

Bineesh vs State of Kerala

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Court : Kerala

Decided On : Jul-29-2022

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : Crl.MC/4799/2022

Appellant : Bineesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TH
FRIDAY, THE 29 DAY OF JULY 2022 / 7TH SRAVANA, 1944 CRL.MC
NO. 4799 OF 2022 C.C No. 1115/2019 pending before the Judicial First
Class Magistrate Court-I, Harippad PETITIONER/ACCUSED NO.1:
BINEESH,AGED 41 YEARS,S/O. ANANDAN. K.S, SHINU NIVAS,
PILAPPUZHA THEKKUMURIYIL, HARIPPAD, ALAPPUZHA., PIN -
690514 BY ADVS. C.P.UDAYABHANU ABHISHEK M. KUNNATHU
RESPONDENT/COMPLAINANT: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031 2 THE PASSPORT OFFICER REGIONAL
PASSPORT OFFICE, KOCHI-36., PIN - 682036 BY ADVS. PUBLIC

PROSECUTOR MANU S. ASG OF INDIA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29.07.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner is the accused No.1 in C.C No. 1115/2019 pending before the Judicial First Class Magistrate Court-I, Harippad. This Crl.M.C is filed by the petitioner, praying for a direction to respondent No.2 to renew the passport of the petitioner for a further period of one year from the date of its expiry, which is due on 11.04.2022.

2. The facts which led to the filing of this Crl.M.C is as

follows: The petitioner submitted Crl. M.P No. 3364/2021, before the learned Judicial First Class Magistrate, Haripad seeking permission to go abroad and issue appropriate direction to renew his passport. However, the period for which the passport has to be renewed was not specified in the application. After considering the aforesaid application, the Annexure-1 order was passed by the learned Magistrate, granting permission to the petitioner to renew the passport. Since no period was mentioned in the application, in

the order also, no period was mentioned. The 2nd respondent issued the passport in compliance with the Annexure-1 order, but the period was specified as one year. The petitioner's grievance is that, when he attempted to obtain employment abroad with the aforesaid passport, he was informed that, to consider his application for processing the Visa, he must have a passport with a minimum validity of two years. This Crl.M.C is filed in such circumstances.

3. Heard, Sri. C.P.Udayabhanu, the learned counsel appearing for the petitioner, Smt. Sreeja V. the learned Public Prosecutor and the learned ASGI, appearing for the 2 nd respondent.

4. The learned counsel for the petitioner submits that, at the time when the petitioner submitted the application, he was not aware that the employer would insist for a passport with a

minimum validity of two years. On the other hand, the learned ASGI, would submit that as far as the Passport Officer is concerned, if no specific period is mentioned in the order passed by the Court, he can issue a passport with a validity of one year only, as stipulated in GSR.570(E), which is a notification of the Central Government issued under Section 22 of the Passport Act.

5. After perusing the records and hearing both sides, I am unable to find any legal infirmity in the Annexure-1 order passed

by the learned Magistrate. This is because, even according to the petitioner, no specific time limit has been mentioned in his application. However, the fact remains that he requires a passport with a minimum validity of two years. I am of the view that, merely because of the reason that he is implicated in an offence,

his employment avenues should not be curtailed. Technicalities shall also not stand in the way of pursuing his avocation for livelihood. The right to travel, including the right to go abroad, is part of the Constitutional rights of the citizen and the same cannot be curtailed unless there are justifiable reasons for the same. Therefore, I deem it appropriate to grant the petitioner one more opportunity to get his grievance redressed.

6. In such circumstances, I am of the view that, even though I do not find any legal infirmity in the Annexure-1 order, in

order to facilitate the petitioner to apply for a passport with a

minimum validity of two years, the aforesaid order is to be set aside. In the result, this Crl.M.C is disposed of, by setting aside the Annexure-1 order, for the limited purpose of enabling the petitioner to submit a fresh application specifying the period along

with the necessary application to substantiate the relief. Upon receipt of such application, the learned Magistrate shall consider the same and appropriate orders will be passed without any delay expeditiously as possible at any rate within two weeks from the date of submission of the application. It is made clear that, since I set aside the Annexure-1 order only to enable the petitioner to submit a fresh

application, the passport already issued in pursuance to Annexure -1 order shall continue to have its effect, despite the order of setting aside the Annexure-1 order. The premature cancellation of the said passport can be affected, if

found necessary, only for issuance of a fresh passport, in tune with further order, if any, passed by the learned Magistrate in the application to be submitted by the petitioner as mentioned above. Sd/- ZIYAD RAHMAN A.A JUDGE rpk APPENDIX OF CRL.MC 4799/2022 PETITIONER ANNEXURES Annexure1 A COPY OF THE ORDER CRL.M.P. NO. C.C.1115/2019 PASSED BY THE JFCM COURT, HARIPAD Annexure2 A COPY OF THE RENEWED PASSPORT Annexure3 A COPY OF THE OFFER LETTER DATED 09.05.2022

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