

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

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Judgment reserved on: 29<sup>th</sup> May, 2017  
Judgment delivered on: 07<sup>th</sup> July, 2017

+ **W.P.(C) 684/2017**

**RANINGLIU RIAMEI**

..... Petitioner

versus

**UNION OF INDIA & ANR**

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr Girish Sharma

For the Respondents : Mr Anil Soni, CGSC with Mr Naginder Benipal for UOI.

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGEMENT**

**SANJEEV SACHDEVA, J**

**W.P.(C) No.684/2017**

1. The petitioner, by the present petition, seeks a direction to respondent No.2, i.e. Foreigner Regional Registration Officer (FRRO) to release the husband of the petitioner, namely, Okwuada Mark Lucky, a Nigerian National, presently lodged in the Deportation Camp.

2. It is contended that petitioner is an Indian National and her marriage was solemnized with Okwuada Mark Lucky, a Nigerian National, on 08.10.2014.

3. It is contended that Okwuada Mark Lucky, the husband of the petitioner is a frequent visitor to India and even prior to the marriage with the petitioner, he had come to India on several occasions after obtaining a valid visa.

4. It is contended that the visa of the husband of the petitioner was extended from time to time and lastly, the same was last extended upto 18.04.2017.

5. It is contended that after solemnization of the marriage with the petitioner, her husband continued to live in India. The husband of the petitioner has even applied for an OCI Registration with the FRRO. The petitioner claims to have one male child from the wedlock with the said Okwuada Mark Lucky.

6. It is contended that the husband of the petitioner came to know that the Officers of FRRO were searching for him by showing his photograph. On 19.12.2016, he himself visited the Office of respondent No.2 whereupon he was detained and sent to the Deportation Camp.

7. On 09.01.2017, the petitioner filed a representation against the said detention and the proposed deportation and sought immediate release of her husband as he had a valid visa to live in India. Receiving no communication, the petitioner has filed the present petition.

8. It is contended that the petitioner is lawfully married to Okwuada Mark Lucky. Okwuada Mark Lucky had a valid visa when he was detained. They also have a child from their wedlock.

9. It is contended that since Okwuada Mark Lucky has a valid visa, he should not have been detained and cannot be deported.

10. The respondents, in their counter-affidavit, have contended that the action taken by the FRRO is as per the procedure and *bona fide*. It is contended that the FRRO is a Civil Authority and discharges its functions as part of the Bureau of Immigration, Intelligence Bureau, vide Notification dated 13.07.2000 read with Joint Director/ Immigration Order dated 18.07.2000. Powers have been delegated upon FRRO to *inter alia*, exercise powers under the Passport (Entry into India) Rules, 1950, Registration of the Foreigners Rules, 1992, the Foreigners Act, 1946, Foreigners Order 1948.

11. It is contended that Okwuada Mark Lucky arrived in India on 25.02.2015 on the strength of Indian Entry Visa issued from Nigeria-Lagos on 20.02.2015, which was valid upto 18.04.2015. The routine checks conducted and scrutiny of records (State Crime Record Bureau) revealed that one Nigerian National, Mark Lucky @ Mark Lucky Luke, Son of Okwuada Sunday, was arrested in case FIR No.43/2010 dated 03.04.2010 under Section 21/29 Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

12. The records revealed that Mark Lucky Luke was convicted and sentenced in the said case. Mark Lucky @ Mark Lucky Luke involved in FIR No.43/2010 Police Station Crime Branch, after completion of sentence was produced before the Office of FRRO, Delhi, by the officials of Narcotic Cell, Crime & Railways, Delhi Police on 19.03.2011, with a request to repatriate/deport him back to his country of origin.

13. Mark Lucky @ Mark Lucky Luke was repatriated/deported back to his country of origin on 16.04.2011. Further, a black list entry ban Look Out Circular (LOC) was opened against Mark Lucky @ Mark Lucky Luke with action to be taken on detection as *“prevent subject from entering India and inform originator”*.

14. It is contended that at the time of his arrest consequent to FIR 43/2010 Police Station Crime Branch, the name disclosed was Mark Lucky @ Mark Lucky Luke son of Okwuada Sunday. Accordingly, in the LOC, the name mentioned was Mark Lucky.

15. It is contended that post his deportation, on 23.06.2012, Mark Lucky Okwuada entered India on 21.08.2012 on an Indian business visa. He departed from India on 10.12.2014 and during his stay, he married the petitioner.

16. It is contended that Mark Lucky Okwuada had earlier given his name as Mark Lucky @ Mark Lucky Luke and subsequently,

obtained a Passport in the name of Mark Lucky Okwuada. As the name of the Mark Lucky had changed, at the time of issuance of the visa, it was not detected by the Authorities that Mark Lucky @ Mark Lucky Luke and the petitioner's husband Mark Lucky Okwuada are one and the same person.

17. During the process of visa extension application, Mark Lucky Okwuada was confronted with the above-mentioned records and facts. He sought time to submit a specific response with complete facts and documents. However, he did not return thereafter and disappeared.

18. It is contended that at the time of consideration for issuance of visa and the extension applications, the officers of the respondent could not detect that Mark Lucky Okwuada was the same individual i.e. Mark Lucky @ Mark Lucky Luke against whom the LOC have been issued. This error, it is contended, occurred on account of the difference between the name and the date of birth recorded in the LOC papers and that recorded in the Passport.

19. It is contended that the LOC issued against Mark Lucky Okwuada is black list Grade 'A' on account of his conviction/involvement in Narcotics Crime.

20. It is contended that in view of the above facts, the movement of Mark Lucky Okwuada was restricted on 19.12.2016 till the travel arrangements for his repatriation/deportation were made.

21. When the petition was listed on 25.01.2017, in view of the stand of the petitioner that as per her information her husband had not been involved in any crime and had not been deported, this Court directed the respondents to have a comparison of the biometrics of the husband of the petitioner with the person, who was earlier convicted and deported under the NDPS Act.

22. The biometrics comparison confirmed that Mark Lucky @ Mark Lucky Luke, who had been convicted in case FIR No.43/2010 Police Station Crime Branch and who had been subsequently deported is the husband of the petitioner, i.e. Mark Lucky Okwuada.

23. It is established from the records that the husband of the petitioner was involved in case FIR No.43/2010 dated 03.04.2010 Police Station Crime Branch under Section 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The husband of the petitioner was convicted in the said case. On completion of his sentence, he was deported.

24. The respondents have produced the Memorandum of the Intelligence Bureau dated 13.09.2005 on the subject “*Guidelines for placing Foreigners in black list (Entry Ban Cases)*” for issuance of an LOC, which stipulates that Foreigners who are convicted on charges of and/or found involved in anti-national activities, rape and murder, crime against humanity, terrorist and subversive activities, narcotics crime, human trafficking, racketeering in fake travel documents and

fake currency and offences which are punishable by imprisonment of 2 years may be listed in this category i.e. Black list Grade 'A'.

25. Record produced shows that Mark Lucky @ Mark Lucky Luke was placed in Blacklist Grade A. The LOC stipulates "prevent subject from entering India and inform originator".

26. By having been listed in Blacklist Grade A, Mark Lucky @ Mark Lucky Luke @ Mark Lucky Okwuada was not to be permitted to enter India. The officers of the respondents erred in not identifying the husband of the petitioner Mark Lucky Okwuada as the individual Mark Lucky @ Mark Lucky Luke, who had earlier been convicted in case FIR No.43/2010 under Section 21/29 of the NDPS Act, Police Station Crime Branch, New Delhi, and against whom the said LOC had issued. Since he was wrongly permitted entry into the country, action of the respondent in seeking to deport him cannot be faulted.

27. The petitioner has admittedly been convicted in a Narcotics crime. Records reveal that the petitioner has been placed in black list Grade 'A' and an LOC to that effect has been issued.

28. Even if there was an error on the part of the Officers of the respondent in not preventing Mark Lucky @ Mark Lucky Luke @ Mark Lucky Okwuada from entering the country does not imply that once the error is detected, it cannot be rectified. There can be no

estoppel against rectification of an illegality or correction of an error on the part of the respondent.

29. The husband of the petitioner was placed in Blacklist Grade 'A', which, as per the Memorandum, disentitled him from entering the country during the period that he is placed in the said category.

30. In terms of the Memorandum, the respondents have to review each case after completion of ten years. In case of petitioner's husband, the period of ten years is not yet over.

31. Since the husband of the petitioner Mark Lucky Okwuada has been placed in Blacklist Grade 'A', in my view, there is no infirmity in the action taken by the respondents in seeking to deport him. The respondents have shown an apprehension that in case Mark Lucky Okwuada had not been detained and kept in the Deportation Centre, there was a likelihood that he would have disappeared. In view of the apprehension expressed, the action taken by the respondents in detaining him in the Deportation Centre till arrangements for deportation are made cannot be faulted.

32. The fact that Mark Lucky Okwuada has married the petitioner and there is a child from wedlock does not, to my mind, make any difference to the proposed action of deportation sought to be taken by the respondents. Mark Lucky Okwuada was not entitled, in the first place, to enter the country having been placed in "Blacklist Grade A"



and in terms of the Lockout Circular. Since, he was not entitled to enter the country, the action of the respondents in deporting him cannot be thus faulted.

33. In view of the above, I find no merit in the petition. The petition is accordingly dismissed. There shall be no orders as to costs.

**July 07, 2017**

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**SANJEEV SACHDEVA, J**

