IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.16222 of 2017
and WMP No.17539 of 2017

Sharif Shiek Mohammed ... Petitioner

Vs

1. Union of India,
   Rep. By its Secretary,
   Ministry of External Affairs,
   New Delhi.

2. The Chief Immigration Officer,
   Shastri Bhavan,
   26, Haddows Road,
   Chennai-600 006.

3. Assistant Director (National Central
   Bureau (Interpol) New Delhi),
   Central Bureau of Investigation,
   Plot No.5B, Sixth Floor, A Wing,
   CGO Complex Lodhi Road,
   New Delhi-110 003.

4. The Inspector General of Police,
   CBCID, I/C DIG of Police/CBCID,
   SIDCO Electronic Complex,
   Thiru Vi Ka Industrial Estate,
   Guindy, Chennai-600 032. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the second respondent to forthwith remove any endorsement made by them on the instruction of the third respondent against the petitioner whereby preventing his travel out of India.

For Petitioner : Mr.MukunD
for M/s.Sarvabhauman Associates

For Respondents: Mr.Rabu Manohar for RR 1 and 2

Mr.G.Vrinda for R3

Mr.V.Shanmugasundar,
Special Government Pleader for R4

O R D E R

This writ petition is taken up for hearing through videoconferencing, on account of COVI-19 pandemic situation.

2. The petitioner is the partner of one M/s.Khushi Transport LLC in Dubai. The said Company had borrowed money from one M/s.Ali Hail Orix Finance PSC and executed finance lease contracts in their favour. The said lease contracts were for the purchase of machinery and for working capital. One of the terms of the contract so entered mandated the petitioner's company to provide un-dated cheques as security. In addition to the undated cheques, the petitioner also had given personal security in the form of machinery as well as landed property. As there was crisis in the oil industry especially in the Middle East Countries, the petitioner's company had to go into bad weathers resulting in financial crunch. Hence, the petitioner could not honour the commitments he had made. In the meanwhile, the petitioner's mother died in India and he had to come to India. The finance company tried to encash the undated cheques issued by the petitioner, which were dishonoured resulting in a criminal case being filed against the petitioner. As the petitioner was not available in the country, an ex-parte order was obtained against the petitioner sentencing him to three years imprisonment.

3. While so, the third respondent had instructed various immigration officers in the country not to allow the petitioner to exit the country, as per the instructions they had received from the Secretariat of the Interpol and in the interregnum, the second respondent also had issued a Red Corner Notice against the petitioner. All these procedures disabled the petitioner from travelling to Dubai to settle the claims and honour the decrees obtained against him. Hence, the writ petition is filed for a Mondamus directing the second respondent to remove the endorsement made by them against the petitioner, thereby permitting him to travel out of India.

4. The third respondent had filed its counter-affidavit stating that on the basis of the INTERPOL General Secretariat (IPSG) message of National Central Bureau, Abu Dhabi, a letter was sent to ILO, Karnataka, to discreetly search/locate the petitioner. However, it was informed that the petitioner had not come to the house since 2012 and he was travelling around Cochin, Kolkata, Hyderabad and Bengaluru for business purposes. In the meanwhile, NCB-Abu Dhabi had sent a message informing that the petitioner was wanted by them in a new cheque dishonour case and he was also sentenced to one year imprisonment. From the counter-affidavit filed by the third respondent, it is clear that the petitioner is not traced. It is further stated that the role of NCB, India INTERPOL is limited to assisting and giving publication of notices and diffusions by IPSG like technical scrutiny of the application of Red Corner Notices received from the Indian Law Enforcement Agencies (LEAs) to check its completeness. Therefore, in so far the third respondent is concerned, the writ petitioner itself cannot be maintained.

5. The fourth respondent had filed a counter-affidavit stating that the fourth respondent has in no way connected with the case and prayed for dismissal of the writ petition.

6. Learned counsel for the petitioner submitted that the petitioner had been negotiating with the companies to honour his commitment and make the payments and settle the dues. In fact, there was yet another suit filed against the petitioner for recovery of money and the only grievance of the petitioner is that though he has been honest in his attempts to settle the disputes and claims, he is unable to do so without his personal presence in Dubai.

7. Heard the learned counsel on either side and perused the materials available on record.

8. Admittedly, as the petitioner had suffered decrees and sentenced by the Court outside the country, he had travelled to India defeating the rights given under the decrees. The Red Corner Notice issued is only a matter of procedure and this Court cannot interfere in the same. If the petitioner has bona fides intention in settling the amount, it is always open to him to appear before the Officers concerned and come out of the Look Out Notice in the manner known to law. Even if it is stated that the petitioner is willing to settle the claim, it is always open to him to do it Online, if his intention is bona fide. Even according to the learned counsel for the petitioner, he is unable to reach the petitioner for further instructions.

9. As rightly pointed out by the third respondent, the writ petition of the above nature is not maintainable and the same is liable to be dismissed. Accordingly this writ petition is dismissed as devoid of merits. There will be no orders as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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   Government of India, New Delhi.

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srg 07/10/2020