

W.P.(MD)No.30791 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.30791 of 2024

Abdul Rahman

... Petitioner

Vs.

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Uala Veethi,
Race Course Road,
Madurai – 625 002.

2.The Inspector of Police,
Thondi Police Station,
Ramanathapuram,
Ramanathapuram District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to renew and re-issue the passport to the petitioner, by considering the petitioner's application taken on file as File No.MD1076572494124, dated 21.05.2024.

For Petitioner

: Mr.K.Yasar Arafath

For 1st Respondent

: Ms.Deepa

Central Government Standing Counsel

For 2nd Respondent

: Mr.K.Gnanasekaran

Government Advocate (Crl)



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ORDER

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The prayer in the Writ Petition reads as follows:-

“To issue a Writ of Mandamus, directing the 1st respondent to renew and re-issue the passport to the petitioner, by considering the petitioner's application taken on file as File No.MD1076572494124, dated 21.05.2024.”

2.Heard the learned counsel on either side and carefully perused the entire materials available on record.

3.The petitioner obtained passport from the first respondent on 19.03.2014 vide passport No.L8070125 and the said passport expired on 18.03.2024. Hence, the petitioner made an application on 21.05.2024, to reissue and renew his passport. Thereafter, on 04.12.2024, he received a show cause notice, seeking clarification with respect to the receipt of adverse police verification report regarding the case in Crime No.138 of 2014 for the offences under Section 7(1)(a) of CLA Act and 120(B) of IPC. On the basis of the said clarification on 06.12.2024, the petitioner duly appeared before the first respondent and had submitted his explanation. The alleged FIR is with respect to an incident, which happened during 2014, when the petitioner and few others had worn the ISIS-T-shirt during Ramzan festival and uploaded a photo on Facebook. So, a first information report was registered in Crime No.138 of 2014 on the file of



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the second respondent against the petitioner and two others.

Subsequently, the same culminated in laying a charge sheet on the file of the learned Judicial Magistrate, Thiruvadhanai, in C.C.No.3 of 2015 for the offences under Sections 120(B), 153 B(1)(a) and (2)2 and 66 -A(a) of the Information Technology Act, 2000. After full fledged trial, the learned Trial Court acquitted the petitioner and others, by judgment dated 30.04.2024, on the ground that the prosecution failed to prove the prosecution case beyond reasonable doubt. However, a Criminal Appeal has been preferred by the second respondent before the learned Principal Sessions Judge, Ramanathapuram, along with delay petition. Only under such circumstances, the said clarification has been raised by the first respondent, in view of the pendency of criminal appeal against the judgment of criminal case and on that basis, he pressed for allowing the Writ Petition, directing the first respondent to renew and reissue his passport.

4.He further relied upon the judgment of the Hon'ble Division Bench of the Supreme Court in Criminal Appeal Nos.1342 of 2017 dated 27.09.2021, in which a similar case was dealt with and the Hon'ble Supreme Court has directed the Passport Authorities to renew and issue passport to the petitioner therein against whom an order of conviction was passed by the learned Trial Court against which a Criminal Appeal was pending. Relying upon the same, the learned counsel for the



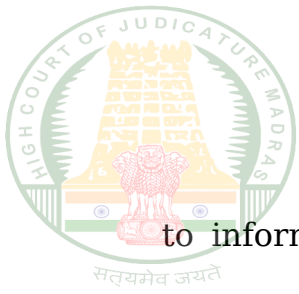
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petitioner pressed for allowing the Writ Petition.

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5.Per contra, on the basis of the counter affidavit filed by the second respondent submitted that the judgment of acquittal was passed by the learned Trial Court, by order dated 30.04.2024, only due to the hostility of witnesses. Now the second respondent has filed a Criminal Appeal before the learned Principal Sessions Judge, at Ramanathapuram and the same is numbered as Criminal Appeal No.8 of 2025 and the same is posted to 24.02.2025 for issuance of service. In fact, the Assistant Director of Forensic Science, who was examined as P.W.35 clearly deposed about the examination of the phones, SIM cards, memory cards etc., on 25.06.2011 at about 17 hours and the proper link of the circumstances against the accused persons could be established beyond reasonable doubt. In fact, establishment of a revolutionary army at Thondi was well evident and hence, the Appeal is very imminent in the consideration of this Writ Petition in such a kind of crime attributed against the petitioner, the petitioner cannot insist for renewal of his passport and press for dismissal of the Writ Petition.

6.The learned counsel for the first respondent on written instruction submitted that the matter with respect to the renewal of the passport of the petitioner has again been referred to the Superintendent of Police, Ramanathapuram, through a separate letter dated 10.12.2024,



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to inform to the first respondent office as to the factual status of the criminal case in Crime No.138 of 2014 registered against the petitioner and the same is awaited. Only on receipt of the same the petitioner's application could be processed in accordance with the provisions of the Indian Passports Act.

7.The argument put forth by the learned counsel for the second respondent would make it clear that the stage of the criminal case is one of Criminal Appeal against the judgment of acquittal passed by the learned Trial Court, which is pending before the learned Sessions Judge Court, at Ramanathapuram. The relevant portion of the order of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner in Criminal Appeal No.1342 of 2017, dated 27.09.2021 is extracted as follows:-

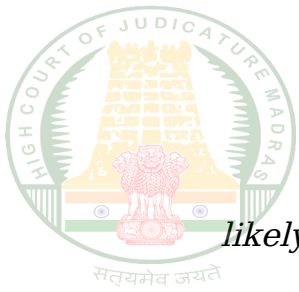
“Section 6.2 of the Passports Act, 1967 reads as follows:

x x x x x x x x x

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: - (a) that the applicant is not a citizen of India.,

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,

(c) that the departure of the applicant from India may, or is



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likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

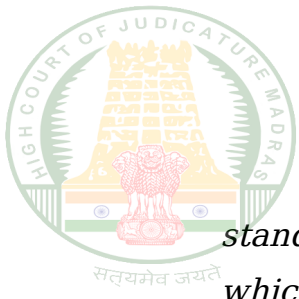
(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

The refusal of a passport can be only in case where an applicant is convicted during the period of 5 years immediately proceeding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years.

Section 6.2 (f) relates to a situation where the applicant is facing trial in a criminal court.

Admittedly, at present, the conviction of the appellant



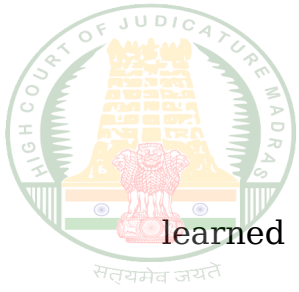
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stands still the disposal of the criminal appeal. The sentence which he has to undergo is for a period of one year. The passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal.

The passport authority is directed to renew the passport of the applicant without raising the objection relating to the pendency of the criminal appeal in this Court."

8. Therefore, the said extracted portion would reveal that the Hon'ble Supreme Court had directed the Passport Authorities to renew the passport of the applicant without raising objection relating to the pendency of Criminal Appeal against conviction of the applicant therein by the learned Trial Court. However, in the instant case, the applicant has already been acquitted and it is only as against the judgment of acquittal, the criminal appeal is pending as on date. Fully fortified by the aforesaid order, this Court hereby direct the first respondent to renew the passport of the petitioner without raising objection relating to the pendency of Criminal Appeal before the learned Principal Sessions Judge, at Ramanathapuram. However, whenever the petitioner intends to travel abroad, he should make an application before the learned Sessions Judge, at Ramanathapuram and seek permission to travel abroad by filing a proper application.

9. As and when such miscellaneous petition is filed, it shall be numbered and disposed of within a period of three weeks thereafter. The



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learned Trial Judge shall bear in mind that right to travel abroad is a fundamental right. The petitioner's career and avocation may be at stake if he is denied the right to go abroad. Therefore, the learned Sessions Judge's Court unless there are extraordinary circumstances shall not deny relief. Of course, the period of travel by the said passport can be restricted, if necessary, in the facts and circumstances of the pending Criminal Appeal. It is also open to the learned Sessions Judge to stipulate appropriate conditions to ensure that the Criminal Appeal is not stalled on account of the petitioner's absence from India. If necessary, the applicant can be directed to file an application under Section 228 of Bharatiya Nyaya Suraksha Sanhita, 2023, by executing a special vakalat.

10. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs.

31.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

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L.VICTORIA GOWRI, J.

Mrn

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