

(1999) 11 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No's. 14963 and 14964 of 1999 and WMP No. 21623 of 1999

Kishore J. Chawla

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-11-1999

Acts Referred:

Constitution of India, 1950 — Article 21
Customs Act, 1962 — Section 107, 108, 40

Citation : (1999) 66 ECC 594 : (2000) 117 ELT 4

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Habibullah Basha, for the Appellant; K. Kumar, Addl. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—The petitioner has filed the above writ petitions, the first one for issue of a writ of mandamus, restraining the respondents from harassing the petitioners or using third degree methods against the petitioner and to restrict the enquiry between 11.00 a.m. to 5.00 p.m., and the other writ petition, seeking to issue a writ of mandamus, directing the respondents 2 and 3 to permit the petitioner's Advocate to be present at the time of interrogation.

2. The petitioner is a partner in M/s. J. Sons, engaging in the business of software and exports. According to the petitioner, the said firm imports educational video cassettes and they are sub-titled and dubbed or made into a multi-media presentation on CD Roms made out by clippings from these video cassettes and, thereafter, exported to several countries.

3. On 28-1-1999 the said firm received a letter from the Assistant Commissioner of Customs, SIB, Air Cargo Complex, Chennai requesting it to produce evidence from the producer of the firm, whether M/s. Oakgrove International Ltd., Hong Kong has got the right to sell such film with world right. The said authorities

made their own inquiries from M/s. AIMS and confirmed that they are the producers of the film. Since the Customs authorities did not release the goods, writ petitions in W.P. Nos. 1083 to 1086 of 1999, praying to issue a writ of mandamus, directing the respondents therein to release the goods were filed and the learned Judge directed the respondents therein to release the cassettes and on such release the petitioner was directed to furnish a copy of the same to the second respondent of the said writ petitions. On that basis 40 films were released and so the petitioner has come forward with the plea that the Customs authorities have accepted that there was no case. But, as informed by the Customs Department, the Enforcement Directorate searched the premises of the petitioner at Coimbatore and its firm's Tirupur office on 3-8-1999. According to the petitioner, no incriminating documents were seized and the petitioner was summoned even prior to the raids on 23-6-1999 and 5-7-1999. According to the petitioner he appeared on both those dates and statements were recorded from him. As directed, he handed over the passport to the Enforcement Directorate. Again, a summon dated 16-8-1999 was faxed to the petitioner's Coimbatore office to appear on 18-8-1999. Since he did not know about the said summons as he was away from Coimbatore, he could not appear on 18-8-1999. Thereafter he came to Chennai on 19-8-1999 with the intention of appearing before the Enforcement Directorate.

4. It is stated by the petitioner that alongwith him one Mr. D.B. Rajani was also asked to appear. The said Rajani was taken inside for interrogation and he was beaten and tortured by the officers of the Enforcement Directorate and statements were obtained under coercion.

5. The petitioner was served with summons on 21-8-1999. Though the petitioner was sitting in their office from 10.30 a.m. on 20-8-1999 till 5.30 a.m. on 21-8-1999, he was asked to be present on 25-8-1999. On the basis of the treatment alleged to have been given to Mr. Rajani, the petitioner wrote a letter to the 3rd respondent giving the gist of what had happened on 20-8-1999 and 21-8-1999. In view of the treatment given to Mr. Rajani, by the authorities, the petitioner has come forward with the plea that he is having an apprehension that he would also be treated inhumanly violating the human rights and in contravention of Article 21 of the Constitution of India. On the basis of the said apprehension the petitioner has come forward with the above writ petitions.

6. The learned Senior Counsel appearing for the petitioner has submitted that when the petitioner has come forward with the prima facie case to establish his apprehension regarding the respondents' inhuman treatment and harassment for the purpose of getting statements as they like, the petitioner's right should be safeguarded by giving suitable directions to the respondents, especially when the petitioner is ready to co-operate with the respondents for enquiry. According to him, the respondents have no right to beat any person or torture him to get confession, and interrogation cannot be done for a prolonged period especially when the petitioner is diabetic and hypertension patient. He has further

submitted that at the time of enquiry, the petitioner's Advocate should be allowed to be present at least in the premises.

7. The learned Senior Counsel appearing for the petitioner has relied on the decision in *Roshan Beevi v. Joint Secretary to the Govt., Tamil Nadu, Public Deft. etc.* -1983 L.R. (Cri.) 289, in support of his submission. The Full Bench of this Court in the said decision has held that Sections 107 and 108 of the Customs Act do not give any power to the customs officials to take any person under compulsion and detention for a prolonged period under the guise of enquiry and interrogation.

8. But, while dealing with a situation of detention of a person for a prolonged period, the said Full Bench has held as follows :

"If, in a given case, the Customs Official detains any person required or summoned under the provisions of the Customs Act for a prolonged period, even exceeding twenty-four hours, or keeps him in closed doors as a captive prisoner surrounded by officials or locks him in a room, or confines him to an office premises, he does so at his peril, because Sections 107 and 108 of the Customs Act do not authorise the officer belonging to the Customs Department to detain a person for a prolonged custody and deprive him of the elementary facilities and privileges to which he is entitled. In such a situation, the officer must be held to have over-stepped his limits, and any confessional statement obtained from such a person by keeping him in a prolonged custody has to be regarded with grave suspicion, because there is always room for criticism that such a confession might have been obtained from extorted mal-treatment or induced by improper means. As pointed out by the Supreme Court in *Nathu Vs. State of Uttar Pradesh*, , the prolonged custody may stamp the confessional statement so obtained as involuntary one and the intrinsic value of such a statement may be vitiated. The question whether a person has been kept in prolonged custody is a question of fact, which has to be carefully considered against the background of the circumstances disclosed in each case".

9. While dealing with courts' power regarding the same, the above said Full Bench has held as follows :-

"It is neither advisable nor possible to lay down any inflexible standards for the guidance of Courts, though in the ultimate analysis, it is the Court which is called upon to decide the circumstances of a particular case".

10. In an unreported judgment of the Division Bench of this Court, while dealing with the scope of enquiry by the Customs officials in *Anil G. Merchant Vs. Director of Revenue Intelligence, Madras and Others*, , has held as follows :-

"...Section 107 of the Customs Act enables an officer of Customs empowered in this behalf during the course of an enquiry in connection with the smuggling of any goods to require any person to produce or deliver any document or thing relevant to the enquiry and to examine any person acquainted with the facts and

circumstances of the case. Section 108 gives power to any Gazetted Officer of Customs to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods. Clause (3) of Section 108 further provides that all persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct and that all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. These provisions, therefore, enable a Customs Officer to summon any person to give evidence or for the purpose of interrogation in connection with any enquiry which such officer is making in connection with the smuggling of any goods. Neither these provisions in Section 107 nor Section 108 nor any other provision in the Act or the rules framed thereunder restrict the right of the Customs Officer to require the person to appear only at stated hours. In the nature of things, therefore, it will have to depend on the facts and circumstances of the case and, therefore, the only things which we can expect is that the time and place shall be reasonable and fair having regard to the facts in that particular case. Normally it is expected that such interrogation or examination will be done during the normal office hours or during day time. However, we could not say that in every case it could be done only during day time or during office hours. If the circumstances demand an examination or interrogation immediately or during the night subject to all other reasonable facilities provided to the person interrogated or examined it could be done at any time. The other thing which is expected is that the examination should be conducted in such a way consistent with human dignity and comfort and not inhuman, unreasonable or unfair. The provisions in the Customs Act do not also enable the Customs Officers to extract, coerce or use any third degree methods as mentioned by the Counsel for the petitioners in the matter of examination or interrogation in exercise of powers u/s 107 or Section 108. The section does not enable the Customs Officers to take any person to custody. When a person is obliged to attend in pursuance of the summons issued u/s 108 and state the truth he could not be considered while he was examined or interrogated as in the custody of the Customs Officials. In such a situation as he is expected to appear before the officers in obedience to the summons and in compliance with law, he cannot be considered to be a person taken into custody. Taking them as captive prisoners, coercing them to give false statements or depriving them of elementary facilities are not authorised by the Act. It is needless to expressly prohibit such actions. If and when the officers violate any of these principles or coerce them to give false confessions, it would always be open to the person concerned to complain of the same wherever those statements are sought to be used and if the allegations are established, certainly nobody could rely or take note of those statements. In this connection we may note that a Full Bench of this Court in the decision reported in *Roshon Beevi v. Joint Secretary to the Government, Tamil Nadu Public Department, etc.*, 1983 LW(Cri.) 289, in paragraph 48 observed: "If, in a given case, the Customs official

detains any person required or summoned under the provisions of the Customs Act for a prolonged period, even exceeding twenty-four hours, or keeps him in closed doors as a captive prisoner surrounded by officials or locks him in a room or confines him to an office premises, he does so at his peril because Sections 107 and 108 of the Customs Act do not authorise the officer belonging to the Customs Department to detain a person for a prolonged custody and deprive him of the elementary facilities and privileges to which he is entitled. In such a situation, the officer must be held to have over-stepped his limits, and any confessional statement obtained from such a person by keeping him in a prolonged custody has to be recorded with grave suspicion, because there is always room for criticism that such a confession might have been obtained from extorted mal-treatment or induced by improper means. As pointed out by the Supreme Court in *Nathu Vs. State of Uttar Pradesh*, , the prolonged custody may stamp the confessional statement so obtained as involuntary one, and the intrinsic value of such a statement may be vitiated. The question whether a person has been kept in prolonged custody is a question of fact, which has to be carefully considered against the background of the circumstances disclosed in each case. So, it is neither advisable nor possible to lay down any inflexible standards for the guidance of Courts, though in the ultimate analysis, it is the Court which is called upon to decide the circumstances of a particular case".

11. The Apex Court in the decision in *Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) Vs. Arun Kumar Bajoria*, , has held as follows :-

"It seems rather unusual that when the aggrieved party approached the High Court challenging the order passed by a subordinate Court the High Court made the position worse for the aggrieved party. The officials of the Directorate are now enjoined by the Division Bench from arresting the respondent and the time and places for carrying out the interrogations were also fixed by the Division Bench, such kind of supervision on the enquiry or investigation under a statute is uncalled for. We have no doubt that such type of interference would impede the even course of enquiry or investigation into the serious allegations now pending. For what purpose the Division Bench made such interference with the functions of the statutory authorities, which they are bound to exercise under law is not discernible from the order under challenge. It is not the function of the Court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual, (vide *State Rep. by the C.B.I. Vs. Anil Sharma*, ."

12. In the decision, in *Directorate of Enforcement v. Ashok Kumar Jain*, AIR 1998 SCW 235, the Apex Court has held as follows -

"We have noticed that learned Sessions Judge while dismissing the application for pre-arrest bail has taken due note of the aforesaid plea of the respondent and

made necessary observations regarding the need to provide medical care and protection to the respondent in view of the medical reports. It cannot be contended, nor has it been contended before us, that respondent is immune from arrest or even interrogation simply on account of his physical conditions. No doubt investigating officials of the Directorate are duty bound to bear in mind that the respondent has put forth a case of delicate health conditions. They cannot overlook it and they have to safeguard his health while he is in their custody. But to say that interrogation should be subject to the opinion of the cardiologists of the AIMS and that the officials of the Directorate should approach the Director of AIMS to constitute a Board of cardiologists to examine the respondent etc., would, in our opinion, considerably impair the efficient functioning of the investigating authorities under FERA. The authorities should have been given freedom to chalk out such measures as are necessary to protect the health of the person who would be subjected to interrogatory process. They cannot be nailed to fixed modalities stipulated by the Court for conducting interrogations. It is not unusual that persons involving themselves in economic offences, particularly those living in affluent circumstances are afflicted by conditions of cardiac instability. So the authorities dealing with such persons must adopt adequate measures to prevent deterioration of their health during the period of custodial internment. Court would interfere when such authorities fail to adopt necessary measures. But we are not in favour of stipulating in advance modalities to be followed by the authorities for that purpose. According to us such anticipatory stipulations are interferences with the efficient exercise of statutory functions when dealing with economic offences. Hence, learned Single judge ought not have imposed such conditions on the Directorate."

13. From the above said decisions, it is clear that the authorities should not overstep their limits and third degree method should not be adopted for the purpose of getting statement as they like, and it has also been held uniformly that it is not the function of the Court to monitor investigation processes, and it must be left to the investigating agency to decide the venue, timings, etc.

14. Mr. Kumar, learned Counsel appearing for the respondents has submitted that the entire issue raised in these writ petitions has been dealt with by the learned Judge of this Court in Writ Petition Nos. 1947 and 1948 of 1996, dated 19-3-1996 which has been confirmed by the Division Bench in W.A. No. 329 of 1996, dated 28-3-1996. The Apex Court also has confirmed the same by dismissing the Special Leave Petition, on 16-9-1997. According to him, the learned Judge, in the said judgment has dealt with the issue regarding the presence of an Advocate, which runs as follows :-

"36. (g) To permit the petitioners to have legal consultation with an Advocate of their choice to be made available within the precincts of the office premises of the respondent at the time of the enquiry though not with simultaneous presence along with the petitioners :- Even the petitioners in their affidavits state that the Courts have declined simultaneous presence of legal Counsel alongwith the

person summoned, but they contend that the right to consult the Counsel is not denied. The learned Counsel for the petitioners in his argument in this regard submitted that situations may arise when the investigation is in progress before the respondent, that it becomes necessary to the petitioners to consult their Counsel. Hence they may be granted permission to consult their Counsel as and when occasion arises during the course of investigation. In my view this prayer cannot be indirectly achieved. Added to this, allowing the petitioners to consult their Counsel during the course of investigation or proceedings under the Act is neither practicable nor desirable.

In the case of Poolpandi Vs. Superintendent, Central Excise and others etc. etc., , the Supreme Court has expressed the view that a person called for questioning during investigation by authorities under the Customs Act or the Act is not an accused person, and presence of a lawyer during investigation is refused. It is stated thus in paragraph 13 of the said judgment :-

"The judgment under challenge in Criminal Appeal No. 476 of 1986 deals with several questions raised by the respondent, and the appeal has been pressed by Mr. Tulsi as against that part which allowed the presence of a lawyer when the respondent is interrogated. It has been rightly contended on behalf of the appellant that the relevant provisions, in this regard, of the FERA and the Customs Act are in pari materia and the object of the two Acts is also similar. As pointed out earlier the case of Ramanlal Bhogilal, (supra) was one arising under FERA. Consequently Criminal Appeal No. 476 of 1986 has to be allowed against that part of the judgment of the Delhi High Court which dealt with the right of the respondents to have their lawyer during their interrogation."

Shri N. Jothi, the learned Counsel for the petitioners contended that the judgment of the Delhi High Court in the case of K.T. Advani Vs. The State, ", should be taken as affirmed by the Supreme Court in all other respects. He submitted that the Supreme Court has reversed the said judgment of the Delhi High Court only so far as it relates to presence of the lawyer with the person concerned at the time of interrogation.

Shri V.T. Gopalan, learned Senior Counsel submitted that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follows from it. He relied on the decision in Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, , in this regard. It is well settled position of law. Hence, I accept the submission of Shri V.T. Gopalan on this aspect.

Hence, this prayer also cannot be granted".

15. Even with respect to the apprehension of the petitioner that the respondents should not adopt third degree method, while answering similar argument in the abovesaid judgment, the learned Judge has held as follows :-

"38. (i) To give an assurance that third degree methods will not be adopted as against the petitioners :-

In paragraph 14 of the counter affidavit it is stated thus :-

"As regards the prayer in para 19(i) of the affidavit under counter, I respectfully submit that the same is nothing but an insinuation against the Department and to create an impression as if the Department will employ such methods. It is totally needless and unnecessary to state that the Department or any law Enforcement Machinery will be bound by law and constitutional mandates in this behalf. In the circumstances, the prayer in this para is totally mischievous and as such this Hon"ble Court may not be pleased to countenance such a prayer".

The learned Senior Counsel for the respondent also submitted that the respondent is expected to act in accordance with law keeping in view the constitutional mandates.

At this stage, I must state that the learned Senior Counsel for the respondent brought to my notice the statement made in paragraph 10 of the reply affidavit of the petitioners that "it was openly admitted on 20-2-1996 by the Senior Standing Counsel of the Central Government that one in thousand cases the third degree method might have been adopted. This is sufficient to indicate that my apprehensions are correct. Whether my case comes into such an odd case cannot be gambled by me". The learned Senior Counsel for the respondent submitted to this Court that he was pained by the above statement made by the petitioners. The submission made by him was not correctly understood. It was not that third degree method would be adopted. Assuming that in a rare case if some irresponsible officer adopts such a method action could be taken against such an officer. But such submission by the Counsel could not be taken as an admission.

The learned Counsel for the petitioners stated that the petitioners did not make such a statement in paragraph 10 of the reply affidavit so as to wound the feelings of the learned Senior Counsel; the statement was made in their anxiety that third degree method should not be used even in any case, and the said statement may be understood accordingly.

Further Shri T. Gopalan, placed before me copy of the order of the Supreme Court in the case of "Union of India through The Secretary, Ministry of Finance and Ors. v. Prem Prakash", Criminal Appeal Nos. 98-99 of 1994 disposed of on 4-2-1994, to contend that in a similar situation the Supreme Court observed that constitutional rights of the person would be duly protected. Paragraph 2 of the said order reads thus :-

"Shri Chidambaram then submitted that the respondent apprehends the use of force against him during the inquiry even though the respondent has been fully cooperating with the authorities in this behalf. Mr. Chidambaram submitted that a statement on behalf of the appellants assuring the respondent of full protection of his rights would go a long way in giving to the respondent the needed

assurance. All that we need to observe in this connection is that the learned Additional Solicitor General promptly, in all fairness reciprocated by making a statement that the constitutional rights of the respondent would be duly protected. This statement is placed on record".

The respondent in these cases also would protect the constitutional rights of the petitioners. This should satisfy the prayer (i)."

16. This Court in *Anil G. Merchant Vs. Director of Revenue Intelligence, Madras and Others*, , held that there is no right in the person examined u/s 108 of the Customs Act to have a lawyer at the time of interrogation. This has been approved by the Division Bench of this Court reported in 1989 42 E.L.T. 523 (Mad.).

17. Even the Division Bench of this Court in *T.T.V. Dinakaran v. Enforcement Officer, E.D. Govt. of India*, 1997 Cri. L.J. 130, which has been followed by the learned Judge in the abovesaid judgment, has held as follows :-

"20...We are of the view that the object of Section 40 of the Act is to facilitate the investigatory process undertaken by the concerned officer without any restriction on person, or place or time inasmuch as the interrogation enabled in this provision cannot be said to be confined to only a delinquent or a person who has committed or corroborated or abetted the commission of any act constituting an offence or violation of any of the provisions of the Act. Having regard to the purpose and object of Section 40 of the Act viz., to aid or assist the progress of investigation or proceeding under the Act, it would not only frustrate the object of the legislation but completely mutilate the provision, if the construction of the nature as claimed on behalf of the appellants is to be placed upon Section 40 of the Act. In our view, the provisions contained in Section 40 of the Act are merely a machinery provision empowering the concerned officer to issue a process or summons and intended to facilitate the effective exercise of powers and enforcement of the provisions of the Act itself. Therefore, we are unable to agree with the submission on behalf of the appellants that the ratio laid down in the judgments relied upon on their behalf must be applied to the case on hand.

21...it is well settled that, the word "investigation" means search for materials and facts in order to find out whether or not an offence or violation has been committed and if so by whom and in what manner and with what result. It may be that the result of investigation disclose ultimately no offence or violation or that it might have provided a clue or turned put to be a hunch or a hoax. To read into Section 40 of the Act any limitations and restrictions on the exercise of powers by the concerned officer even at the stage of investigation would not only derail and demoralise the investigation and retard the effective enforcement of an important legislation having serious impact upon the economic viability and very development of the nation but also would help real culprits to escape from the clutches of the law with impunity."

18. The learned Senior Counsel also relying on the decision reported in *D.K. Basu*

Vs. State of West Bengal, , has submitted that the Apex Court has permitted the arrestee to meet his lawyer during interrogation. In the said case, the Apex Court has held that in addition to the statutory and constitutional requirements, it can be useful and effective to structure appropriate machinery for contemporaneous recording and accountability. While observing so, the Apex Court, has held as follows :-

"36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1)....

(2)...

(3)...

(4)...

(5)...

(6)...

(7)...

(8)...

(9)...

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11)...

19. The Apex Court has formulated the same while dealing with the custodial violence and abuse of Police power under the guise of arrest or preventive detention. This principle cannot be made applicable to the present case where the petitioner has been summoned for interrogation. Moreover, in (supra), the Apex Court while dealing with this issue has held as follows :-

"We do not find any force in the arguments of Mr. Salve and Mr. Lall that if a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus: if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering questions it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a

constitutional right to claim similar luxuries and company of his choice. Mr. Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the "just, fair and reasonable test" we hold that there is no merit in the stand of appellant before us."

20. In the decision of the Division Bench of this Court in *Vijayaraj Jain v. Union of India*, 1996 CrL. L.J. 2071, the learned Judges, while dealing with the similar issue, have held as follows :-

"58. The said submission of the learned Counsel for the petitioners also cannot be accepted in view of the decision reported in *Balkrishna Chhaganlal Soni Vs. State of West Bengal*, , *Balkrishna Chhaganlal Soni v. State of West Bengal*, where (in paragraph 15) it is stated thus :-

"...A businessman may be want only humiliated if he is arrested and kept in the bazaar and interrogated at length in the presence of a crowd which is sure to collect. The provision is plain that an authorised customs official is entitled to examine any person at any time at any place in the course of an enquiry..."

The said judgment was followed by our High Court in Writ Appeal Nos. 891 to 893 of 1988 (*The Deputy Director, Enforcement Directorate, Madras-6 v. P. Mansoor Mohamed Ali Jinnah and Ors.*), as per judgment dated 11-11-1988, the first Bench has held (in paragraph 32) as follows :-

"A further argument was advanced that the statements have been recorded out of office hours, and as such as rightly pointed out by the learned single Judge, no reliance can be placed on these statements. We have already held that there is no material in the present case to show that the statements were recorded out of office hours. The observation of the Supreme Court in *Balkrishna Chhaganlal Soni Vs. State of West Bengal*, answers this contention. In this case, the Supreme Court has pointed out thus: "The provisions (Section 107 of the Customs Act) is plain that an authorised Customs official is entitled to examine any person at any time, at any place in the course of an enquiry"...."

From the abovesaid principles laid down in the above mentioned decisions, it is very clear that the petitioner's request to permit his Advocate to be present at

the time of interrogation or near to him in the premises cannot be countenanced.

21. With respect to the petitioner's apprehension regarding harassment, this Court cannot simply brush aside the case of the petitioner as baseless. He has come forward with certain facts in support of his case. But, this suggestion should not be misunderstood as if this Court has accepted the allegations mentioned in the affidavit as such. The said suggestion has been made only on the basis that the petitioner is having some apprehension in his mind on the basis of the averments made in the affidavit. Moreover, in view of the abovesaid principles of law laid down in the above mentioned decisions, the action of the authorities must be right, just and fair. The petitioner should not be tortured or subjected to third degree method, or his constitutional right should not be abridged, except in the manner permitted under law. The respondents have fairly stated in the counter affidavit that they are not adopting any such third degree method and also they are not having any intention to do so. In view of the said assurance given by the respondents, this Court need not give any specific direction to the authorities regarding the same.

22. For the reasons stated above, I do not find any merits in these writ petitions. Accordingly, they are dismissed. No costs. Consequently, W.M.P. No. 21623 of 1999 is also dismissed.