

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Date of Reserving the Judgment	Date of Pronouncing the Judgment
27.04.2019	17.06.2019

Writ Appeal No.1524 of 2019 &
C.M.P.No.10366 of 2019

Abdul Kadir Najmudin Sathak ... Appellant/Petitioner

-vs-

1. Union of India,
Rep., by its Secretary,
Department of Revenue,
Minister of Finance,
New Delhi.
2. The Assistant Director,
Directorate of Enforcement,
4th Floor, Kaiser I Hind Building
Currimbhoy Road, Ballard Estate,
Mumbai - 400001
3. The Director of Enforcement,
Lok Nayak Bhavan,
Khan Market, New Delhi - 110 003. ... Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent to set aside the order dated 19.03.2019, passed this Court in W.P.No.8214 of 2018.

Prayer in W.P.No.8214 of 2018: 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.

For Appellant : Mr.P.R.Raman Sr. Counsel
for M/s.A.Uma Sankar

JUDGMENT

T.S.Sivagnanam, J.

This appeal by the Writ Petitioner is directed against the order in W.P.No.8214 of 2018, dated 19.03.2019.

2. The appellant filed the Writ Petition challenging the lookout circular issued by the second respondent, the Assistant Director, the Directorate of Enforcement, Mumbai and for a consequential direction upon the second respondent to return the appellant's Indian Passport bearing No.23278550. The Writ Petition was dismissed by the order dated 19.03.2019, which is impugned before us in this appeal.

3. Mr.P.R.Raman, learned Senior counsel assisted by Mr.A.Uma Sankar, submitted that the learned Writ Court ought to have considered the fact that the appellant had made himself available for enquiry on more than 17 occasions and all the interrogation done lasted for several hours and he had been cooperating with the investigation and unless there are good and sufficient reasons to apprehend that the accused is likely to leave the country, there may be a need to issue lookout circular and the same cannot be mechanically done. Further, it is submitted that the appellant was not an accused in any offence at the time when the lookout circular (LOC) was issued and even during the pendency of the Writ Petition. There is absolutely no authority of law for the respondent to deprive the appellant of his fundamental right to travel. Referring to various documents which were filed in the typed set of papers, the learned Senior counsel submitted that the appellant is a native of India, born and brought up in Tamil Nadu and he owns properties in Chennai and has several relations in and around Chennai and there is no intention on the part of the appellant to avoid any summons for investigation regardless of the fact that whether the appellant was located abroad or otherwise. Further, it is submitted that the Writ Court ought not to have referred to the provisions of the Unlawful Activities Prevention Act, 1963 cited in the FIR No.5, dated 18.11.2016, against Dr.Zakir Nair and two others in which the appellant is not named and what is sought to be investigated is apparently an offence under the Prevention of Money Laundering Act, 2002, (in short "PMLA"), in which also the appellant is not an accused. It is further submitted that insofar as Section 10 of the said Act is concerned, the same pertains only to a member of any unlawful association and does not apply to the appellant. Thus, it is the submission of the learned Senior counsel that the appellant

had clearly disclosed his intention not to evade due process of law in India, and hence, there is no cause for issuance of LOC and by doing so, it amounts to abuse of legal process. In support of his contention, the learned Senior counsel placed reliance on the decision of the Division Bench in the case of Karti P.Chidambaram vs. Bureau of Immigration reported in 2018 SCC Online Madras 2229.

4. We have elaborately heard the learned Senior counsel appearing for the appellant and carefully perused the materials placed on record.

5. The challenge to the LOC is primarily on the ground that the appellant has been cooperating with the on going investigation done by the respondents and there is absolutely no cause for issuance of LOC. The appellant would state that he has strong roots in India, particularly in Tamil Nadu, he owns immovable properties in Chennai and has several relatives in and around Chennai. At the very outset, we need to point out that the Courts have to exercise restraint while criminal investigation is being done by the competent authorities under various criminal and quasi-criminal statutes. Unless it is established that the action amounts to a clear abuse of process of law or a malafide exercise of power or an act palpably without jurisdiction, Constitutional courts seldom interfere in the course of investigation. It is not for the Court to tell the Investigating Officer as to what is the procedure to be adopted by him, unless and until it is shown that the investigation had derailed on account of gross misuse or abuse of power or having been done in utter violation of the procedure contemplated either under the Code of Criminal Procedure or under any other special statute.

6. Bearing this in mind, we propose to examine the correctness of the order passed by the learned Writ Court rejecting the challenge to the LOC issued against the appellant. The Writ Court, in our considered view, rightly noted that Section 41A of the Code of Criminal Procedure gives inherent power to the Investigating Authority to take necessary steps to see that the accused in the case do not leave the jurisdiction and cooperate with the investigation. The Writ Court pointed out that the recourse to LOC is taken by the Investigating Agency in cognizable offences under IPC or other penal laws, where the accused deliberately evaded arrest or did not appear before the authority and there is a likelihood of the accused moving out of the country to evade arrest on trial. The Ministry of Home Affairs in their official Memorandum, dated 27.10.2010, have issued guidelines for issuance of LOC. The second respondent, Assistant Director of Mumbai Zonal Unit of Directorate of Enforcement, had filed a counter affidavit in the

Writ Petition. The appellant had filed a reply to the counter affidavit, copies of which have been annexed in the typed set of papers. The Investigation which is being done by the second respondent revolves around an organisation, which has been declared as unlawful organisation by the proceedings of the Government of India and persons suspected to be associated with the organisation are being investigated with regard to the alleged commission of offences under PMLA and other statute.

7. The facts mentioned in the counter affidavit are that the President of the organisation which was declared as unlawful along with its associates have been indulging in unlawful activities and through his provocative utterances, promoting enmity, hatred between different religious groups in India. Further, it is stated that the inflammatory speeches and lectures have inspired and incited a number of youth in India to commit unlawful activities and terrorists acts. It is stated that during the course of investigation, it is revealed that the said organisation was registered as a trust and received funds in the form of donations both from local donors and international donors. The President of the said organisation had established certain companies to camouflage diversion of funds received from him to illegal activities of provocative speeches and one such company being a private limited company registered at Mumbai under the name and style of M/s.Harmony Media Pvt., Ltd., Mumbai. This company was initially incorporated by the President of the said association along with another person, who is stated to be his close confidante and associate and the sister of the President, three of them being the Directors. The said company was involved in the business of pre and post production activities of the President speeches, speech videos and the edited videos were forwarded to M/s.Global Broadcasting Corporation located in Dubai, who in turn broadcasted the said videos through Peace TV and other social media. The sister of the President of the unlawful organisation had in the course of her statement recorded under Section 50(2) (3) of the PMLA of 2002 admitted that she became a Director of M/s.Harmony Media at the behest of her brother and agreed to sign the documents and cheques on his instructions and thus, acted as a front to the company. The statement of the another Director was also recorded under the said provisions, who is stated to have admitted that M/s.Harmony Media is involved in producing TV talks which is exported to Global Broadcasting Corporation, Dubai for telecasting the same as per the rates fixed by the President of the unlawful association.

8. The appellant before us Mr.Abdul Kadir Najmuddin Sathak and Mr.S.M.Khalil, who were stationed at Dubai, are the Directors of Global Broadcasting Corporation. The agreements

between M/s.Harmony Media and Global Broadcasting have been signed by the appellant and other Directors. It is stated that since both the Directors of Global Broadcasting Corporation, namely, the appellant and S.M.Khalil were not available in India, the other Director Aamir Gazdar was placed under arrest and later enlarged on bail and prosecution complaint has been filed against him before the Special Court Mumbai and the same is pending trial. It is submitted that during the course of investigation, the Department received reliable information that the appellant had arrived from Dubai and was available in India and that there was a possibility of his fleeing from India, as a precautionary measure, a LOC was issued against him, so as to ensure his presence for carrying out further investigation in the matter.

9. The appellant was detained by the Immigration Authorities at Delhi Airport while he was trying to board a flight to Nepal. The appellant has been examined under Section 50(2)(3) of the PMLA Act and it is stated that he was summoned on numerous occasions and statement was also recorded. It is further stated by the respondent that the appellant had failed to produce the relevant documents, which he could have easily obtained as all his family members are located and settled abroad. Thus, the respondents are of the view that the appellant is deliberately and intentionally not providing the said documents and he is not co-operating with the investigation. It is further stated that the case is still under investigation and the details of investigation cannot be revealed and if done, it would jeopardise the investigation. The respondents seek for a direction upon the appellant to come out with the details/documents as required as promised during the course of recording the appellant's statement, as they are of utmost importance and crucial for investigation. Further, it is stated that the appellant is in regular contact with the main suspect and was operating the company Global Broadcasting Corporation on his behalf. Further, it is stated that the appellant is not parting with the information/documents, which are in exclusive possession and domain, even after giving considerable opportunity. Thus, the respondents would state that if the appellant is allowed to leave the country at this stage, he will never be available for the investigation and more particularly the main suspect, the President of the unlawful association who is also not available and is out of India, will be alerted about the details of investigation and as such, will hamper the investigation procedures.

10. The appellant in his reply affidavit to the counter affidavit filed in the Writ Petition referred to the number of

occasions, he has attended enquiry pursuant to summons issued by the respondent. The appellant has listed out 11 documents, which were produced by him during the course of investigation. The averments which have been made in paragraphs 7, 9, & 10 have not been denied in the reply affidavit. So far as the averment in paragraph 8 of the counter affidavit is concerned, it is stated in the reply affidavit that the allegation that the Global Broadcasting Corporation, broadcasted the videos through Peace TV and other social media are false. It is stated that Global Broadcasting was in the business of broadcasting through Satellite TV only and not social media.

11. We find the denial to be vague and not specific. In any event, we cannot comment upon the allegations or counter allegations at this juncture, as the case is under investigation. The learned Writ Court after considering the entire facts, held that the LOC was issued with statutory sanction and the respondents had jurisdiction to issue the same. We concur with the view taken by the learned Writ Court.

12. In the case of Karti P.Chidambaram (supra), the Court pointed out that 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. On facts, the Court found that there was no justification for issuance of the LOC on 16.06.2017 and the validity whereof expired, in any case after one year. In the said case, the LOC was set aside taking into consideration the fact situation, which was prevailing in the case of the appellant therein. The facts placed before the Writ Court by way of a counter affidavit much of which has not been controverted by the appellant in the reply affidavit, does not make out any convincing grounds to set aside the LOC. The allegation against the appellant is that he is not cooperating with the investigation, he is not parting with the information/documents, which are in exclusive possession and domain, even after giving considerable opportunity. Further, the respondent would state that the appellant if allowed to leave the country, at this stage, will never be available for the investigation and the main suspect is also not available in India and he will be alerted about the details of investigation and it would hamper the investigation process. Thus, we are of the considered view that the appellant has not made out any ground to quash the LOC.

13. For all the above reasons, the Writ Appeal fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

pbn

To

1. The Secretary,
Union of India,
Department of Revenue,
Minister of Finance,
New Delhi.
2. The Assistant Director,
Directorate of Enforcement,
4th Floor, Kaiser I Hind Building
Currimbhoy Road, Ballard Estate,
Mumbai - 400001
3. The Director of Enforcement,
Lok Nayak Bhavan,
Khan Market, New Delhi - 110 003.

+1 cc to Mr.C.Seethapathy, Advocate, S.R.No.48944

Writ Appeal No.1524 of 2019

VG-I(CO)
SSM(24/06/2019)

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