

(2013) 10 MAD CK 0009

In the Madras High Court

Case No : Criminal O.P. No. 27741 of 2013

E.V. Perumal Samy Reddy, E.V.R. Santhosh Reddy and
Rajeshwari

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2013) 2 LW(Cri) 628 : (2014) 1 MLJ(Cri) 125

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : R.C. Paul Kanagaraj, for the Appellant; C. Emalias, Additional Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

P. Devadass, J.—The petitioners, who are A1 to A3 in PRC No. 7/2013 pending before the learned Judicial Magistrate, Poonamallee,

seeks direction u/s 482 Cr.P.C. to the first respondent to withdraw the Lookout Circular issued against them. (Shortly, hereinafter L.O.C.).

Petitioners are owners of "EVP Theme Park" in Sembarambakkam. There are lot of items of interest for the children. One is "Octopus ride". It is

being used for jolly ride.

2. On 02.10.2012, a mishap has occurred while having ride in the said Octopus. Chabraboorthy's daughter sustained very serious injuries. She

died. Based on her father's complaint a case in crime No. 1271 of 2012 has been registered. After investigation, final report has been filed for an

offence u/s 304(ii) IPC. Learned Magistrate took cognizance thereon in PRC. No. 7 of 2013 as against the petitioners. It is pending. They have

filed Crl.O.P. No. 22742 of 2013 in this Court to quash the said criminal

proceedings. It is pending.

3. Petitioners are holders of Indian Passports. During the investigation stage, L.O.C. order has been issued by the 1st respondent as against the petitioners.

4. Subsequently, first petitioner has been granted bail by this Court in Crl.O.P. No. 29309 of 2013 on 04.12.2012, while other petitioners were granted Anticipatory Bail in Crl.O.P. No. 27500 of 2012 and 27499 of 2012 on 08.04.2013.

5. The learned counsel for the petitioners submitted that in view of the L.O.C. order, Indian as well as foreign Airports Authorities are not allowing the petitioners to land their airports. The learned counsel for the petitioner further submitted that the petitioners are on bail, they made arrangements to defend themselves in the criminal case. In none of the bail orders, there is any stipulation preventing that they shall not leave the country. They are not absconders. They are business people. They have their residences and lot of properties in Chennai. They have strong roots in Chennai. The learned counsel further submitted that even as per the instructions relating to issuance of L.O.C. petitioners will not come under the category of persons mentioned therein.

There are instances where this Court had withdrawn L.O.C. In the circumstances, the L.O.C. inhibits their freedom of movement. Thus, the L.O.C. order is required to be withdrawn.

6. The learned Additional Public Prosecutor submitted that the petitioners have been granted bail, anticipatory bail, as the case may be. But, it does not require to withdraw the L.O.C. order. Even apart from getting bail or anticipatory bail, if the offences are serious in nature, persons movements are required to be watched L.O.C. can be issued.

7. I have considered the rival submissions and perused the materials on records.

8. It is basic that merely because a person is involved in a criminal case, he is not denude of his Fundamental Rights. It is the fundamental of a person to move anywhere he likes including foreign countries. One's such personal freedom and liberty cannot be abridged.[See: Article 21 Constitution of India]. In the celebrated in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , the Hon"ble Supreme Court upheld the

constitutional right of persons to go abroad. The phrase no one shall be deprived of his "life and liberty" except procedure established by law

employed in Article 21, had deep and pervasive effect on fundamental right and human right. Menaka Gandhi (supra) ushered a new era in the

annals of Indian Human Rights Law. It had gone ahead of American concept of "Due Process of Law".

9. But, the fundamental right to move anywhere including foreign countries could be regulated. Where persons involved in criminal cases are

wanted for investigation, for court cases, persons, who are anti-social elements their movements can be regulated. Need may arise to apprehend

persons, who have ability to fly, flee away the country. So, L.O.C. orders are issued. It is a harmonious way out between a person's fundamental

right and interest of the society/state. But, in any case, it must be fair and reasonable. It should not be indiscriminate without any reason or basis.

10. The learned counsel for the petitioners brought to our notice the instructions issued with regard to the issuance of L.O.C. They run as under:-

14Q: What do we mean by a look out circular(LOC)

Ans: LOC is a tool to prohibit restrict/regulate the entry, stay and exit of

(i) all under able persons.

(ii) Whose presence is required to answer criminal charges.

(iii) persons notified by interpol.

15Q: How to include a wanted offenders name in the LOC of MHA which in turn will be included in all 23 the International Airport immigration

countries.

Ans: SsP/CsP have to write to Addl. DGP(INT) with all details to address the JD/DD(Immgn) MHA New Delhi and all CHIOs(Chief Immigration

Officers) of International Airports for left India already but are likely to come back again, or those who are not supposed to leave the country as

they are charged as accused in heinous crimes. In Delhi, Mumbai, Chennai & Kolkata, the Intelligence Bureau takes care of the immigration and in

other international airports concerned commissioners of police SSP are designated as CHIOs. For instance of Hyderabad International Airport.

DCPb. SB is the CHIO.

16Q. What are the 4 broad categories of persons in LOC?

Ans:

- i) Persons to be arrested.
- ii) Persons not to be allowed to land in our country(Ban entry).
- iii) Persons not to be allowed to leave our country(Ban exit).
- iv) Persons whose movements are to be watched and reported.

17Q: What are the parameters to be included in LOC.

Ans:

- i) Name in full and alias if any.
- ii) Passport Number issuing office
- iii) Nationality
- iv) Date of birth
- v) Place of Birth
- vi) Parentage
- vii) Address with photograph

18Q. What are the various types of persons who can be included in the LOC?

Ans:

- i) Persons with Terrorist or Militant Links,
- ii) Belligerent Foreigners.
- Iii) Foreigners previously noticed for violations of visa conditions.
- iv) Persons required by courts in criminal/civil cases who are absconding.
- v) Absconding Offenders wanted by Police/CBI/Customs/Central excise/ Directorate of Rev. Intelligence/other agencies.

19Q: What is the upper limit for maintaining a wanted persons name in LOC?

Ans:

- (i) Visadex cards after expiry of one year will be weeded out unless and otherwise the originator asks for continuance.
- (ii) MHA warning circulates/look out instructions will be retained permanently until specific instructions are given for deletion.

11. L.O.C. containing full particulars of the person is being sent throughout the world. Even to Interpol also. It is being sent using software

techniques. Its effect is that the person against whom L.O.C. has been issued, if

lands in an Indian Airport, he will be apprehended. There will be difficulty for him to land in a foreign country also as he will not allowed to enter the country from the Airport.

12. Petitioners are facing criminal prosecutions. They are granted bail/ anticipatory bail. They are holders of valid Indian Passports. They have strong roots in the society. They are business people. They need to travel abroad often. So far there is no valid restriction on their movement by any Court order or Ministry of Home Affairs or External Affairs. They are not stated be involved in any heinous crimes. They are not terrorists.

Nor anti-social elements. There is no allegation that they have absconded. Thus, they cannot be brought under any one of the categories with respect to whom L.O.C. orders are being issued.

13. In Crl.O.P. No. 8864 of 2010 (A. Arumugaraja Vs. Deputy Commissioner of Police, Adyar, Chennai and Another), dated 21.04.2010, in

Crl.O.P. No. 21441 of 2010 (A. Arumugaraja Vs. Deputy Commissioner of Police, Adyar, Chennai and Another), dated 23.09.2010 and in

Crl.O.P. No. 30704 of 2012 (R. Viswanathan Vs. Deputy Commissioner of Police Kilpauk, Chennai), dated 04.01.2013 in certain matrimonial

matters enabling persons to go abroad, this Court directed lifting of L.O.C. orders.

14. In the facts and circumstances of this case and due to the subsequent developments, so far as the petitioners are concerned, L.O.C. orders

becomes irrelevant.

15. In view of the foregoings, the 1st respondent, namely, the Deputy Commissioner of Police, Ambattur Range, Chennai is directed to withdraw

the Look Out Circular order issued as against the petitioners. Accordingly, this criminal Original Petition is disposed of.