

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: July 15, 2010

Date of Order: August 11, 2010

W.P.(Crl.) No. 1315/2008

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11.08.2010

SUMER SINGH SALKAN

... Petitioner

Through: Ms. Malavika Rajkotia with Mr. Bandan
Kumar, Advocates

Versus

ASSTT. DIRECTOR & ORS.

... Respondents

Through: Mr. Vikas Pahwa, Standing Counsel for
CBI, Mr. Pawan Sharma, APP for the State, Mr. D.K.
Sharma, SHO, P.S. Alipur.

and

Date of Reserve: July 20, 2010

Date of Order: August 11, 2010

Crl. Ref. 1/2006

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11.08.2010

COURT ON ITS OWN MOTION RE:

... Petitioner

Through: None.

Versus

STATE VS. GURNEK SINGH ETC.

... Respondents

Through: Mr. Sunil Sharma, APP

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.

3. Whether judgment should be reported in Digest?

Yes.

JUDGMENT

1. By the present petition the petitioner has sought recall of Look-out-Circular (LOC) and Red Corner Notice (RCN) issued by Delhi Police and Interpol against the petitioner alleging that LOC and RCN were issued in arbitrary and malafide exercise of power by the respondent.

2. The petitioner claimed that he was a Canadian citizen since January, 2004 and a person of Indian origin. He had married one Ms. Reema Salkan, daughter of Prof. R.S. Mann, on 24th March, 2002 according to Hindu rites and ceremonies at Infantry Hostel, Delhi Cantonment, New Delhi. At the time of his marriage, the petitioner was living and working in Canada and he came to India on three weeks leave for the purpose of marriage. The marriage was settled with Ms Reema through matrimonial advertisement in newspaper. The facts reveal that wife of the petitioner was not able to join the petitioner in Canada, as difference arose between the parties in the very beginning. The petitioner alleged that he was compelled to withdraw the sponsorship made by him for his wife Reema in view of certain developments. A complaint against the petitioner and his parents and married sister was filed at Crime Against Women Cell (CAW Cell) under section 498-A/406 IPC making various

allegations. Later on, an FIR was registered on 22nd April, 2003 on the basis of this complaint. The parents and sister of petitioner obtained anticipatory bail from the court. Since petitioner was in Canada, he could not be arrested by the police. Additional Deputy Commissioner of Police (North-West) wrote a letter dated 27th May, 2003 to Foreigners Regional Registration Office (FRRO) for opening LOC against the petitioner. This letter, annexed with the petition, shows that Addl. DCP asked RFFO to open an LOC against the petitioner at all India basis because of FIR under section 498A/406 of IPC, registered at Police Station – Alipur, Delhi. Later, a letter seems to have also been written to Interpol Wing of Central Bureau of Investigation (CBI) on 11th June, 2003 for opening and issuance of a Red Corner Notice and service of summons on the petitioner in Canada. In response to this letter, CBI wrote a letter to Dr. R.K. Bansal, Asstt. Commissioner of Police (ACP), Sub Div. Narela, Delhi dated 15th July, 2003 and informed ACP that summons had been forwarded to Indian High Commission in Canada and also informed that in order to bring the petitioner to Delhi, charge-sheet should be filed and Non-Bailable Warrants (NBWs) of arrest should be obtained against the petitioner so that extradition proceedings could be initiated. It was advised that a short self contained note be prepared and same be sent to Interpol Wing. Further documents show that

the police declared the petitioner as a “Wanted” person without any process issued through the Court and opened a file No. 6/SIO/2003 (77). Asstt. Director of T.P. Section/SI Cell issued a letter to all Immigration Check Posts alerting them so that if the petitioner was detected, he should be detained and his detention should be conveyed to Shri R.S. Yadav, Addl. Deputy Commissioner of Police. This letter was sent to all States D.G.Ps, all Seaports and all Airports. A copy of RCN, issued against the petitioner, is on record. The RCN described the petitioner as “fugitive wanted for prosecution”. A warning is there that the petitioner may be “dangerous” and “violent”. The RCN had the photograph of the petitioner and particulars. In the particulars, the offences mentioned are section 498A, 406 and 34 of IPC and maximum possible penalty has been mentioned as ‘10 years’ imprisonment’. (This must be an invention made by ACP, as far as IPC is concerned, the maximum punishment for offences under section 498-A & 406 of IPC is up to three years imprisonment.)

3. A notice of the petition was served upon the respondent and a status report was filed by SHO, P.S. Alipur, Delhi. In the status report it has been stated that after registration of FIR, investigation was taken up and sister and parents of the petitioner were granted anticipatory bail, so they were formally

arrested. Since the petitioner was at Canada, he could not be arrested and LOC was got opened against him and also RCN was got issued against him, but the petitioner did not join investigation. A charge-sheet was filed against the petitioner, his parents and his sister; in which the petitioner's name was kept in column 2. It is submitted that LOC and RCN were got issued against the petitioner during investigation as there was sufficient evidence to show complicity of the petitioner in commission of crime. The NBWs were issued against the petitioner by the Court of learned Metropolitan Magistrate through Ministry of Home Affairs and the date fixed before the Court was 15th April, 2009.

4. The RCN, was widely published and also placed on internet. It shows that the petitioner was involved in crime of kidnapping including crime against life and health. It is submitted by CBI that family related crimes are classified in the category of 'kidnapping' and that is why Interpol's public website showed the crime of petitioner as 'kidnapping'. However, on a protest of petitioner, the offence of kidnapping was deleted from 'RCN'.

5. This court also received a reference from ACMM, Patiala House Court regarding guidelines for issuance of LOC and for closure of LOCs. Response of

the State/UOI was sought on this reference. In its response, it is stated by UOI that there was no legal definition of LOC. However, LOC was interpreted as a communication received from an authorized government agency with reference to a person who is wanted by that agency for fulfillment of a legal requirement, to secure arrest of a person evading arrest, to nab a Proclaimed Offenders so as to facilitate court proceedings by securing presence of under trials. It is stated that statutory backing for issuance of LOC can be placed to Passport Act, 1967, sections 10A and 10B. Section 10A gives power to a designated officer to suspend passport or render a travel document invalid for a period of 4 weeks and section 10B provides that every intimation given by the Central Government or the designated officer, to any immigration authority at an airport or any other point of embarkation or immigration, restricting or in any manner prohibiting the departure from India or any holder of the Passport or travel document. The other statutory provision relied upon is Section 41 of Cr. P.C. which requires police to arrest any person without warrants. The LOC's are issued at the behest of different agencies in accordance with Ministry of Home Affairs' Circular No. 15022/13/78-F.1 dated 5th September, 1979, either to monitor the arrival/ departure of foreigners and Indians or to restrict arrival/departure of foreigners or Indians. It is stated that

LOCs are based on the originator's request to send communication to various immigrations, check posts on the basis of substantive/ procedural laws in respect of persons wanted in some cases. It is admitted that Ministry of Home Affairs' office memorandum No. 15022/20/98-F.IV dated 27th December, 2000 requires that a request for opening of LOC must be issued with an approval of officer not below the rank of Deputy Secretary to the Govt. of India/ Joint Secretary in the State Government/ Concerned Supdt. of Police at district level and action on the LOC is to be taken in accordance with the directions of the originator. LOC was a part of investigation technique.

6. A perusal of Interpol documents regarding issuance of RCN would show that the RCN / 'wanted notice' are published in respect of offender wanted at international level and it requires that the subject may be arrested in certain country with a view to extradite him to the country where he is wanted and following conditions are to be fulfilled:

- The person against whom the notice is to be published has committed an offence against ordinary criminal law.
- The offence is an "extraditable offence" under the Indian Extradition Act, 1962.
- A warrant of arrest has been issued for his/her arrest.

- Extradition will be requested, at least from certain countries.

7. It is apparent that the offence for which an RCN can be issued must be extraditable offence in the country where the offence is originated and in the country where person is located and a warrant of arrest against the person had been issued.

8. In the present case, petitioner's address in Canada was well known to the police as well as to the complainant. No effort was made by the police to initiate extradition proceedings against the petitioner from Canada to Delhi despite the fact that even according to police; the petitioner is wanted since 2003. The information given in RCN is that the petitioner emotionally tortured his wife while his family physically tortured his wife. The RCN requirements provide that the request has to be made to the country if the country is linked by Bilateral Extradition Treaty or by any other Convention or Treaty containing provision of Extradition Treaty.

9. In another case where LOC was issued at the behest of National Commission of Women (NCW) titled as *Vikram Sharma & Ors Vs. Union of India & Ors.*, decided on 26th July, 2010, High Court observed as under:

"8. As regards the procedure for opening an LOC, reference is made to the MHA circulated dated 5th

September 1979. It is stated that: "Courts also open LOCs on various legal matters. LOCs are based on the originator's request who sent the communication to various immigrations check posts on the basis of substantive/procedural laws viz IPC, Cr.P.C., Custom Act, Income Tax Act, NDPS Act, etc. All these communications are related to accused/suspected persons wanted in some cases. Besides, different courts also issue these communications in the form of LOCs including LOCs against those person who evade their presence in the Court of law during the course of judicial trial."

9. It is further clear from the reply that in terms of a subsequent O.M. dated 27th December 2000 there is a specific proforma in which a request must be made for opening of an LOC and this should be issued "with the approval of an officer not below the rank of Deputy Secretary to the Government of India/Joint Secretary in the State Government/Concerned Superintendent of Police at district level." A copy of the Office Memorandum dated 27th December 2000 enclosing proforma for request for opening an LOC has also been enclosed.

16. The question now is only for consequential relief that should be granted. The power to suspend, even temporarily, a passport of a citizen, the power to issue an LOC, the power to „off-load“ a passenger and prevent him or her from travelling are all extraordinary powers, vested in the criminal law enforcement agencies by the statutory law. These are powers that are required under the law, to be exercised with caution and only by the authorities who are empowered by law to do so and then again only for valid reasons. Recently, in **Suresh Nanda v. Union of India 2010 IV AD (Del) 53**, this Court, after referring to the judgment of the Supreme Court in

Maneka Gandhi v. Union of India (1978) 1 SCC 248,
observed: “35. ...There has to be application of mind by the authority to the relevant factors that would enable it to come to the conclusion that the impounding of the passport is in the interests of the general public. And then again, in the context of the criminal case which is still under investigation, this cannot be an opinion formed at one point in time. The public interest element will vary depending on the stage of the investigation. It cannot be said that as long as the investigation is not complete, it is not in public interest to release a passport. That would be giving too wide a power to the authority.”

17. In Bhim Singh v. State of J&K (1985) 4 SCC 677,
a member of the Jammu & Kashmir Legislative Assembly was detained by the Police while on his way to attend a session of the assembly. By the time the petition filed by him challenging his detention was heard, he had already been released. Nevertheless, the Supreme Court examined the case and concluded that his detention was unlawful. It then proceeded to award him compensation after observing:

“Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely

where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this court in Rudul Sah v. State of Bihar (1983) 3 SCR 508 and Sebastian M. Hongray v. Union of India AIR 1984 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case.”

This High Court concerning the issuance of LOC in *Vikram Sharma*

(Supra) gave following directions :

“19. Mr. Nanda, learned counsel appearing for Respondent No. 1 submitted that in order to ensure that such incidents do not recur, this Court should direct that further instructions/circulars should be

issued clarifying the correct legal position. This Court finds that there are a large number of statutory commissions at the level of the Centre and the States which perform judicial functions and are vested with, for the purpose of conducting inquiries upon receiving complaints, the powers of a civil court. These include the National Human Rights Commission („NHRC”), the NCW, the National Commission for Protection of Children’s Rights. These statutory bodies, however, have not been vested with the powers of a criminal court and do not have powers to enforce criminal law. It is for the Government of India to take a policy decision on whether it wants to vest such statutory tribunal/commissions with criminal law enforcement powers. Since as of today, they have no such power, it is imperative that the MHA should issue further clarificatory circulars or office memoranda clearly stating that the request for issuance of LOCs cannot „emanate” from statutory bodies like the NCW. If at all, such bodies should bring the necessary facts to the notice of law enforcement agencies like the police, which will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. This clarification will be issued by the MHA, in consultation with the other concerned agencies, including representatives of the statutory bodies referred to, within a period of 12 weeks from today.

10. In the present case, the LOC was issued against the petitioner soon after the registration of FIR. It is alleged by the petitioner that LOC was issued in view of the fact that complainant’s close relative was an IPS officer. This allegation of the petitioner finds support from the fact that the punishment

stated by the police to Interpol in respect of the offences committed has been deliberately given as 10 years while the prescribed punishment is maximum 3 years imprisonment. The petitioner's description of being 'violent and dangerous' also has been added malafidly, with ulterior motive, in view of the fact that allegations against petitioner were of only of emotional torture. Offence of kidnapping was given as the reasons for issuance of RCN, which on the representation of petitioner was removed. It is apparent that the LOC & RCN were issued for extraneous reasons by an officer who was not authorized. The petitioner has also highlighted the difference in statements made by witnesses on different occasions. Since the matter pertaining to these offences is subjudiced, it will not be appropriate to comment on this aspect but suffice it to say that the action against the petitioner of issuing RCN was uncalled for in view of the fact that neither offence, for which the petitioner is facing trial in India, is an extraditable offence, nor any request for extradition of the petitioner has been made for the last 7 years despite knowing whereabouts of the petitioner. I, therefore, consider it a fit case for quashing the RCN issued against the petitioner at the behest of Delhi Police. The RCN, is therefore, hereby quashed.

11. Look-out-Circular has also been issued against the petitioner as the petitioner is an accused before the Court of M.M. and he has not appeared before the Court of M.M. If the petitioner gives an undertaking before the court for his appearance on a particular date, through his counsel, the Look-out-Circular issued against the petitioner shall be withdrawn within 24 hours of giving undertaking by the petitioner.

The questions raised in the reference are as under:

“A. What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?

B. What procedure is required to be followed by the investigating agency before opening a Look-out-circular?

C. What is the remedy available to the person against whom such Look-out-Circular has been opened?

D. What is the role of the concerned Court when such a case is brought before it and under what circumstances, the subordinate courts can intervene?

The questions are answered as under:

A. Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

B. The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.

C. The person against whom LOC is issued must join investigation by appearing before I.O. or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.

D. LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs.

12. The petitions stand disposed of in above terms.

SHIV NARAYAN DHINGRA, J.

AUGUST 11 , 2010

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