate can take cognizance of the offence and direct the 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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To

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2. The Inspector of Police,
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L.VICTORIA GOWRI, J.

PNM

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