
(2015) 03 KL CK 0194
In the High Court Of Kerala
Case No : Writ Petition (C) No. 8455 of 2015

Nabeel Ansari

APPELLANT

Vs

Department of Customs and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Evidence Act, 1872 — Section 139

Citation : (2015) 322 ELT 461 : (2015) 2 KHC 828

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : C.P. Mohammed Nias, for the Appellant; John Varghese and Thomas Mathew Nellimoottil, SCs, Advocates for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The petitioner has approached this Court challenging the course and events pursued by the respondents in denying the opportunity sought for to cross-examine the concerned witnesses as requested vide Ext. P6 leading to Ext. P7 order dated 30/01/2015. The learned counsel for the petitioner points out that there is violation of the principles of natural justice as well and much prejudice has caused to the petitioner because of the denial of cross-examination of the concerned witnesses. This in turn is under challenge in this writ petition. The learned Standing Counsel for the respondents submits that the idea and understanding of the petitioner is thoroughly wrong and misconceived. It is stated that the proceedings were finalised by the 2nd respondent strictly in conformity with the statutory prescription also granting sufficient opportunity to verify, peruse the documents and to mould the case accordingly. Every aspect pointed out by the petitioner has been meticulously considered before passing the impugned order. It is stated that no provision of law is violated under any circumstances nor is there any infringement of principles of natural justice. Reliance is also sought to be placed on the decision rendered by the Apex Court as per the decision reported in Telestar Travels Pvt. Ltd. and Others Vs. Special Director of Enforcement, (2013) 2 ABR 988 : (2013) 3 AD 89 : (2013) 178 CompCas 321 : (2013) 4 CompLJ 228 : (2013) 289 ELT 3 :

(2013) 3 JT 157 : (2013) 2 RCR(Criminal) 3 : (2013) 2 SCALE 519 : (2013) 9 SCC 549 : (2013) 118 SCL 361 . The observations as in paragraph "20" are in the following terms:

"20. Coming to the case at hand, the Adjudicating Authority has mainly relied upon the statements of the appellants and the documents seized in the course of the search of their premises. But, there is no dispute that apart from what was seized from the business premises of the appellants the Adjudicating Authority also placed reliance upon documents produced by Miss. Anita Chortarni and Mr. Raut. These documents were, it is admitted disclosed to the appellants who were permitted to inspect the same. The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents is not subjected to cross-examination of the witnesses producing the documents cannot even on the principles of Evidence Act be found fault with. At any rate, the disclosure of the documents to the appellants and the opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the Courts below. The third limb of the case of the appellants also in that view fails and is rejected."

2. After hearing both the sides, this Court finds that the case put up by the petitioner is not liable to be entertained in view of the law declared by the Apex Court as per the decision cited supra. In the said circumstance, interference is declined and the writ petition is dismissed.

It is brought to the notice of this Court that the proceedings are still to be finalized and as per Ext. P7, only the opportunity to cross-examine the witnesses alone has been rejected. In the said circumstance, the 2nd respondent is granted a further period of one month to finalise the proceedings.