

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 19.05.2015

W.P.(CRL) 437/2015 & CRL.M.A.3118/2015

JITENDER KUMAR

..... Petitioner

Versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Manoj Ohri, Sr. Advocate with Mr. Sunil Dalal and Ms. Payal Juneja,
Advocate
For the Respondents : Mr. Sanjay Lao, Additional Standing Counsel (Criminal) for R-1
Mr. Anurag Ahluwalia, Advocate for R-2
Mr. Varun Rai Sharma, Advocate for R-3

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J. (ORAL)

1. The present is a petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking a prayer to quash the Look Out Circular issued at the instance of the Special Police Unit for Women and Children, Nanak Pura, New Delhi and to quash the directions issued by the M.M., Mahila Courts, Dwarka, New Delhi

vide order dated 23.02.2015 to initiate proceedings under Sections 82, 83 Cr.P.C. against the petitioner.

2. The present petition arises out of a matrimonial dispute between the petitioner and his estranged wife, who is arrayed as respondent No.3 in the present petition.

3. For the reasons best known to the parties, they have been residing separately since 2009. While the petitioner is a resident of Australia, the respondent No.3/wife resides in Delhi.

4. Mr. Manoj Ohri, learned Senior Counsel appearing on behalf of the petitioner has invited my attention to the divorce decree granted by the Federal Magistrates Courts of Australia on 22.09.2011 whereby the marriage between the parties to the union was terminated. Mr. Ohri further invites my attention to Page No.40 of the paper book, which is the affidavit filed on behalf of the respondent No.3/wife, opposing the petition for divorce filed on behalf of the petitioner in Australia. Subsequent thereto, respondent No.3/wife filed a complaint before Crime Against Women Cell, Nanak Pura, New Delhi, which has fructified into FIR No.90/2011 dated 10.09.2011. The present petition challenges the proceedings arising therefrom including the Look Out Circular issued by the official respondents and the order under Sections 82, 83 Cr.P.C. passed by the M.M., Mahila Court, Dwarka s, New Delhi.

5. This Court passed the following order on 02.03.2015 recording the submissions made on behalf of the petitioner. The order reads as follows:-

“Mr Manoj Ohri, learned senior counsel appearing on behalf of the petitioner, with reference to the prayers sought in the present petition submits:-

- (a) That there was no occasion to issue Look Out Circular dated 18.07.2012 inasmuch there was no warrant outstanding against the petitioner at that stage; the petitioner had not been asserted to have avoided service of summons on him; and that there was no direction to arrest the petitioner at that stage.
- (b) Insofar as the show cause notice dated 30.12.2014 issued by the Consulate General of India for cancellation of petitioner's passport and visa is concerned, it is submitted on behalf of Mr Ohri that the same is contrary to the provisions of Section 10(3) of the Passport Act, 1967 wherein it is a mandatory requirement that the proceedings should be pending against a person before the concerned court.
- (c) Insofar as the third prayer relating to the initiation of proceedings under Section 82-83 CrPC, 1973 is concerned, it is urged that despite knowledge that the petitioner has been residing in Australia there is an attempt to have served him at his Gurgaon address.

Issue notice. Learned counsel, as above, accept notice on behalf of the respondents and prays for time to file reply. Let the reply be filed within three weeks with an advance copy to counsel for the petitioner who may file rejoinder thereto, if any, before the next date of hearing.

Renotify on 20.04.2015.

Mr Manoj Ohri, learned senior counsel, on instructions, states that the petitioner is willing to come to India and join investigation and co-operate with the police authorities. Ordered accordingly.

In view of the above, no coercive steps shall be taken against the petitioner till the next date of hearing.

Dasti.”

6. The time given to the petitioner by way of the said order dated 02.03.2015 to come to India and to join investigation and cooperate with the police authorities was extended by way of order dated 20.04.2015, which reads as under:-

“Mr Manoj Ohri, learned senior counsel appearing on behalf of the petitioner, states that the last order dated 02.03.2015 could not be complied with in view of the ill health of the petitioner. Mr Manoj Ohri, learned senior counsel, on instructions, states that given an additional two weeks the petitioner shall come to India and join investigation. Ordered accordingly.

Renotify on 11.05.2015.

Interim order to continue till the next date of hearing.

Dasti.”

7. Mr. Sanjay Lao, learned Additional Standing Counsel (Criminal) appearing on behalf of the official respondent No.1 and Mr. Anurag Ahluwalia, learned counsel appearing on behalf of respondent No.2 state that in view of the fact that the petitioner has now joined the investigation and is cooperating with

it, the subject Look Out Circular has served its purpose. Furthermore, it is urged on behalf of the official respondents that the order dated 23.02.2015 has in fact been complied with by the arrival of the petitioner in Delhi.

8. In view of the circumstances aforesaid, whilst noticing the opposition to the grant of the present petition on behalf of respondent No.3/wife, I am of the opinion that the Look Out Circular dated 18.07.2012 and the direction issued by the M.M., Mahila Court, Dwarka, New Delhi by way of its order dated 23.02.2015 to initiate proceedings under Sections 82, 83 Cr.P.C. against the petitioner do not survive. The same are accordingly set aside and quashed qua the petitioner. The consequent Show Cause Notice dated 30.12.2014 issued by the Consulate General of India in Australia whereby the Consulate sought cancellation of the petitioner's passport and visa on the grounds of pendency of FIR against the petitioner also, does not survive and has become infructuous.

9. The writ petition is allowed and disposed of accordingly. The pending application also stands disposed of.

SIDDHARTH MRIDUL, J

MAY 19, 2015

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