

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

W.P.(MD)No.7056 of 2017

and

W.M.P.(MD)Nos.5580 and 5581 of 2017

N.Chandrababu

... Petitioner

Vs.

1. The Sub Inspector of Police,
Palakkarai Police Station,
Trichy-620 001.

2. The Passport Officer,
Passport Office,
Trichy-620 008.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the letter of the second respondent letter No.TR2078034667114 dated 05.04.2017 received by the petitioner dated 06.04.2017 and quash the same.

For Petitioner : Mr.R.Rajagopal
For R1 : Mr.T.S.Mohammed Mohideen
For R2 : Mr.G.R.Swaminathan
Asst. Solicitor General of India

ORDER

On the complaint lodged by Syed Sahul Ahmeer, the Sub-Inspector of Police, Trichy, Palakkari Police Station registered a case in Crime No.319 of 2013 on

04.06.2013 and after completing the investigation, filed a charge sheet in C.C.No.21 of 2015 before the learned Judicial Magistrate No.V, Trichy for the offences under Sections 120-B, 418, 419, 420, 463, 468 and 506(i) of I.P.C., against M.A.Alaudeen (A1), Paulgeesh @ Bhuvneshwari (A2) and N.Babu @ Chandrababu (A3). Babu @ Chandrababu (A3), the petitioner herein was released on anticipatory bail in Crl.O.P. (MD).No.21389 of 2013 vide order dated 29.11.2013. Babu @ Chandrababu is an Indian citizen and he was the holder of a passport bearing No.K5703462 dated 29.07.2013. He submitted an application for re-issuance of passport based on which, he was re-issued with a passport bearing No.Z2971459, dated 03.11.2014. On subsequent verification by the Passport Authorities, it came to their notice that the above said criminal case in Crime No.319 of 2013 on the file of Palakkari Police Station is pending against the petitioner and that the case is on trial in C.C.No.21 of 2015 before the Court. According to the Passport Authorities, the petitioner had suppressed this information and obtained the re-issued passport. In this regard, a show cause notice dated 19.12.2014 was issued by the Passport Authorities to the petitioner, calling upon him to explain as to why action should not be taken against him for suppression of the factum of the pendency of the criminal case against him. In response to the show cause notice, the petitioner submitted his explanation dated 10.09.2015, stating that there was no criminal case pending against him at the time of seeking re-issuance. However, the petitioner was advised to surrender the

passport pursuant to which, he surrendered the passport bearing No.Z2971459 to the Passport Authorities on 10.09.2015. Under such circumstances, the petitioner has filed the present Writ Petition for issuance of Writ of Mandamus to the Passport Authorities to return his passport to him as he wants to go to China on business assignment.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The admitted fact is that the petitioner is facing trial in C.C.No.21 of 2015 before the learned Judicial Magistrate No.V, Trichy. It is also a fact that the petitioner has filed Crl.O.P.(MD).No.3533 of 2017, challenging the criminal prosecution in C.C.No.21 of 2015 and this Court has admitted the quash application and in Crl.M.P.(MD).No.2642 of 2017, has granted interim stay of all further proceedings in C.C.No.21 of 2015 before the learned Judicial Magistrate No.V, Trichy. At this juncture, it may be relevant to discuss the legal position with regard to the right of a person facing criminal prosecution to demand issuance of passport. To decide this issue, it may be necessary to extract the following legal provisions from the Passports Act, 1967.

"Section 5(2) of the Passports Act, 1967

On receipt of an application under this section, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

(a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries ; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement."

Section 6(2) of the Passports Act, 1967

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, an on no other ground,

(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 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 an 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."

4. For deciding the issue at hand, Section 6(2)(f) will be relevant. A reading of the said provisions shows that the power of the Passport Authority to refuse issuance of passport under Section 5(2)(c) is governed by Section 6(2). Thus, for any of the reasons given in Clause (a) to (i) of Section 6(2), the Passport Authorities can refuse to issue a passport in exercise of power under Section 5(2)(c). The Parliament, in its wisdom, has conferred the aforesaid power, which is administrative in nature, on the Passport Authority. The Central Government has issued the following Notification

dated 25.08.1993, for regulating the exercise of power by the Passport Authority under Section 6(2) (f):

“In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:-

(a) The passport to be issued to every such citizen shall be issued-

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

5. From a reading of the aforesaid Notification, in the opinion of this Court, the expression 'concerned Court' will mean the Court before whom the person is facing the prosecution. In this case, had there not been a quash petition pending, the 'concerned Court' would be the learned Judicial Magistrate No.V, Trichy before whom the petitioner is facing trial in C.C.No.21 of 2015. However, this Court, in exercise of its power under Section 482 of Cr.P.C., has admitted Crl.O.P.(MD)No.3533 of 2017 and has granted stay of all further proceedings in C.C.No.21 of 2015 on the file of Judicial Magistrate No.V, Trichy. Under such circumstances, the expression 'concerned Court' in the context of the present case will mean the High Court and not the Judicial Magistrate No.V, Trichy.

6. Now, the next question that falls for consideration is whether, this Court can permit the petitioner to go abroad. This decision has to be taken on a case to case basis and there cannot be any cut and paste formula. To decide the desirability of permitting this petitioner to go abroad, it may be necessary for this Court to briefly analyse the allegations in the charge sheet in C.C.No.21 of 2015. In the charge sheet, it is alleged by the prosecution that M.A.Alaudeen (A1) and his wife

Paulgeesh @ Bhuvneshwari (A2) were running a film Company, Haji Cine Creation and had received money from the de-facto complainant for taking a film titled 'Sathiram Bus Stand', but did not complete the film. They had promised to give a role to the de-facto complainant in the said film and had also taken him as a partner in Haji Cine Creation. Pursuant to that, the de-facto complainant became a partner with A1 and a partnership deed was registered as Document No.197 of 2010 on 27.04.2010. Thereafter, A1 completed the film with the help of the finance provided by Babu @ Chandrababu (A3) (the petitioner herein) and thus cheated the de-facto complainant. Since, this Court was *prima facie* satisfied that the transaction is purely civil in nature, this Court had admitted Crl.O.P.(MD)No.3533 of 2017 and had granted stay of the prosecution in C.C.No.21 of 2015. The police have filed a report before this Court, in which it is stated that the petitioner is a permanent resident of Trichy and has been doing furniture business. It is the case of the petitioner that to fulfil his business commitments, he is required to go to China for procuring furniture items as well as farm equipments.

7. On a conspectus of the facts obtaining in this case, this Court is of the view that this is a fit case for which permission should be granted to the petitioner to go abroad. Under such circumstances, this Court permits the petitioner to depart from India and return on 30th May 2017. In view of the permission granted by this

Court, the Passport authorities are directed to exempt the petitioner from the operation of the provisions of Clause (f) of sub-Section (2) of Section 6 of the Passports Act. The petitioner shall give an undertaking as contemplated by Clause (d) of the Notification dated 25.08.1993. The petitioner will be entitled to keep the passport with him, in view of the fact that this Court has granted stay of all further proceedings in C.C.No.21 of 2015 and it may not be necessary for the petitioner to come every time to this Court seeking permission to go abroad. Accordingly, this writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

21.04.2017

Index: Yes / No
Internet: Yes / No
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Note: Issue order copy on 27.04.2017

To:

1. The Sub Inspector of Police,
Palakkarai Police Station,
Trichy -620 001.
2. The Passport Officer,
Passport Office,
Tiruchy-620 008.

P.N.PRAKASH,J.
akv/ar

W.P.(MD)No.7056 of 2017

21.04.2017