

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.3927 of 2017

Abdul Razik

: Petitioner

Vs.

The Regional passport Officer,
Regional Passport Office,
Bharathi Ula road,
Racecourse Salai,
Madurai District.

: Respondent

Prayer : This Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus to direct the respondent to issue passport to the petitioner by considering his application taken on file as file No.MD. 2079877643917 in light of the judgement made by this Court in W.Jaihar William Vs State of Tamil Nadu, 2014 2 CWC 684 within the time that may be stipulated by this Court.

For Petitioner : Mr.E.MareesKumar

For Respondent :Mr.G.Rajaraman

ORDER

This writ petition has been filed for the issuance of a Writ of Mandamus directing the respondent to issue passport to the petitioner by considering his application taken on file as file No.MD.2079877643917 in light of the judgement made by this Court in **W.Jaihar William Vs State of Tamil Nadu, 2014 2 CWC 684.**

2.According to the petitioner, he is a resident of Tuticorin. He was issued passport on 15.07.2012 and the same is valid upto 14.07.2022. He was employed in Bahrain. He married on 04.09.2013. After marriage, the petitioner had surrendered his passport for change of status from bachelor to married and reapplied for reissue of passport on 30.12.2016. In the meantime, the petitioner's wife had given a police complaint against the petitioner under Section 498-A of IPC and Section 4 of the Domestic Violence Act. Taking note of the FIR lodged by the petitioner's wife, the respondent vide proceedings dated 21.02.2017 sought for an explanation from the petitioner. According to the communication dated 21.02.2017, the petitioner was involved in the offence as stated supra and called for explanation within 30 days. As per

proceedings, the petitioner seems to have suppressed the material information in his passport application. In response to the column No.8 of the show cause notice, the petitioner had submitted his explanation on 24.02.2017 as follows:-

"8.1Have you ever been charged with criminal proceedings or any arrest warrant/summons pending before a court in India?'

From the reading of the above question it would be clear that, an applicant is warranted to answer in affirmative only if he has been charged of a criminal proceedings or any warrant/summons have been issued and are pending any court of India. In other words the said question does not cover a stage prior to filing of a charge sheet as a person is said to have been charged with a criminal proceedings only when a competent criminal court of jurisdiction, charges a accused of the offence after taking cognizance of the same. As the criminal case against me is in the stage of an FIR alone and as no court has taken cognizance of the same, I cannot be considered to have been charged with a criminal proceedings and therefore, the answering of the said question in question No.8.1 in negative is not suppression but is rather a true statement. It would have been a misleading or a false statement if I had answered the said question in affirmative. Therefore, there is no suppression as alleged in the proceedings stated supra. In the like manner, as no court has taken cognizance of the said

criminal case, there is no question of either summons or warrant being pending against me.”

3. That answer to be given in the form only when a person had been charged of criminal proceedings under the Code of Criminal Procedure and taking cognizance of the same. Mere pendency of the FIR cannot be construed as pendency of criminal proceedings. Therefore, the petitioner had not suppressed any material information in his passport application.

4. Notwithstanding the explanation given by the petitioner, no action has been taken by the respondent for re-issuance of passport and there is no communication received from the petitioner. Hence, the petitioner has come before this Court with the relief as stated supra.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

6. The learned counsel appearing for the petitioner placed on a decision reported in **2014(2) CWC 684** (M.Jaihar William vs. State of 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.

7.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 as 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.”

8. From the above, it could be seen that the present issue is squarely covered in the above said decision rendered by the learned Judge of this Court.

9. Following the abovesaid decision, the respondent is directed to consider the application for re-issuance of passport submitted by the petitioner without reference to the FIR lodged against him and issue

passport, if he is otherwise eligible for the same. The respondent shall comply with the said direction on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2017

skn
Index : Yes/No
Internet: Yes/No

To

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V.PARTHIBAN.,J.

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