

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

Judgment Reserved on: January 21, 2016

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Judgment Delivered on: February 01, 2016

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FAO (OS) 157/2015

R.S. YADAV

..... Appellant

Represented by: Mr.Arjun Deewan, Mr.Nitin Saluja & Ms.Anupama Kumar, Advs.

versus

SUMER SINGH SALKAN & ORS.

..... Respondent

Represented by: Ms.Malavika Rajkotia & Mr.Ranjay N, Advs. for R-1. Ms.Reema Salkan, R-2 in person as well as for R-6.

FAO (OS) 238/2015

SUMER SINGH SALKAN

..... Appellant

Represented by: Ms.Malavika Rajkotia & Mr. Ranjay N, Advs.

versus

RANJEET NARAYAN & ORS.

..... Respondent

Represented by: Mr.Sidharth Luthra, Sr.Adv. instructed by Mr. Arjun Deewan, Mr.Nitin Saluja & Ms.Anupama Kumar, Advs. for R-1 & R-6. Ms. Reema Salkan, R-2 in person as well as for R-7.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Following a matrimonial dispute between Sumer Singh Salkan and

Reema Salkan, a complaint was made by Reema Salkan to the CAW Cell on March 06, 2003 which resulted in registration of FIR No. 127/2003 dated April 22, 2003 under Sections 498A/406/34 IPC at PS Alipur, Delhi.

2. During the course of investigation in the said FIR, Look Out Circular (LOC) and Red Corner Notice (RCN) were issued against Sumer Singh Salkan resulting in the filing of a civil suit being CS(OS) No.2315/2011 for damages for ₹50 lakhs with interest pendent lite and future @ 12% per annum on account of defamation and malicious prosecution by Sumer Singh Salkan impleading Reema Salkan as defendant No.1, Assistant Director, Interpol, CBI as defendant No.2, Dr.R.K.Bansal, ACP Sub-Division Narela, as defendant No.3, Rupin Sharma, IPS, Head Quarters R&AW, as defendant No.4, R.S.Yadav, Additional Deputy Commissioner of Police, North West District, Delhi as defendant No.5, Ranjeet Narayan, Special Commissioner, Crime Branch Delhi Police as defendant No.6 and Vikram Singh Mann, Superintendent of Police, Vizianagaram, Andhra Pradesh as defendant No.7.

3. Ranjeet Narayan, defendant No.6 and R.S.Yadav defendant No.5 in the suit filed two applications being IA Nos. 3401/2013 and 12048/2013 respectively under Order 1 Rule 10 CPC read with Section 151 CPC seeking deletion of their names from the array of parties. Vide the impugned order dated February 20, 2015 the learned Single Judge decided both the applications dismissing the application of R.S.Yadav declining him to delete from the array of parties and allowing the application of Ranjeet Narayan deleting him from the array of parties. Thus the two appeals before this Court one by R.S.Yadav being FAO(OS)157/2015 against dismissal of his application and the other by Sumer Singh Salkan being FAO(OS)

No.238/2015 against the order allowing the application of Ranjeet Narayan.

4. Learned Single Judge notes and we reiterate that meaningful reading of the plaint would show that there are errors in referring to the defendants in the plaint inasmuch as though Vikram Singh Mann was impleaded as defendant No.7, he is referred as defendant No.6 in the plaint on some points whereas defendant No.6 is Ranjeet Narayan.

5. The averments regarding R.S.Yadav and Ranjeet Narayan in the plaint are in the following paragraphs and we reproduce-

“(xxi) The defendant No.1 realising that she was getting no where in the Crime Against Women Cell, exerted her influence with a senior police officer, by sending a false complaint against Inspector Raj Kumari to Mr. Ranjeet Narayan, Joint Commissioner of Police; wherein she said that the I.O. had advised her not to take her lawyer with her on 17.04.2003, hence she could not plead her case in the court convincingly, and consequently the parents and sister of the plaintiff got their bail. However, the order-sheet of the proceedings of 17.04.2003 shows that the defendant No.1 was not present in court. Thus there was no question of her not being able to argue her case convincingly. It is pertinent to mention that the F.I.R. was registered on the same day, i.e., 22.04.2003, when she complained to Mr. Ranjit Narayan. Evidently, a false and illegal F.I.R. was registered without looking into the documents on record (legal correspondence) which forms part of the F.I.R and without checking the authenticity of complaint of defendant No.1 against I.O. Ms. Raj Kumari.

(xxii) The defendant No.1 using the contact network in the police and influence of her brother, Mr. Vikram Singh Mann, (who is a senior IPS officer) managed to get an illegal Look-Out-Circular (LOC) issued against the plaintiff on the 27.05.2003 by an who was not even

authorised to issue LOC.

(xxvi) The defendant No.1 continued to harass the plaintiff and his family in the garb of proceedings under Section 498-A/406/34 of IPC. The defendant No.1 with ulterior motives has spurned every effort by the plaintiff/his family and their representatives to resolve the matter in an amicable manner. Using her brother's, the defendant No.6, influence with the police, she managed to get an LOC issued against the plaintiff on 30.05.2003. After lodging the F.I.R No.127 of 2003 dated 22.04.2003, a Red Corner Notice was also issued by Interpol on 03.03.2004 and displayed on internet containing wrong and misleading information about Nationality of plaintiff and alleged crimes for which he was allegedly wanted, when the same was factually incorrect.

(xxvii) After 2½ months of making a false complaint and lodging a complaint on 06.03.2003, as an afterthought and to somehow make a case for issuance of LOC against the plaintiff, the defendant No.1, for the first time made an accusation of plaintiff beating her and that he took Rs.1,55,000/- (Rupees One Lakh Fifty Five Thousand only) and ran away to Canada. The police had in their files, the entire legal correspondence resulting from Legal Notice dated 20.12.2002 sent by the plaintiff's parents; yet without any investigation or consideration of relevant material, they manipulated the investigation system at the behest of defendant No.1 and her false reports and under the influence of the defendant No.6. Their actions were partisan and motivated by malice since they were helping defendant No.1 to lodge a false F.I.R and issue illegal LOC etc. This has resulted in crippling the plaintiff's career and it became difficult for him to live in Canada. His job was affected, he was forced to resign from his job; lost his chance to obtain further jobs in Canada; his social reputation had been severely affected by the police bias and unfair actions of

certain police officers (named herein above and arrayed as defendants) in their actions of helping her.

(xxviii) The LOC was got issued by defendant No.2 shortly after registration of F.I.R No.127 of 2003 dated 22.04.2003 u/s 498-A/406/34 IPC by the defendant No.1. The F.I.R contains no allegation against the plaintiff which would justify issuance of an LOC. The only allegation against the plaintiff is that he took Rs.10,000/- (Rupees Ten Thousand only) from her. Later on, R.S.Yadav, the defendant No.5, clearly motivated by malice and bias under the influence of Defendant No.6 and 1, improved even upon the F.I.R by stating in his letter dated 27.05.2003 issued to FRRO that an LOC be opened as the plaintiff and his parents beat her and that he ran away with Rs.1,55,000/- (Rupees One Lakh Fifty Five Thousand only) whereas the F.I.R finds no such allegation. It was not for R.S.Yadav to write beyond the F.I.R and improve the case of the defendant No.1.

(xxix) It is submitted that keeping in view the fact that the plaintiff being a Canadian citizen could not be forced to come to India, the LOC and later Red Corner Notice which initially only talked of alleged cruelty to a married woman for dowry, criminal breach of trust, common intention was suddenly categorized as "Crimes against life and health kidnapping" by the Interpol. The accusation of kidnapping was malicious, motivated and damaging. Contrary to the allegations, it was the life and health of the plaintiff which was severely jeopardized on account of the false and malafide LOC and Red Corner Notices. The plaintiff's peace of mind and job was threatened on account of these extra legal methods adopted by the defendants."

6. The learned Single Judge deleting Ranjit Narayan from the array of defendants held that the allegations in the plaint against Ranjit Narayan were

that he attempted to favour Reema by registering a FIR against Sumer Singh and his relatives for cruelty when no such cognizance was taken by IO Ms.Raj Kumari attending the Women Cell, the allegations in the FIR and the legal correspondence exchanged between the parties were contradictory and thus Mr.Ranjit Narayan without investigating the matter proceeded to lodge the FIR on the same day on receipt of the complaint under the influence of the senior Police officer Mr.Vikram Singh Mann. The learned Single Judge held that the role assigned to Ranjit Narayan was that he was instrumental in lodging a false and frivolous FIR against Sumer Singh and his relatives. Noting that lodging a FIR was within the purview of duty of Ranjit Narayan as a Police official and correctness or falsity in the said FIR or ascribing motives would not alter the position at least to the extent that after all act of lodging of FIR was done in discharge of the official duty, it was held that the acts alleged having been done by Ranjit Narayan falling within the ambit of Section 140 of the Delhi Police Act (in short the Act), the suit against Ranjit Narayan was barred. Consequently, Ranjit Narayan who impleaded as defendant No.6 was deleted as a defendant in the suit.

7. Challenging the order passed in favour of Ranjit Narayan learned counsel for Sumer Singh contends that due to the interference caused by Ranjit Narayan who was then Joint Commissioner of Police, Northern Range, through his letter dated April 22, 2003 CAW Cell was not able to perform its job and the FIR was registered in haste without investigating the falsity of the allegations, hence the averments in the plaint required a trial to be conducted and the learned Single Judge erroneously deleted Ranjit Singh from the array of defendants by invoking the principles of demurer as required to be adhered under Order VII Rule 11 CPC.

8. Learned counsel for Ranjit Narayan on the other hand contends that a perusal of the documents filed by Sumer Singh himself reveal that the CAW Cell recommended registration of FIR on April 21, 2003 pursuant where to approval was granted by Ranjit Narayan on April 22, 2003. Registration of FIR is a paramount duty of a Police officer and in case the junior officers fail to do so, the senior officer is bound to direct registration of FIR if the complaint discloses commission of a cognizable offence.

9. A perusal of the documents filed by Sumer Singh with the suit would reveal that Insp.Raj Kumari the concerned officer at the CAW Cell forwarded her recommendation for registration of FIR on the complaint of Reema Salkan on April 21, 2003 to the ACP CAW Cell which was later sent to Addl.DCP North West on which approval was accorded by Shri Ranjit Narayan resulting in the registration of FIR.

10. It is trite law that on receipt of a complaint alleging cognizable offence the Police officer is duty bound to register a FIR under Section 154(1) Cr.P.C. In case the officer in-charge of the Police Station refuses to register FIR the informant can send in writing or by post to the Superintendent of Police i.e. senior Police official the complaint and if he is satisfied that the information discloses commission of a cognizable offence, the senior officer shall either investigate the case himself or direct investigation of the case by a Police officer subordinate to him as provided by Section 154(3) Cr.P.C.

11. Constitution Bench of the Supreme Court in the decision reported as (2014) 2 SCC 1 Lalita Kumari vs. Govt. of Uttar Pradesh & Ors. noting the mandatory nature of Section 154 Cr.P.C. held that the provision mandates registration of FIR and summarised the law as under:

“120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

12. Thus even if a preliminary inquiry is conducted the same is limited to examining whether the complaint alleges commission of a cognizable offence and does not empower the Police Officer to inquire into the falsity of the allegation. Granting approval for registration of FIR being a part of the official duty of Ranjit Narayan as a senior officer and the stage of verifying the authenticity or credibility of information having not reached, the act alleged in the plaint was performed in colour of his duty and the suit having not been filed within three months from the date of the act complained or with the previous sanction of the Administrator within one year of the act complained, the suit was barred by Section 140 of the Act, hence the learned Single Judge committed no error in allowing IA No.3401/2013 filed by Ranjit Narayan and deleting him from the array of defendants.

13. Consequently FAO(OS) 238/2015 filed by Sumer Singh Salkan is dismissed.

14. A meaningful reading of the plaint would show that the averments against R.S.Yadav in the plaint are that Reema Salkan used the influence of her brother Vikram Singh Mann and managed to get an illegal LOC issued

against Sumer Singh Salkan on May 30, 2003 by an officer who was not even authorized to issue LOC (word officer missing from the plaint) after lodging false FIR No.1278 dated April 22, 2003 and a RCN was also issued by Interpol on March 03, 2004 displaying on internet containing wrong and misleading information about the nationality of Sumer Singh and alleging crimes for which he was wanted when the same were factually incorrect. The allegations of beating, taking away ₹1,55,000/- and running away to Canada are attributed to Reema and not R.S.Yadav as noted in Para (xxvii) of the plaint. In para (xxviii) it is stated that R.S.Yadav motivated by malice and bias under the influence of defendant No.6 and 1 (wrongly noted for V.S.Mann) improved even upon the FIR by stating in his letter dated May 27, 2003 issued to FRRO that a LOC be opened, as Sumer Singh and his parents beat Reema and he has run away with ₹1,55,000/-. Thus R.S.Yadav went beyond the FIR and improved the case of Reema Salkan.

15. Vide the impugned order learned Single Judge held that the allegations of opening LOC and Red Corner notice (RCN) were both against R.S.Yadav whereas the same is incorrect for the reason, there is no averment in the plaint that RCN was got issued by R.S.Yadav. The only averment is with regard to LOC. Further there is no document on record to show that any of the proformas or the material noted in the RCN were filled up or got issued by R.S.Yadav. His role is only confined to requesting for opening a LOC against Sumer Singh Salkan. It would be thus relevant to note the said letter which was forwarded to FRRO by R.S.Yadav.

*“OFFICE OF THE DY.COMMISSIONER OF POLICE
NORTH WEST DISTRICT DELHI*

No._____ACP Narela

Dated 27/5/03

*No. /SO/DCP/NW Distt. Dated Delhi, the
To*

The FRRO

Delhi

Subject: Regarding opening of LOC

Memo,

I am to state that Smt. Reema Salkan D/o Shri R.S.Mann R/o 612, Behind Veterinary Hospital, Alipur, Delhi submitted a complaint alleging therein that she was married with Shri Sumer Singh Salkan S/o Shri Narender Singh Salkan R/o, Tilak Road, Begam Bagh, Meerut, UP on 24.3.02. The in-laws and husband of the complainant harassed and beaten up her for demand of more dowry. Her husband also took R.1,55,000/- and run away to Canada. A case vide FIR No.127 dated 22.4.03 u/S 498-A/406/34 IPC P.S.Alipur, Delhi has been registered in this regard. Shri Sumer Singh Salkan is wanted and yet to be arrested in the above case. The relevant proforma along with detailed particulars of Shri Sumer Singh Salkan is enclosed.

It is, therefore, requested that LOC against Shri Sumer Singh Salkan may please be opened at all India basis and SHO/Alipur may please be informed if the subject is found at any of the immigration check posts.

(R.S.YADAV)

*ADDL. DY.COMMISSIONER OF POLICE
NORTH WEST DISTRICT DELHI*

Encl:- As above

No.5200/SO-DCP/NW Distt., dated, Delhi, the 27/5/03

Copy to ACP/Narela with reference to No.2352/ACP/Narela dated 3.5.03 for necessary action and to direct IO of the case to pursue the matter with the authority concerned and got the needful done immediately under intimation to this office."

16. This document which is at page 118 of the documents filed by Sumer

Singh would reveal that the letter was issued by R.S.Yadav as Addl.Deputy Commissioner of Police, North West District, Delhi Police on a reference No.2352 made by ACP Narela on May 03, 2003 for necessary action and was not a suo-moto generated document. Admittedly as on May 27, 2003 when the request was made to FRRO for opening the LOC, Sumer Singh was not in India, was in Canada and FIR No.1278 dated April 22, 2003 under Sections 498A/406/34 IPC had been registered against him at PS Alipur.

17. The contention of learned counsel for Sumer Singh that there was no warrant issued by a Court in the name of Sumer Singh ignores the legal position that in a case of cognizable offence no warrants are required to be got issued from the Court by a Police Officer to arrest an accused and if the fact so warrants the Police Officer authorized can arrest an accused for commission of offences which are cognizable and non-bailable. The request dated May 27, 2003 to FRRO made by R.S.Yadav on a reference by the ACP dated May 03, 2003 was within the colour of his duty and Section 140 of the Act was attracted.

18. The Supreme Court in Prof.Sumer Chand (supra) while dealing with the scope of Section 140 of the Delhi Police Act held:

13. The expression “under colour of duty” are also contained in sub-section (1) of Section 161 of the Bombay Police Act. Construing this expression, this Court in Virupaxappa Veerappa Kadampur v. State of Mysore [1963 Supp 2 SCR 6 : AIR 1963 SC 849 : (1963) 1 Cri LJ 814] has laid down:

“The expression ‘under colour of something’ or ‘under colour of duty’, or ‘under colour of office’, is not

infrequently used in law as well as in common parlance. Thus in common parlance when a person is entrusted with the duty of collecting funds for, say, some charity and he uses that opportunity to get money for himself, we say of him that he is collecting money for himself under colour of making collections for a charity. Whether or not when the act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words 'under colour' in Section 161(1) to include this sense." (pp. 11-12)

14. *The Court has further observed that the words "under colour of duty" would include "acts done under the cloak of duty, even though not by virtue of the duty" and that the acts done in dereliction of duty must be held to have been done under colour of the duty (pp. 12-13). The Court rejected the view that if the alleged act is found to have been done in gross violation of the duty then it ceases to be an act done under colour of duty. It was observed that "it is only when the act is in violation of the duty, the question of the act being done under colour of the duty arises" and, therefore, "the fact that the act has been done under gross violation of the duty can be no reason to think that the act has not been done under colour of the duty" (p. 15). In that case, the allegation was that the appellant, a Police Head-Constable, had prepared a false panchnama and a false report with regard to seizure of ganja. It was held that the said preparation of the panchnama and report were acts done under colour of duty imposed upon the said Head-Constable by the Police Act.*

15. *In State of A.P. v. N. Venugopal [(1964) 3 SCR 742 : AIR 1964 SC 33 : (1964) 1 Cri LJ 16] the Court was dealing with Section 53 of the Madras District Police Act, 1859, which contains provisions similar to those contained in Section 42 in*

the Police Act, 1861. The accused were a Sub-Inspector of Police, a Head Constable and a Constable. They were prosecuted for having caused injuries to a prisoner in custody for the purpose of extorting from him information which might lead to detection of an offence and restoration of stolen property, and also for having his body thrown at the place where it was ultimately found with the intention of screening themselves from punishment. Section 53 of the Madras District Police Act uses the words “anything done or intended to be done under the provisions of this Act”. Construing the said expression this Court has observed: (AIR p. 37, para 14)

“The Court has to remember in this connection that an act is not ‘under’ a provision of law merely because the point of time at which it is done coincides with the point of time when some act is done in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done ‘under’ a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation the act cannot be said to be done ‘under’ the particular provision of law.” (p. 753)

16. The principles laid down in Virupaxappa Veerappa Kadampur v. State of Mysore [1963 Supp 2 SCR 6 : AIR 1963 SC 849 : (1963) 1 Cri LJ 814] were held applicable and it was observed that the acts complained of, viz., beating a person suspected of a crime or confining him or sending him away in an injured condition cannot be said to have any relation with any provision of law whether the Police Act or some other law. It was held that the acts complained of had no reasonable connection with the process of investigation.

17. In State of Maharashtra v. Narharrao [(1966) 3 SCR 880 : AIR 1966 SC 1783 : 1966 Cri LJ 1495] a Head-Constable was charged under Section 161 IPC and Sections 5(1)(b) and 5(2) of the Prevention of Corruption Act, 1947 for accepting a bribe for weakening the prosecution case. The question was whether the said matter was governed by Section 161(1) of the Bombay Police Act, 1951. It was held that “unless there is a

reasonable connection between the act complained of and the powers and duties of the office, it cannot be said that the act was done by the accused officer under the colour of the office” (p. 883). Applying the said test, this Court held that the alleged acceptance of bribe by the accused officer was not an act which could be said to have been done under the colour of office or done in excess of his duty or authority within the meaning of Section 161(1) of the Bombay Police Act. Reference has been made to the earlier decision in Virupaxappa Veerappa Kadampur v. State of Mysore [1963 Supp 2 SCR 6 : AIR 1963 SC 849 : (1963) 1 Cri LJ 814] and it has been pointed out that in that case it was the duty of the Police Constable to prepare a panchnama and the act of preparation of false panchnama was done under the colour of his office and there was a nexus between the act complained of and the statutory duty that the Police Head Constable was to perform and the provisions of Section 161(1) of the Bombay Police Act were, therefore, applicable. (p. 884)

18. Similarly in State of Maharashtra v. Atma Ram [AIR 1966 SC 1786 : 1966 Cri LJ 1498] it was held that the alleged act of assault and confinement of a suspect in police custody were not acts done under the colour of duty or authority since the said acts had no reasonable connection or nexus to the duty or authority imposed upon the officer under the Bombay Police Act or any other enactment conferring the powers on the police under the colour of which this act was done and that such acts fell completely outside the scope and duties of the respondent police officers and they are not entitled to the protection conferred by Section 161(1) of the Bombay Police Act.

19. Having regard to the principles laid down in the aforementioned decisions of this Court on provisions contained in Section 161(1) of the Bombay Police Act, 1951 which are similar to those contained in Section 140(1) of the Act, we are of the view that the High Court was right in holding that the present case falls within the ambit of Section 140 of the Act. What is alleged against respondents 3 and 4 by the appellant in the plaint is that respondent 4, who was in charge of Mayapuri

police post had registered a false, vexatious and malicious report against the appellant, and respondent 3, who was Station House Officer, P.S. Naraina, had filed the challan in the Court against appellant and other accused on the basis of the said report. The facts in the present case are similar to those in Virupaxappa Veerappa Kadampur v. State of Mysore where the allegation was about the preparation of false panchnama and report of seizure of ganja. The said action of the appellant in that case was held to be done under the colour of duty since it was the duty of Police Head Constable to prepare a panchnama and for that reason it was held that there was a nexus between the act complained and the statutory duty that the Police Head Constable was to perform. Similarly in the present case it was the duty of respondent 4, being in-charge of Police Post Mayapuri, to record the report and so also it was the duty of respondent 3 the SHO of P.S. Naraina to file the challan in court. The acts complained of thus had a reasonable connection and nexus with the duties attached to the offices held by respondents 3 and 4. The acts complained of were, therefore, done under the colour of office of the said respondents and fell within the ambit of Section 140(1) of the Act. It is not disputed that if Section 140(1) is found applicable the suit filed by the appellant, as against the respondents, was barred by limitation having been filed after the expiry of three months and it could not be entertained against them.”

19. Learned counsel for Sumer Singh relies upon the observation of a learned Single Judge of this Court while deciding the writ petition i.e. W.P.(Crl.) 1315/2008 filed by him seeking quashing of the LOC and RCN vide order dated August 11, 2010. Learned Single Judge noted and we quote “it is apparent that the LOC and RCN were issued for extraneous reasons by an officer who was not authorized”.

20. A perusal of the order dated August 11, 2010 in W.P.(CRL) 1315/2008 would show that again the issue of LOC and RCN were mixed

up. While dealing with the Circulars and requirement of RCN, the Court passed observations with regard to LOC as well. As noted above there is no document to show that R.S.Yadav had any role in opening RCN. His role was only confined to forwarding the reference of ACP Narela dated May 03, 2003 to the FRRO for opening LOC.

21. We take judicial notice of the fact that in W.P.(CRL) 1315/20008 titled as “*Sumer Singh Salkan Vs. Assistant Director and Ors.*” R.S.Yadav was not impleaded as a party nor any affidavit was sought while passing such observations by the Court and thus the same would not be binding on R.S. Yadav. The only respondents impleaded before the Court in WP(Crl.) 1315/2008 were Assistant Director Interpol Wing CBI, Delhi Police through ACP Sub-Division Narela and Reema.

22. It is well settled that if malafides are attributed and a finding on the same is sought against a person than he has to be made a party and given an opportunity to rebut the allegations. The findings of malafides arrived at by the learned Single Judge are not binding on R.S. Yadav.

23. It is well settled that while deciding the application under Order I Rule 10 CPC filed by R.S.Yadav the principles under Order VII Rule 11 CPC can only be used i.e. the documents and plaint filed can only be looked into and not the documents filed by the defendants. Thus even without considering the documents filed by R.S.Yadav along with his application which would show that the request for opening of LOC was based on a request dated May 02, 2003 made by SI Ram Saran of Police Alipur duly forwarded by ACP Narela, from the letter dated May 27, 2003 filed by Sumer Singh itself it is amply clear that the same was pursuant to reference No.2352 of ACP Narela dated May 03, 2003.

24. We may also note that though the appellant has filed almost all judicial orders however it has failed to file the orders dated December 6 and 7, 2010 passed by the learned MM on the application of Sumer Singh noting that the LOC against Sumer Singh had been deleted on October 21, 2007. We take judicial notice of the orders passed by the learned Metropolitan Magistrate Ms.Shunali Gupta on December 06, 2010 and December 07, 2010, before the W.P.(CRL) 1315/2008 was decided by this Court. The two orders are:

“FIR No.127/03

PS Alipur

06.12.2010

Present: Ld.APP for State

Sh.K.C.Jain counsel for applicant Sumer Singh.

SHO, PS Alipur, Shri Dinesh Kumar Sharma in person.

He submits that correspondence has been received from FRRO as per which LOC has already been deleted. Perusal of the said letter shows that there is some clerical/typographical error in the said letter. SHO seeks one day time to clarify the same. Accordingly, be listed on 07.12.2010. Copy of this order be given dasti to both the parties.

(SHUNALI GUPTA)

MM/ROHINI/DELHI

06.12.2010

FIR No.127/03

PS Alipur

07.12.2010

Present: Ld.APP for State.

Sh.Dinesh Kumar, SHO, PS Alipur is present.

He has filed the letter sent by DCP (Outer) District which is coupled with the copy of correspondence received

from the FRRO. As per which LOC against the accused Sumer Singh Salkon has already been deleted on 21.10.07 as per the record of FRRO. There were certain typographical errors in mentioning of the circular number which have now been corrected. Copy of this order be given dasti to the counsel for the applicant. Be listed for date fixed i.e.20.12.10.

*(SHUNALI GUPTA)
MM/ROHINI/DELHI
06.12.2010”*

25. The order dated December 06, 2010 notes the presence of learned counsel for the applicant Sumer Singh and copy of the order dated December 7, 2010 was given Dasti to learned counsel for Sumer Singh. However these two orders were neither filed by Sumer Singh in the suit nor were brought to the notice of the learned Single Judge while deciding W.P.(CRL) 1315/2008. Thus it was in the knowledge of Sumer Singh on December 7, 2010 that the LOC stood deleted on October 21, 2007. The act of Sumer Singh in deliberately concealing orders passed on his application and not filing the same is malafide.

26. Supreme Court in the decision reported as (1997) 4 SCC 467 T.Arivandandam Vs. T.V.Satyapal & Anr. deprecated the practice of concealment and malafide and held:

“ The trial Court must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, it should exercise his power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would

insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them.

27. Section 140 of the Act provides as under:

“140. Bar to suits and prosecutions.-

(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:

Provided that any such prosecution against a Police Officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one months notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.”,

28. In the present, case the letter requesting opening of LOC was sent by R.S.Yadav on May 27, 2003 pursuant to which LOC was opened on May

30, 2003. Thus the cause of action to sue R.S.Yadav if any on the basis of opening of LOC arose on May 30, 2005 or from the date when Sumer Singh came to know about opening of the LOC. It is the case of the plaintiff himself that the LOC was widely published and he could not leave Canada for over 7 years and meet his relatives and dear ones. Thus at least in the year 2003 Sumer Singh came to know about opening of the LOC. Further as noted above, from the orders dated December 6 and 7, 2010 passed by learned Metropolitan Magistrate Ms. Shunali Gupta on an application filed by Sumer Singh, he was informed that the LOC had been deleted on October 21, 2007.

29. As noted above the suit in this regard could have been filed only within three months of the date of the act or within one year with the previous sanction of the Administrator. The finding of the learned Single Judge vide the order dated August 11, 2010 in W.P.(CRL)1315/2008 that the LOC was opened for extraneous reasons by a officer not authorized does not give rise to the cause of action as a judicial order only adjudicate a lis and does not give rise to a lis. CS(OS) 2315/2011 was instituted on August 10, 2011 well beyond the period of three months from the date the cause of action to sue arises. The act of R.S.Yadav requesting for opening the LOC was in the colour of his duty and thus Section 140 of the Act was duly attracted.

30. Hence we set aside the impugned order dated February 20, 2015 dismissing IA 12048/2013. IA 12048/2013 in CS(OS) 2315/2011 is allowed. Defendant No.5 R.S.Yadav is also deleted from the array of defendants in CS(OS) 2315/2011. FAO(OS) 157/2015 is allowed.

31. FAO(OS) 238/2015 is dismissed as recorded in para 13 above.
32. No cost.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

FEBRUARY 01, 2016
‘vkm/ga’