

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.M.P.No.6711 of 2015

And

W.P.No.3213 of 2015

ORDER:

Heard Sri Ravi Shankar Jandyala, learned counsel for the petitioner and learned G.P.for Home and Sri G.Ram Gopal, learned counsel for the proposed parties, who have filed W.P.M.P.No.6711 of 2015.

Since the proposed parties are wife and son of the petitioner and since the dispute is pending in the Courts below, they are necessary and proper parties, the application in W.P.M.P.No.6711 of 2015 is therefore ordered.

The writ petition is filed seeking the relief against Look Out Circular(LOC) issued and continued thereof inspite of the fact that the petitioner has surrendered and appeared before the learned Special Judicial Magistrate of First Class, Prohibition & Excise, Guntur in C.C.No.570 of 2014. It is stated in the affidavit that the petitioner is a British citizen and he got married to the proposed respondent No.7 on 03.02.2006 at Guntur. It is stated that both of them lived together at London for some time and then she came back and delivered a male child on 19.10.2006. It is alleged that thereafter there is no contact between the petitioner and the 7th respondent and that the 7th respondent filed a complaint on 17.09.2012 against the petitioner and his parents alleging that there was a demand for dowry in Crime No.471 of 2012 before Pattabhipuram Police Station, Guntur, under Section 498-A IPC read with Sections 3 & 4 of the Dowry Prohibition Act. It is stated

that at the request of the Investigating Officer, the Superintendent of Police, Guntur addressed the concerned authorities to issue LOC against the petitioner and accordingly the Additional Director General of Police issued LOC on 08.01.2014. Meanwhile, petitioner states that he came down to India, surrendered before the Court and also obtained a bail vide Criminal Petition No.2058 of 2014 dated 07.07.2014, wherein Court imposed a condition that the petitioner has to report on every Tuesday before the Station House Officer and also provide sureties. It is stated that charge sheet is now filed in the above said crime and the same is numbered as C.C.No.570 of 2014.

The present writ petition came to be filed thereafter on the ground that the petitioner is now required to go to London in order to save his job, but on account of LOC the petitioner was not permitted to leave the country by the Immigration Authorities at Chatrapathi Shivaji International Airport, Mumbai. Petitioner has thereafter made a detailed representation dated 19.12.2014 before the Superintendent of Police, Guntur, pointing out that he has already exceeded his stay in India beyond 180 days, which is the maximum permissible period and as such, he cannot remain in India and required to return to London as his salary is being withheld by his employer and that in view of the fact that the petitioner has no intention to obstruct the hearing of the cases and he has already surrendered before the Court voluntarily, requested that the LOC to be taken back. However, as no action is being taken, the present writ petition is filed. The instructions received earlier by the learned Government Pleader however show that on the basis of opinion of Assistant Public Prosecutor, the Superintendent of Police declined to take any action on the request of the petitioner for withdrawal of LOC. Since such a reason was not

acceptable to this Court, the Superintendent of Police was directed to file a counter.

Learned Government Pleader has filed a counter affidavit of the second respondent, wherein he states that the Look Out Circular dated 08.01.2014 was to expire on 07.01.2015, the Superintendent of Police, Guntur Urban sent a request for renewal of LOC to Additional Director General of Police, A.P., Hyderabad on 06.01.2015 and LOC was extended on 06.01.2015 by one more year. The counter affidavit further states that the said LOC was issued as per the circular instructions received under memorandum dated 27.10.2010 by the Ministry of Home Affairs, Government of India (Foreigners Division) and that in view of the existing LOC, the petitioner was not allowed to leave the country. It is also stated that the proceedings against the petitioner are pending in Crime No.471 of 2012 and though it is accepted that the petitioner surrendered before the Special Judicial Magistrate of First Class, Prohibition & Excise, Guntur on 16.09.2014 and filed an undertaking before the Court, it is alleged that his nationality as a Britishian was not disclosed. The counter affidavit also relies upon a decision of the Madras High Court wherein similar matter is stated to have been considered and a copy of the judgment is also appended to the counter.

I have heard the learned counsel for the petitioner, who submits that the petitioner has already established his bonafides in cooperating with the investigation and also appearing before the Court by surrendering himself. He further submits that the petitioner is required to go out to England for the purpose of his job and petitioner cannot indefinitely stay in India. As such, his request for recall of Look Out Circular is required to be accepted.

Learned counsel for the impleaded respondents however submits on apprehension that once the petitioner leaves the country, he will not be available before the Courts, where the proceedings are pending.

The decision cited along with the counter affidavit as well as the decision of Delhi High Court cited by the learned counsel for the petitioner in my view, would direct that it is open for the petitioner to approach the Investigating Officer and explain the circumstances and reasons why the Look Out Circular is required to be withdrawn. In the present case, petitioner has already made an appropriate representation before the Superintendent of Police as referred to above. However, apparently, the Superintendent of Police is not inclined to withdraw the said circular. The decision of Madras High Court referred to above in ***S.MARTIN v. DEPUTY COMMISSIONER OF POLICE AND OTHERS***^[1] dated 21.02.2014 directs in paras 45 and 46 that apart from approaching the Investigating Officer or the authority which has issued the circular, it is open for the petitioner to approach the Court where the case is pending, which has jurisdiction over the concerned police station seeking withdrawal or cancellation of LOC by filing necessary petition in accordance with law.

It is also held that the criminal Court's jurisdiction in cancellation of LOC or upholding the same is within similar jurisdiction as to cancellation of NBW and as such, the said Criminal Court is fully competent to pass appropriate orders taking into consideration the facts and circumstances of the case. Here, the decision of the Delhi High Court in ***SUMER SINGH SALKAN; COURT ON ITS OWN MOTION RE v. ASSISTANT DIRECTOR***

AND OTHERS; STATE v. GURNEK SINGH ETC.^[2] dated 11.08.2010 also considers the matter in a similar manner and para 11 also reiterate that it is open for the petitioner to approach the Officer who ordered issuance of LOC or it is open for him to approach the trial Court which can rescind the LOC issued on an appropriate application made by the person concerned.

I respectfully agree with the aforesaid decisions. Since no purpose would be served by directing the petitioner to approach the Superintendent of Police for the purpose of withdrawal of LOC, this writ petition is disposed of permitting the petitioner to move the Court of Special Judicial Magistrate of First Class, Prohibition & Excise, Guntur, where C.C.No.570 of 2014 is pending and to make appropriate application seeking withdrawal of LOC. The petitioner is also at liberty to set out the reasons for making the said request including that he has already surrendered and has been abiding with the directions issued from time to time by the Court. If such an application is made by the petitioner, the learned Special Judicial Magistrate of First Class shall consider the same in accordance with law and pass appropriate orders expeditiously. No order as to costs. The miscellaneous petitions, if any, pending in this writ petition shall stand closed.

VILAS V.AFZULPURKAR, J

Date:06.03.2015

Note:

Issue C.C. by 10.03.2015.

B/o. Rns.



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Rns

[\[1\]](#) 2014 Law Suit(Madras) 250

[\[2\]](#) 2010 Law Suit (Delhi) 1628