IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.03.2019
CORAM
THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.8214 of 2018
and W.M.P.Nos.10184 and 10185 of 2018

Abdul Kadir Najmudin Sathak .. Petitioner

Vs.

1. Union of India
   Rep. by its Secretary,
   Department of Revenue,
   Ministry of Finance,
   New Delhi.

2. The Assistant Director,
   Directorate of Enforcement,
   4th Floor, Kaiser-I, Hind Building,
   Currimbhoy Road, Ballard Estate,
   Mumbai-400 001.

3. The Directorate of Enforcement,
   Lok Nayak Bhavan, Khan Market,
   New Delhi-110 003. .. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records and proceedings relating to the Look Out Circular issued by the second respondent against the petitioner in connection with ECIR/MBZ0/13/2016 and quash the same and direct the second respondent to return to the petitioner, his Indian Passport bearing No.Z3278530.

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For Petitioner : Mr.P.S.Bharath Raman, Senior Counsel for Mr.C.Seethapathy

For Respondents: Mr.B.Sudhir Kumar, Central Govt. Standing Counsel for R1

Mr.N.Ramesh, Special Public Prosecutor for RR 2 and 3

O R D E R

The Directorate of Enforcement, Department of Revenue is an investigating agency of the Government of India and is entrusted with the power to investigate and enforce the provisions of the Prevention of Money Laundering Act, 2002 (in short "PMLA").

2. The Act provides for attachment of properties derived or obtained from the proceeds of a crime, for completion of investigation and prosecution of persons for committing the offence under the said Act. While the process of attachment is provided under Section 5 of the PMLA, prosecution for Commission of Offence of money laundering is under section 3 of the said Act, by filing complaint under section 45 of the Act.

3. The case in hand is with respect to an organisation, which has been declared as unlawful association by the Government of India and the persons associated are being investigated under ECIR/MBZO/13/2016 for suspected commissioning of money laundering offence.

4. One Dr.Zakir Abdul Karim Naik, who is the President of Islamic Research Foundation, (IRF) Mumbai, and his associates have been indulging in unlawful activities and through its provocative utterances, promoting enmity and hatred between different religious groups in India. It is alleged that his inflammatory speeches and lecturers have incited a number of youths in India to commit unlawful activities and terrorist acts. It is stated that M/s.Harmony Media Private Limited was initially incorporated by the above referred Dr.Zakir Naik which involved in the business of pre and post production activities of Dr.Zakir Naik's speech videos. The company forwarded the edited videos of Dr.Zakir Naik to M/s.Global Broadcasting Corporation located in Dubai, who, in turn, broadcasted the said videos through Peace TV. One of the Directors of M/s.Global Broadcasting Corporation was Sheikh Abdul Kadir Najmuddin Sathak, who is the petitioner herein. One of the Directors of M/s.Harmony Media Private Limited was examined and her statement was also recorded under section 50(2) and (3) of PMLA, wherein, she has stated that she became Director at the behest of her brother Dr.Zakir Naik. Since both the Directors of M/s.Global Broadcasting Corporation were not available in India, they remained to be examined.

5. While so, based on reliable information received that the petitioner has arrived from Dubai and is available in India, a Look Out Circular was issued against him to ensure his presence for carrying out further investigation in the matter. It is also stated that the petitioner was detained by the Immigration Authorities at Delhi Airport, while he was trying to board a flight to Nepal. On receipt of information about his detention, the second respondent took him to their Mumbai Zonal Office along with his passport for examining him and recording his evidence under section 50 (2) & (3) of PMLA. Admittedly, the passport had been handed over to the petitioner and the said Look Out Circular is under challenge in this Writ petition.

6. The petitioner further submitted that he attended the office of the second respondent on 25.01.2018 and after being questioned he was allowed to go. It is admitted that he was a Promoter Director of M/s.Global Broadcasting Corporation Limited, a media company incorporated in Dubai, which owned and aired a satellite TV channel in the name and style of Peace TV. The said channel was an edutainment channel focused on social and theological issues. Admittedly, the channel also broadcast speeches of Dr.Zakir Naik. There was a summon dated 25.01.2018 calling upon the petitioner to appear once again on 31.01.2018 and to produce certain documents. The petitioner also stated that he became aware of the fact that he has been questioned in connection with the speeches of Dr.Zakir Naik. The petitioner also had attended the hearing on 31.01.2018 and submitted all those documents which were immediately available with him and extended his fullest cooperation for the enquiry.

7. The petitioner was again summoned to appear on 01.02.2018, 02.02.2018 and 06.02.2018. Accordingly, the petitioner claimed that he had attended the office of the second respondent for more than 7 occasions, the last of it being on 28.03.2018. It is also stated that the petitioner had visited the second respondent office 14 times. The passport and the mobile phone taken away from the petitioner were returned to him and what remains now for consideration is the Look Out Circular issued by second respondent against the petitioner in connection with ECIR/MBZO/13/2016.

8. The learned counsel appearing for the petitioner argued that a request for issuance for Look Out Circular had to come from either the Central Government or the State Government and that too only in the prescribed form signed by the officer of certain rank. In this case, the look out circular is not produced before the court.

9. Heard the learned Central Government Standing Counsel for the first respondent and the learned Special Public Prosecutor appearing on behalf of the second and third respondents.

10. While issuing notice under Section 41A of the Code of Criminal Procedure, the Investigating Authority has got inherent power to take necessary steps to see that the accused in the case don't leave the jurisdiction and co-operate with the enquiry. The person accused is also duty bound to appear before the authorities. If such power under Section 41A is not available with the Investigating Authority, it would render the very provision useless. Section 41 of the CrPC clearly empowers an officer even to arrest any person without an order from a Magistrate.

11. A recourse to the Look Out Circular is taken by the Investigating Agency in cognizable offences under IPC or other penal laws, where the accused deliberately evading arrest or not appearing before the authorities and there was a likelihood of the accused leaving the country to evade trial or arrest. The Look Out Circulars are one of the coercive measures to make a person surrender to the investigating agency. It is also stated that the Ministry of Home Affairs issued an official memorandum dated 27.10.2010 laying down the guidelines for issuance of Look out circular. The said circular provides as follows :

> "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 or regarding reason for opening LOC's must invariably be provided without which the subject of the look out circular will not be arrested/detained,"

12. From the perusal of the above Circular, it is clear that it mandates that the request for issuance of Look Out Circular has to contain reasons for such request, which is the condition precedent for issuance of an LOC.

13. In paragraph 11 of the counter affidavit, it is stated that there was a possibility of the petitioner fleeing from India, and hence, as a precautionary measure, a Look Out Circular was issued against him so as to ensure his presence for carrying out further investigation in the matter. Accordingly, he was detained by Immigration Authorities at Delhi Airport, while he was trying to board a flight to Nepal.

14. As stated already, the entire investigation is related to offences under Sections 10, 13 and 18 of the Unlawful Activities Prevention Act, 1967 and under Section 153A of IPC against Dr.Zakir Naik and others, vide the FIR No.5 dated 18.11.2016. As per the said FIR, the activities of Dr.Zakir Naik and his associates are prejudicial to the maintenance of harmony among various communities and likely to disturb the public tranquility. The FIR also revealed existence of scheduled offences under Part A of the PMLA and ECIR/MBZO/13/2016 dated 21.12.2016 has been recorded by the Zonal Office, Mumbai of the Directorate of Enforcement. As the offence of money laundering is cognizable and a non-bailable offence and the petitioner has been listed as one of the suspected persons, the investigation has been initiated.

15. As the Look Out Circular itself seems to have been issued only based on the FIR registered under the PMLA and the Unlawful Activities Prevention Act, 1967 and therefore, the legality of Look Out Circular has to be considered having regard

to the circumstances prevailing as on the date, on which, the request for issuance of Look Out Circular is made. No doubt the petitioner had accepted and acted upon the Look Out Circular and appeared for several hearings based on the summons issued. Hence, the petitioner cannot challenge the legality or validity of the Look Out Circular. Admittedly, his passport and mobile phone were returned to him and what remains to be decided is the validity of Look Out Circular in terms of the length of time.

16. It is true that a Look Out Circular is a coercive measure to make a person surrender and consequentlialy interferes with the right of personal liberty and free movement. However, in this case the investigation is not yet over as the authorities are trying to extract the required details for their investigation. Therefore, in the present case it cannot be stated that the Look Out Circular was issued without statutory sanction or that the respondents did not have jurisdiction to issue the impugned Look Out Circular.

17. The Look Out Circular was issued in the year 2016 and is challenged after almost more than a year long enquiry was being conducted, by issuing numerous summons. Hence, the impugned Look Out Circular cannot be quashed at this stage. However, this court is inclined to direct the second and third respondents to complete the enquiry as expeditiously as possible, however, not beyond three months from the date of receipt of a copy of this order.

18. Excepting the above direction, the writ petition fails and the same is dismissed as devoid of merits. There shall be no order as to costs. Consequently, connected W.M.P.Nos.10184 and 10185 are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Department of Revenue,
Ministry of Finance,
Union of India
New Delhi.

2. The Assistant Director,
   Directorate of Enforcement,
   4th Floor, Kaiser-I, Hind Building,
   Currimbhoy Road, Ballard Estate,
   Mumbai-400 001.

3. The Directorate of Enforcement,
   Lok Nayak Bhavan, Khan Market,
   New Delhi-110 003.

+1cc to Mr.C.Seethapathy, Advocate, S.R.No.25443
+2ccs to Mr.Sudhir Kumar, Advocate, S.R.No.25484

W.P.No.8214 of 2018

GJII(CO)

rrs 20/03/2019