

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.9639 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the Look Out Circular issued in C.C.No.345 of 2018 against the petitioner/A2, who is resident of Abu Dhabi since it is contrary to the guidelines issued by the Delhi High Court and the Ministry of External Affairs and the guidelines issued in ***Rajesh Sharma v. State of U.P.***¹

Though offence is registered and calendar case is pending before the VII Additional Chief Metropolitan Magistrate, Hyderabad, the petitioner did not appear before the Court and even during investigation also the petitioner allegedly did not co-operate with the investigating agency, a letter was addressed to the Commissioner of Police for issue of Look Out Circular to secure the presence of the petitioner before the Court in connection with the above case.

Issue of Look Out Circular is challenged on various grounds mainly contending that when no summons were served on the petitioner, the question of his appearance before the Court in the calendar case does not arise and unless the authorities records satisfaction that the petitioner could not secure his presence, they cannot resort to issue such notice and the procedure adopted by the respondent is contrary to the guidelines issued by the Delhi High Court and circular issued by the Ministry of External Affairs and requested to quash the Look Out Circular proceedings.

The Delhi High Court laid down certain guidelines for exercise of power to secure the presence of the accused, who is residing outside the country i.e. India.

¹ 2017 (2) ALT (Crl.) 393 (SC)

In Karthi P. Chidambaram v Bureau of Immigration and others

(W.P.No.21305 of 2017 and batch), the Madras High Court adverted to various decisions and observed as follows:

“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 25-22/2-/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.

The Delhi High Court in **Rashmi Raikshy and another v The State of National Capital Territory Delhi and others** (W.P.(Crl.)2196 of 2015 and Crl.M.A.No.14470 of 2015) at para 8 stated that in the case of E.V.Perumal Samy Reddy, E.V.R.Santosh Reddy and Rajeshwari vs. State represented by the Deputy Commissioner of Police and State represented by the Inspector of Police (MANU/TN/2308/2013), the Madras High Court noted that Look Out Circular can be issued and enumerated five circumstances and they are:

- i) Persons with Terrorists or Militant Links,
- ii) Belligerent Foreigners,
- iii) Foreigners previously noticed for violations of visa conditions.
- iv) Persons required by Courts in criminal/civil cases who are absconding.
- v) Absconding Offenders wanted by Police/CBI/Customs/Central excise/Directorate of Rev. Intelligence/other agencies.

In pursuance of the judgment, the Ministry of Home Affairs issued a Memorandum based on Delhi High Court Judgment they are follows:

- 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 (Telefax: 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 Matgistrate 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 Head quarters 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/Bol; 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 ran 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 Incia.

- 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 an 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 minimize 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 cases 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 01.01.2011, 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 outlined 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 para 8(b) above."

None of the grounds exists in the present case and therefore, the Look Out Circular issued against the petitioner is illegal and contrary to the guidelines issued by the Courts referred above and Memorandum issued by Ministry of External Affairs. Hence, the Look Out Circular issued against the petitioner/A2 is hereby quashed while permitting the petitioner to appear before the Court within two weeks from today and face trial in accordance with law and the VII Additional Chief Metropolitan Magistrate, Hyderabad may take necessary steps to secure the presence of the petitioner in the Court till completion of trial in C.C.No.345 of 2018.

With the above direction, the criminal petition is allowed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

12.09.2018
Note: issue cc by 14.09.2018
b/o
kvrm

M.SATYANARAYANA MURTHY,J

