

W.P.(C) 10180/2009

VIKRAM SHARMA & ORS Petitioners
Through Mr. Abhay Singh with
Ms. Yasmin Zafar, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Atul Nanda with
Ms. Sugandha, Advocate for UOI.
Ms. Jyoti Singh, Advocate for R-2, 5 to 7.
Ms. Aparna Bhat with
Mr. P. Ramesh Kumar, Advocate
for R-3 & 8.
Ms. Veena Goswami, Advocate for R-4.
Ms. Masha Brar, Advocate for
Mr. Sunil Mittal, Advocate for R- 9 & 10.

CORAM: JUSTICE S. MURALIDHAR

- | | |
|---|-----|
| 1. Whether Reporters of local papers may be allowed to see the order? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the order should be reported in Digest? | Yes |

ORDER
26.07.2010

1. The background to the petition is that Respondent No. 10 who is the wife of Petitioner No.1, and daughter-in-law of Petitioners 2 and 3, filed a complaint on 15th March 2008 with the Crime Against Women (CAW) Cell, Nanakpura, Delhi alleging commission of acts of cruelty by them attracting the provision of S.498-A IPC and the Dowry Prohibition Act. On 28th March 2008 she also filed a complaint with the National Commission of Women (NCW), Respondent No.3 herein. The Petitioners state that on receiving a telephonic summons from the Project Coordinator, Respondent No. 8, on 31st March 2008 they went to the office of the NCW on 1st

April 2008 where, they allege, they were spoken to rudely by Respondent No.8. On 8th April 2008, as Petitioner No.1 was on his way to Dubai, he was “off-loaded’ at the IGI Airport, and detained by the officials of the Foreigners Regional Registration Office (‘FRRO’). The Petitioners allege that this was done at the instance of Respondent No.8 who wrote a letter to the DCP, FRRO who then issued a Look-out Circular (‘LOC’) on the basis of which Petitioner No.1 was ‘off -loaded’ and detained at the IGI Airport on 8th April 2008. It is alleged that Petitioner No.1 was “made to stand in solitary confinement in a toilet, causing untold harassment, humiliation and infringement of his fundamental rights guaranteed under the Constitution of India. His passport was stamped with the remarks ‘Off loaded-deported due to criminal complaint’ albeit there was no criminal case pending against him nor any FIR was registered. He was released only after intervention by his solicitor.”

2. At the time that an LOC was issued against the Petitioner No. 1 at the instance of the NCW, no FIR had been registered. That was done on 11th August 2008. The Delhi Police then requested on 15th April 2008 to issue an LOC. Later, on the directions issued on 16th April 2008 by the Court of the Additional Sessions Judge, who granted the Petitioners anticipatory bail conditional upon their not leaving the country, the LOC was withdrawn on 22nd April 2008.

3. In the circumstances, the present petition was filed on 10th July 2009 praying for the following reliefs:

“(a) Issue a writ in the nature of Mandamus or any other appropriate writ, direction or order thereby directing the Respondent No. 1 to expunge the endorsement “off loaded (criminal complaint)” on the Passport of the Petitioner No. 1;

(b) To direct an enquiry or investigation into the illegal, wrongful and malafide conduct of the officials of the CAW, NCW, FRRO and DCW and Respondents No. 8 to 10 and to ascertain and fix the responsibility and liability and punish the wrongdoers found guilty;

(c) To grant compensation to the Petitioners in a sum of Rs.50 lakhs, or as deemed fit in the facts and circumstances of the case to be paid by the Respondents jointly and severally;

(d) Award costs to the Petitioners; and

(e) Any other/further relief this Hon’ble Court may deem fit and proper in the facts and circumstances of the case, may also be passed in favour of the Petitioners, in the interest of justice.”

4. On 5th May 2010 this Court passed the following order:

“1. The National Commission for Women (NCW) wrote a letter the Foreigners Registration Regional Office (FRRO) on 31st March 2008 (which letter was received by the FRRO on 1st April 2008) asking for the opening of a Look Out Circular (LOC) against the Petitioner No.1. The reason for this as explained by the NCW is that the complainant expressed a great sense of urgency and the apprehension that Petitioner No.1 might flee the country thus frustrating the mediation process before the NCW. According to the NCW, a telephonic call was made by its officer to the Petitioner No.3 who expressed her inability to appear before the NCW. This then triggered off the

aforementioned letter from the NCW to the FRRO. It is not in dispute that acting on the above letter of the NCW, the FRRO promptly issued an LOC and Petitioner No.1 who had boarded a flight to Dubai was offloaded with a direction to report to the NCW.

2. The legal basis for the above action is traced to the powers vested for the NCW under Section 10 (4) of the National Commission for Women Act 1990. That provision reads as under:

“10 (4). The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (f) of sub-section (1), have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents; and
- (f) any other matter which may be prescribed.”

3. The question that arises is whether while exercising the power of a civil court the NCW could ask for an LOC to be issued against a person who is to appear before it.

4. In its counter affidavit the FRRO has placed reliance upon a circular dated 5th September 1979 issued by the

Ministry of Home Affairs (MHA) which states that such LOCs are issued to check the arrival/departure of foreigners and Indians “whose arrival/departure has been banned by the concerned authorities”. The “concerned authorities” are stated to include “the Ministry of Home Affairs, the Customs and Income Tax Department, Directorate of Revenue Intelligence, Central Bureau of Investigation, Interol, Regional Passport Officers, Police Authorities in various States etc.”

5. On instructions from SI Sanjeev attached to the FRRO, counsel for the FRRO submits that there is no further amendment to the aforementioned circular dated 5th September 1979. It is, therefore, not clear on what basis the FRRO could have simply acted on a letter from the NCW and issued the LOC in the instant case. It prima facie appears that tribunals and commissions which exercise only powers of the civil court were not intended to be included in the list of “concerned authorities” which the above circular dated 5th September 1979 talks of. However, without further clarifications from the MHA on this aspect it will not be possible for this Court to take a final view on the legality of the action of the NCW in the instant case.

6. Therefore, this Court directs the impleadment of Union of India, in the Ministry of Home Affairs through its Secretary as a party Respondent. Amended memo of parties be filed within one week.

7. Notice will go to the newly added Respondent. The MHA will file an affidavit indicating whether the system of having LOCs issued continues to be governed by the aforementioned circular dated 5th September 1979; whether there have been subsequent

amendments to the said circular; whether there are any detailed instructions/guidelines on the procedure to be followed for issuing an LOC and whether there are instructions/guidelines for the guidance of the various 'concerned authorities' about the circumstances in which and procedure they should follow while making requests for issuance of LOCs. An affidavit be filed by a senior level officer of the MHA within a period of four weeks. Preferably the deponent of the said affidavit should be present in the Court on the next date of hearing for clarifications.

8. An affidavit will also be filed by the Commissioner of Police, Headquarters, New Delhi (Respondent No.5) explaining the procedure it adopts where it makes requests, as it has done in the instant case, for issuance of LOC. It may be mentioned here apart from the MHA, the Delhi Police also made a separate request for issuance of the LOCs against the Petitioners which was thereafter withdrawn within a few days. The affidavit to be filed by the Delhi Police will deal with the contention of the petitioners that for no apparent reason their case was transferred from the Crime Against Women Cell (CAW Cell) to the Anti Extortion Cell.

9. List on 20th July 2010. A copy of this order be sent to the Secretary, Ministry of Home Affairs and the Commissioner of Police within five days.

10. A copy of this order be given dasti to the learned counsel for the parties.”

5. Pursuant to the above order, two affidavits were filed, one by the

Delhi Police dated 13th July 2010 and the other by the Ministry of

Home Affairs ('MHA') dated 16th July 2010.

6. In the affidavit filed by the MHA it is stated that there is no legal definition of an LOC. It is then stated:

“yet, it has a definite statutory legal backing in the form of already enshrined enabling provisions in the Cr.P.C. such as Section-37 read with Section 41(1), Section 441 read with Explanation to Section-446. A comprehensive legal mandate has been provided in the procedural law of the country to cover the stage of both investigation as well as trial respectively in the realm of criminal jurisprudence. Practically, LOC is interpreted as a communication received from an authorised Govt. agency with reference to a person who is wanted by that agency for fulfillment of a legal requirement, to secure arrest of person evading arrest, to nab proclaimed offender, to facilitate court proceeding by securing presence of under trials who are on bail. LOC is opened at the instance of a competent authority authorized to do so only after examining the fact that the person concerned is either a wanted or a suspect.”

7. Reference is then made to the background in which specific amendments were made to the Passports Act 1967 on 23rd October 2001 introducing Sections 10A and 10B. Section 10A gives power to a ‘designated officer’ to suspend a passport or order a passport to be invalid for four weeks. It may be extended till proceedings under Section 10 are concluded. Section 10B states that “every intimation given by the Central Government or the designated officer, before the commencement of the Passports (Amendment) Act 2002 to any

immigration authority at an airport or any other point of embarkation or immigration, restricting or in any manner prohibiting the departure from India of any holder of the passport or travel document under sub-section (3) of Section 10, shall be deemed to be an order under sub-section (1) of Section 10A and such order shall continue to be in force for a period of three months from the date of commencement of the Passports (Amendment) Act, 2002, or the date of giving such intimation, whichever is later.”

8. As regards the procedure for opening an LOC, reference is made to the MHA circulated dated 5th September 1979. It is stated that:

“Courts also open LOCs on various legal matters. LOCs are based on the originator’s request who sent the communication to various immigrations check posts on the basis of substantive/procedural laws viz IPC, Cr.P.C., Custom Act, Income Tax Act, NDPS Act, etc. All these communications are related to accused/suspected persons wanted in some cases. Besides, different courts also issue these communications in the form of LOCs including LOCs against those person who evade their presence in the Court of law during the course of judicial trial.”

9. It is further clear from the reply that in terms of a subsequent O.M. dated 27th December 2000 there is a specific proforma in which a request must be made for opening of an LOC and this should be issued “with the approval of an officer not below the rank of Deputy Secretary to the Government of India/Joint Secretary in the State Government/Concerned Superintendent of Police at

district level.” A copy of the Office Memorandum dated 27th December 2000 enclosing proforma for request for opening an LOC has also been enclosed.

10. Since the above affidavit of the MHA did not categorically state whether statutory bodies like NCW can make a request for opening an LOC, the MHA was asked at the hearing on 20th July 2010 to clarify its stand. Today, learned counsel for the Respondents informs the Court that as of today there is no further amendment to the existing instructions. The legal position is that statutory bodies like NCW cannot make a request for the issuance of an LOC. Apart from the Central Government and the State Government, there is no other authority on whose request an LOC can be issued.

11. The other affidavit filed by Mr. Mangesh Kashyap, Deputy Commissioner of Police, Headquarters, Delhi dated 13th July 2010 refers to the factual details in the present case. It appears that it was only after an FIR was registered on 11th April 2008 that the DCP sent a formal request in the prescribed format on 15th April 2008. Therefore, on 8th April 2008 when the Petitioner No. 1 was detained at the airport, there was no request by the Delhi Police for issuance of an LOC. Clearly it is only on the basis of the LOC request made by the NCW, which was made without any authority of law, that the Petitioner No. 1 was off-loaded and detained.

12. Although this Court had in its order dated 5th May 2010

required the Delhi Police to deal with the contentions of the Petitioners that “for no apparent reason their case was transferred from the Crime Against Women Cell (CAW Cell) to the Anti-Extortion Cell”, the response on this aspect is not satisfactory. The affidavit only states that since the complainant expressed dissatisfaction over the conduct of the investigation by the CAW Cell, Nanakpura and non-recovery of stridhan by Investigation Officer, the case was transferred to Anti-Extortion Cell of the Crime Branch for fair and impartial investigation in the case by the orders of the Commissioner of Police, Delhi. This Court fails to understand why the case had to be transferred to the “Anti-Extortion Cell”. Be that as it may, the Commissioner of Police will personally examine the case once again and take a fresh decision within two weeks from today. The Petitioners and the complainant will be informed of such decision within a week thereafter.

13. Ms. Bhat, learned counsel appearing for the NCW submitted that it was the NCW’s stand that it has no power to make a request for the issuance of an LOC under the existing Circulars of the MHA. According to her, NCW has acted bonafide and made a written request to the FRRO and since the FRRO was authorized to issue the LOC, the NCW was acting within its powers. She added that on receiving a complaint from a woman in distress, the NCW attempts, in the first place, to bring about an atmosphere which is not adversarial. It seeks to facilitate mediation between the parties. According to her, when upon making a telephone call to the

Petitioners, the co-ordinator of the NCW was informed that they will not be willing to come to NCW's office, a letter was sent to the FRRO by the co-ordinator for the issuance of an LOC.

14. In the affidavit of FRRO, which has been referred to in the earlier order of this Court, it is stated that the LOC came to be opened only on the request of the NCW. Clearly, neither the NCW nor the FRRO was aware of the correct legal position as explained in the affidavit of the MHA. A request for the issuance of an LOC could not have emanated from the NCW. It had to come from either the Central or the State Government and that too only in the prescribed form and then again only by the officers of a certain rank. In this context, while criminal courts dealing with cases of criminal law enforcement can issue directions, which may result in the issuance of an LOC, there is no such power vested either under the Cr. P.C. or the Passports Act or under the MHA's circular, in statutory bodies like the NCW. Being granted the powers of a civil court for a limited purpose does not vest the NCW with the powers of a criminal court and it has no authority as of today to make a request for the issuance of an LOC.

15. This Court is, therefore, of the view that action of the NCW in writing to the DCP, FRRO for the issuance of an LOC against the Petitioner No. 1 was without the authority of law. The consequent action of the FRRO in issuing such LOC which resulted in the Petitioner No.1 being detained at the IGI airport on 8th April 2008

was also, therefore, illegal.

16. The question now is only for consequential relief that should be granted. The power to suspend, even temporarily, a passport of a citizen, the power to issue an LOC, the power to ‘off-load’ a passenger and prevent him or her from travelling are all extraordinary powers, vested in the criminal law enforcement agencies by the statutory law. These are powers that are required under the law, to be exercised with caution and only by the authorities who are empowered by law to do so and then again only for valid reasons. Recently, in *Suresh Nanda v. Union of India 2010 IV AD (Del) 53*, this Court, after referring to the judgment of the Supreme Court in *Maneka Gandhi v. Union of India (1978) 1 SCC 248*, observed:

“35. ...There has to be application of mind by the authority to the relevant factors that would enable it to come to the conclusion that the impounding of the passport is in the interests of the general public. And then again, in the context of the criminal case which is still under investigation, this cannot be an opinion formed at one point in time. The public interest element will vary depending on the stage of the investigation. It cannot be said that as long as the investigation is not complete, it is not in public interest to release a passport. That would be giving too wide a power to the authority.”

17. In *Bhim Singh v. State of J&K (1985) 4 SCC 677*, a member of the Jammu & Kashmir Legislative Assembly was detained by the Police while on his way to attend a session of the assembly. By the

time the petition filed by him challenging his detention was heard, he had already been released. Nevertheless, the Supreme Court examined the case and concluded that his detention was unlawful. It then proceeded to award him compensation after observing:

“Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this court in *Rudul Sah v. State of Bihar (1983) 3 SCR 508* and *Sebastian M. Hongray v. Union of India AIR 1984 SC 1026*. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case.”

18. Therefore, as regards the illegal detention suffered by the Petitioner No. 1 on 8th April 2008 at the instance of both the NCW as well as the FRRO, this Court directs that the FRRO as well as the NCW will each pay the Petitioner No.1 a sum of Rs. 20,000/- by way of compensation within a period of four weeks from today. The Respondent No. 1 will, if not already done, within two weeks, make the necessary endorsement on the passport of Petitioner No. 1 expunging the earlier endorsement “off-loaded (criminal complaint)”. In the circumstances, this Court does not consider it necessary to examine the other prayer of the Petitioners that a further detailed investigation should be undertaken to fix responsibility on those who may have been responsible for the issuance of the LOC.

19. Mr. Nanda, learned counsel appearing for Respondent No. 1 submitted that in order to ensure that such incidents do not recur, this Court should direct that further instructions/circulars should be issued clarifying the correct legal position. This Court finds that there are a large number of statutory commissions at the level of the Centre and the States which perform judicial functions and are vested with, for the purpose of conducting inquiries upon receiving complaints, the powers of a civil court. These include the National Human Rights Commission (‘NHRC’), the NCW, the National Commission for Protection of Children’s Rights. These statutory bodies, however, have not been vested with the powers of a criminal court and do not have powers to enforce criminal law. It is

for the Government of India to take a policy decision on whether it wants to vest such statutory tribunal/commissions with criminal law enforcement powers. Since as of today, they have no such power, it is imperative that the MHA should issue further clarificatory circulars or office memoranda clearly stating that the request for issuance of LOCs cannot 'emanate' from statutory bodies like the NCW. If at all, such bodies should bring the necessary facts to the notice of law enforcement agencies like the police, which will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. This clarification will be issued by the MHA, in consultation with the other concerned agencies, including representatives of the statutory bodies referred to, within a period of 12 weeks from today.

20. With the above directions, the writ petition is disposed of.

21. Order dasti under the signatures of Court Master. A certified copy be delivered to the Secretary, MHA, the Commissioner of Police and the Chairperson, NCW forthwith.

S. MURALIDHAR, J.

JULY 26, 2010

rk