IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.11373 of 2018
and
W.M.P.No.13273 of 2018

Kakulamarri Kalyan Srinivasa Rao ... Petitioner

Vs.

1.The Central Bureau of Investigation
Bank Securities and Frauds Cell
rep. by its Deputy Inspector General of Police
and Head of Branch
Bangalore, Karnataka

2.The Central Bank of India
rep. by its Assistant General Manager
Corporate Finance Branch
Addison Buildings, 803, Anna Salai
Chennai 600 002

3.Andhra Bank
rep. by its Zonal Manager
Zonal Office, No.168, Linghi Chetty Street
Chennai 600 001 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents herein to forthwith withdraw the LOC (Look out circular) issued against the petitioner and consequently direct removal of all entries made in the records and computers at the airports across the country reflecting the look out circular prohibiting smooth departure and arrival of the petitioner at the airports thereby enabling the petitioner to have the departure and arrival like any other regular passenger without any obstruction.

For Petitioner : Mr.P.Kumaresan
for M/s.N.Elumalai

For Respondents : Mr.K.Srinivasan
Spl.P.P. (CBI Cases) for R1
Mr.M.Devaraj for R2 & R3

J U D G M E N T

This Writ Petition has been filed by the petitioner to direct the respondents herein to forthwith withdraw the LOC (Look out circular) issued against the petitioner and consequently direct removal of all entries made in the records and computers at the airports across the country reflecting the look out circular prohibiting smooth departure and arrival of the petitioner at the airports thereby enabling the petitioner to have the departure and arrival like any other regular passenger without any obstruction.

2.The petitioner is the Managing Director of M/s.Best and Crompton Engineering Projects Ltd., approached the Central Bank of India, Corporate Finance Branch, Chennai for the purpose of sanction of Working Capital facilities for executing projects for different Public Sector undertakings. The Central Bank of India accordingly approved the working capital. Subsequently, the said Bank's Management Committee of the Board sanctioned FB limits and NFB limits to the petitioner. The petitioner Company had approached other Banks viz. Andhra Bank and Corporation Bank. After the sanction of the said loans, according to the 1st respondent, the petitioner indulged in fictitious sales and purchases which are mere book entries. Further, the petitioner company was maintaining only eight accounts as submitted to the Consortium of Banks. Thereafter, the petitioner company committed default in repayment of loan and SARFAESI proceedings were initiated before the Debt Recovery Tribunal, Chennai.

3.The Central Bank of India lodged a complaint before the 1st respondent / the Central Bureau of Investigation on 28.01.2016. Based on the said complaint, a case was registered on 01.12.2016. Apprehending arrest, the petitioner filed Anticipatory Bail petition before the Principal Sessions Court, Chennai. Anticipatory bail was granted to the petitioner on 28.04.2016, directing him to surrender before the Additional Chief Metropolitan Magistrate, Chennai and to furnish a bond for Rs.10 lakhs each with two sureties and further directing the petitioner to surrender the passport before the said Court and to appear before the Investigating Officer daily at 10.30 a.m. and to cooperate with the investigation. Accordingly, the petitioner surrendered his passport and cooperated to the investigation.

4.Thereafter, for the purpose of travelling abroad, the petitioner filed Crl.M.P.No.9210 of 2016, seeking to relax the condition imposed on him on 28.04.2016 before the Sessions Court, Chennai. The learned Sessions Judge directed the concerned Court to return the passport on receipt of an undertaking of the petitioner by filing an affidavit and permitted him to travel abroad. Thereafter, on his return, the petitioner re-submitted the passport to the Additional Chief Metropolitan Magistrate, Egmore, Chennai. The petitioner again approached the Sessions Court in Crl.M.P.No.16123 of 2016 seeking return of the passport for travelling, which was declined by the learned Sessions Judge on 05.11.2016, against which, the petitioner filed Crl.O.P.No.5521 of 2017 before this Court. This Court after considering the submissions of the petitioner, directed the Lower Court to return the passport to the petitioner by order dated 12.05.2017.

5.Thereafter, the Andhra Bank lodged a complaint with the 1st respondent on the similar facts as of Central Bank of India. Based on the complaint, a case was registered and the look out circular was issued against the petitioner. However, the petitioner was not aware of the look out circular. The petitioner was a regular traveller abroad for business purposes and while he was about to board a flight for Sri Lanka, he was stopped by the Immigration Authority based on the look out circular issued by the 1st respondent.

6.The petitioner, thereafter, filed a petition in W.P.No.24403 of 2017 seeking a copy of the look out circular. The official respondent informed in the Writ Petition that they have not initiated any proceedings in the form of look out circular against the petitioner. However, the 1st respondent herein informed in its counter that they had issued the look out circular against the petitioner and it is not mandatory to furnish a copy of the look out circular.

7.The petitioner submitted that he is a lawful citizen and he is not absconding and he has been appearing before the Lower Court as and when called for. The petitioner is the resident of India, having properties at Hyderabad. The petitioner wants to mobilize funds for settling the dispute with the Bank and he is a business traveller having a deep roots in the society and has to make frequent travel to abroad. Due to the look out circular, the petitioner is prevented from travelling abroad. Further, the petitioner is not a proclaimed offender warranting issuance of Court circular. Hence, the petitioner approached this Court to direct the 1st respondent to remove the entries made in the Airports reflecting the look out circular prohibiting smooth departure and arrival of the petitioner to enable him to have the departure and arrival like any other regular passenger without any obstruction.

8.The 2nd respondent filed a counter affidavit. The relevant portion of the counter is extracted hereunder:

"6. It is submitted that the averment made in paragraph 14 are baseless. Once the borrower company has not paid the due amount in time, the respondent banks are entitled to initiate appropriate proceedings as permissible under the law to recover the dues. The petitioner being the Managing Director of the Company is equally responsible for the administration of the borrower company and as such is answerable for the repayment of the due amount to the respondent bank as the director and as the guarantor. The petitioner admitted the borrowing, has not come forward to furnish adequate security through which the bank will be able to realize the due amount. Further, the petitioner has not disclosed the assets which he is owning and also the assets which are under his control, which can be liquidated and the due amount to the bank be repaid. Hence the averment that the petitioner is not involved in any heinous crime, nor a terrorist or an antisocial element, the petitioner is very much available for trial are irrelevant. The look out circular relates to the criminal activity which was indulged by the petitioner as the director of the company in misusing the funds. It is submitted that from the year 2013, the petitioner has not taken any initiative to settle the dues that was borrowed by the company and as such cannot plead that the petitioner's fundamental rights are infringed wherein the restriction to movement to foreign countries is imposed.

7.It is submitted that the look out circular issued by the 1st respondent is legal and valid and the petitioner can always show genuine reasons for his travel abroad and get appropriate permission from the authorities, furnishing his travel details and if necessary, can seek the indulgence of the court by furnishing necessary security and undertaking. As such the lookout circular issued against the petitioner is valid and the above writ petition is liable to be dismissed.

9.The learned Special Public Prosecutor (CBI Cases) submitted that earlier this petitioner violated the conditions imposed when the passport was returned to him to enable him to travel abroad. Further, it is submitted that the petitioner is arraigned as accused in C.C.No.3449 of 2018 which is pending trial before the learned Additional Chief Metropolitan Magistrate, Chennai and investigation in Crime No.4 of 2016 is in progress, charge sheet has to be filed and in another case in R.C.14/ 2018 BSFC, CBI, Bangalore, investigation is in progress. The petitioner had misappropriated and cheated huge sums of public money on various bank accounts, he has not disclosed the true facts to the Investigation Agency and correct particulars to the Banks about the transactions and various accounts he was holding.

10.Further, the learned Special Public Prosecutor (CBI Cases) would submit that there are three cases registered against the petitioner, one is Crime No.4 of 2016 on the complaint of the 2nd respondent, the 2nd case is Crime No.4 of 2017 on the complaint of the 3rd respondent and the 3rd case is Crime No.RC 4/F/2016 - CBI/BS & FC, Bangalore on the complaint of the 1st respondent. As regards Crime No.4 of 2016, the investigation has been completed and charge sheet has been filed in C.C.No.3449 of 2018 before the Chief Metropolitan Magistrate, Egmore, Chennai. As regards Crime No.4 of 2017 investigation is in progress. As regards Crime No.RC 4/F/2016 - CBI/BS & FC, Bangalore, the case is pending.

11.He would further submit that the Look out circular is to ensure that the person not to disappear and vanish. Though the petitioner has given an undertaking, he went to Indonesia and London on two occasions without any permission of the Trial Court and his whereabouts could not be monitored. If Look out circular is not in force, there are chances of petitioner fleeing away. Further Look out circular is suspended and permission granted for travel only to the country, where he had got permission and not to other countries. Further the petitioner involved in siphoning out huge sums of money, which runs to several crores. To the consortium of banks, eight accounts have been disclosed and it has come to the knowledge of the 1st respondent that around 24 accounts have not been disclosed to the consortium of the banks. The tracing of money to the account and to various places has to be ascertained and unearthed.

12.The learned counsel for the respondents 2 and 3 would submit that as on 18.05.2015 the petitioner and the other accused siphoned out huge sums of money, which is due to the banks. The 2nd & 3rd respondents Banks had initiated recovery proceedings under the SARFAESI Act in O.A.No.457 of 2014 before DRT-II, Chennai. The learned counsel further submitted that if Look out circular is lifted, the petitioner would disappear and further the SARFAESI proceedings and the recovery proceedings would be brought to stand still and possibility of recovery of the public money would become futile.

13.In view of the same, the apprehension of the 1st respondent is well founded. Hence the look out circular issued against the petitioner cannot be recalled. The only apprehension of the petitioner is that each time the petitioner wants to leave India or returns from abroad he has been unnecessarily detained in the Airport despite the permission from the Trial Court, wherein, the petitioner categorically discloses the date of departure, his arrival, place of stay, the purpose and reasons and the entire travel plan of the petitioner is made known to the 1st respondent. Despite the same, it is not informed / instructed to the Immigration Authorities about the Court Order. In view of the same, the petitioner is facing denial of his fundamental right to travel.

14.The learned Special Public Prosecutor submitted that the 1st respondent would inform the Court orders to the Immigration Authorities about the petitioner's travel plan and remove the restrictions imposed on the petitioner due to look out circular on the petitioner getting relief and permission to travel abroad from the appropriate Court and the order of the Courts would be followed.

15.However, the petitioner is at liberty to approach this Court once the charge sheet is filed against him in all the cases. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Inspector General of Police
and Head of Branch
The Central Bureau of Investigation
Bank Securities and Frauds Cell
Bangalore, Karnataka.

2.The Assistant General Manager
The Central Bank of India
Corporate Finance Branch
Addison Buildings, 803, Anna Salai
Chennai 600 002.

3.The Zonal Manager,
Andhra Bank,
Zonal Office, No.168, Linghi Chetty Street,
Chennai 600 001.

+1cc to M/s.N.Elumalai, Advocate Sr.87000

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srg 14/11/2019