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2024 SCC OnLine Del 837

In the High Court of Delhi at New Delhi

(BEFORE SUBRAMONIUM PRASAD, J.)

In the Matter of:

Shalini Khanna … Petitioner;

Versus

Union of India and Another … Respondents.

W.P. (C) 10951/2022

Decided on February 6, 2024

Advocates who appeared in this case:

Mr. Hrishikesh Baruah, Mr. Kumar Kshitij and Mr. Anurag Mishra, Advocates.

Mr. Ajay Digpaul, CGSC with Mr. Kamal Digpaul and Ms. Ishita Pathak, Advocates for UoI.

Mr. Ashish Verma and Mr. Kartikey Bhargava, Advocates for R-2.

The Judgment of the Court was delivered by

SUBRAMONIUM PRASAD, J.:— The Petitioner has approached this Court challenging a Lookout Circular issued by Respondent No. 1/Bureau of Immigration at the instance of Respondent No. 2/Bank of Baroda.

2. The facts of the case reveal that in June, 2013, Metaphor Exports Private Limited, a company engaged in the business of garment manufacturing through its Directors Pran Nath Khanna, Mr. Sameer Khanna (the husband of the Petitioner herein) and Ms. Anju Khanna, had approached the erstwhile Bank of Baroda for availing cash credit facilities of Rs. 9 crore.

3. It is stated that the Petitioner executed a Deed of Guarantee for repaying the amount disbursed by Respondent No. 2/Bank for the cash credit facilities to be extended by the Bank. The Deed of Guarantee, specifically states that the Guarantee shall not exceed Rs. 2.63 crores which is the fair from the value of the property at DLF, Park Place, Gurgaon. The Deed of Guarantee observes that the Petitioner has mortgaged the said property to the company as security for the cash credit for Rs. 9 crore.

4. It is stated by the Bank that cash credit facilities to the tune of Rs. 7 crore based on the stock and book debts of the company were released and out of the said Rs. 7 crore, a sum of Rs. 5.95 crore was withdrawn by the Directors of the company.

5. It is stated that the amount has been misappropriated. The

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account of the company was classified as a Non-Performing Asset (NPA) on 30.06.2014 and on that date, a balance of Rs. 7.26 crore was due and payable by the company.

6. It is stated that Respondent No. 2/Bank initiated proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act (*in short* 'RDDBFI Act') before the Debts Recovery Tribunal (DRT) by filing O.A. No. 295/2014 titled as *Bank of Baroda* v. *Metaphor Exports*, and *vide* Judgment dated 12.02.2017, the learned DRT held that Respondent No. 2/Bank is entitled to recover a sum of Rs. 2,95,74,316/- along with *pendente lite* interest and future interest @ 12% per annum simple interest from the Petitioner, in terms of the guarantee from the Petitioner.

7. It is also stated that a complaint was registered by the Central Bureau of Investigation (CBI) being FIR No. RC-2192016E0014 against the Petitioner herein and the Directors of the company under Section 420 and 120B IPC read with Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act.

8. It is stated that in terms of the Office Memorandum issued by the Ministry of Home Affairs, a request was made by the Bank of Baroda for opening a Look Out Circular (LOC) against the Petitioner and the Bureau of Immigration being the executor opened a Lookout Circular against the Petitioner.

9. Material on record discloses that a chargesheet has been filed by the CBI in the abovementioned FIR No. RC-2192016E0014 and the Petitioner has not been arrayed as an accused. She has been kept in column No. 12.

10. Learned Counsel for the Petitioner contends that the Petitioner is not an accused in any offence. He also states that the property being Flat No. PPC-124/12th Floor, Tower No. C, DLF Park Heights, DLF Park Place, DLF Phase-V, Gurugram, Haryana, has already been sold by the Bank. He states that an LOC cannot be opened against the Petitioner only for recovery of money.

11. Learned Counsel for the Petitioner states that the right of a person to free movement including the right to go abroad has been construed as a Fundamental Right enshrined under Article 21 of the Constitution of India. He states that in view of the fact that civil remedies have already been availed by the Banks against the Petitioner, the LOC issued against the Petitioner deserves to be quashed. He states that the case of the Petitioner cannot be covered by any of the Office Memorandums issued by the Ministry of Home Affairs under which an LOC can be issued.

12. *Per contra*, learned Counsel for the Respondent No. 2/Bank, contends that even if there is no cognizable offence under the IPC or

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any other penal laws, in exceptional circumstances LOC can be issued whereby departure of a person from India can be declined if it appears to the authorities that the departure of such person is detrimental to the economic interests of the country. He states that substantial amounts of money have been siphoned off by the directors of the company, i.e., Metaphor Exports Private Limited. He states that the Petitioner has not been given a clean chit and has been kept at Serial No. 12 of the chargesheet and, therefore, the LOC should not be quashed.

13. Heard learned Counsel for the parties and perused the material on record.

14. Lookout Circular can be issued against a person at the instance of any of the agencies mentioned in the Office Memorandums issued by the Ministry of Home Affairs from time to time.

15. Relevant portion of the Office Memorandum bearing No. 25016/10/2017-Imm (Pt.) dated 22.02.2021 which is the last of the guidelines which have been issued for opening of LOCs in respect of the Indian Citizens and Foreigners reads as under:

> *"**6**. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in supersession of all the existing guidelines issued vide this Ministry's letters/O.M. referred to in para 1 above, it has been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:—*
>
> > *(F) 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 viz. name & parentage, passport number or Date of Birth 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. Details of Government identity cards like PAN Card, Driving License, Aadhaar Card, Voter Card etc. may also be included in the request for opening LOC.*
> >
> > *(G) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.*

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(H) 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.

(I) In cases where there is no cognizable offence under IPC and 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.

(J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.

(K) On many occasions, persons against whom LOCs are issued, obtain Orders regarding LOC deletion/quashing/suspension from Courts and approach ICPs for LOC deletion and seek their departure. Since ICPs have no means of verifying genuineness of the Court Order, in all such cases, orders for deletion/quashing/suspension etc. of LOC, must be communicated to the BoI through the same Originator who requested for opening of LOC. Hon'ble Courts may be requested by the Law Enforcement Agency concerned to endorse-/convey orders regarding LOC suspension/deletion/quashing etc. to the same law enforcement agency through which LOC was opened.

(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with anv

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country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.

(emphasis supplied)

16. In terms of the said OM, an LOC can be issued at the request of the Chairman/Managing Directors/Chief Executive of all Public Sector Banks. A request is given by a person, who is authorized under the said OM, to the Bureau of Immigration and then the Bureau of Immigration at the request of the said Officer opens the Lookout Circular.

17. The Office Memorandum indicates that the legal liability of the action taken by the immigration authorities in pursuance of the Lookout Circular rests with the Originating Agency, in this case, the Bank of Baroda.

18. Clause L of the Office Memorandum of 2021, as quoted above, states that in exceptional cases, an LOC can be issued at the instance of the Bank if the authorities are of the view that letting the person to depart from the country will be detrimental to the economic interests of India.

19. The scope of the term 'detrimental to the economic interest of India' has been dealt with by the various High Courts in various judgments. The Apex Court in *Prateek Chitkara* v. *Union of India*, 2023 SCC OnLine Del 6104 has observed as under:

*"**47.** The question before this court is, whether clause L of the Office Memorandum of 2021, would be legally valid, especially in respect of the phrase "detrimental to the economic interests of India" and in respect of other clauses which permit indefinite continuation of look-out circulars, non-communication of reasons either prior or post issuance of the look-out circular and extension of look-out circular to such individuals who in the opinion of the authorities ought not to be permitted to travel on the ground of it being detrimental to the economic interests of India.*

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***57.** In* Mr. Chaitya Shah *v.* Union of India *[2021 : BHC-AS : 16392-DB.], a learned Division Bench of the Bombay High Court was dealing with a case where a substantial amount had been invested in a company called M/s. Gitanjali Gems of Rs. 50 crores and various banking operations and transfer of money was found. The court observed that the words "economic interest of India" and "larger business interest" are not empty words. The relevant paragraph of the said judgment is extracted below:*

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"32. In the present case the ***Serious Fraud Investigation Office is investigating into the affairs of the aforementioned companies and its investigation overrides the investigations by other investigating agencies. Therefore recourse to look-out circular was not unfounded as the petitioner has definite connection with the investigation as discussed hereinabove****. From the facts of the case it is clear that clause (L) of these guidelines clearly covers the petitioner's case as it is detrimental to the 'economic interests of India' and that his departure ought not to be permitted in the larger public interest. The words 'economic interests of India' and 'larger public interest' are not empty words in the context of the present case because as mentioned earlier the petitioner is directly involved and was concerned with considerable shareholding of M/s. Gitanjali Gems Limited.* ***It involves huge amount of almost Rs. 50 crores which requires serious explanation from the petitioner in the background of the allegations that the money belonged to Mr. Mehul Choksi, who has left India and has not returned back****. This transaction is an important part of the entire fraud involving huge amount.* ***Sheer magnitude of the offence and its spread through various banking operations and transfer of money through different modes and different countries shows that it has definitely affected the economic interests of India and the larger public interest is definitely involved and affected. Therefore, we do not find that issuance of lookout circular against the petitioner was unnecessary****."*

58. *In* Vishambhar Saran *v.* Bureau of Immigration *(W.P. No. 10241(W) of 2020, decided on December 24, 2021) [2021 SCC OnLine Cal 3074.], the Calcutta High Court held that vague allegations of a person's travel being detrimental to the economic interest of the country or the quantum of the alleged default (Rs. 351 crores in this case), is not sufficient to issue a look-out circular thereby restricting the personal liberty of a person to travel. In the said petition, no civil or criminal proceedings were initiated against the petitioner and thus the petitioner was allowed to travel. This view was echoed in* Vishambhar Saran *v.* Bureau of Immigration *(W.P.A. No. 6670 of 2022, decided on January 31, 2023).*

59. *In* Vikas Chaudhary *v.* Union of India *(W.P. (C) No. 5374 of 2021, decided on January 12, 2022) [(2022) 442 ITR 119 (Delhi)], the petitioner was a businessman engaged in the export of garments to a number of foreign countries. A look-out circular was issued against the petitioner on the ground of undisclosed foreign assets and interests in foreign-entities liable for penalty and prosecution*

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under the Income-tax Act, 1961, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015, as also the proceedings under the Prevention of Money Laundering Act, 2002, having been commenced against the petitioner. The petitioner did not hold any foreign assets and any undisclosed assets.

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61. *The court noted that the phrase "detrimental to the economic interests of India" was introduced for the first time in the Office Memorandum (hereinafter "OM") dated December 5, 2017. The said phrase did not exist in the previous Office Memorandum dated October 27, 2010. However, it continues to exist in all the subsequent Office Memoranda. In this context, the court observed as under (page 137 of 442 ITR):*

> *"36. However, the matter does not end here and the crucial issue which needs to be now determined is as to whether the clause 'detrimental to the economic interests of India' introduced vide the amendment in 2017, with a specific rider that the same would be used only in exceptional circumstances, could have, in the facts of the present case, been resorted to, for issuing the impugned look-out circular, as also whether the impugned look-out circular could be continued for the last almost three years without any proceedings under the Penal Code, 1860 or any other penal law being initiated against the petitioner. It has to be kept in mind, that the issuance of a look-out circular necessarily curtails the rights of an individual to travel abroad and therefore,* ***I am of the view, that for invocation of this clause, which, in any event, is meant to be used only in exceptional circumstances, a mandatory precondition would be a formation of a reasonable belief by the originating authority that the departure of an individual would be 'detrimental to the economic interests of India' to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad...***
>
> *xxx*
>
> *39. Merely because the Office Memorandum dated December 5, 2017 permits the issuance of a look-out circular, in exceptional circumstances, even when the individual is not involved in any cognizable offence under the Penal Code, 1860 or any other penal law, it has to be remembered that this power is meant to be used in exceptional circumstances and not as a matter of routine, it must therefore, be interpreted in a manner that indicates an offence of such a magnitude so as to significantly affect the economic interests of the country. Mere suspicion of a person opening bank accounts in other countries and of investing in a foreign company cannot, in my*

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view, be accepted as the basis for holding that the petitioner being allowed to travel abroad would be 'detrimental to the economic interest of India', when it is undisputed that this suspicion has remained a suspicion for such a long period of almost three years."

62. *Thus, the conclusion of the court was that exceptional circumstances could exist even if a person was not involved in any cognizable offence under the Penal Code, 1860 or under any other penal law. In the said petition, the look-out circular was quashed by the court.*

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82. *The term "detrimental to economic interest" used in the Office Memorandum is not defined. Some cases may require the issuance of a look-out circular, if it is found that the conduct of the individuals concerned affects public interest as a whole or has an adverse impact on the economy. Squandering of public money, siphoning off amounts taken as loans from banks, defrauding depositors, indulging in hawala transactions may have a greater impact as a whole which may justify the issuance of look-out circulars. However, issuance of look-out circulars cannot be resorted to in each and every case of bank loan defaults or credit facilities availed of for business, etc. Citizens ought not to be harassed and deprived of their liberty to travel, merely due to their participation in a business, whether in a professional or a non-executive capacity. The circumstances have to reveal a higher gravity and a larger impact on the country."*

(emphasis supplied)

20. Though Paragraph (L) of the aforesaid Office Memorandum permits the Banks to issue a request for opening a lookout circular, in exceptional cases, even if they are not covered by the guidelines, even in such of those cases, the same can be issued only if departure of such person is detrimental to the sovereignty or security of the country, or departure of the person is threat to the bilateral relations to any country, or to the strategic or economic interest of the country, or if such person is allowed to leave, he may potentially indulge in acts of terrorism or offences against State or that such departure ought not be permitted in larger public interest at any given point of time.

21. It is well settled that merely because the Office Memorandum permits the issuance of a lookout circular in exceptional circumstances, even when an individual is not involved in any offence under the IPC or any other penal law, the said power should be used in exceptional circumstances and not as a matter of routine.

22. The term 'detrimental to the economic interests' must be of such a magnitude that it can significantly affect the economic interest of the country. In the present case, the total loan amount disbursed is about

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Rs. 7 crores and even if one adds the interest to it, it cannot be said that the amount is so large that it will affect the economic interests of the country.

23. The issuance of lookout circular cannot be resorted to in every case of bank loan defaults or credit facilities availed for business and the Fundamental Right of a citizen of the country to travel abroad cannot be curtailed only because of failure to pay a bank loan more so when the person against whom the lookout circular is opened has not been even arrayed as an accused in any offence for misappropriation or siphoning off the loan amounts.

24. Paragraph 16.52 of the chargesheet which has been filed in the present case discusses the role of the Petitioner herein. Paragraph 16.52 of the chargesheet reads as under:—

> *"**16.52** During investigation role of Smt. Shalini Khanna w/o Sanjay Khanna (A-4), Guarantor of the credit facility given to M/s. Metaphor Export Pvt. Ltd. (A-6) have also been looked into. It is revealed that she had not prior knowledge of fraudulent acts or omission of accused person at the time of her giving Collateral Security and Personal Guarantee to the Bank. Hence, her name has been kept in the column no. 12 of Charge sheet."*

25. The aforesaid paragraph indicates that after investigation, the CBI was of the opinion that the Petitioner herein had no prior knowledge of the fraudulent acts or omission of the accused at the time of her giving collateral security and personal guarantee.

26. In view of the foregoing, this Court is inclined to quash the Lookout Circular (LOC) issued against the Petitioner. However, in case during the course of the criminal proceedings, the Petitioner is arrayed as an accused, it is always open for Respondent No. 2 to make a request to the Bureau of Immigration to open a fresh LOC against the Petitioner.

27. With these observations, the petition is allowed. Pending application(s), if any, stand disposed of.

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