

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2018

DELIVERED ON : 23.07.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE ABDUL QUDDHOSE

W.P.Nos.21305 and 20798 of 2017
and WMP Nos.22241, 22242, 21645 and 21646 of 2017

W.P.No.21305 of 2017:

Karti P.Chidambaram .. Petitioner

-vs-

- 1.Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
rep. by its Commissioner (Immigration),
East Block - VIII, Level - V,
Sector - 1, R.K.Puram,
New Delhi - 110 066.
 - 2.The Deputy Inspector General/Head of Branch (HOB),
Economic Offences Unit - IV, EO-II,
Central Bureau of Investigation Head Office,
4th Floor, Opp. Electronics Niketan,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
 - 3.Foreigner Regional Registration Officer (FRRO),
Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
Sastri Bhavan Annex Building,
No.26, Haddows Road, Chennai - 600 006.
 - 4.The Assistant Foreigners Regional Registration Officer,
Bureau of Immigration,
Anna International Airport,
Meenambakkam Airport,
Chennai - 600 027.
- .. Respondents

W.P.No.20798 of 2017 :

Karti P.Chidambaram

.. Petitioner

-vs-

1.Foreigner Regional Registration Officer (FRRO),
Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
No.26, Haddows Road,
Chennai - 600 006.

2.The Secretary,
Ministry of Home Affairs,
Government of India,
South Block,
New Delhi - 110 001.

3.The Deputy Inspector General/HOB,
EO-II, Central Bureau of Investigation,
10th Floor, Plot No.5-B, CGO Complex,
New Delhi - 110 003.

.. Respondents

W.P.No.21305 of 2017 filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records of the 1st respondent relating to the Look Out Circular having Reg.No.1/SIC (DMC)/LOC/2017-5812, dated 16.06.2017 issued by the 1st respondent in respect of the petitioner and quash the same as an abuse of authority, without jurisdiction, issued for extraneous considerations and vitiated by malafides.

W.P.No.20798 of 2017 filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration, declaring that the "Look Out Circular" issued by the 1st respondent in purported exercise of the powers conferred under Section 10B of the Pass Port Act, 1967, in the case of the petitioner is an arbitrary exercise of power, abuse of authority, vitiated by malafides, ultra vires and without jurisdiction and consequently, direct the 1st respondent to recall the "Look Out Circular" issued by the 1st respondent naming the petitioner.

For Petitioner

: Mr.Gopal Subramaniam
Senior Advocate
for M/s.C.Uma

For Respondents : Mr.V.Venkatesan
SCGSC
for respondent Nos.1,3 & 4
in WP.21305 of 2017
and respondents 1 and 2
in WP.20798 of 2017

Mr.G.Rajagopalan
Addl. Solicitor General
assisted by
Mr.K.Srinivasan
for 2nd respondent
in WP.21305 of 2017
and 3rd respondent in
WP.20798 of 2017

COMMON ORDER

Ms.INDIRA BANERJEE, CHIEF JUSTICE

These writ petitions are directed against a Look Out Circular being reference No.1/SIC (DMC)/LOC/2017-5812, dated 16.6.2017, issued in respect of the petitioner by the Bureau of Immigration under the Ministry of Home Affairs of Government of India.

2. On 15.5.2017, the Central Bureau of Investigation (hereinafter referred to as "the CBI") filed an FIR against the petitioner before the Special Judge, CBI Court, New Delhi, under Sections 120-B and 420 of the Indian Penal Code read with Sections 8 and 13 of the Prevention of Corruption Act, 1988.

3. The petitioner in these writ petitions was named as the third accused in the said FIR, the others named as accused being:

- (i) M/s.INX Media (P) Ltd., Mumbai, hereinafter referred to as "INX Media", through the then Director, Indrani Mukherjea and others (first accused);
- (ii) M/s.INX News (P) Ltd., hereinafter referred to as "INX News", through the then Director, Sh.Pratim Mukherjea @ Peter Mukherjea and others (second accused);
- (iii) M/s.Chess Management Services (P) Ltd., hereinafter referred to as "CMS", represented through its Director, Sh.Karti P.Chidambaram, being the petitioner and others (fourth accused);
- (iv) M/s.Advantage Strategic Consulting (P) Ltd., hereinafter referred to as "ASC", represented through its Director, Ms.Padma Vishwanathan @ Padma Bhaskararaman and others (fifth accused); and

(v) other unknown officers of the Ministry of Finance, Government of India and other unknown persons.

4. INX Media, the first accused was apparently incorporated on 8.8.2006 under the provisions of the Companies Act, 1956, to carry on the business of creating, operating, managing and broadcasting a bouquet of television channels, including Hindi and vernacular entertainment channels.

5. On or about 13.3.2007, INX Media applied to the Chairman, Foreign Investment Promotion Board (hereinafter referred to as "the FIPB") of the Department of Economic Affairs, Ministry of Finance, Government of India, seeking its approval for permission to issue by way of preferential allotment, in one or more tranches (i) upto 14,98,995 equity shares of Rs.10 each, and (ii) upto 31,22,605 convertible, non cumulative, redeemable preference shares of Rs.10 each collectively representing approximately 46.216% of the Issued Equity Share Capital of INX Media on an "as converted" basis to three non resident investors under the Foreign Direct Investment route, namely:

- (i) Dunearn Investment (Mauritius) Pte. Ltd.;
- (ii) NSR-PE Mauritius LLC; and
- (iii) New Vernon Pvt. Equity Ltd.

6. INX Media had in its application dated 13.3.2017 also expressed its intention, subject to the provisions of applicable laws, to make a down stream financial investment to the extent of 26% of the issued and outstanding equity share capital of INX News.

7. The application of the company seeking FIPB approval was received and acknowledged by the Department of Economic Affairs, FIPB Unit, Ministry of Finance, through its letter dated 15.3.2007. Thereafter, by a Memorandum dated 16.3.2007, the FIPB Unit forwarded the proposal of INX Media to various departments of the Government of India for their comments.

8. The FIPB at its meeting held on 18.5.2007 recommended the proposal of INX Media for consideration and approval of the then Finance Minister. However, the FIPB did not approve the down stream investment by INX Media in INX News. The recommendation of FIPB was approved by the then Finance Minister, Shri.P.Chidambaram, who happens to be the father of the petitioner.

9. The FIPB Unit issued a press release dated 30.5.2007 indicating the details of proposals approved in the FIPB meeting. The quantum of FDI (Foreign Direct Investment)/NRI (Non-Resident Indian) inflow against M/s.INX Media was shown as

Rs.4.62 crores. The approval was intimated vide a letter dated 31.5.2007.

10. In the FIR, it is alleged that in contravention of the terms of the approval of FIPB conveyed vide the aforesaid letter dated 31.5.2007, INX Media deliberately made a down stream investment to the extent of 26% in the capital of INX News without the specific approval of FIPB. The down stream investment included indirect foreign investment by the same foreign investors and generated more than Rs.305 crores Foreign Direct Investment in INX Media as against the approved foreign inflow of Rs.4.62 crores by issuance of shares to foreign investors at a premium of more than Rs.800/- per share.

11. It is further alleged that in order to wriggle out of the situation without any punitive action, INX Media, upon receipt of the letter dated 31.5.2007 from the FIPB Unit, entered into a criminal conspiracy with the petitioner, son of the then Finance Minister of India and Promoter Director of CMS, to get the issues resolved/addressed amicably by influencing the officials of the FIPB of the Ministry of Finance, taking wrongful advantage of his relationship with the then Finance Minister.

12. Based on clarifications by CMS, INX Media, through its letter dated 26.6.2008, tried to justify its action on both the counts. It is alleged in the FIR that INX Media falsely claimed that the unapproved and unauthorized down stream investment was in accordance with the approval. INX Media further justified the excess foreign inflow receipt, as premium received against shares issued.

13. In the FIR, it is also alleged that information discloses that upon receipt of the aforesaid letter of INX Media, the concerned officials of FIPB, who had been influenced by the petitioner, Mr.Karti P.Chidambaram, ignored the illegalities on the part of INX Media. In abuse of their official position, these officials showed undue favour to the INX Group of Companies and advised INX News to apply afresh for FIPB approval in respect of down stream investment. It is also alleged that the officials of the FIPB ignored the request of the Department of Revenue to investigate into down stream investment made by INX Media without FIPB approval.

14. It is stated in the FIR that information discloses that INX News, concealing the investment in INX Media to the extent of 26%, again approached FIPB for permission for down stream investment in pursuance of a criminal conspiracy. Such deceitful and fallacious proposals were favourably considered by the officials of the Ministry of Finance and approved by the

then Finance Minister. Concurrence to a "proposed investment" when investment had been made without the approval of the Finance Ministry, smacks of malafides and dishonest intention on the part of the officials of the Ministry, who did not take any punitive action against INX Media, but covered up the illegality by seeking an application from INX News and granting permission to INX News. The permission gave an erroneous impression that INX News was yet to receive the foreign investment.

15. It is stated in the FIR that, pursuant to the criminal conspiracy with INX Group and the intermediaries, senior officials of the Ministry of Finance not only granted illegal approval, but also misinformed (sic misled) the investigation by the Investigation Wing of the Income Tax in this regard.

16. As per the FIR, information discloses that in consideration for the services rendered by the petitioner to the INX Group, through CMS, payments were received against invoice raised on INX Media by ASC. As per source information, the reason for getting the invoice raised in the name of ASC for services rendered by CMS was to conceal the identity of the petitioner, since the petitioner was Director of CMS, when the invoice was raised and the payment was received.

17. In the FIR, it is alleged that ASC was being controlled by the petitioner indirectly. In the FIR, it is further alleged that information discloses that invoices for approximately 3.5 crores were raised in favour of the INX Group in the name of other companies, in which the petitioner had sustainable interests either directly or indirectly. Such invoices were falsely raised for creation and acquisition of media content; consultancy in respect of market research; acquisition of content of various genre of audio or video, etc. INX Group, in its records, mentioned the purpose of payment of Rs.10 lakhs to ASC as towards "Management consultancy charges towards FIPB notification and clarification".

18. The FIR has been filed on the contention that the acts and omissions, as aforesaid, prima facie disclose commission of offence under Section 120-B read with Section 420 of the Indian Penal Code and Section 8 and Section 13(2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988 against INX Media; INX News; the petitioner, Mr.Karti P.Chidambaram; CMS, through the petitioner, Mr.Karti P.Chidambaram, its Director and others; and ASC, through its Director, Smt. Padma Vishwanathan @ Padma Bhaskaraman and others, as also unknown officers and/or officials of FIPB and other unknown persons.

19. The allegation against the petitioner in the FIR was of rendering his good offices to the INX Group, through CMS, in getting issues against INX Group scuttled by influencing officials and/or in other words, securing favours for the INX Group against disguised consideration received from INX Media, through ASC. The petitioner has apparently not himself been accused of misappropriation, embezzlement, financial illegalities and/or economic offences.

20. On 15.6.2017, that is after about a month, a notice was issued under Section 41-A(1) read with Section 41(1)(b) of the Criminal Procedure Code calling upon the petitioner to appear before the Station House Officer/Investigation Officer on 29.6.2017 at 1030 Hours. On the very next day, i.e. 16.6.2017, the impugned "Look out Circular" (LOC) was issued.

21. In these writ petitions, the Court is not concerned with the veracity of the allegations in the aforesaid FIR, or with the legality of the criminal case started on the basis of the same, but only with the question of validity and/or maintainability of the impugned Look Out Circular.

22. By an order dated 10.8.2017, a learned Single Bench of this Court passed an interim order of stay of the impugned LOC dated 16.6.2017 and gave directions for filing of counter-affidavits.

23. The CBI filed an application for Special Leave to Appeal, being S.L.P.Nos.20699 - 20700 of 2017, in the Supreme Court challenging the aforesaid interim order.

24. By an order dated 14.8.2017, the Hon'ble Supreme Court stayed the interim order passed by the learned Single Judge. Thereafter, diverse orders were passed by the Supreme Court from time to time and ultimately, by an order dated 31.1.2018, the Special Leave Petitions were finally disposed of, inter alia, directing the Division Bench of this Court, presided over by the Chief Justice, to decide these writ petitions. All the issues raised in these two writ petitions, including the issue of territorial jurisdiction of this Court to entertain these writ petitions, have been kept open for this Court to adjudicate.

25. On 7.2.2018, this Division Bench of this Court directed that the matter be fixed for hearing on 12.2.2018 at 10.30 AM. Notice was directed to be issued to the CBI through the CBI Counsel and the learned counsel was directed to file counter-affidavits, if any, in the meanwhile. However, when the writ petitions were taken up for hearing on 12.2.2018, the learned Additional Solicitor General submitted that the CBI had only

filed counter-affidavit to the Miscellaneous Petition filed by the petitioner for leave to the petitioner to travel abroad being W.M.P.No.3031 of 2018 , but had not filed the counter-affidavit to the main writ petitions. The said Miscellaneous Petition for leave to travel has been heard and disposed of.

26. It appears that the CBI misunderstood the order dated 7.2.2018 of this Court, whereby this Court had directed that counter affidavits, if any, be filed within 12.2.2018. It was not our intention that counter affidavit be only filed to the Miscellaneous Petition. Moreover, as early as on 10.8.2017, the learned Single Judge had issued directions for counter affidavits in the main writ petitions. Be that as it may, for the ends of justice, we granted time to the respondents till 23.2.2018 to file counter affidavits in the main writ petition. Pursuant to the aforesaid direction, a counter-affidavit has duly been filed and the writ petitions are now ready for final hearing.

27. Mr.Gopal Subramaniam argued that on 15.5.2017 raids were conducted in diverse premises not only of the petitioner, but also of others associated with the petitioner, after which the FIR was lodged. Notice under Section 41-A(1) read with Section 41(1)(b) of the Criminal Procedure Code was issued on 15.6.2017, directing the petitioner to appear before the CBI on 29.6.2017. However, on the very next day, that is on 16.6.2017, the impugned LOC was issued.

28. Mr.Gopal Subramaniam referred to an Office Memorandum of Government of India, Ministry of Home Affairs, No.25016/31/2010-Imm., dated 27.10.2010, which lays down the principles for issuance of an LOC.

29. Mr.Gopal Subramaniam submitted that by a judgment delivered on 11.8.2010 in W.P. (Crl.) No.1315/2008 (Sumer Singh Salkan v. Assistant Director and others) and Crl.Ref.1/2006 (Court on its Own Motion Re: State v. Gurnek Singh, etc.), the High Court of Delhi held that recourse to LOC could be taken by an Investigating Agency in case of cognizable offences under the Indian Penal Code or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite non-bailable warrants (NBWs) and other coercive measures and there was a likelihood of the accused leaving the country to evade trial/arrest. The principles as laid down in the aforesaid judgment have been accepted and adopted by the Ministry of Home Affairs by the Office Memorandum referred to above.

30. On a perusal of the said memorandum dated 27.10.2010, it is patently clear that LOC is a coercive measure to make a person surrender to the Investigating Agency or Court of law. The LOC has apparently been issued prematurely, in haste.

31. It is a matter of record that the FIR has been lodged on 15.5.2017 in respect of alleged offences which took place in the year 2007-2008. Notice under Section 41-A(1) read with Section 41(1)(b) of the Criminal Procedure Code was issued to the petitioner on 15.6.2017 calling upon the petitioner to appear on 29.6.2017.

32. Mr.Gopal Subramaniam argued that the request for issuance of LOC was made even before notice under Section 41-A (1) read with Section 41(1)(b) of the Criminal Procedure Code was issued to the petitioner.

33. Be that as it may, on the face of the records, the LOC was issued on 16.6.2017, one day after notice was issued calling upon the petitioner to appear on 29.6.2017.

34. Mr.Gopal Subramaniam submitted that the petitioner duly appeared before the CBI on 23.8.2017 and 28.8.2017. He has been cooperating with the investigation.

35. Mr.Gopal Subramaniam argued that a person cannot be deprived of a fundamental right by executive fiat, in the absence of statutory sanction. In support of his submission, Mr.Gopal Subramaniam cited Maneka Gandhi v. Union of India, reported in (1978) 1 SCC 248 and K.S.Puttaswamy v. Union of India, reported in (2017) 10 SCC 1.

36. Mr.Gopal Subramaniam submitted that the respondents have not been able to disclose the authority of law under which the respondents were issuing the Look Out Circulars. Mr.Gopal Subramaniam also argued that even assuming that executive orders could be issued to abrogate fundamental rights, it was clear from the guidelines which had been issued by the Central Government on 27.10.2010 that a Look Out Circular should not be issued mechanically, but must only be issued when good reasons exist and when a person is avoiding warrants of arrest or avoiding trial in a criminal case.

37. Mr.Gopal Subramaniam emphasized that the expression "avoiding warrants of arrest or non-bailable warrants of arrest" is in distinction to the power exercised by a police officer under Section 41 of the Code of Criminal Procedure, where the police officer can upon the existence of certain conditions, arrest without warrant.

38. Mr.Gopal Subramaniam argued that it is only when warrants of arrest have to be executed, which involve application of judicial mind, and there is a possibility that the execution of the warrants of arrest can be frustrated, that a look out circular can be viewed as an aid.

39. Mr.Gopal Subramaniam argued that it was clear from the facts of this case that the Look Out Circular dated 16.6.2017 was issued by non application of mind on the part of the concerned authority and in particular, non consideration of the following facts:

- (i) CBI had failed to disclose to the competent authority that it had issued notice under Section 41A of the Code of Criminal Procedure;
- (ii) The concerned authorities proceeded on the erroneous belief that the Look Out Circular could be issued simultaneously with notice under Section 41A of the Code of Criminal Procedure;
- (iii) Notice under Section 41A of the Code of Criminal Procedure was a step anterior to a step under Section 41 of the Code of Criminal Procedure [vide Arnesht Kumar v. State of Bihar, reported in (2014) 8 SCC 273];
- (iv) When first notice issued on 16.6.2017 and made returnable on 29.6.2017 had been replaced by a further notice dated 4.7.2017, the concerned authorities had, by necessary implication, accepted the contention of the petitioner that he was traveling abroad and that he would attend to the notice immediately upon his return.

40. Mr.Subramaniam emphatically reiterated that the condition precedent for issuance of a look out circular was attempt to evade arrest. The petitioner was not in any manner seeking to evade the trial, since the case is at the stage of investigation and a final report or charge sheet has not been filed. In the absence of filing of a charge sheet or a final report, it could not be assumed that the petitioner was going to evade trial.

41. As argued by Mr.Gopal Subramaniam, the issuance of a look out circular is amenable to judicial review under Article 226 of the Constitution of India. The issuance of look out circular is not equivalent to a decision of a Tribunal or a judicial authority which can be said to be subject to the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India.

42. Appearing on behalf of the CBI, Mr. Rajagopalan, learned Additional Solicitor General has taken a preliminary objection to the writ petitions contending that this Court lacks territorial jurisdiction to entertain the same. The learned Additional Solicitor General submitted that this Court lacked territorial jurisdiction to entertain the writ petitions, as no part of cause of action could be said to have arisen within the jurisdiction of this Court. He submitted that it was not in dispute that the FIR was registered against the petitioner at New Delhi.

43. Citing the judgment of the Supreme Court in *Dashrath Rupsingh Rathod v. State of Maharashtra*, reported in (2014) 9 SCC 129, the learned Additional Solicitor General submitted that the civil concept of part of cause of action cannot be *pari materia* borrowed for ascertaining the jurisdiction in cases of criminal prosecution.

44. The judgment in *Dashrath Rupsingh Rathod*, *supra*, cited by the learned Additional Solicitor General has no application in this case, where the territorial jurisdiction to entertain a writ petition is in question and not the territorial jurisdiction for entertaining a criminal complaint. In *Dashrath Rupsingh Rathod*, *supra*, the Court held that territorial jurisdiction for filing a complaint for cheque dishonour was restricted to the Court within whose jurisdiction the offence has been committed.

45. On the face of the FIR, referred to above, the petitioner has been named accused with his address "16, Pycrofts Garden Road, Thousand Lights, Chennai - 600 006", which is within the jurisdiction of this Court. The FIR has been filed on suspected offence of criminal conspiracy, cheating, taking gratification to influence public servant and criminal misconduct. In the FIR, the place of occurrence of the offence is shown amongst other places to be Delhi, Mumbai and Chennai, within the jurisdiction of this Court.

46. Notice under Section 41A(1) read with 41(1)(b) of the Criminal Procedure Code has been addressed to and served on the petitioner at 16, Pycrofts Garden Road, Thousand Lights, Chennai - 600 006, within the jurisdiction of this Court.

47. Though the impugned Look Out Circular appears to have been issued to the Head of Branch, Economic Offences Wing IV, CGO Complex, Lodhi Road, New Delhi-110003, a part of cause of action has certainly arisen within the jurisdiction of this Court. LOC is a coercive measure to make a person surrender to an investigating agency or a Court of law. The LOC would be enforced against the petitioner within the jurisdiction of this

Court. The impugned LOC will affect his fundamental rights and in particular his right to equality, personal liberty, free movement, privacy, in and around Chennai and Tamil Nadu, within the jurisdiction of this Court. It cannot be said that this Court lacks territorial jurisdiction to entertain the writ petitions.

48. Learned Additional Solicitor General submitted that even assuming that notices were received within the jurisdiction of this Court, that would not in itself confer jurisdiction on this Court since the Court might refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. In support of his submission, the learned Additional Solicitor General cited *Kusum Ingots and Alloys Limited v. Union of India* and another, reported in (2004) 6 SCC 254.

49. In *Kusum Ingots and Alloys Limited v. Union of India* and another, reported in (2004) 6 SCC 254, the Supreme Court held that "keeping in view the expressions used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter". The Supreme Court, however, held that the Court might refuse to exercise its discretionary jurisdiction by invoking the doctrine of "forum conveniens" only where a notice has been issued within its jurisdiction. However, in this case, in the FIR the offence is alleged to have taken place, inter alia, in Chennai, within the jurisdiction of this Court, where the petitioner resides and carries on business. The petitioner has been impleaded as accused in the FIR with his address in Chennai.

50. In *Lt. Col. Khajoor Singh v. Union of India* and another, reported in AIR 1961 SC 532, the Supreme Court held "of course, as held in *Kusum Ingots and Alloys Limited*, supra, even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens".

51. However, in a case like this where the offence is alleged to have taken place under the jurisdiction of different Courts, including in Chennai within the jurisdiction of this Court, where the petitioner is residing in Chennai within the jurisdiction of this Court and the Look Out Circular will be implemented and enforced in Chennai within the jurisdiction of this Court, it would not be appropriate for this Court to refuse to exercise its discretionary jurisdiction by invoking the

doctrine of "forum conveniens".

52. The learned Additional Solicitor General also submitted that Section 41 of the Code of Criminal Procedure confers power on the police to arrest without warrant. The second respondent, who could have arrested the petitioner and other Directors of the Companies under Section 41 of the Code of Criminal Procedure, had registered the FIR on 15.05.2017. The second respondent issued a notice under Section 41A directing them to appear before him, but none actually appeared. Mr.Karti P.Chidambaram appeared before the authority only after the Supreme Court directed him to appear.

53. Learned Additional Solicitor General further submitted that while issuing notice under Section 41A, the investigating authority has inherent power to take necessary steps to see that the accused in the case does not leave this jurisdiction and co-operate in the enquiry. It is a part of the duty of the second respondent to ensure that the accused appeared before him for investigation.

54. The learned Additional Solicitor General submitted that in order to ensure that an accused appeared before him for investigation, the Investigating Officer could seek the assistance of government authorities who were bound to render necessary assistance to prevent the escape of an accused whom a police officer is authorised to arrest. The power, according to the learned Additional Solicitor General is derived from Chapter IV-B and particularly, Section 37 of the Criminal Procedure Code.

55. The learned Additional Solicitor General argued that if the contention that the Investigating Officer had no power to prevent the escape of an accused were to be accepted, the very purpose of Section 41A and Section 37 of the Criminal Procedure Code would be defeated.

56. In support of his submission that Chapter IV B of the Criminal Procedure Code and in particular Section 37 read with Sections 41 and 41A should be given a wide interpretation, the learned Additional Solicitor General cited *Badshah v. Urmila Badshah Godse and another*, reported in (2014) 1 SCC 188, where the Supreme Court held:

"20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in *Heydon's Case* which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction *ut res magis valeat quam*

pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 Cr.P.C., such a woman is to be treated as the legally wedded wife."

57. It has been argued that whether an LOC should be issued against any person or not is purely an executive decision to be taken by the authority having regard to the facts and circumstances of the case. Such executive decision is not subject to judicial review.

58. The learned Additional Solicitor General concluded his submissions with the argument that the principles enunciated in *Maneka Gandhi, supra*, would not apply to this case because in distinction to this case, there was no criminal case pending against Mrs. Maneka Gandhi. The passport authorities had, on their own, initiated action.

59. The issuance of Look Out Circulars is governed by the Executive instructions as contained in the communication No.25022/13/78-F1, dated 05.9.1979 and the Official Memorandum No.25022/20/98-FIV, dated 27.12.2000 of the Government of India, Ministry of Home Affairs (Foreigners Division).

60. Look Out Circulars are issued by the Ministry of Home Affairs of the Government of India as well as certain other authorities such as Ministry of External Affairs; the Customs Department; the Income Tax Department; the Directorate of Revenue Intelligence; Central Bureau of Investigation; Interpol; Regional Passport Officers and Police authorities in various States.

61. In a Writ Petition (Civil) No.10180 of 2009 (Shri.Vikram Sharma v. Union of India and others), the Delhi High Court passed an order dated 27.7.2010 observing that a request for issuance of an Look Out Circular had to come from either the Central or the State Government and that too only in the prescribed form signed by the officers of certain rank. While Criminal Courts dealing with cases of criminal law enforcement could issue directions which might result in the issuance of Look Out Circular, there was no power vested either under the Code of Criminal Procedure or the Passports Act or under Circulars of the Ministry of Home Affairs vesting power on statutory bodies like the National Commission for Human Rights to issue Look Out Circular.

62. In a Writ Petition (Crl) No.1315 of 2008 being Sumer Singh Salkan v. Assistant Director and others, the High Court of Delhi passed a judgment and order dated 11.8.2010 formulating and answering certain questions relating to issuance of Look Out Circulars for the guidance of concerned agencies. In answer to the questions as to what were the categories of cases in which the Investigating agency could seek recourse to Look Out Circular, and under what circumstances, the High Court held that "recourse to Look Out Circular can be taken by the Investigating agency in cognizable offences under Indian Penal Code or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial Court despite Non-Bailable warrant and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest."

63. Look Out Circulars are coercive measures to make a person surrender to the Investigating agency or the Court of law. In accordance with the order dated 26.7.2017 of the High Court of Delhi, the Ministry of Home Affairs issued Official Memorandum dated 27.10.2010 laying down the guidelines for issuance of Look Out Circulars. The said Circular provided:

"Recourse to Look Out Circular is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed proforma or regarding reason for opening LOC's must invariably be provided without which the subject of an LOC will not be arrested/detained."

64. The mandate of the Office Memorandum dated 27.10.2010, that a request for issuance of an LOC would necessarily have to contain reasons for such request makes it clear that the condition precedent for issuance of an LOC is the existence of reasons, which should be disclosed in the request for issuance of an LOC.

65. Pursuant to the directions of this Court, the respondents have filed their counter affidavit. The counter affidavit does not disclose the reasons for making a request for issuance of an LOC. The impugned LOC is liable to be set aside on that ground alone.

66. Sections 41, 41-A and 41-B of the Code of Criminal Procedure, 1973 are set out hereinafter for convenience:

"41. When police may arrest without warrant.-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been

received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

41A. Notice of appearance before police officer.—

(1) The police officer shall, in all cases where

the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

41B. Procedure of arrest and duties of officer making arrest.— Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest."

67. Section 41(2) clearly provides that subject to the provisions of Section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned is to be arrested except under a warrant or order of a Magistrate.

68. Section 42 provides for arrest of a person who in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false. Even in such cases, when the true name and residence of such person have been ascertained, he is to be released on his executing a bond with or without sureties to appear before a Magistrate if so required.

69. The conditions precedent for arrest under Section 41 of the Code of Criminal Procedure without warrant as set forth in sub-sections (a) to (i) of Section 41(1) were wholly absent atleast as on the date of issuance of the Look Out Circular. In any case, there was no attempt to arrest the petitioner without warrant atleast as on 15.06.2017 when notice under Section 41-A was issued to the petitioner to appear before the Investigating officer on 29.6.2017. A notice under Section 41A of the Criminal Procedure Code is issued directing the accused to appear before the Investigating Officer, when arrest of a person is not required, as observed by the Supreme Court in Arnesh Kumar, supra.

70. The legality and/or validity of a Look Out Circular has to be adjudged having regard to the circumstances prevailing on the date on which the request for issuance of the Look Out Circular had been made.

71. As observed above, the FIR against the petitioner was lodged on 15.05.2017. Notice was issued on 15.6.2017 calling upon the petitioner to appear before the Station House Officer/Investigation Officer on 29.6.2017. On the very next day i.e., 16.6.2017, the impugned Look Out Circular was issued. As on the date of issuance of the Look Out Circular, there could have been no reason to suppose that the petitioner would not appear before the Station House Officer/Investigation Officer.

72. On behalf of the respondents, it has been contended that the petitioner did not appear on 29.6.2017 as directed, but only appeared pursuant to the directions of the Supreme Court. However, as argued by Mr.Subramaniam, the very fact that after issuance of the first notice dated 16.06.2017, which was returnable on 29.06.2017, a further notice was issued on 04.07.2017 granting the petitioner time till 21.07.2017, shows that there was no immediate apprehension of his evading investigation, at least on 04.07.2017. There was, thus, no justification for issuance of the impugned LOC on 16.06.2017, the validity whereof has expired, in any case, after one year.

73. As observed above, the issuance of Look Out Circulars is governed by executive instructions as contained in the Office Memoranda Nos.25022/13/78-F1 dated 05.09.1979 and 25022/20/98-FIV dated 27.12.2000, as modified by Office Memorandum dated 27.10.2010. Such LOCs cannot be issued as a matter of course, but when reasons exist, where an accused deliberately evades arrest or does not appear in the trial Court. The argument of the learned Additional Solicitor General that a request for Look Out Circular could have been made in view of the inherent power of the investigating authority to secure attendance and cooperation of an accused is contrary to the aforesaid circulars and thus, not sustainable.

74. It is, in the view of this Court, too late in the day to contend that whether or not to issue an LOC, being a executive decision, the same is not subject to judicial review. It is now well settled that any decision, be it executive or quasi-judicial, is amenable to the power of judicial review of the writ Court under Article 226 of the Constitution of India, when such decision has adverse civil consequences. An LOC, which is a coercive measure to make a person surrender and consequentially interferes with his right of personal liberty and free movement, certainly has adverse civil consequences. This Court, therefore, holds that in exercise of power of judicial review under Article 226 of the Constitution, the writ Court can interfere with an LOC. The question is whether the writ Court should exercise its discretionary jurisdiction to interfere with the impugned LOC.

75. In view of the finding of this Court that the conditions precedent for issuance of the impugned LOC were absent, and the impugned LOC is liable to set aside on that ground, we need not go into the questions of whether an LOC could have been issued without statutory sanction, or whether the respondents concerned had jurisdiction to issue the impugned LOC. However, in our view, the Look Out Circular was issued in hot haste when the conditions precedent for issuance of such Circular did not exist. The impugned Look Out Circular is, thus, liable to be set aside.

76. For the reasons discussed above, the impugned LOC is set aside and quashed. It is made clear that the order of this Court setting aside the impugned LOC will not impact the criminal proceedings initiated pursuant to the FIR, referred to above, or any other proceedings initiated against the petitioner.

With the above observations, both the writ petitions are disposed of. No costs. Consequently, WMP.Nos.22241, 22242, 21645 and 21646 of 2017 are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

bbr/sra/sasi

To:

- 1.The Commissioner (Immigration),
Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
East Block - VIII, Level - V,
Sector - 1, R.K.Puram,
New Delhi - 110 066.
- 2.The Deputy Inspector General/Head of Branch (HOB),
Economic Offences Unit - IV, EO-II,
Central Bureau of Investigation Head Office,
4th Floor, Opp. Electronics Niketan,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
- 3.The Foreigner Regional Registration Officer (FRRO),
Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
Sastri Bhavan Annex Building,
No.26, Haddows Road, Chennai - 600 006.
- 4.The Assistant Foreigners Regional Registration Officer,
Bureau of Immigration,
Anna International Airport,
Meenambakkam Airport,
Chennai - 600 027.
- 5.The Secretary,
ministry of Home Affairs,
govt. of India,
south block, newdelhi - 1.

6. The Deputy Inspector General/HOB,
EO-II, Central Bureau of Investigation,
10th Floor, Plot No.5-B, CGO Complex,
Lodhi Road, New Delhi - 110 003.

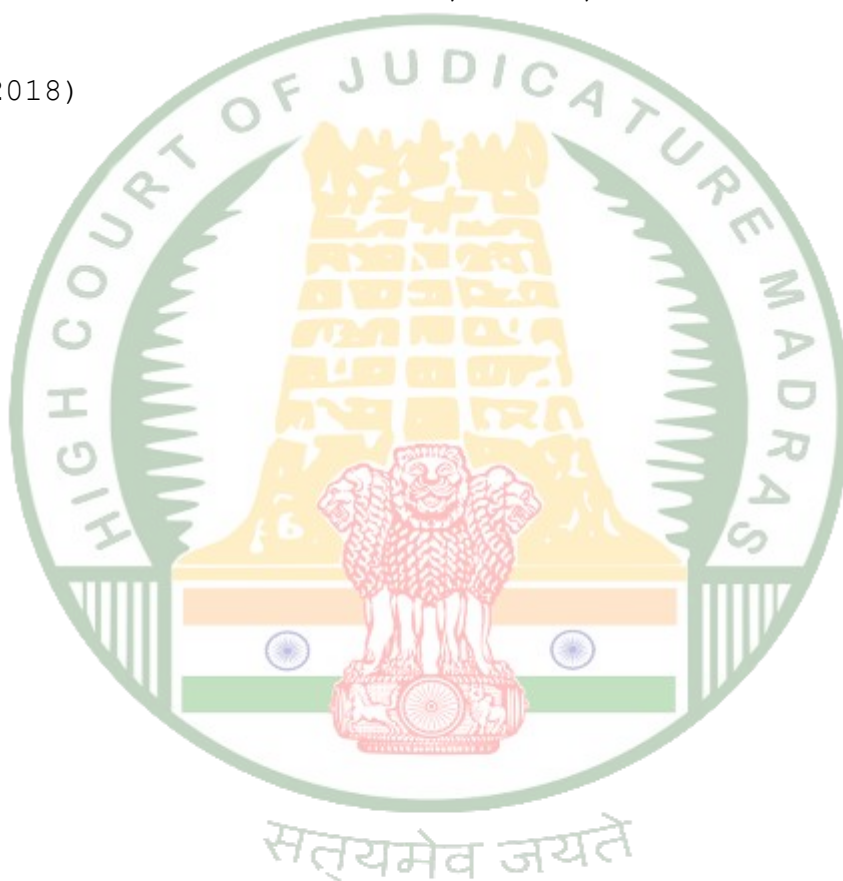
+1cc to Mr.K.SRINIVASAN, Advocate, S.R.No.49688

+1cc to Mr.V.VENKATESAN, Advocate, S.R.No.49201

+1cc to Mr.C.UMA, Advocate, S.R.No.49198

W.P.Nos.21305 and 20798 of 2017
and WMP Nos.22241, 22242, 21645 and 21646 of 2017

RV(CO)
TR(10/08/2018)



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