

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 30<sup>TH</sup> DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943

WP (C) NO. 15182 OF 2021

PETITIONER:

THADEVOOSE SEBASTIAN,  
AGED 48 YEARS, S/O. SEBASTIAN,  
NOW RESIDING AT TC 33/31 S.S. VILLA,  
OPP. COMMUNITY HALL, KANNANTHURA,  
BEACH P.O.  
THIRUVANANTHAPURAM, KERALA 695 007.

BY

ADVS.S.SAJU  
ADVS.A.V.SAJAN  
ADVS.NEELANJANA NAIR  
ADVS.POOJA SEBASTIAN

RESPONDENTS:

- 1 THE REGIONAL PASSPORT OFFICE  
TRIVANDRUM SNSM BUILDING,  
KARALKADA JUNCTION, PETTAH P.O.  
TRIVANDRUM 695 024, KERALA,  
REPRESENTED THROUGH ITS REGIONAL PASSPORT  
OFFICER) .
- 2 THE REGIONAL PASSPORT OFFICER,  
THE REGIONAL PASSPORT OFFICE,  
TRIVANDRUM SNSM BUILDING,  
KARALKADA JUNCTION, PETTAH P.O.  
TRIVANDRUM 695 024, KERALA,  
BY ADV SHRI.P.VIJAYAKUMAR, ASG

W.P.(C) No.15182/21

-:2:-

BY ADV.JAISHANKER, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 22.09.2021, THE COURT ON 30.09.2021 DELIVERED  
THE FOLLOWING:

**“C.R.”**

**BECHU KURIAN THOMAS, J.**

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**W.P.(C) No.15182 of 2021**  
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Dated this the 30<sup>th</sup> day of September, 2021

**JUDGMENT**

Petitioner challenges the communication issued by the Regional Passport Officer informing him of the short comings in his application for issuance of a passport. Reliefs are also sought for the issuance of a fresh passport in accordance with the circulars issued by the Government of India.

2. Petitioner was the holder of an Indian Passport bearing No. Z1969747 issued from Dubai and valid till 11.12.2020. It is alleged by the petitioner that, while he came for a visit to his hometown in April, 2012, he lost his passport within the premises of Nedumbassery Airport. The fact of loss of passport was intimated to the police station and he obtained a certificate dated 20.11.2012 from the police that no useful information have been received relating to the missing passport. Curiously, on the very same day petitioner received the certificate as mentioned above, an FIR was registered before the Ernakulam Rural Police Station against the petitioner as

F.I.R. No.1480 dated 20.11.2012, alleging offences under sections 406, 419 and 420 of IPC apart from sections 12(1)(a), (d) of Passports Act, 1967. It was alleged in the crime that petitioner had impersonated the defacto complainant and travelled with the defacto complainant's passport on 10.10.2012 from Sharjah, after taking possession of the passport of the complainant by committing a breach of trust.

3. Petitioner contends that he had applied for a fresh passport on 26.11.2012, but since, in the meanwhile, the aforementioned crime was registered, petitioner was stuck in Kerala and has not returned back to Sharja till date. It is pleaded that by Ext.P5 dated 08.12.2014 petitioner was informed from the passport office that due to the adverse report on the pendency of the crime, the file for issuance of passport was closed.

4. Almost five years after the closure of the file relating to his application for issuance of passport, petitioner applied afresh, for a new passport, claiming that the police had dropped the proceedings against him. It is further alleged in the petition that even though a police clearance was issued, on 19.02.2020, Ext.P7 communication was issued by the 1<sup>st</sup> respondent intimating shortcomings in his

application for the passport. Petitioner contends that despite having proper police clearance and despite the closure of the crime registered against him, the passport authorities are harassing him by referring to those false crimes.

5. The proceedings of this case on 30.07.2021 reflects that submissions were made on behalf of the petitioner that police had filed a closure report in the crime against the petitioner and hence he need not even get permission from the Magistrate's Court.

6. Contrary to the aforesaid, it is now submitted by the learned counsel for the petitioner that, the criminal case against the petitioner is still pending investigation and the submission on 30.07.2021 was incorrect and was an unfortunate instance of wrong instructions. According to the learned counsel, it is now reliably learnt that the police are yet to complete the investigation.

7. In view of the aforesaid submission of the learned counsel, it is admitted that a crime is still pending against the petitioner but at the investigation stage. In the aforesaid circumstances, it may be apposite to consider the circumstances in which a passport can be denied to a citizen of India.

8. The Passports Act, 1967 (for short 'the Act') deals with the

issuance of passports and regulating the departure of citizens of India to places outside the country. An application for obtaining a passport has to be submitted under section 5 of the Act while the refusal of a passport is dealt with under section 6 of the Act. Applicants for issuance of passport who are facing criminal proceedings are dealt with under section 6(2)(f) which reads as under:

**6. Refusal of passports, travel documents, etc.-**

(1) xxxx                      xxxx                      xxxx                      xxxx                      xxxx

*(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) xxxx                      xxxx                      xxxx                      xxxx

(b) xxxx                      xxxx                      xxxx                      xxxx

(c) xxxx                      xxxx                      xxxx                      xxxx

(d) xxxx                      xxxx                      xxxx                      xxxx

(e) xxxx                      xxxx                      xxxx                      xxxx

*(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) xxxx                      xxxx                      xxxx                      xxxx

(h) xxxx                      xxxx                      xxxx                      xxxx

(i) xxxx                      xxxx                      xxxx                      xxxx

9. A bare reading of the above provision may indicate that the passport issuing authority shall be bound to reject the application for issuance of a passport if “criminal proceedings are pending” in any

Court in India.

10. It is indubitable that the right to travel beyond the frontiers of our country is a facet of personal liberty under Article 21 of the Constitution of India. (See **Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi and Others** (AIR 1967 SC 1836) and **Maneka Gandhi v. Union of India and Another** [(1978) 1 SCC 248]. (Satwant Singh's case is pre-Passport Act case while Maneka Gandhi's case is after the Passport Act). However comprehensive the said liberty be, it is still subject to '*procedure established by law*'. Thus after the enactment of the Act in 1967, a law came into existence which enabled denial merely on the ground of existence of a criminal proceeding. Another facet of Article 21 that encapsulates every law, laying down a procedure to deprive the personal liberty of a person is the triplet of '*just, fair and reasonable*'.

11. Thus to make the deprivation of the personal liberty of the right to travel abroad, just, fair and reasonable, the Government of India in exercise of the powers under section 22 of the Act, issued a notification, which is statutory in character, exempting citizens of India against whom criminal proceedings are pending before a

criminal court from the operation of section 6(2)(f) of the Act on condition that the applicant produces orders from the Court concerned permitting to depart from India.

12. It may be germane to reproduce the notification issued by the Government of India as GSR 570(E) dated 25.8.1993, which is as follows:

*“GSR 570(E) - 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. GSR 298(E) dated the 14<sup>th</sup> 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 subsection (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 of 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;*



*(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.”*

13. Petitioner has produced an Office Memorandum dated 10.10.2019 issued by the Government of India reiterating the terms of the notification extracted above. Since GSR 570(E) dated 25.8.1993 is statutory in character, it has the force of law, unlike the Office Memorandum which can act only as a guide to the passport officers.

14. In this context, it is relevant to refer to the decision in **Asok**

**Kumar v. State of Kerala** (2009 (2) KLT 712). In the said case, relying upon the notification GSR 570(E) dated 25.8.1993, this Court rejected the refusal of the Magistrate, before whom criminal proceedings were pending against the accused in that case, to travel abroad. Noticing that there was no chance for the case to come up for trial in the near future, this Court granted permission to the accused to travel abroad.

15. On a consideration of the above-extracted notification and the provisions of the Act, it is obvious that there are still lacuna about the parameters that govern the grant of no objection by the criminal courts. Though it is for the legislature to fill up the lacuna by recourse to its rule making power or through proper amendments, such amendments have unfortunately not been forthcoming. It is essential that till then there must be some yardstick to govern the grant of such no objections by criminal courts as otherwise, there is a possibility of the grant of permission turning into a subjective satisfaction rather than an objective one.

16. After expressing the inclination of this Court to lay down parameters for the criminal courts to act upon while granting the no objection, the counsel for the petitioner Adv. Saju S. Nair and the

Central Government Counsel Adv. Jaisankar V. Nair were heard on the said issue.

17. A recap of the various decisions of this Court may be necessary at this stage of the deliberations. In **Muhammed v. Union of India and Others** (2018 (4) KHC 945) this Court had held that a criminal proceeding is pending only when cognizance is taken and in the absence of a final report filed in court, a criminal case cannot be treated as pending. It was also held that mere registration of a crime does not invoke either section 6 or section 10 of the Act and the police verification report must mention the stage of the crime. Similarly, in the decision in **Jayan V.M. @ Jayasoorya v. Union of India and Others** (2018 KHC 823) this Court had observed while considering a case of impounding of passport that mere property disputes or family disputes masquerading as crimes cannot deprive a person of his or her fundamental right to travel and the passport officer has to exercise his discretion in evaluating the gravity of the crime and then decide whether the pending crime must result in variation, impounding or revocation of the passport or the travel document. In the decision in **Mohamad Shafi v. Regional Passport Officer** (2017 (2) KHC 484) this Court has held that Criminal Court is

vested with ample powers to issue directions for providing passport for a specific period and the Magistrate can fix the period for travelling abroad or even issue directions to issue the passport for a specified period in accordance with the facts and circumstances of each and every case. In **Muhammed v. State of Kerala and Another** (2012 (4) KHC 553) it was held that the gravity of the offence alleged cannot be the sole basis to decline permission to go abroad for a short period and the Magistrate can allow the application to travel abroad by imposing adequate safeguards for securing the presence of accused for trial. In **Akhilesh v. State of Kerala and Others** (2021 (2) KHC 752) it was held that the Court where the case is presently pending has to decide whether the applicant is entitled to get a passport as well as the period for which he is entitled to hold the passport and the court has also to keep in mind the fact that pendency of a criminal case shall not stand in the way or cause hindrance to decide the future of an applicant.

18. On an appreciation of the aforesaid decisions, it can be seen that the courts have been constantly holding that the pendency of a criminal proceeding is not a bar for obtaining a passport or for travelling abroad. However, the only requirement in such cases is

that the court where the criminal proceeding is pending, must grant permission for the period of such travel or the period for which the passport can be issued . Based upon such permission, the passport issuing authority can issue the requisite document enabling travel.

19. We must remind ourselves that, we are still governed by the pristine principle that an accused is presumed innocent unless and until he is found guilty. The fact that false prosecutions can mar the career and future of a person is also a factor that may well not be ignored while considering the grant of permission. This Court cannot also lose sight of the fact that criminal trials in our Country take ages to complete, notwithstanding the efforts at reducing delay. Adding to all these, with the Covid-19 pandemic having halted the continuity of trials in many trial courts, further delay is a forgone conclusion and to say the least. Reality being so, the grant of permission by the Magistrate enabling an accused to travel abroad will be of great significance, especially since it will be a process of balancing the fundamental right of a citizen to travel abroad and the need to ensure the presence of the accused during trial. Many a time, the consideration results in subjective satisfaction of the Magistrate rather than the required objective satisfaction. To avoid subjectivity, it

is necessary to lay down the parameters that can govern the grant of permission for future guidance.

20. The parameters that shall govern the grant of permission by the criminal courts in the matter of issuance of passports to those involved in criminal proceedings pending in courts shall be as follows:

- (i) The stage of the criminal proceeding and the duration of time within which the trial may take place;
- (ii) The criminal antecedents and past conduct of the accused;
- (iii) The nature and gravity of the crime; offences under Statutes dealing with acts of terrorism and acts of smuggling should require a different consideration.
- (iv) In heinous crimes, if the court decides to grant permission, the period for which permission is granted can be limited;
- (v) Chances of the accused fleeing or evading the trial in the case;
- (vi) Mode in which the presence of the accused can be ensured during trial, including stipulating conditions like providing the address/ change of address in the country of residence abroad, either with the Indian Consulate at the country of residence abroad or with the Court where the trial is pending.
- (vii) Since in cases where time is not fixed by the Magistrate while granting permission, the Passport authorities are issuing passports only for one year, the period for which the accused can be permitted to travel can also be fixed by the Magistrate, while granting permission.

21. The parameters laid down as above are not exhaustive.

While granting permission, the criminal courts will do well to bear in mind that the ultimate aim of granting permission is to balance the competing claims of fundamental right to travel abroad and the need to ensure the presence of the accused during trial. Other reasonable safeguards to ensure the presence of the accused during trial can also be incorporated into the order granting permission, if the circumstances warrant it.

22. In view of the aforesaid, since the petitioner is unable to fully satisfy this Court, the stage of crime No. 1480 of 2012 of the Nedumbassery Police Station, this writ petition is ordered directing the petitioner to approach the jurisdictional Magistrate and obtain appropriate orders if the final report has been filed and cognizance taken. On the other hand, if the final report has not been filed and cognizance not taken yet, there is no criminal proceeding pending and the Passport Authority is free to decide the grant of passport without permission from the Magistrate. To enable the passport authorities to process the application filed by the petitioner for grant of a fresh passport, petitioner is given the liberty to file his explanation to Ext.P7 within ten days from the date of receipt of a copy of this Judgment and thereafter the second respondent shall

pass appropriate orders within an outer period of four weeks thereafter.

The writ petition is disposed of with the above observation.

Sd/-

**BECHU KURIAN THOMAS  
JUDGE**

vps



APPENDIX OF WP(C) 15182/2021

PETITIONER'S/S' EXHIBITS

- Exhibit P1 TRUE COPY OF THE FLIGHT TICKETS USING WHICH THE PETITIONER TRAVELLED FROM SHARJAH TO TRIVANDRUM DATE 11.04.2012.
- Exhibit P2 TRUE COPY OF THE LOST CERTIFICATE OBTAINED FROM THE NEDUMABSSERY POLICE STATION, DATED 20.11.2012.
- Exhibit P3 TRUE COPY OF THE FIR IN CRIME NO. 1480/2012 OF NEDUMBASSERY POLICE STATION DATED 20.11.2012.
- Exhibit P3(a) TRANSLATION OF EXT. P3, FIR IN CRIME NO. 1480/2012 OF NUDEUMBASSERY POLICE STATION DATED 20.11.2012.
- Exhibit P4 TRUE COPY OF THE EXPLANATION GIVEN BY THE PETITIONER TO THE SIT RESPONDENT DATED 12.11.2014.
- Exhibit P5 TRUE COPY OF THE LETTER ISEUD BY THE IST RESPONDENT DATED 08.12.2014.
- Exhibit P6 TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT ISSUED BY THE IST RESPONDENT DATED 19.09.2019.
- Exhibit P7 TRUE COPY OF THE OBJECTION LETTER ISSUED BY THE IST RESPONDENT DATED 19.02.2020.
- Exhibit P8 TRUE COPY OF CIRCULAR NO. VI/410/1/5/2019 DATED 10.10.2019.