

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.7292 of 2018

ORDER:

This petition is filed under section 482 Cr.P.C. with a request to quash/cancel the LOC (Look Out Circular) pending against the petitioner in all International Airports in Cr.No.1115/2017 of KPHB Police Station, as the investigation is pending with CID Police.

Respondent No.2 is the *de facto* complainant, who lodged a report before the police alleging that on several representations of the petitioner on the project claimed to be conceived by him for providing laundry services to the public at their convenience, a shareholders' agreement was executed on 25.07.2016, wherein they have committed the investment to the tune of Rs.3,40,00,000/- on repatriation basis. In terms of the Agreement, the *de facto* complainant remitted Rs.71,61,000/- and Rs.66,30,000/- in the bank account of the petitioner towards subscription of Laundry Spot Private Limited equity shares on 30.07.2016 and 01.08.2016 respectively. Subsequently, the petitioner had unilaterally terminated the agreement, vide his letter dated 22.08.2016, acknowledging the first round of investment by the *de facto* complainant without mentioning about any allotment of shares to the *de facto* complainant for the foregoing amounts received by the petitioner. It is also alleged that after re-negotiations, the *de facto* complainant further remitted an amount of Rs.1,99,80,000/- on 23.08.2016 to the account of the petitioner. Thereafter, despite several oral requests, e-mails, reminders, messages, calls etc., the petitioner has neither allotted the shares nor refunded the amounts to the *de facto* complainant, thereby

cheated him. Based on report of the *de facto* complainant, dated 22.01.2017, the police registered a case in Cr.No.1115/2017 of KPHB Colony Police Station, Cyberabad, for the offences punishable under Sections 420 and 406 IPC and issued FIR. On the strength of the FIR, the Sub-Inspector of Police, KPHB Colony PS took up investigation and filed final report under Section 173 Cr.P.C, referring the case as civil in nature before the Magistrate. No petition was filed by the *de facto* complainant questioning the said report. But again the investigation was referred to CID of Police for different reasons. Still the final report filed before the Magistrate is pending for recording, though the investigation is pending with the CID of Police. While the matter stood thus, during pendency of the investigation, the Inspector of Police, Kukatpalli P.S. issued Look Out Circular against the petitioner. Though the petitioner contends that he made a representation to cancel the LOC, but no piece of paper was filed.

The petitioner filed CrI.M.P.No.2690/2018 in Cr.No.1115/2017 of P.S. KPHB for cancellation of LOC issued by the respondent police on various grounds, but a docket order was passed on 04.06.2018 by the XIX Metropolitan Magistrate, Cyberabad, Kukatpally, dismissing the said petition. Aggrieved by the same, as contended by the learned counsel for the petitioner, a review petition was filed with a request to cancel the LOC, mainly on the ground that a final report was filed referring the case as civil in nature, and issuing Look Out Circular is grave illegality, as there is no allegation that this petitioner is avoiding his arrest in connection with the above crime or absconding from the country to avoid facing of criminal trial. In the absence of such material, the learned counsel for the

petitioner contended that issue of Look Out Circular is grave illegality and requested this court to cancel or quash the same.

The petitioner produced the communication between the police officials, i.e., letters addressed to by the Inspector of Police EOW, CID, Hyderabad to the Station House Officer, KPHB, Cyberabad and the Commissioner of Police, Cyberabad informing about the letters addressed for cancellation of LOC against the petitioner. Though copy of the LOC is not placed on record, it is undisputed that LOC was issued. When the case was referred as civil in nature, the question of the petitioner absconding from country to avoid facing of trial does not arise. The Delhi High Court in *Sumer Singh Salkan v. Asstt. Director & ors.*¹ issued certain guidelines to be followed for issuing Look Out Circulars, by framing certain questions and answered same, which are extracted below:

“The questions raised in the reference are as under:

"A. What are the categories of cases in which the investigating agency can seek recourse of Look- out-Circular and under what circumstances?

B. What procedure is required to be followed by the investigating agency before opening a Look- out-circular?

C. What is the remedy available to the person against whom such Look-out-Circular has been opened?

D. What is the role of the concerned Court when such a case is brought before it and under what circumstances, the subordinate courts can intervene?

The questions are answered as under:

A. Recourse to LOC can be taken by investigating agency in cognizable offences under [IPC](#) or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

B. The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving

¹ W.P(Crl.)No.1315 of 2008, dated.11.08.2010

details & reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.

C. The person against whom LOC is issued must join investigation by appearing before I.O. or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.

D. LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs.

The Ministry of Home Affairs (Foreigners Division), pursuant to the order dated 26.07.2010 of the High Court of Delhi, after discussing the matter with the concerned agencies, vide Office Memorandum No.25016/31/2010-Imm., dated 27.10.2010, issued following guidelines for issuing such Look Out Circulars in respect of Indian citizens and foreigners:

- a) The request for opening an LOC would be made by the originating agency to Deputy Director, Bureau of Immigration (BoI), East Block-VIII, R.K.Puram, New Delhi-66 (Telefac:011-2619244) in the Proforma enclosed.
- b) The request for opening of LOC must invariably be issued with the approval of an officer **not below the rank of**
 - i. Deputy Secretary to the Government of India; or
 - ii. Joint Secretary in the State Government; or
 - iii. District Magistrate of the District concerned; or
 - iv. Superintendent of Police (SP) of the District concerned; or
 - v. SP in CBI or an officer of equivalent level working in CBI; or
 - vi. Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level (including Assistant Director (Ops.) in Headquarters of NCB); or
 - vii. Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Excise and Customs; or
 - viii. Assistant Director of IB/BoI; or
 - ix. Deputy Secretary of R&AW; or
 - x. An Officer not below the level of Superintendent of Police in National Investigation Agency; or
 - xi. Assistant Director of Enforcement Directorate; or
 - xii. Protector of Emigrants in the office of the Protectorate of Emigrants or an Officer not below the rank of Deputy Secretary of the Government of India; or

xiii. Designated officer of Interpol.

Further, LOCs can also be issued as per directions of any Criminal Court in India.

- c) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.
- d) The contact details of the originator must be provided in column VI of the enclosed Proforma. The contact telephone/mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action.
- e) Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that as LOC cannot be opened unless a minimum of three identifying parameters, as given in the enclosed Proforma, apart from sex and nationality, are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimise harassment to genuine passengers.
- f) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.
- g) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.
- h) In case where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/departure of the subject in such cases.
- i) The LOC will be valid for a period of one year from the date of issue and name of the subject shall be automatically removed from the LOC thereafter unless the concerned agency requests for its renewal within a period of one year. With effect from 1.1.2011, all LOCs with more than one year validity shall be deemed to have lapsed unless the agencies concerned specifically request BoI for continuation of the names in the LOC. However, this provision for automatic deletion after one year shall not be applicable in following cases:
 - a. Ban-entry LOCs issued for watching arrival of wanted persons (which have a specific duration);
 - b. Loss of passport LOCs (which ordinarily continue till the validity of the document);
 - c. LOCs regarding impounding of passports;
 - d. LOCs issued at behest of Courts and Interpol
- j) In exceptional cases, LOCs can be issued without complete parameters and / or case details against CI suspects, terrorists, anti-national elements, etc in larger national interest.
- k) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/foreigner from leaving India. Such requests along with full necessary facts are first to be brought to the notice of law enforcement agencies like the police. The S.P.concerned will then make the request for issuance of an LOC upon an

assessment of the situation, and strictly in terms of the procedure outlines for the purpose. The immigration/emigration authorities will strictly go by the communication received from the officers authorized to open LOCs as detailed in the para8 (b) above.”

In the present case none of the guidelines issued by the Government of India were followed and issue of Look Out Circular when the case was referred as civil in nature is a serious illegality and it amounts to infringement of the fundamental right as guaranteed by the Constitution of India. Therefore, the Look Out Circular issued by the respondent police is declared as illegal and the same is hereby quashed since it is contrary to the guidelines issued by the Ministry of Home Affairs (Foreigners Division), vide Office Memorandum, dated 27.10.2010.

Accordingly, the Criminal Petition is ordered. The petitioner is directed to execute a personal bond for Rs.1,00,000/- in favour of the Station House Officer, CID, Crime Investigation Department, Hyderabad for his appearance whenever directed in connection with Cr.No.1115/2017 of KPHB Police Station, Hyderabad registered for the offences punishable under Sections 420 and 406 IPC.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.SATYANARAYANA MURTHY,J

Date: 01.08.2018
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