

(2022) 03 DEL CK 0135

In the Delhi High Court

Case No : Civil Writ Petition No. 8084 Of 2020, Civil Miscellaneous Application
No.11855 Of 2022

Shivani Saxena

APPELLANT

Vs

Directorate Of Enforcement & Anr

RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 13, 22(1), 32, 226
Code Of Criminal Procedure, 1973 — Section 70(2), 482
Prevention of Money Laundering Act, 2002 — Section 3, 5, 45
Passports Act, 1967 — Section 10A, 10B

Citation : (2022) 03 DEL CK 0135

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : R.K. Handoo, Rajat Manchanda, Aditya Chaudhary, Garvit Solanki,
Zoheb Hossain, Vivek Gurnani, Amit Mahajan

Final Decision : Disposed Of

Judgement

V. Kameswar Rao, J

1. By this order, I shall decide the objection taken by Mr. Zoheb Hossain, Special Counsel for the respondent No. 1 appearing with Mr. Amit Mahajan (who appears for respondents) that the present petition shall not be maintainable inasmuch as the petitioner must approach the concerned Special Court where the Complaint Case No. 75/2019 filed by the respondent No.1, of which cognizance has been taken by the Special Court by issuing summons to the petitioner herein for appearance on April 30, 2022 is pending. By this order I shall also decide the application filed by the petitioner being CM APPL.11855/2022, wherein the following prayers have been made:-

"In the light of the aforesaid facts and circumstances stated herein above, it is hereby most respectfully prayed that this Hon'ble Court may:-

i. Direct the suspension of LOC issued against the Petitioner from 14.03.2022 to

29.04.2022 and further allow her to travel to Dubai and Italy during the said period, in the interest of justice.

ii. Any other order which the Hon'ble Court deems fit in the circumstances and in the interest of justice;

It is prayed accordingly."

2. The submission of Mr. Hossain as noted by this Court in the order dated January 03, 2022 for deciding the said issue is reproduced as under:-

"3. Today, Mr. Zoheb Hossain, learned counsel for the respondents submits that even though an email has been addressed to the concerned authorities to verify the aforesaid position, no response thereto has been received till date.

4. In the light of the aforesaid and taking judicial notice of the fact that new variant of Covid-19 i.e. Omicron is creating havoc in the entire world, I am of the view that the petitioner should not be denied the opportunity of being administered a booster dose in UAE, especially, when she had taken the earlier two doses of the Covid vaccination in the UAE itself. It may be also noted that the petitioner has already been granted permission to travel abroad several times, which liberty she has never misused. Moreover, the learned Trial Court has, on 17.12.2021, in another case pending against the petitioner, granted her permission to travel abroad for a period of four months, subject to certain conditions.

5. The application, therefore, deserves to be and is allowed by permitting the petitioner to travel to the UAE for a period of eight weeks, which permission would be subject to conditions already imposed by the learned trial court vide its order dated 17.12.2021. The petitioner will return back to the country within eight weeks of her departure from the country.

6. All concerned authorities shall act in compliance with the digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court www.delhihighcourt.nic.in, which shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of the order shall be insisted upon by any authority/entity or litigant.

W.P.(C) 8084/2020

7. Learned Counsel for the respondents submits that in view of a prosecution complaint having been filed against the petitioner in respect of the offence for which the impugned LOC was issued, cognizance whereof has already been taken by the learned trial Court, the present writ petition would no longer be maintainable and if aggrieved the petitioner ought to approach the learned trial Court.

8. Even though learned counsel for the petitioner vehemently disputes this plea, the aspect regarding maintainability of the writ petition will be considered on the next date."

3. Some of the relevant facts as noted from the record and also highlighted by the counsel for the parties are, in 2017 the petitioner was arrested at Chennai Airport on the basis of a Look-out Circular ('LOC', for short). She was granted bail by this Court on December 15, 2017 and was arraigned as an accused in the third supplementary complaint filed on September 13, 2017 in ECIR No. ECIR/15/DLZO/2014 dated July 03, 2014, i.e., the AugustaWestland Helicopter scam. It is the case of the petitioner and contended by Mr. R. K. Handoo, learned counsel for the petitioner that she was granted permission to travel abroad for the first time vide order dated January 11, 2018. The LOC against the petitioner remained till January 28, 2019 when respondent No.1 made a statement before the learned Special Judge, CBI, Patiala House Courts, New Delhi that the same has been withdrawn by the respondent No.1.

4. On August 17, 2019, the CBI registered a case of default in repayment of loan against one Ratul Puri and his company under FIR No. RCB1/2019/E/0006. The respondent on the basis of said FIR registered a new ECIR being ECIR/07/DZCR/2019 and initiated investigation against the petitioner and her husband. The respondent No.1 had also issued attachment orders under Section 5 of the Prevention of Money Laundering Act, 2002 ('PMLA', for short).

5. It is contended by Mr. Handoo that on October 12, 2020 the petitioner reached Mumbai airport to board her flight to Dubai, but was informed by the officials of respondent No.2 that she cannot travel as an LOC has been issued against her. The petitioner stated that she had been travelling without any hindrance since the year 2018 and even informed them about orders passed by the Special Judge, CBI, Rouse Avenue Courts, New Delhi, permitting her to travel abroad, but the officials of the respondent No.2 did not pay any heed to the same. It is contended by Mr. Handoo that no communication has been received by the petitioner as to why or how the LOC has been issued against her preventing her from attending the marriage of her daughter. Similarly, the husband of the petitioner has also been prevented from attending the marriage. The aforesaid LOC resulted in the filing of the present petition.

6. On the objection of maintainability taken by Mr. Hossain, the submission of Mr. Handoo is that, Article 32 and Article 226 of the Constitution of India empowers the Supreme Court and the High Court to issue prerogative writs of different types as engrafted in the Constitution and as such, even a parliamentary enactment or a constitutional amendment cannot override power of the Supreme Court and this Court to exercise the jurisdiction under said Articles. The concept of alternative remedy is a rule of self restraint exercised by the High Court and Supreme Court, when an alternate efficacious remedy is available under a statute / legislation / enactment providing remedy before a different forum. But no statute can curtail such right of a citizen to approach the Supreme Court or this Court. He has relied upon the judgment of the Supreme Court in the case of L. Chandra Kumar v. Union of India & Ors., 1997 (3) SCC 261, wherein the Apex Court has set aside the provision providing for Tribunals to perform the functions

as a substitute for High Courts. According to him, the plea of Mr. Hossain is now beyond the pale of controversy, as can be inferred by the judgments of the Supreme Court in the cases of *State of U.P. v. Muhammad Noor*, AIR 1958 SC 86, *Magadh Sugar and Energy Ltd. v. State of Bihar and ors.* (2021) SCC Online SC 801 and *Whirlpool Corporation v. Registered Trademarks*, 1998 8 SCC 1. The law is now well crystallized and the scope of alternate remedy would not lie where the writ petition is filed for:-

- i. Violation of the fundamental rights protected under Part III of the Constitution;
- ii. There has been violation of principles of natural justice;
- iii. The order or proceedings are wholly without jurisdiction;
- iv. Vires of legislation is under challenge.

7. He submitted that the case of the petitioner falls within the four corners of all exceptions to entertain the writ petition under Article 226 of Constitution of India and as such, the petitioner should not be relegated to the Special Court concerned. That apart, he stated that the plea of alternate remedy cannot be based on an administrative circular, which is not a law as per Article 13 of the Constitution of India.

8. According to Mr. Handoo, by issuing the LOC, the right of the petitioner to travel has been curtailed. It cannot be anybody's case that right to travel is not a fundamental right of a citizen. In this regard, he has relied upon *Maneka Gandhi v. Union of India* 1978 (1) SCC 248, followed by the Supreme Court in *Suresh Nanda v. CBI*, 2008 3 SCC 674. The only way to curtail the right to travel of a citizen is under the provisions of the Passports Act, 1967, more specifically Sections 10A and 10B of the Act. No such proceedings have been initiated against the petitioner under the said Act for preventing her departure from India. Even in these provisions, there is a limitation of time of four weeks and eight weeks, that too after reasonable opportunity of being heard is given to a person.

9. In the instant case, the petitioner has been under the shadow of LOC from the year 2017, though the Court had granted permission, which has now been scuttled and overreached by the respondents in a colourable and arbitrary exercise of powers. He stated that that the LOC, if it is purported to have been issued in the economic interest of the country, it has been interpreted by different Courts that individual cases cannot be construed as jeopardizing the economic interest of the country, otherwise every default to the banks would be construed as jeopardising economic interest of the country. Therefore, the exercise of power in this case is patently illegal. According to Mr. Handoo, the reliance placed by Mr. Hossain on the judgment of this Court in *Sumer Singh Salkan v. Assistant Director & Ors.*, (2010) SCC Online Del 2699 is by overlooking the fact that an LOC being a temporary coercive measure, its purpose is only to make a person available to the investigating agency or Court of law for investigation / appearance and nothing more, which such person has

been avoiding.

10. In the present case, no such ground exists for issuance of LOC. It is not a case where the petitioner has been avoiding and not participating in the investigation. It is also not a case where the person is a flight risk, as the petitioner, having been granted permission to travel abroad, has been travelling and returning back to India. At no point of time has the petitioner violated any of the conditions imposed on her to travel abroad.

11. He stated that even the judgment in *Sumer Singh Salkan* (supra) contemplates that an LOC can be withdrawn by the officer concerned, which unfortunately has not been done. He also stated that the word 'pending' in Answer (C) in paragraph (11) gets its colour from Answer (A) of the judgment when the Trial Court has issued NBWs or other coercive measures against the persons accused. NBWs are issued by a Court in a charge sheet or complaint after cognizance is taken and there is an intentional default of summons or bailable warrants for appearance. It is in this context that the LOC can also be rescinded by the Trial Court where the case is pending in respect of such person wherein the Court has issued NBWs and other coercive process. Mere filing of an FIR or filing of complaint and issuance of summons for appearance of accused would not vest the jurisdiction with the Court to cancel an LOC unless coercive measures are issued by the Court, by way of NBWs after the service of summons and bailable warrants are exhausted and defaulted.

12. Mr. Handoo stated that the judgment of the Telangana High Court in *Dasari Sudheer v. State of Andhra Pradesh*, W.P.(C) No. 6711/2015 is one where a charge sheet was filed before the Court, the accused had surrendered before the Court and had taken bail, but the LOC was not revoked or taken back. The High Court, because the matter was pending before the Trial Court, directed the concerned Court to consider withdrawal of the LOC. In the present case, the petitioner in respect of the first LOC, after taking bail had also applied to the Trial Court for withdrawal of the LOC as the petitioner has been granted bail and was pivoted to the conditions before the Trial Court. Therefore, the Trial Court entertained the application and the earlier LOC was withdrawn.

13. Mr. Handoo stated that the Special Court would come in picture in post bail proceedings where the matter is pending before the Court in trial. The current writ petition is against an arbitrary action where there was no FIR, with no pre-bail conditions and without any matter pending before Special Court. The only remedy available for the petitioner is to approach this Court in writ jurisdiction.

14. According to Mr. Handoo, in the instant case, the Court concerned has taken cognizance of the complaint and has issued summons against the petitioner and others for appearance on April 30, 2022. No coercive process like NBW has been issued against the petitioner. Hence, the Court concerned in the second ECIR has no jurisdiction, even as per guidelines to rescind the LOC.

15. In the end, Mr. Handoo submitted that the writ jurisdiction of this Court

cannot be avoided to get benefits of the respondent's own wrong. The respondents cannot decide the remedy of a person whose fundamental rights have been violated. Mr. Handoo stated that the objection on the maintainability of the writ petition need to be rejected and the application filed by the petitioner for visiting Dubai and Italy need to be allowed.

16. Mr. Hossain, on the other hand would submit that, the respondent No.1 had taken the objection on the maintainability of the petition in reply to the CM No. 47740/2021 filed by the petitioner wherein reference has been made about the filing of a second supplementary complaint on November 22, 2021 before the Special Court, PMLA, Rouse Avenue Courts, New Delhi and in view of the judgment in Sumer Singh Salkan (supra), wherein a Coordinate Bench of this Court has, while answering the questions raised in the reference made to the Court, was of the view that an LOC can be rescinded by the Trial Court where the case is pending. In other words, since the subject matter of the writ petition is concerning LOC and a complaint having been filed before the Special Court, the petitioner must be relegated to the said Court even with respect to the LOC. The submission of Mr. Hossain is that the prosecution complaint under second proviso of Section 45 of the PMLA arraying the petitioner as an accused was filed on November 22, 2021 and as such the alternate efficacious remedy being available to the petitioner, she should approach the Special Court where the case with regard to the complaint No.75/2019 in ECIR/07/DZCR/2019 is pending i.e., the Court of Sh. Sanjay Garg, Ld. Special Judge, PMLA, Rouse Avenue Courts, Delhi.

17. According to him, the plea of Mr. Handoo that this Court had earlier granted permission to the petitioner to travel abroad will not come in the way of the objection of the respondents as to the maintainability of this petition, for the reason that except for the order dated January 03, 2022 which was passed taking judicial notice of the Omicron variant of COVID-19 creating havoc and the petitioner requesting to travel for a booster shot, all the earlier orders were passed when there was no complaint pending before the Special Court. In other words, there was no prosecution complaint pending in the case in which the impugned LOC is issued and therefore reliance on the earlier orders is misplaced.

18. Mr. Hossain stated that the cognizance has been taken of the prosecution complaint by the Court concerned by an order dated December 10, 2021 and the accused including the petitioner have been summoned for appearing on April 30, 2022. He stated that as the petitioner has now been summoned by the Court concerned, she must satisfy the Court concerned as to why the LOC issued against her need to be cancelled / rescinded.

19. According to Mr. Hossain, it is a settled law that on taking cognizance, the issue regarding cancellation of LOC is within the ambit of the pending criminal case before the Court concerned. In this regard he has relied upon a judgment of this Court in case of Yogender Chandolia v. Vishesh Ravi & Ors., 2021 SCC Online Del 5540, more specifically paragraph 43 thereof.

20. According to him, the judgment in the case of Sumer Singh Salkan (supra) has been consistently followed not only by this Court but also by the Madras High Court as well as Telangana High Court. In this regard he has relied upon the judgment of the Madras High Court in *S. Martin v. Dy. Commissioner of Police & Ors.*, 2014 SCC Online Mad 426, and the Telangana High Court in *Dasari Sudheer* (supra). In other words, only option left for the petitioner is either to surrender before the concerned Court or prefer an application prior to the date of scheduled appearance before the Special Court.

21. On the submission of Mr. Handoo that this Court in exercise of power under Article 226 of Constitution of India can entertain the petition, even if alternate remedy is available, more so, when the fundamental rights of the petitioner have been infringed, Mr. Hossain would submit that jurisdiction of this Court under Article 226 of the Constitution of India for entertaining the petition cannot be disputed but this Court has a rule of self imposed restraint, inasmuch as it would not entertain a writ petition if an alternate efficacious remedy is available to aggrieved persons. Further, he stated that the plea that there is no statutory enforced alternative remedy which would make the petitioner approach the concerned Court is also unmerited for the reason that the plea of alternate remedy shall also be available in common law and in equity. In this regard he has relied upon the judgment of the Calcutta High Court in *Nani Lal Roy v. Satyendra Nath Roy*, AIR 1952 Cal 1. This submission of Mr. Hossain is primarily by relying on the judgment of *Sumer Singh Salkan* (supra) to contend that the jurisdiction of the concerned Court in affirming or cancelling LOC commensurate with its jurisdiction to cancel or affirm NBWs. There is no specific provision for cancellation of LOCs, as is provided in Section 70(2) Cr.P.C. for cancellation of warrants by the Court and therefore for this reason as well, the jurisdiction to cancel an LOC has been held commensurate with the jurisdiction to cancel NBWs.

22. Mr. Hossain also stated that mere pendency of the petition since 2020 would not be a bar for this Court to relegate the petitioner to the Special Court in view of the judgment in *Sumer Singh Salkan* (supra) as even after a petition is admitted and interim orders are passed, various Courts have invoked the issue of jurisdiction and alternate remedy. In this regard he has relied upon *State of U.P. v. U.P. Rajya Ghanij Vikas Nigam and Ors.*, 2008 (12) SCC 675; *Genpact Pvt. Ltd. v. Deputy Commissioner of Income Tax and Anr.*, 2019 SCC OnLine SC 1500 and *Union Bank of India v. K. J. Jose & Ors.*, dated March 07, 2022 passed by the Kerala High Court in W.P.(C) 36086 of 2015.

23. A similar submission is made by Mr. Hossain by stating that the Madras High Court has refused to entertain a petition under Section 482 of the Cr.P.C. and directed the concerned party to approach the Court below to redress their grievances according to specific provisions under the Cr.P.C. seeking cancellation of NBWs in terms of Section 70(2) of the Cr.P.C. In this regard he has relied upon *Francis Xavier v. Neelamegam* (1995) SCC Online Mad 14.

24. Insofar as the plea of Mr. Handoo that the prayer of the petitioner for

cancellation of LOC, cannot be granted by the Special Court and as such remedy is only available before this Court is concerned, Mr. Hossain has stated that the Criminal Courts in this country are equally responsible for protecting and enforcing fundamental rights of citizens. Every time an arrest is made, the investigating agency must satisfy the Trial Court of the reasons of such arrest as well as due compliance of Article 22(1) of the Constitution of India as per the law laid down by the Supreme Court in *D. K. Basu v. State of West Bengal*, AIR 1997 SC 610. That apart, the provisions exist for production of accused arrested within 24 hours.

25. Insofar as the submission made by Mr. Handoo that the OMs under which the LOC is issued do not satisfy the constitutional requirements is concerned, Mr. Hossain has stated that there are no prayers made in the petition challenging the validity of the OMs under which the LOC has been issued. Hence, the present petition should be confined only to examining whether LOC issued is in accordance with the extant OMs of the Ministry of Home Affairs. According to Mr. Hossain, the attempt of Mr. Handoo is to enlarge the relief in the petition. Reliefs which have not been prayed for, cannot be granted even by this Court under Article 226 of Constitution of India, in view of settled position of law in *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234. Further, he stated that Mr. Handoo has not highlighted any prejudice that would be caused to the petitioner if she is relegated to the Special Court before whom the prosecution complaint is pending with regard to the case in question qua which present LOC has been issued.

26. In fact, Mr. Hossain has stated that it is appropriate for the petitioner to approach the Special Court, when she had without any hesitation approached the other Special Court seeking permission to travel abroad wherein the prosecution complaint relating to the AugustaWestland Helicopter scam is pending i.e., another criminal case wherein she has been arrayed as an accused relating to ECIR/15/DLZO/2014. In fact, the petitioner through Mr. Handoo has been relying upon the orders passed by that Court every time she wishes to travel abroad but for the reasons best known to her, refuses to approach the Special Court wherein the complaint case No. 75/2019 in ECIR/07/DZCR/2019 is pending.

27. According to Mr. Hossain, even the plea of Mr. Handoo that issuance of LOC is vitiated by mala fide is a question of fact which can be raised by the petitioner before the Special Court which can examine the evidence, if any, in support of the petitioner's plea of mala fide. His related plea is that the bald allegations of mala fide deserve to be rejected. He stated that for the sake of consistency in view of the principles laid down by this Court in *Sumer Singh Salkan* (supra) as followed by the Madras High Court in *S. Martin* (supra) and the Telangana High Court in *Dasari Sudheer* (supra), the writ petition ought not to be entertained when an equally efficacious alternative remedy is available, and as such, the present petition deserves to be dismissed.

28. Having heard the learned counsel for the parties on the maintainability of the

petition and on the application, at the outset, I may state that the writ petition has been filed by the petitioner challenging the LOC issued against her on the basis of ECIR/07/DZCR/2019. During the pendency of the writ petition till November 22, 2021 no complaint under Section 45 of the PMLA was filed by the respondent No.1 before the Special Court. It was in the reply filed on December 28, 2021 to CM APPL. 47740/2021, the respondents for the first time stated that a second supplementary prosecution complaint has been filed before Special Court, PMLA, Rouse Avenue Courts, New Delhi on December 22, 2021 against the petitioner and others in Complaint Case No.75/2019 in ECIR/07/DZCR/2019 for the offence of money laundering as defined under Section 3 of the PMLA and the Special Court has taken cognizance of the complaint and issued summoning order, and accordingly, the writ petition is liable to be dismissed as the petitioner should approach the concerned Special Court, PMLA, where the trial of the petitioner is pending, for quashing of the LOC. Reliance is placed on the judgment in the case of Sumer Singh Salkan (supra). It is stated by Mr. Hossain that the petitioner has placed reliance on the orders passed by the Court of Sh. Arvind Kumar, Special Judge, CBI, Rouse Avenue Courts where the case of AugustaWestland, is being investigated under ECIR/15/DLZO/2014 whereas the trial in the present case is being investigated under the Complaint Case No.75/2019 in ECIR/07/DZCR/2019 which is pending before the Court of Sh. Sanjay Garg, Special Judge, PMLA, Rouse Avenue Courts, and the petitioner should seek permission for travelling abroad from the latter Court i.e., the Court of Special Judge, PMLA, Rouse Avenue Courts, New Delhi. It is seen that the respondents have taken objection on the maintainability of the petition at the first available opportunity and as such the plea of Mr. Handoo that the respondents have not taken any objection on the maintainability of the petition in their counter affidavit is unmerited. This I say so, for the reason that the objection is primarily based on the filing of the complaint before the Special Court by the respondent No.1. The same having been filed on November 22, 2021, the respondents in their reply to CM No. 47740/2021 filed on December 28, 2021 have taken the objection.

29. The submissions made by Mr. Handoo that the power of this Court under Article 226 of the Constitution of India cannot be taken away on the ground that alternate remedy is available to the petitioner to approach the Special Court where the complaint filed by the respondent No.1 is pending; an administrative circular is not law within the meaning of Article 13 of the Constitution of India; LOC violates the fundamental right of the petitioner to travel abroad; even provisions of statute cannot override the power of this Court under Article 226 of the Constitution, cannot be disputed.

30. But the submission of Mr. Hossain that this Court in exercise of power under Article 226 of the Constitution of India, practices self restraint when alternative remedy which is more efficacious is available to petitioner, is appealing. His plea that the Special Court is not barred in protecting the fundamental rights of a litigant in terms of the provisions of the Cr.P.C. is also appealing. That apart, it is

important to note that this Court in Sumer Singh Salkan (supra) has in clear and unequivocal terms stated that LOC can be rescinded by the Trial Court where the case is pending.

31. Mr. Handoo has not disputed that the complaint is pending before the Special Court being Complaint Case No. 75/2019 where a supplementary prosecution complaint has been filed against the petitioner and the Special Court has taken cognizance of the same and issued a summoning order. Before November 21, 2021, there was no complaint filed, hence, there was no occasion for this Court to relegate the petitioner to the Special Court and as such the petition was entertained by this Court. As of today, the complaint having been filed in which summoning order has been issued, there is no reason for this Court to retain this petition. The said Court is seized of the facts of the case, including evidence sought to be relied upon by the respondent No.1.

32. The judgment in Sumer Singh Salkan (supra) has been passed in the year 2010 and has held the field ever since. In fact, the same has been relied upon by the Madras High Court in the case of S. Martin (supra) wherein in paragraph 46 it is stated as under:-

"46. For the foregoing discussions, the Writ Petition is dismissed, leaving the parties to bear their own costs. Further, this Court directs the Petitioner/A2 to co-operate with the Investigating Agency in respect of Crime No. 304 of 2012 by joining the investigation and to make his appearance before the Investigating Officer. After completion of the investigation, the concerned Investigating Agency is to file a charge sheet before the concerned Court in the manner known to law and in accordance with law, as expeditiously as possible (since the LOC cannot be issued periodically for a indefinite period and issuance of the same cannot hang on like a Damocle's Sword on a Person's Head). As and when the investigation is completed and charge sheet is filed, it is open to the Petitioner/A2 either to seek the aid of Authority/Officer (based on the request made by the concerned authority), who ordered the issuance of LOC or the trial Court where a case is pending or having jurisdiction over the concerned Police Station relating to the cancellation of LOC, (provided it is in force and alive), by filing necessary petition in accordance with law. Also that, the LOC can be withdrawn by the authorities concerned, who issued the same. Indeed, the Criminal Court's jurisdiction in cancelling LOC or affirming the same is quite in tune with the jurisdiction of cancellation of Non Bailable Warrant. Also, it is open to the Petitioner/A2 to seek permission of the trial Court by projecting necessary petition for proceeding abroad setting out necessary details/particulars, like places to which he intends visiting/travelling, the addresses of the places where he would be staying or residing and the duration, the object of visit/travel etc., if so advised. Consequently, connected Miscellaneous Petition is also dismissed."

33. Similarly, the Telangana High Court in Dasari Sudheer (supra) has also relied upon the judgment of Sumer Singh Salkan (supra) and has disposed of the writ petition by stating as under:-

"9. The decision cited along with the counter affidavit as well as the decision of Delhi High Court cited by the learned counsel for the petitioner in my view, would direct that it is open for the petitioner to approach the Investigating Officer and explain the circumstances and reasons why the Look Out Circular is required to be withdrawn. In the present case, petitioner has already made an appropriate representation before the Superintendent of Police as referred to above. However, apparently, the Superintendent of Police is not inclined to withdraw the said circular. The decision of Madras High Court referred to above in *S. Martin v. Deputy Commissioner of Police* (1) 2014 Law Suit (Madras) 250 dated 21.02.2014 directs in paras 45 and 46 that apart from approaching the Investigating Officer or the authority which has issued the circular, it is open for the petitioner to approach the Court where the case is pending, which has jurisdiction over the concerned police station seeking withdrawal or cancellation of LOC by filing necessary petition in accordance with law.

10. It is also held that the criminal Court's jurisdiction in cancellation of LOC or upholding the same is within similar jurisdiction as to cancellation of NBW and as such, the said Criminal Court is fully competent to pass appropriate orders taking into consideration the facts and circumstances of the case. Here, the decision of the Delhi High Court in *Sumer Singh Salkan; Court on its Own Motion Re v. Assistant Director; State v. Gurnek Singh Etc.* (2) 2010 Law Suit (Delhi) 1628 dated 11.08.2010 also considers the matter in a similar manner and para 11 also reiterate that it is open for the petitioner to approach the Officer who ordered issuance of LOC or it is open for him to approach the trial Court which can rescind the LOC issued on an appropriate application made by the person concerned.

11. I respectfully agree with the aforesaid decisions. Since no purpose would be served by directing the petitioner to approach the Superintendent of Police for the purpose of withdrawal of LOC, this writ petition is disposed of permitting the petitioner to move the Court of Special Judicial Magistrate of First Class, Prohibition & Excise, Guntur, where C.C. No. 570 of 2014 is pending and to make appropriate application seeking withdrawal of LOC. The petitioner is also at liberty to set out the reasons for making the said request including that he has already surrendered and has been abiding with the directions issued from time to time by the Court. If such an application is made by the petitioner, the learned Special Judicial Magistrate of First Class shall consider the same in accordance with law and pass appropriate orders expeditiously. No order as to costs. The miscellaneous petitions, if any, pending in this writ petition shall stand closed."

34. That apart, Mr. Handoo has not disputed that the petitioner is within her rights to appear before the Special Court even before the summoned date of April 30, 2022. The plea of Mr. Handoo that the Special Court cannot consider withdrawal of LOC is not appealing for the simple reason, as held by this Court in *Sumer Singh Salkan* (supra) that issuance of LOC is akin to issuance of NBWs and the Court below is within its rights to consider the prayer of withdrawal of

LOC. In fact, such a submission is contrary to the conclusion in Sumer Singh Salkan (supra).

35. During the course of hearing, Mr. Handoo has placed reliance on the judgment in the case of L. Chandra Kumar (supra), Whirlpool Corporation (supra) and Muhammad Noor (supra) and Magadh Sugar and Energy Ltd. (supra). Suffice to state, the proposition of law in these judgments are clear, but in the facts of this case and also in view of the law laid down in Sumer Singh Salkan (supra), this Court refuses to continue the proceedings in this writ petition in view of an intervening development of filing of the complaint by the respondent No.1 before the concerned Special Court against the petitioner of which cognizance has been taken. Moreover, liberty is with the petitioner to urge all grounds for withdrawal of LOC including mala fide resulting in the issuance of the LOC against the petitioner. Though, Mr. Handoo has made submissions on the legality of the OMs issued by the Ministry of Home Affairs under which the LOC has been issued, I agree with the submission of Mr. Hossain that the same cannot be gone into, when no such relief for quashing of OMs have been prayed for by the petitioner in this petition.

36. In view of my above discussion, this Court is of the view that the plea of Mr. Hossain on the maintainability of the petition needs to be accepted and the writ petition and connected applications are closed. Liberty is with the petitioner to approach the Special Court by way of application(s) along with the pleadings as filed by the parties in this petition for seeking withdrawal of the LOC and permission to travel, which shall be considered by the Special Court in accordance with law.