
(2021) 01 KL CK 0209

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24890 Of 2020

Maneesh E.P And Ors

APPELLANT

Vs

Directorate Of Enforcement And Ors

RESPONDENT

Date of Decision : 06-01-2021

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 50, 50(2)
Foreign Exchange Management Act, 1999 — Section 40

Citation : (2021) 01 KL CK 0209

Hon'ble Judges : V.G. Arun, J

Bench : Single Bench

Advocate : Shaijan C. George, Anju Treesa George, T.A. Unnikrishnan, P. Vijayakumar

Final Decision : Dismissed

Judgement

1. This writ petition was filed on the petitioners being issued with summons under Section 50 of the Prevention of Money Laundering Act, 2002, requiring them to appear before the fourth respondent, in connection with the investigation of F.No.ECIR/KZSZO/05/2020/536. The prayers in the writ petition is (i) to direct the respondents to abstain from harassing, threatening or coercing the petitioners during questioning, (ii) to permit the presence of a legal practitioner, (iii) to limit the questioning time between 9.30 a.m and 4.30 p.m and (iv) to direct the respondents to provide copies of the statements taken from them. The reason for approaching this Court is stated to be the petitioners' apprehension due to the manner in which Ms.Swapna E.P, sister of the first petitioner and daughter of the second petitioner, was questioned and her statement recorded under threat and coercion.

2. The fourth respondent has filed counter affidavit refuting the allegation that Swapna E.P was harassed during questioning and coerced into giving statement against her will. It is stated that the apprehensions of the petitioners are misplaced and the allegation, misconceived. That, the presence of legal

practitioners cannot be permitted during questioning. It is contended that a writ petition under Article 226 against the summons issued under Section 50 of the Act, cannot be entertained.

3. In their reply affidavit, the petitioners have stated that pending the writ petition, they appeared before the fourth respondent. But, contrary to the assurance given before this Court, the fourth respondent and his colleagues threatened the petitioners during questioning and had forced them to give statements against their will. This allegation was stoutly refuted in the additional counter affidavit filed by the fourth respondent. Thereupon, the petitioners sought to amend the writ petition, incorporating an additional prayer that, guidelines should be laid down regarding the procedure to be followed when petitioners or similarly placed persons summoned under Section 50 of the Act, appear before the investigating officers.

4. Heard Sri. Shaijan C. George, learned Counsel for the petitioners and Sri. T.A.Unnikrishnan, learned Special Prosecutor for the Enforcement Directorate.

5. The question regarding maintainability of writ petition against a summons under Section 50 and the entitlement to have the presence of a legal practitioner during questioning was considered and negated by this Court in W.P(C) No. 28049 of 2020. Therein, reliance was placed on the judgments of the Apex Court in Kirit Shrimankar v. Union of India and Others [order dated 20.11.2014 in WP(Crl.) No.110 of 2013] and Union of India and Another v. Kunisetty Satyanarayana [(2006) 12 SCC 28]. In Kirit Shrimankar, the petitioner had approached the Apex Court after the Customs officials conducted a search in the residential premises of his former wife. The petitioner alleged that he was threatened with arrest and incarceration if he did not submit to the dictates of the Customs Officials. The Apex Court observed that it was highly premature for the petitioner to seek remedy under Article 32 of the Constitution of India based on such flimsy averments, which cannot form the basis for a prima facie apprehension. Thereupon, the petitioner withdrew the writ petition. In Kunisetty Satyanarayana, the appellant had approached the court on being served with a show cause notice by his employer as to the genuineness of his caste certificate. After adverting to precedents, which laid down the proposition that ordinarily no writ would lie against a charge sheet or show cause notice, the Apex Court held as follows:

"14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any

party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

6. The decision of the High Court of Delhi in Virbhadra Singh and Another v. Directorate of Enforcement and Another [2017 SCC Online Del 8930], is to the effect that, no person is entitled in law to evade the command of the summons issued under Section 50 of the Act on the ground of a possibility of such person being prosecuted in future.

7. In Poolpandi v. Superintendent, Central Excise [(1992) 3 SCC 259] the Honourable Supreme Court had occasion to deal with the entitlement of a person summoned under the Customs Act to have the presence of a companion during questioning. The relevant portion of the judgment is extracted hereunder:

"11. We do not find any force in the arguments of Mr Salve and Mr Lalit 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."

8. Another relevant decision is, Commissioner of Customs, Calcutta and Others v. M.M.Exports and Another [(2010) 15 SCC 647], wherein the Apex Court cautioned the High Courts against interference at the summons stage. In

Dukhishyam Benupani v. Assistant Director, Enforcement Directorate v. Arun Kumar Bajoria [(1998)1 SCC 52], interference by the High Court into the interrogation of a person summoned under Section 40 of the FERA, by fixing the time and venue for interrogation, was frowned upon by the Honourable Supreme Court, observing that it is not the function of the courts to monitor investigation processes so long as the investigation do not transgress any provision of law and that, the decision regarding the venue, the timings, the questions and the manner of putting such questions to persons involved in such offences, are best left to the discretion of the investigating agency.

9. Hence, the legal position is that a person issued with summons under Section 50(2) of the Act is bound to appear in person or through authorised agents, as the case may be and to state the truth upon any subject respecting which he is examined and that, no cause of action arises merely for reason of a person being thus summoned. As held by the Apex Court in Dukhishyam Benupani, it is not for this Court to monitor the investigation and to decide the venue, the timings, the questions and the manner of questioning.

For the foregoing reasons, the writ petition is dismissed.