

(2014) 06 MAD CK 0047

In the Madras High Court

Case No : W.P. (MD). Nos. 8343 to 8350 of 2014 and M.P. Nos. 1, 1, 1, 1, 1, 1, 1 and 1 of 2014

W. Jaihar William

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190
Passports Act, 1967 — Section 5, 5(2), 6(2)(f)
Penal Code, 1860 (IPC) — Section 143, 147, 148, 188, 294

Citation : (2014) 8 MLJ 61

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Judgement

R. Subbiah, J.—As issue involved in all these writ petitions is one and the same, they are disposed of by way of this common order. These writ petitions have been filed praying for issuance of a writ of Mandamus to direct the 3rd respondent to issue passport to the petitioners.

2. The petitioners herein have applied for issuance of passport, with an intention to leave to go abroad for seeking their livelihood. They have made the applications to the 3rd respondent on different dates. While they were eagerly awaiting for issuance of passport, vide his proceedings (different dates) the 3rd respondent has informed the petitioners that he has received an adverse police verification report corresponding to their application for passport and directed the petitioners to give suitable explanation within 30 days regarding the circumstances under which, they had suppressed the material information in the passport application regarding the pendency of criminal cases. Thereafter only, the petitioners came to know that their names have been falsely implicated by the Police in the First Information Report, for having participated in the agitation against the Koodankulam Nuclear Project. It is the case of the petitioners that on the date of their application for passport, no criminal case was pending against them and they have not received summons from any Court of Law and no Court

of Law had taken cognizance of the offence alleged to have been committed by them. Hence, the petitioners have sent explanations to the 3rd respondent stating that they have not suppressed any information in their application for passport, regarding the pendency of the criminal case. Thus, they sought for issuance of passport. But, even thereafter, the 3rd respondent has not considered their application for passport and as such, the petitioners are not in a position to go abroad for securing employment. Hence, the present writ petitions have been filed by the petitioners for the relief as stated supra.

3. The 3rd respondent has filed a counter affidavits, by taking a common stand in all the writ petitions that on receipt of the applications of the petitioners for issuance of passport, the same was referred to the Superintendent of Police, Tirunelveli, under Section 5(2) of the Passports Act, 1967, for verification of character and antecedents on 01.11.2011; in response, an adverse police verification report was received from the Superintendent of Police, Tirunelveli, in respect of each of the petitioners; the petitioners are involved in the agitation against the Koodankulam Nuclear Project and First Information Reports have been filed against the petitioners. As regards the petitioners in W.P.(MD). Nos. 8343 to 8348 & 8350 of 2014, criminal cases have been registered in Cr. Nos. 338/2011, 397/2011, 375/2011, 377/2011, 393/2011, 375/2011 & 384/2011 respectively, for the offences under Section 143 & 188 r/w 34 IPC. So far as the petitioners in W.P.(MD). No. 8349 of 2014 is concerned, criminal case has been registered in Cr. No. 397 of 2011 for the offences under Sections 147, 148, 294(b), 353 & 307 IPC. On receipt of the adverse police verification report, show cause notices were sent to the petitioners asking them to give explanation as to why they suppressed the particulars regarding the pendency of criminal cases and also to give explanation regarding the status of the criminal cases. The petitioners have given explanation stating that they were not informed by the Police about the registration of the FIRs against them. In the counter affidavits, it has been further stated by the 3rd respondent that as per the Passports Act, 1967, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under Section 6(2)(f) read with Clause (c) of sub-section (2) of Section 5 of the Passports Act 1967, on the ground that the proceedings in respect of an offence alleged to have been committed by the, applicants are pending before the criminal Court in India. Thus, the 3rd respondent sought for dismissal of the writ petitions.

4. From the counter affidavits filed by the 2nd respondent, it could be understood that except the petitioner in W.P.(MD).8349/2014, who is involved in the criminal case registered under Sections 147, 148, 294(b), 353 & 307 IPC, in respect of all other petitioners, the 2nd respondent has sent a proposal to the Government for withdrawal of the above said criminal cases, which were filed under Sections 143, 188 r/w 34 IPC.

5. When the matter was taken up for consideration, the learned counsel for the petitioners made a submission that as per Section 6(2)(f) of the Passports Act

1967, the 3rd respondent can refuse to issue passport, only if the criminal proceedings in respect of the alleged offence said to have been committed by the petitioners are pending before the Court of Law. The pendency of FIR cannot be a bar in considering the applications of the petitioners for issuance of passport. Unless, the judicial authority takes cognizance of the offence alleged to have been committed by the petitioners, it cannot be said that the criminal case is pending before the Court. In this regard, the learned counsel for the petitioners relied upon the judgments reported in Kamal Kumar Narottam Dash Parekh Vs. Superintendent (Administration) Regional Passport Office, Ministry of External Affairs and Others , Matchumari China Venkatareddy and Others Vs. State of Andhra Pradesh, and Anwar-ul-Haq Vs. Union of India (UOI) and Others, .

6. Heard the submissions made on either side and perused the materials available on record.

7. From the materials available on record, this Court finds that the applications submitted by the petitioners for passport were not considered by the 3rd respondent for the reason that FIRs are pending against them. The Superintendent of Police, Tirunelveli, has filed counter affidavits stating that First Information Reports have been filed against the petitioners for the alleged offences, stated supra, since they are involved in the agitation against the Koodankulam Nuclear Project. So far as the petitioner in W.P.(MD). No. 8349 of 2014 is concerned, the criminal case has been registered under Sections 147, 148, 294(b), 353 & 307 IPC. Since the FIRs are pending against the petitioners, the 3rd respondent has not considered the applications of the petitioners, by placing reliance on Section 6(2)(f) of the Passports Act, 1967. Section 6(2)(f) reads as follows:

"6. Refusal of passports, travel documents, etc

(1).....

(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) & (b)....

(c) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before the criminal Court in India;"

It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of criminal proceedings in respect of the offences alleged to have been committed by the applicant before the Criminal Court. Only after the Court takes cognizance of the offence alleged to have been committed by the applicant, as stipulated under Section 190 of Cr.P.C., it can be construed as "proceedings pending before the Court".

8. In this regard, a reference could be placed in the judgment relied upon by the learned counsel for the petitioner reported in *Kamal Kumar Narottam Dash Parekh v. Superintendent (Administration), Regional Passport Office, Ministry of External Affairs and Others* (supra). In that case, a criminal case was registered against the petitioner therein under Sections 20(B), 420, 409, 467, 468, 471, 477A of IPC and he was arrested and subsequently, released on bail. When his application for passport was not considered, he approached the High Court and in that case, the Calcutta High Court has held that the proceedings that reaches the Court in the course of investigation cannot be held to be "proceedings pending in Court" and such proceedings remain still at the stage of investigation, and gets transformed into a "proceeding pending in a Court" only, and if, cognizance thereof is taken by the Court.

9. 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 *Mathumari China Venkatareddy and Others v. State of Andhra Pradesh* (supra), 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 judgment 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.

For the foregoing reasons, the writ petitions are allowed and a direction is issued to the 3rd respondent to consider the applications of the petitioners and to pass appropriate orders regarding issuance of passports to them, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs.