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* IN THE HIGH COURT OF DELHI AT NEWDELHI

Reserved on: August 04, 2022

Decided on: August 31, 2022

+ W.P(CRL) 3420/2019

GIRISH SAGAR

..... Petitioner

Through: Mr. Shiv Dutt Bakshi, Ms. Kushika Chachla, Mr. Kunal Nath, Ms. Bhawna Sharma and Mr. D.K. Dogra, Advocates.

V

UNION OF INDIA & OTHERS

....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Vinod Tiwari, GP, Mr. Danish Faraz Khan, Mr. Vishal Chanda and Mr. Gurimar Preet Singh, Advocates for R-1 to 3.

Mr. Anupam S. Sharma, SPP and Mr. Prakarsh Airan, Advocates for CBI.

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CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present writ petition is filed under Article 226 of the constitution read with section 482 of the Code of Criminal Procedure, 1973(hereinafter referred to as “**The Cr.P.C**”) for quashing of the Look Out Circular dated 10.02.2016 issued by the respondent no. 2 against the petitioner.



2. The petitioner pleaded that the petitioner, a person of Indian Origin, is a citizen of the United Kingdom and is holding British passport bearing No. 521241201. The petitioner is engaged in the business of repairing and sale of watches. The petitioner is also holding a document issued by the Government of India i.e., Overseas Citizen of India bearing no. A860650. The Petitioner came to India on 16.01.2016 to visit his ailing and aged mother residing flat bearing no 501, 5th floor, Queens Diamond Apartment, M.P Marg, Opera House, Mumbai – 400004. The petitioner is a senior citizen and requires constant medical attention due to various ailments.

2.1 The Directorate of Enforcement, Mumbai Zonal Office i.e., the respondent no.3 had registered an Enforcement Case Information Report i.e., ECIR/02/MZO/2007 on 08.01.2007 against Hassan Ali Khan and Kashinath Tapuriah under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “PMLA”). The respondent no. 3 subsequently registered a case bearing Complaint No 01/2011 and the Special Court, Mumbai vide order dated 06.05.2011 issued process against Hassan Ali Khan and Kashinath Tapuriah for allegedly stashing of funds to the tune of 8 US billion dollars.

2.2 The petitioner in the month of February, 2016 was served with the summons issued by the respondent no.3 and was directed to appear and participate in the investigation initiated in pursuance of Complaint bearing no 01/2011. The officials of the respondent no. 3 on 09.02.2016 has raided the place where the petitioner was residing i.e., flat no 501, 5th floor, Queens Diamond Apartment, M.P Marg,



Opera House, Mumbai – 400004 without search warrant and seized copies of bank accounts details and certain mobile phone bills.

2.3 The respondent no. 2 opened/issued Look Out Circular (hereinafter referred to as “LOC”) on 10.02.2016 against the petitioner without any justified or cogent reason and in contradiction to the Office Memorandum dated 27.10.2010 issued by the Ministry of Home Affairs (Foreigners Division).

2.4 The petitioner in compliance of summons issued by the respondent no. 3 appeared before the respondent no. 3 on 12.02.2016 and 26.02.2016 and thereafter also participated in the investigation.

2.5 The respondent no. 3 in March, 2016 filed an application bearing O.A. No 49 of 2016 under sub-section (4) of Section 17 of PMLA before the adjudicating authority, New Delhi constituted under the PMLA seeking retention of documents/ records / properties seized on 09.02.2016 from the premises owned by mother of the petitioner. The petitioner came to know from said O.A. that the respondent no. 3 seized mobile bills and photocopy of jewellery on 09.02. 2016. The jewellery was surfaced for the first time in the O.A. No 49/2016.

2.6 The petitioner was bound to return to United Kingdom on 14.04.2016 but was apprehended at Mumbai Airport and was disallowed to leave India due to LOC issued by respondent no. 2 against the petitioner which curbed his right to travel beyond India.

2.7 The respondent no. 3 issued summons to the petitioner on 03.05.2016 and 10.05.2016. The respondent no. 3 during investigation asked the petitioner to lodge a police complaint against Hassan Ali Khan which was refused by the petitioner. The petitioner



was forced to sign a statement. The petitioner subsequently retracted from the statement made on 11.05.2016.

2.8 The petitioner filed a Criminal Writ Petition bearing No. 2332/2016 before the High Court of Bombay for withdrawal/cancellation/discontinuance of LOC issued by the respondent no. 2. The High Court of Bombay vide order 23.09.2016 asked the Public Prosecutor to take final decision regarding alleged involvement of the petitioner in a crime under investigation by the respondents. The High Court of Bombay vide proceedings dated 14.10.2016 recorded submissions of an officer of the respondent no. 3 who submitted that the role of the petitioner is being investigated which revealed that the petitioner was an accused and the investigating agency would be filing supplementary complaint against the petitioner. The respondent no. 3 on 21.12.2016 handed over confidential report to the court and informed to the court that the respondent no. 4 on 19.09.2016 had registered a FIR under section 120-B read with section 420 of Indian Penal Code, 1860 (hereinafter referred as **IPC**) and section 13(2) and Section 13(1)(e) of Prevention of Corruption Act, 1988. The High Court of Bombay dismissed Writ Petition bearing No. 2332 of 2016 after perusal of the confidential report filed by the respondent no. 3.

2.9 The respondent no. 2 issued LOC prior to registration of FIR by the respondent no. 4. The respondent no. 3 subsequently admitted that the petitioner was not arrayed as an accused in said FIR registered by the respondent no. 4. The petitioner was not provided with copy of FIR dated 19.09.2016 and LOC even despite invoking



provisions of Right to Information Act, 2005. The petitioner came to know that the court of Special Judge (CBI), Greater Bombay, Mumbai was concerned court and as such moved Crl. Misc. Application No. 677/2018 for supplying the certified copy of the FIR alleged to have been registered against the petitioner on 19.09.2016 by the CBI. The respondent no. 3 in reply dated 08.06.2018 admitted that the petitioner was not implicated as an accused in the said FIR and said fact was also recorded in the order dated 04.08.2018 passed by the Special Judge.

2.10 The petitioner through counsel sent email on 30.05.2019 to the Director (Immigration), Ministry of Home Affairs and requested the Director (Immigration) to provide the current status of the LOC within 48 hours. The petitioner was not allowed to leave India due to the LOC. The petitioner sent another email to the Director (Immigration), Ministry of Home Affairs on 17.06.2019 to inquire about current status of LOC. The Assistant Director, SIC, BOI, Sector - 1, R.K, Puram, New Delhi i.e., the respondent no. 6 vide letter dated 28.06.2019 informed that Bureau of Immigration would be taking appropriate action but no relevant details were intimated to the petitioner regarding LOC. The petitioner again sent emails but without any response.

2.11 The petitioner challenged validity of LOC on grounds that the petitioner being a citizen of United Kingdom and holding a valid passport ought not to be prohibited from travelling back to the United Kingdom, which is his fundamental right as Article 21 of the Constitution. The petitioner has been denied right to liberty and to



live with dignity. LOC is illegal, unconstitutional and unlawful and was beyond the mandate of Office Memorandum dated 27.10.2010 bearing No. 25016/31/2010 - Imm. issued by the Ministry of Home Affairs, Government of India (Foreigners Division) as on date of issuance of LOC no criminal case or trial was pending against the petitioner. The registration of FIR on 19.09.2019 was completely unjustified and was registered after seven months from issuance of LOC. The copies of LOC and FIR were not supplied to the petitioner. LOC has lost its validity after expiry of one year from date of its issuance unless renewed in accordance with the Office Memorandum dated 27.10.2010. The issuance of a LOC is an extra ordinary power and can be exercised only in exceptional situations. The petitioner is in paucity of funds and is denied comforts of staying with his family and wife of the petitioner also needs immediate medical intervention. The petitioner prayed as under:-

I. issue a writ in the nature of Mandamus and/or any other appropriate writ, order or directions against the Respondent(s) and its officers thereby directing the Respondents to withdraw/cancel/ quash/discontinue/recall the Look Out Circular issued in the name of the Petitioner and to allow the Petitioner to return to his home in the United Kingdom.

II. any other reliefs as the nature and circumstances of the case may be granted.

3. The respondent no. 3 filed Counter Affidavit sworn by Sitaram Shivram Narkar, Assistant Director, Directorate of Enforcement, Zonal Office-II, Mumbai.



3.1 It is stated in Counter Affidavit that the respondent no. 3 registered a Enforcement Case Information Report (hereinafter referred to as "**ECIR**") vide ECIR/02/MZO/2007 dated 08.01.2007 under the Prevention of Money Laundering Act, 2002 (PMLA) against Hassan Ali Khan and others on basis of certain information and documents received from the Income Tax Department and statement of Hassan Ali Khan and others. The respondent no. 3 filed the Prosecution Complaints bearing no. 01/2011 dated 06.05.2011 titled as **Samir Bajaj V Hassan Ali Khan & another** and 24/2018 dated 17.07.2018 titled as **Directorate of Enforcement V Hassan Ali Khan & Others** before the Special Court (PMLA), Mumbai for laundering of USD 93.7 Million (approximately Rs. 423 Crores). The Special Court (PMLA), Mumbai after taking cognizance issued process against Hassan Ali Khan and others in these prosecution complaints for the offence under section 3 of the PMLA. The petitioner filed a Writ Petition titled as **Girish Sagar V Directorate of Enforcement & Others** bearing no. 2332 of 2016 before the High Court of Bombay seeking quashing of LOC issued by the respondent no. 2 through the respondent no. 6 which was dismissed vide order dated 21.12.2016. The present petition is not maintainable due to lack of jurisdiction.

3.2 Hassan Ali Khan also involved in the theft of jewellery and antiques from Salarjung Museum, Hyderabad and the petitioner appeared to be involved in the trading of jewellery and antiques stolen from the Salarjung Museum, Hyderabad with active connivance of Hassan Ali Khan. The petitioner was investigated for



his role in assisting Hassan Ali Khan in the PMLA case being investigated by the respondent no. 3 which is having international ramifications. The petitioner did not co-operate with the investigation being conducted by the respondent no. 3. LOC was issued against the petitioner as his presence in the country was necessary for investigation after following guidelines issued by this court vide order dated 11.08.2010 passed in Writ Petition (Criminal) No. 1315 of 2008 titled as **Sumer Singh Salkhan V Assistant Director and Others** and vide OM No. 25015/31/2010-Imm. Dated 27.10.2010 issued by the Ministry of Home Affairs with respect to issuance of LOC.

3.3 The respondent no.3 conducted search at the residence of the petitioner situated at Queens Diamond Apartment, Opera House, Mumbai on 09.02.2016 under Search Authorization bearing No. 17/2016 dated 08.02.2016 and the records/documents seized were incorporated in the *panchnama* prepared by the respondent no. 3.

3.4 The petitioner tried to flee India on 14.04.2016 but was apprehended at Chattrapati Shivaji Airport, Mumbai on the basis of the LOC. The petitioner again attempted to flee via the land route from the check point at Petrapore near Indo-Bangladesh border but was stopped in his tracks. The intention of the petitioner was to flee from the country and not to cooperate in the investigation being conducted by the respondent no. 3. There is every possibility that the petitioner being citizen of UK might escape from India and would not return back to join the investigation.



3.5 One of the co-accused namely Vishwanathan Venugopal along with Hassan Ali Khan in ECIR dated 08.01.2007 had filed a Writ Petition (Civil) No. 11771 of 2018 titled as **Vishwanathan Venugopal V. Bureau of Immigration and Others** which was disposed of vide Order dated 11.03.2019 by this court after observing that permission to travel was granted to him by the Special Judge (PMLA), Mumbai and as such the Special Judge (PMLA), Mumbai is competent to allow the petitioner to travel depending upon the facts and circumstances of the case.

3.6 The respondent no. 3 in reply on merits denied allegations of the petitioner. It is submitted that the statements dated 11.02.2016, 12.02.2016, 15.02.2016, 24.02.2016, 25.02.2016, 26.02.2016, 11.05.2016 of the petitioner were recorded in pursuance of summons issued to the petitioner which were voluntary in nature. The petitioner had claimed that he had met Hassan Ali Khan and others for the purpose of the recovery of his pending amount and as such was advised to lodge a complaint with the police for cheating and misappropriation against Hassan Ali Khan. The petitioner retracted from the voluntary statement made by him. LOC is still in operation and is renewed from time to time. The petitioner is being investigated regarding role played by him with Hassan Ali Khan who is involved in large scale money laundering and holding bank accounts in various countries. The petition is liable to be dismissed.

4. The petitioner filed rejoinder affidavit wherein stated that the petitioner is not an accused in Prosecution Complaints bearing No. 01/2011 dated 06.05.2011 titled as **Sameer Bajaj V Hassan Ali**



Khan & another and 24/2018 dated 17.07.2018 titled as **Directorate of Enforcement V Hassan Ali Khan & Others**.

5. The respondent no. 3 filed additional affidavit sworn by Rajesh Kumar, Assistant Director, Directorate of Enforcement, Mumbai in terms of order 17.03.2021 wherein stated that the respondent no. 3 registered a case vide ECIR/02/MZO/2007 on 08.01.2007 against Hassan Ali Khan and others under PMLA on allegations that Hassan Ali Khan either individually or along with associates was maintaining account(s) with Union Bank of Switzerland, Zurich (hereinafter referred to as "UBS") and it was believed that substantial funds of US \$8 billion were stashed in December, 2006. There were reasons to believe that part of said funds stashed in the account of Hassan Ali Khan at UBS, Credit Swiss Bank and Sarasin Banks (the funds were moved from UBS) has come from illegitimate and illegal sources and could possibly be funds from sale of arms/ammunition / weapons to India, other countries in collusion with the arms dealer Adnan Khashoggi.

5.1 There are also reasons to believe that Hassan Ali Khan is only a front man and is holding foreign account(s) as a Power of Attorney Holder for some influential politician(s) /bureaucrat(s) of Government of India who is / are the actual beneficial owner(s) of such account(s) / amount(s) earned through corrupt and illegal means. Hassan Ali Khan is also believed to be dealing in illegal sale of antique items and is also involved in hawala transactions / money laundering activities. The petitioner is investigated being a close associate of Hassan Ali Khan and is having privy and knowledge of



the illegal activities of Hassan Ali Khan including smuggling of antiques/artefacts, his huge overseas financial transactions, bank accounts etc. The claim of the petitioner that he is a watch repairer/Horologist in United Kingdom does not match with his profile as he was in contact with numerous high ranking Swiss Bankers. The Petitioner was in constant touch with Mr. Remo Maurer, Bank Official of Credit Swiss Bank and Swiss Consulate in Mumbai and these facts were admitted by the petitioner in his statement recorded under Section 50 of PMLA. The petitioner also stated in statement dated 11.05.2016 that he was introduced to Hassan Ali Khan by Mr. Remo Maurer, Credit Suisse as a Foreign Banker.

5.2 The petitioner in statement dated 12.02.2016 admitted that he had given watches worth US \$50,000 to Hassan Ali Khan at instance of Mr. Remo Maurer and these facts reflect that the petitioner was deeply involved with the bankers of Switzerland. The petitioner through Swiss Consulate tried to sell some paintings illegally acquired by Hassan Ali Khan and also introduced the Swiss Consulate General to Hassan Ali Khan. The petitioner during investigation admitted that he had visited the residence of Hassan Ali Khan at Pune and had met with Philip Anandraj, another associate of Hassan Ali Khan.

5.3 The petitioner was asked by Mr. Remo Maurer to financially help Hassan All Khan and as such arranged US \$300,000/- for Hassan All Khan through M. Sonnenthal by pawning some jewellery. The petitioner also got wire transferred of US \$300,000/- in the Suisse Bank account of Hasan Ali Khan through Mr. Michael Sonnenthal as



admitted by the petitioner in statement dated 26.02.2016. As per intercepted calls, Hassan Ali Khan also offered the petitioner important paintings and antiques which he wanted to send abroad through Swiss Consulate General and the petitioner was having good relations with foreign bankers of Credit Suisse and was friend of Mr. Remo and Mr. Joe, CEO of Credit Suisse Bank and Sarasin Banks, where the funds were being moved from UBS by Mr. Hassan Ali Khan in 2006-2007.

5.4 The petitioner also convinced the then Swiss Consulate General to smuggle out some antiques for Mr. Hassan Ali Khan in his container. The petitioner also negotiated sale of antiques belonging to some diamond dealer from New York. The petitioner is deeply involved and appears to be fully conversant with position, source of funds, activities and financial transaction of Hassan Ali Khan but the petitioner is not divulging complete facts which are in his knowledge. The petitioner was non-cooperative throughout the investigation. The petitioner was tracked and only thereafter, he appeared before Investigation Officer on 21.02.2016 after deleting all data from his mobile. The petitioner in various statements gave either evasive replies or claimed ignorance.

5.5 The respondent no. 3 due to non-cooperative attitude of the petitioner as a preventive measure requested Bureau of Immigration to issue a Look Out Circular against the petitioner on 10.02.2016 to prevent him from leaving the country. The petitioner remained non-cooperative in investigation despite issuance of LOC. The activities of the petitioner appear to be suspicious with Hasan Ali and he



appears to be indulged with or knowingly assisted Hassan Ali Khan and his associates in activity connected to proceed of Crime. The petitioner as such is suspected to be accused of offence of money laundering as defined under section 3 of PMLA.

5.6 The FIR No. RC 0682016E0013 dated 19.09.2016 was registered by CBI/EOW/Mumbai against Hassan Ali Khan and unknown public servants wherein the petitioner is mentioned as an accused. The petitioner is cited as a witness in Prosecution Complaints bearing no. 01 of 2011 and 24 of 2018 and presence of the petitioner is required during trial. Hassan Ali Khan has got international linkages and evidences are required to be collected from foreign jurisdictions through Letter of Rogatory (LR) from different countries.

6. The respondents no. 4 & 5 primarily mentioned facts in Status Report which are mentioned in Counter Affidavit filed on behalf of the respondent no. 3. The respondents no. 4 & 5 in Status Report filed through Sanjeev Sharma, Inspector of Police, SIT/AV-VI/CBI/New Delhi wherein stated that a case was registered on basis of written complaint dated 09/09/2016 made by G.C. Parihar, Assistant Director, Enforcement Directorate, Mumbai Zonal Office, Mumbai on 19.09.2016 at CBI/EOW/Mumbai Branch vide RC 13/2016/EOW Mumbai for commission of offences under section 120-B Indian Penal Code, 1860 (hereinafter referred as IPC) read with section 420 IPC and section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against Hasan Ali Khan, unknown public servants, and others and said case is still under investigation by GBI/AG-VI/SIT, New Delhi. It is also stated that the petitioner has



not been arraigned as an accused in FIR/RC but his role in the commission of offences was suspected and notice under section 160 Cr.P.C. was issued to the petitioner for joining the investigation on two/three occasions at Delhi and Mumbai. The petitioner during investigation was examined in detail and his statements were recorded but the role of the petitioner was not clearly established during investigation and as such no need was felt for associating the petitioner with the investigation. CBI has not put any embargo on the movement of the petitioner within India or abroad and has not got opened LOC against the petitioner. The petitioner should join the investigation as and when directed. The petitioner was not made an accused by CBI in any FIR registered at Mumbai.

7. The Enforcement Directorate in compliance of order dated 24.01.22 filed Status Report wherein stated that FIR bearing no. RC0682016F0013 dated 19.09.2016 was registered by the CBI under section 120-B read with section 420 IPC read with Section 13(1) (d) of Prevention of Corruption Act, 1988. The petitioner was an associate of Hassan Ali Khan and actively assisted him in the commission of the offences. Directorate of Enforcement conducted investigation under PMLA vide ECIR/HO/02/2017 dated 08.01.2018. The statement of the petitioner during investigation was recorded under Section 50 of PMLA wherein he disclosed that he knew Hassan Ali Khan and assisted him in arranging transaction with Michael Sonnenthal which was aimed at raising funds of USD 300000 from Michael Sonnenthal for Hassan Ali Khan against the mortgage of certain jewellery of Dianoor Jewels London and said



funds were sent by Michael Sonnenthal in the bank account of Hassan Ali Khan operational in Credit Suisse Bank under the name “Blank Prince”.

7.1 The petitioner was directed to appear at ED (Headquarter office), Delhi on 30.06.2018 but the petitioner on 02.07.2018 requested to shift venue/place of enquiry to Mumbai instead of Delhi and said request was not accepted. The petitioner was further directed to join investigation in ED (Headquarter office) at Delhi vide summons dated 10.08.2018, 14.08.2018, 11.01.2019 and 01.02.2019 under section 50 of PMLA but he failed to comply with the summons. The petitioner neither appeared nor filed the requisite documents and failed to cooperate with the investigation. The petitioner stated that he has given consent to join the investigation at the Mumbai Zonal Office and no notice was received by him. The petitioner was summoned on 03.02.2022 and directed to join investigation at the Mumbai Zonal Office on 11.02.2022 and he was asked to furnish details/documents. The petitioner appeared before the Zonal Office, Mumbai on 11.02.2022 but did not submit any requisite documents mentioned in the summons. The statement of the petitioner was recorded on 11.02.2022 under section 50 of PMLA, 2002 wherein he undertook to submit requisite documents within two days but did not submit the requisite documents till date to the ED office. The petitioner is not furnishing crucial information required for investigation and under in his exclusive possession. The petitioner is still required for the investigation.



8. Lock Out circular (LOC) does not have a legal definition and issue to check whether a travelling person is wanted by any law enforcement agency in the country. The purpose of Look Out Circular is solely to track/detain the wanted person and hand them over to appropriate law enforcing agency. It curtails person's ability to travel in and out of country. A Coordinate Bench of this court in **Sumer Singh Salkan V Assistant Director & others**, ILR (2010) VI DELHI 706 considered following four questions raised by the trial court on the LOC raised in the reference: -

- a) What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?
- b) What procedure is required to be followed by the investigating agency before opening a Look-out-Circular?
- c) What is the remedy available to the person against whom such Look-out-Circular has been opened?
- d) What is the role of the concerned Court when such a case is brought before it and under what circumstances the subordinate Courts can intervene?

The above questions were answered by the court vide the judgment dated 11th August, 2010 as under: -

- a) Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.
- b) The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer alone shall give



directions for opening LOC by passing an order in this respect.

c) The person against whom LOC is issued must join investigation by appearing before I.O. or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.

d) LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs.

8.1 The respondent no. 2/FRRO thereafter issued Office Memorandum dated 27th October, 2010 for issuance of Look Out Circular (LOC) in respect of Indian citizens and foreigners. As per clause 8(g) recourse to LOC is to be taken in cognizable offences under IPC or other penal laws and reason for opening LOC must invariably be provided without which the subject of an LOC will not be arrested/detained. As per clause 8(h), in cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country and originating agency can only request that they be informed about the arrival/departure of the subject in such cases. As per clause 8(i) LOC will be valid for a period of one year from the date of issue and name of the subject shall be automatically removed from the LOC



thereafter unless the concerned agency requests for its renewal within a period of one year. Clauses 8(g) & (h) are read as under:-

g) 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 a LOC will not be arrested/detained.

h) In cases where there is no cognizable offence under IPC or 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.

The Office Memorandum of 2010 was amended in 2017 to expand the scope of the exceptions by permitting the issuance of LOCs in cases in exceptional cases which can be issued even in such cases, as would not be covered by the guidelines above, whereby departure of a person from India may be declined having potential of hampering bilateral relations between countries or denting the economic interests of the country, etc.

8.2 The Coordinate Bench of this court in Dhruv Tiwari V Directorate of Enforcement, W.P. (Crl.) 2227/2021 observed that the petitioner was not an accused either in the predicate offence or in ECIRs and preventive/detentive LOC was converted into an intimative LOC. It was directed that in the garb of LOC of intimation, the petitioner will not be detained or prevented at the airport or any other port on the pretext that first intimation has to be given to the originating agency.



8.3 Another Coordinate Bench of this court in *Vikas Chaudhary V Union Of India & Others*, W.P.(C) 5374/2021 decided on 12th January, 2022 considered four issues which are: (i) whether the Court can interfere with the issuance of a LOC or whether it is purely an administrative decision: (ii) whether having made a request for issuance of the LOC under the OM dated 27.10.2010, the requesting authority can now seek to defend the LOC by relying on a Clause introduced vide the OM dated 05.12.2017 which for the first time permits issuance of a LOC even when there is no involvement in a cognizable offence, a pre-condition for issuance of a LOC under the OM dated 27.10.2010; (iii) whether the LOC can be held to have lapsed after one year from the date of its issuance or whether the same continues to hold the field and (iv) whether the petitioner's case would fall within the ambit of the Clause '**detrimental to the economic interests of the country**' and if yes, whether the respondents can continue to curtail the petitioner's rights by the impugned LOC for an indefinite period, when admittedly, till date, no proceedings have been initiated against him.

8.4 It was held regarding first issue that the scope of judicial review to interfere with the decision of the competent authority issuing a LOC is limited but it cannot be said that the decision is purely an administrative one or that in no situation can the court examine the reasons provided by the authority for the issuance of a LOC. The Court will be circumspect in interfering with the authority's decision to issue the same but there can never be any blanket bar on the Court's powers of judicial review to examine the authority's decision



to issue the LOC. It was held in respect of second issue that the request for LOC, having been made under the OM of 2010, resort could be made to the Clause introduced in 2017 as OM dated 05.12.2017 was clearly in the nature of an amendment to the circular dated 27.10.2010, Regarding third issue, the court by referring OM dated 22.02.2021 observed that under Clause 'J' of the guidelines issued on 22.02.2021, the position has been reversed, and now a LOC once opened, remains in force, till a request for deletion is made. The concept of an automatic deletion of a LOC no longer exists. The court in respect of issue four observed that amendment of 2017 can be invoked only in exceptional circumstances, which is a mandatory pre-condition for formation of a reasonable belief by the originating authority that the departure of an individual would be to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad.

9. The counsels for the petitioner in written synopsis and in oral arguments stated that the petitioner, a person of Indian origin, is a citizen of United Kingdom and is holding British passport bearing no. 521241201. The petitioner is also holding an Overseas Citizen of India Card bearing no. A860650 and is engaged in business of repair and sale of watches in London. The respondent no. 3 had filed a Complaint bearing no. 01/2011 against Hassan Ali Khan and Kashinath Tapuriah and the respondent no. 3 issued summons to the petitioner to join the investigation in February, 2016. The petitioner is neither an accused nor witness in said case. The respondent no. 2 issued illegal Look Out Circular (LOC) dated 10.02.2016 arbitrarily



but and in contradiction of OM dated 27.10.2010. The respondent no. 2 has failed to satisfy mandatory pre-condition before issuance of Look Out Circular as the petitioner was not involved in any cognizable offence. The respondent to 2 issued LOC on mere conjecture and surmises. The fundamental right of the petitioner to travel cannot be curtailed as enshrined in Article 21 of the Constitution and confirmed by the Supreme Court in **Maneka Gandhi V. Union of India**, (1975) 1 SC 248.

9.1 The counsels for the petitioner further argued that the respondent no. 3 without any cogent reason raided the residence of mother of the petitioner in his absence but could not discover anything against the petitioner except few mobile bills and photograph of jewelry. The petitioner always participated in the investigation and has joined the investigation sixteen times. The respondent no. 3 during the investigation coerced him to file a false complaint against Hassan Ali Khan despite that the petitioner has no has no relation with him.

9.2 The petitioner filed a writ petition bearing no. 2332/2016 before High Court of Bombay and the respondent no. 3 mislead the High Court by filing a confidential report wherein falsely stated that the respondent no. 4 had registered an FIR dated 19.09.2016 against the petitioner under Section 120-B read with section 420 of IPC and section 13(2) and Section 13(1)(e) of Prevention of Corruption Act, 1988. The respondent no. 2 issued LOC seven months prior to registration of alleged FIR against the petitioner. However, the petitioner was never arrayed as an accused in said FIR and the respondent no. 4 had already mentioned said fact in its Report. LOC



as per the OM dated 27.10.2010 was to be valid only for one year but is operative till date i.e., for more than 6 years without any cogent reasons. There is no evidence against the petitioner and the role of the petitioner has not been established by the respondent no. 3 to justify issuance of LOC by the respondent no. 2. The counsels for the petitioner argued that LOC issued against the petitioner be cancelled/quashed/withdraw and the petitioner be allowed to return to United Kingdom.

10. The Central Government Standing Counsel (CGSC) assisted by other counsels argued on facts as mentioned and detailed in Counter Affidavit and Additional Affidavit submitted on behalf of the respondent no. 3. It was primarily argued that the respondent no. 3 had registered a case vide ECIR/02/MZO/2007 on 08.01.2007 against Hassan Ali Khan and others under PMLA on allegations that Hassan Ali Khan either individually or along with associates is maintaining account(s) with Union Bank of Switzerland, Zurich (UBS) in which substantial funds to the tune of USD 8 Billion were stashed in December, 2006 and these funds had come from illegitimate and illegal sources. The petitioner was investigated being a close associate of Hassan Ali Khan and was in contact with numerous high ranking Swiss Bankers. The petitioner also arranged funds for Hassan Ali Khan and was having good relations with foreign bankers. The petitioner did not cooperate in investigation and his statements were recorded on various dates wherein the petitioner gave evasive replies or claimed ignorance. The petitioner tried to flee



from India despite issuance of LOC. The investigation has not reached finality due to non-cooperation of the petitioner.

10.1 The petitioner filed a Criminal Writ Petition bearing no. 2332 of 2016 titled as **Girish Sagar V Directorate of Enforcement and Others** before the High of Bombay challenging the LOC which was ordered to be dismissed vide order dated 21.12.2016. The Special Court, PMLA, Mumbai took the cognizance on the Prosecution Complaints bearing no. 01 of 2011 and 24 of 2018 and issued process against the accused for the offence of Money Laundering under Section 3 of PMLA. The petitioner has been made a prosecution witness in these prosecution complaints and as such his presence is very much required during trial.

10.2 The respondent no. 3 due to non-cooperative attitude of the petitioner requested the respondent no. 2 through the respondent no. 6 to issue a Look-Out Circular (LOC) against the petitioner as a preventive measure on 10.02.2016 so that he can be prevented from leaving the country.

10.3 The respondent no. 4/CBI, EOW, Mumbai registered FIR dated 19.09.2016 under section 120-B read with section 420 of the Indian Penal Code, 1860 read with Section 13(1) (d) of Prevention of Corruption Act, 1988 and the respondent no. 2 initiated investigation under PMLA vide ECIR/HQ/02/2017 dated 24.01.2017 after considering nature of scheduled offences and involvement of proceeds of crime of Rs. 36000 crores.

10.4 The Petitioner on 30.06.2018 was directed to appear in the headquarter office of ED, Delhi and on 02.07.2018 requested to



change venue/place of enquiry to Mumbai which was not accepted. Thereafter, the petitioner was further directed to join investigation in ED headquarter office at Delhi vide summons dated 10.08.2018, 14.08.2018, 11.01.2019 and 01.02.2019 under Section 50 of PMLA, 2002 but the petitioner neither appeared nor filed the requisite documents and, therefore, failed to co-operate with the investigation. The petitioner on 03.02.2022 was summoned and directed to join investigation at the Mumbai Zonal Office on 11.02.2022 and was asked to furnish details/documents. The petitioner appeared before the Mumbai Zonal Office on 11.02.2022 but did not submit requisite documents.

10.5 The LOC was issued the petitioner as his presence is required for investigation and was issued in conformity with guidelines in terms of order dated 11.08.2010 passed by the coordinate Bench of this court in Writ Petition (Criminal) No. 1315 of 2008 titled as **Sumer Singh Salkhan V Assistant Director and Others** and OM No. 25015/31/2010-Imm. dated 27. 10.2010 issued by the Ministry of Home Affairs which was amended vide Office Memorandum No. 2501 6/10/201 7-Imm (Pt) dated 05.12.2017.

11. It is reflecting from record that Hassan Ali Khan was found to be involved in large scale money laundering and was holding bank accounts in various countries. The respondent no. 3 registered a ECIR vide ECIR/02/MZO/2007 dated 08.01.2007 under PMLA against Hassan Ali Khan and other son allegations that Hassan Ali Khan either individually or along with associates was maintaining account(s) with UBS and it was believed that substantial funds of US



\$8 billion were stashed in December, 2006 which was believed to be came from illegitimate and illegal sources and could possibly be funds from sale of arms/ammunition/weapons to India, other countries in collusion with the arms dealers. The respondent no. 3 thereafter filed the Prosecution Complaints bearing no. 01/2011 dated 06.05.2011 and 24/2018 dated 17.07.2018. The petitioner was not implicated as an accused either in ECIR vide ECIR/02/MZO/2007 dated 08.01.2007 or the Prosecution Complaints bearing no. 01/2011 dated 06.05.2011 and 24/2018 dated 17.07.2018 for commission of any cognizable offence but cited as a witness in Prosecution Complaints bearing no. 01 of 2011 and 24 of 2018.

11.1 The petitioner was investigated for assisting Hassan Ali Khan in his illegal and unlawful activities and being a close associate of Hassan Ali Khan was having privy and knowledge of the illegal activities of Hassan Ali Khan including smuggling of antiques/artefacts, huge overseas financial transactions, bank accounts etc. The petitioner was also in contact with numerous high ranking Swiss Bankers including Remo Maurer, Bank Official of Credit Swiss Bank and Swiss Consulate in Mumbai. The petitioner also assisted Hassan Ali Khan in arranging finance for him. The petitioner did not co-operate in the investigation being conducted by the respondent no. 3. The petitioner in various statements gave either evasive replies or claimed ignorance. The petitioner was activity connected to proceed of crime as such was suspected to be accused of offence of money laundering as defined under Section 3 of PMLA. The respondent no. 3 due to non-cooperative attitude of the petitioner



as a preventive measure requested Bureau of Immigration to issue a Look Out Circular against the petitioner on 10.02.2016 to prevent him from leaving the country and LOC was issued against the petitioner, as his presence in the country was necessary for investigation. The petitioner remained non-cooperative in investigation despite issuance of LOC and attempted to flee from India on two occasions but was apprehended.

11.2 The respondent no. 4/CBI/EOW/Mumbai also registered FIR bearing no. RC 0682016E0013 dated 19.09.2016 against Hassan Ali Khan and unknown public servants wherein the petitioner was not implicated as an accused although the respondent no. 3 took contrary stand in Additional Affidavit. The respondent no. 2 initiated investigation under PMLA vide ECIR/HQ/02/2017 dated 24.01.2017 after considering nature of scheduled offences and involvement of proceeds of crime of Rs. 36000 crores.

11.3 LOC was issued in pursuance of Office Memorandum dated 27th October, 2010 and as per clause 8(g) recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The petitioner at that time was not implicated in any cognizable offence either under IPC or any other penal law. The petitioner is now covered by the OM of 2017 after amendments made in OM of 2010 which provides that in exceptional cases, LOCs can be issued in cases which are not covered by the guidelines of OM of 2010 and departure of a person from India may be declined if it appears 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 any 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 interest at any given point in time.

The relevant extract of the OM dated 05.12.2017 reads as under-

Sub: Amendments in Circular dated 27.10.2010 for issuance of LOC in respect of Indian citizens and foreigners” – reg.

In continuation to the Ministry OM No.25016/31/2010-Imm dated 27.10.2010 and as approved by the Competent Authority, the following amendment is hereby issued (emphasis supplied): -

Amendment- Read as:

In exceptional cases, LOCs can be issued even in such cases, as would 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) of the above-referred OM, 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 Indian or that the same is detrimental to the bilateral relations with any 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 interest at any given point in time.

11.4 As observed by Coordinate Bench of this court in *Vikas Chaudhary V Union of India & Others* that OM dated 05.12.2017



was clearly in the nature of an amendment to the circular dated 27.10.2010 and existing Clause of the OM dated 27.10.2010 dealing with cases covered under the exception Clause was sought to be amended. OM of 2017 except for introducing an amendment to the existing OM of 2010 does not lay down or even refer to any new guidelines. The OM dated 05.12.2017 only sought to introduce an amendment and OM issued on 05.12.2017 only brought about an amendment and OM of 2010 continues to hold the field. This court is also in agreement with observations given by Coordinate Bench of this court.

11.5 The petitioner was active close associate of Hassan Ali Khan who was indulging in large scale money laundering and was privy to his illegal acts including sale of arms/ammunition/weapons to India, other countries in collusion with the arms dealers besides smuggling of antiques/artefacts, huge overseas financial transactions, bank accounts etc. The petitioner did not participate in investigation and gave evasive replies or exhibit ignorance. The petitioner during investigation did not divulge vital and sensitive information. The petitioner is cited as witness in criminal prosecutions launched under PMLA and Prevention of Corruption Act, 1988. The presence of the petitioner is required in India and departure of the petitioner would be detrimental to larger public interest. The respondent was justified in issuance of LOC on request of the respondent no. 3 against the petitioner under given facts and circumstances. The case of the petitioner falls in exception clause as per amended OM of 2017. There is no force in arguments advanced by the counsels of the



petitioner that LOC was not issued on justified reasons and is based on conjectures and surmises and was issued in contravention of OM of 2010. There exit sufficient ground for issuance of LOC and its continuance thereafter. LOC was rightly issued to prevent his escape from India particularly when the petitioner did not participate in investigation properly and failed to divulge relevant information being close associate of Hassan Ali Khan. Issuance of LOC against the petitioner is falling in exceptional clause of amendment as per OM of 2017.

11.6 The counsels for the petitioner also argued that LOC which was issued on 10.02.2016, was bound to expire after expiry of one year in view of para 8 (i) of the OM dated 27.10.2010. The CGSC argued that LOC was duly extended from time to time and as per amendment introduced in February, 2021, LOC would continue till a deletion is requested by the respondent no. 3/the originating authority. As per Clause 8 (i) of the OM dated 27.10.2010 LOC will be valid for a period of one year from the date of issue and name of the subject shall be automatically removed from LOC thereafter unless the concerned agency requests for its renewal within a period of one year. However as per Clause 'J' of the guidelines issued on 22.02.2021, which LOC shall remain in force until and unless a deletion request is received by Bureau of Immigration from the originator and no LOC shall be deleted automatically. There is no force in arguments advanced by the counsels for the petitioner.

12. The CGSC also argued that the petitioner filed another writ petition bearing no. 2332 of 2016 titled as **Girish Sagar V**



Directorate of Enforcement & Others before High Court of Bombay seeking quashing of the LOC dated 10.12.2016 issued by the respondent no. 6 which was dismissed vide order dated 21.12.2016 and as such the present petition is not maintainable and is liable to be dismissed as barred by *res judicata*. The counsels for the petitioner argued to the contrary.

12.1 It is correct that the petitioner filed a writ petition bearing no. 2332 of 2016 titled as **Girish Sagar V Directorate of Enforcement & Others** before High Court of Bombay seeking quashing of LOC dated 10.12.2016 which was dismissed vide order dated 21.12.2016 by observing as under: -

3. Mr Shinde, the learned Counsel appearing for Respondent No. 1 placed before us the confidential report as on 14th December, 2016. We have perused the same and returned back to Mr. Shinde. The report shows that CBI has registered FIR against the Petitioner on 19th September, 2016 under Section 120B read with 420 of the Indian Penal Code, 1860 and sections 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988. The said report further shows that on the basis of the said FIR, Enforcement Directorate has registered ECIR No.02/M20/207 on 1st November, 2016 and investigation by the Enforcement Directorate is in progress.

4. In above circumstances, we are not inclined to entertain this Writ petition and the same is accordingly dismissed.

12.2 The rule of *res judicata* is based on public policy as finality should attach to the binding decisions pronounced by courts of competent jurisdiction. This is applicable to writ proceedings through the process of judicial interpretation and a party is precluded from initiating fresh legal in respect of same cause of action. If a writ



petition is filed in a High Court or Supreme Court and is rejected on merits then a subsequent writ petition cannot be moved on the same cause of action. Even if in the first petition a plea which could have been raised is not raised, the matter cannot be agitated in a subsequent petition because of constructive *res judicata*. It is also based on public policy and to prevent harassment and hardship to the opposite party. The decision given by the court operates as *res judicata* and not the reasons given by the court in support of the decision. The principle of *res judicata* applies not only when an issue has actually been adjudicated by a court of competent jurisdiction but also when the issues that were actually raised but in fact not decided.

12.3 The issue pertaining to the applicability of principle of *res judicata* in filing subsequent writ petition on same cause of action was considered by the superior courts on many occasions. It was observed in **Khacher Singh V State of UP**, AIR 1995 All 338 that the second writ petition will not be maintainable under Article 226 of the Constitution if the earlier writ petition was dismissed by the High Court even in *limine* by a non-speaking order and principle of *res judicata* bars the second writ petition. It was held in **R. V. Naidu V Director, Enforcement Directorate, New Delhi**, AIR 1992 Mad 235 that when categorical findings on certain issues had been given by the court in a writ petition then subsequent petition for the same issues would be barred by the principle of *res judicata*. The Supreme Court in **State Of Uttar Pradesh V Nawab Hussain**, 1977 SCR (3) 428 observed that the doctrine of *res judicata* is based on two theories: (i) the finality and conclusiveness of judicial decisions for



the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It was further observed as under:-

It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief .on the same cause of action, for other- wise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

The Supreme Court in **Direct Recruit Class II Engineering Officers' Association V State of Maharashtra**, AIR 1990 SC 1607, established principle of *res judicata* applicable for writ petitions under Articles 32 and 226. It was held that the binding character of judgments of courts of competent jurisdiction was in essence a part of rule of law on which administration of justice was founded. A judgment of the High Court under Article 226 given on merits must bind all unless set aside in appeal.

12.4 The petitioner in the present petition prayed for withdrawal/cancellation/quashing/discontinuance/recalling of the Look Out Circular issued in the name of the petitioner and to allow the



petitioner to return to his home in the United Kingdom. The petitioner in writ petition bearing no. 2332 of 2016 titled as **Girish Sagar V Directorate of Enforcement & Others** filed before the High Court of Bombay prayed for quashing of the LOC dated 10.12.2016 issued by the respondent no. 6 which was dismissed vide order dated 21.12.2016. The relief as prayed for in present petition and petition bearing no. 2332 of 2016 are substantially similar and based on same cause of action i.e. LOC dated 10.12.2016. The perusal of order dated 21.12.2016 reflects that Writ Petition bearing no. 2332 of 2016 was dismissed by High Court of Bombay after considering confidential report wherein it was mentioned that CBI has registered FIR against the petitioner on 19.09. 2016 under section 120B read with section 420 of the Indian Penal Code, 1860 and sections 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988 and thereafter Enforcement Directorate on the basis of said FIR has registered ECIR No. 02/M20/2007 on 1st November, 2016 and investigation by the Enforcement Directorate is in progress.

12.5 It is correct that as per Status Report filed by the respondents no. 4 & 5/CBI a case was registered vide RC 13/2016/EOW Mumbai on 19.09.2016 at CBI/EOW/Mumbai Branch for commission of offences under section 120-B IPC read with section 420 IPC and section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against Hasan Ali Khan, unknown public servants, and others and said case is still under investigation by GBI/AG-VI/SIT, New Delhi but the petitioner has not been implicated as an accused in said FIR/RC and during investigation the role of the petitioner was not



clearly established and the petitioner was not made an accused by CBI in any FIR registered at Mumbai.

12.6 The petitioner has not challenged order dated 21.12.2016 by perusing further legal and judicial remedy. The counsels for the petitioner during arguments could not explain why the petitioner did not pursue further remedy in accordance with law to challenge order dated 21.12.2016 passed by the High Court of Bombay and as such order dated 21.12.2016 has attained the finality. The petitioner cannot be allowed to challenge issuance of LOC dated 10.12.2016 by subsequent filing of present writ petition after dismissal of earlier petition bearing no. 2332 of 2016 by the High Court of Bombay despite it was dismissed on consideration of fact that CBI has registered FIR against the petitioner on 19.09.2016 as detailed hereinabove and thereafter Enforcement Directorate on the basis of said FIR has registered ECIR No.02/M20/2007 on 01.11.2016. There is legal force in arguments advanced by the CGSC that present petition is barred by *res judicata*. The present petition is barred by *res judicata*.

13. The CGSC argued that the present petition is not maintainable due to lack of territorial jurisdiction as the prosecution Complaints bearing no. 01/2011 and 24/2013 were also filed in Mumbai and the Special Court, PMLA, Mumbai took cognizance of these Complaints and issued the process. The petitioner was required to file present petition in Mumbai.

The counsels for the petitioner argued that this court is having territorial jurisdiction to entertain and decide the present petition and



stated that this court has jurisdiction to entertain and adjudicate the present petition as Look Out Circular was issued by the respondent no. 2 which is having its registered office at Delhi and trial in pursuance of FIR bearing RC No. 13/E/2016 is pending adjudication before the CBI Court, New Delhi.

13.1 Whenever a suit/writ is instituted before the court, the initial issue is to be decided whether the court has jurisdiction to deal with the matter. If the court does not have jurisdiction then it will be recognized as lack of jurisdiction and irregular exercise of jurisdiction. If the court does not have jurisdiction to decide the case then such decision would be regarded as void or voidable depending upon the circumstances. Jurisdiction is not defined and explained in Code of Civil Procedure, 1908. Jurisdiction is power and competence of the court to adjudicate case. Jurisdiction is boundary of court in exercise its judicial authority. In **Hriday Nath Roy V Ram Chandra**, AIR 1921 Cal 34, Calcutta High Court explained Jurisdiction and observed as under:-

An examination of the cases in the books discloses numerous attempts to define the term ‘jurisdiction’, which has been stated to be ‘the power to hear and determine issues of law and fact;’ ‘the authority by which judicial officers take cognizance of and decide cause;’ ‘the authority to hear and decide a legal controversy;’ ‘the power to hear and determine the subject-matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them;’ ‘the power to hear, determine and pronounce judgment on the issues before the Court;’ ‘the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments into effect;’ ‘the power to



enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution.

The question of what is jurisdiction came for consideration before the Supreme Court in **Official Trustees West Bengal V Sachindra Nath Chatterjee**, AIR 1969 SC 823. The Supreme Court after relying on the Full Bench judgment in **Hriday Nath Roy V Ramchandra** held as under:-

13. What is meant by jurisdiction? This question is answered by Mukherjee Acting C.J., speaking for the full bench of the Calcutta High Court in **Hriday Nath Roy v. Ramchandra Barna Sarma**, AIR 1921 Cal 34 explained what exactly is meant by jurisdiction. We can do not better than to quote his words:

In the order of Reference to a Full Bench in the case of **Sukhlal v. Tara Chand**, (1905) ILR 33 Cal 68 (FB), it was stated that jurisdiction may be defined to be the power of a Court to ‘hear and determine a cause, to adjudicate and exercise any judicial power in relation to it:’ in other words, by jurisdiction is meant ‘the authority which a “Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.’ An examination of the cases in the books discloses numerous attempts to define the term ‘jurisdiction’, which has been stated to be ‘the power to hear and determine issues of law and fact’ “the authority by which the judicial officers take cognizance of and decide causes”; ‘the authority to hear and decide a legal controversy’ “the power to hear and determine the subject matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them”; “the power to hear, determine and pronounce judgment on the issues before the Court”; “the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the



judgments into effect”; “the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution”.

Proceeding further the learned Judge observed: “This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary or matrimonial causes, acquisition of lands for public purposes, record of rights as between landlords and tenants. This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject matter is obviously of a fundamental character

The Calcutta High Court in **Sri Sushanta Malik @ Susanta Malik V Srei Equipment Finance Limited and another**, C.O. No. 136 of 2015 decided on 08th September, 2015 observed that jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The classification of jurisdiction into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject matter is of a fundamental character.

13.2 It is reflecting from record and not in dispute that the respondent no. 3 registered a ECIR vide ECIR/02/MZO/2007 dated 08.01.2007 under **PMLA** wherein Hassan Ali Khan and others at Mumbai and filed the Prosecution Complaints bearing no. 01/2011 dated 06.05.2011 titled as **Samir Bajaj V Hassan Ali Khan & another** and 24/2018 dated 17.07.2018 titled as **Directorate of**



Enforcement V Hassan Ali Khan & Others before the Special Court (PMLA), Mumbai. The Special Court (PMLA), Mumbai after taking cognizance issued process against Hassan Ali Khan and others in these prosecution complaints for the offence under section 3 of the PMLA. The respondent no. 3 conducted search at the residence of the petitioner situated at Mumbai on 09.02.2016. The co-accused namely Vishwanathan Venugopal along with Hassan Ali Khan in ECIR dated 08.01.2007 had filed a Writ Petition (Civil) No. 11771 of 2018 titled as **Vishwanathan Venugopal V. Bureau of Immigration and Others before** this court which was disposed of vide order dated 11.03.2019 after observing that permission to travel can be granted to him by the Special Judge (PMLA), Mumbai which is competent to allow him to travel depending upon the facts and circumstances of the case as Prosecution Complaints bearing no. 01/2011 and 24/2018 are pending before the Special Court (PMLA), Mumbai.

13.3 The respondent no. 4/CBI, EOW, Mumbai registered FIR bearing no. RCD682016E0013 dated 19.09.2016 under section 120-B read with section 420 of the Indian Penal Code, 1860 read with Section 13(1) (d) of Prevention of Corruption Act, 1988 and thereafter the respondent no. 2 considering nature of scheduled offences and involvement of proceeds of crime of Rs. 36000 crores initiated investigation under PMLA vide ECIR/HQ/02/2017 dated 24.01.2017 at Delhi. The petitioner was directed to appear in the headquarter office of ED, Delhi on 30.06.2018 but the petitioner himself on 02.07.2018 requested to change venue/place of enquiry to Mumbai which was not accepted. Thereafter, the petitioner was



further directed to join investigation in ED headquarter office at Delhi vide summons dated 10.08.2018, 14.08.2018, 11.01.2019 and 01.02.2019 under Section 50 of PMLA, 2002. The petitioner on 03.02.2022 was summoned and in pursuance of order dated 24.01.2022 passed by this court was directed to join investigation at the Mumbai Zonal Office on 11.02.2022 and was asked to furnish details/documents. The petitioner appeared before the Mumbai Zonal Office on 11.02.2022 and his statement was recorded on 11.02.2022 under section 50 of PMLA.

13.4 The special court, PMLA at Mumbai has already seized with criminal cases as detailed hereinabove initiated by the respondent no. 3. The petitioner himself subjected him to jurisdiction of courts situated at Mumbai by filing writ petition bearing no. 2332 of 2016 and Crl. Misc. Application No. 677/2018 for supplying the certified copy of the FIR registered on 19.09.2016 by the CBI. The respondent no. 4/CBI, EOW, Mumbai also registered FIR bearing no. RCD682016E0013 dated 19.09.2016. Although in pursuance of said FIR, the respondent no. 2 initiated investigations under PMLA vide ECIR/HQ/02/2017 dated 24.01.2017 at Delhi but the petitioner was permitted to join investigation at Mumbai in pursuance of said ECIR. Moreover, FIR bearing no. RCD682016E0013 dated 19.09.2016 which is genesis of registration of ECIR/HQ/02/2017 dated 24.01.2017 at Delhi was registered after issuance of LOC dated 10.02.2016.

13.5 Mere fact that the respondent no. 2 through the respondent no. 6 on the request of the respondent no. 3 issued LOC dated 10.02.2016

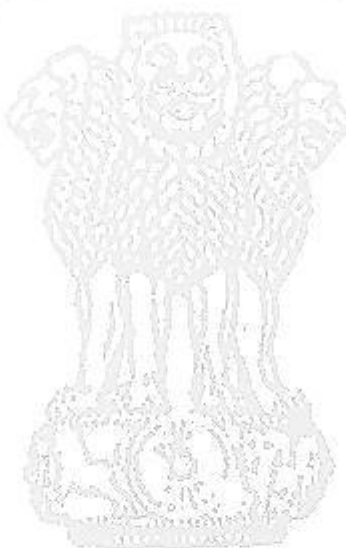


at Delhi does not create or vest territorial jurisdiction in courts at Delhi. No cause of action either wholly or in part has ever been arisen in Delhi for filing the present petition. This court is lacking territorial jurisdiction to entertain the present petition.

14. In the view of above discussion, the present petition along with pending application if stand dismissed.

SUDHIR KUMAR JAIN
(JUDGE)

AUGUST 31, 2022
N/MYS



न्यायमेव जयते