

(1992) 02 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No's. 519 to 524 of 92

S. Balasubramaniam and others

APPELLANT

Vs

R. Muthu Krishnan and others

RESPONDENT

Date of Decision : 04-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 107, 108

Citation : (1993) CriLJ 242 : (1992) 40 ECC 69

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Advocate : M.R.M. Abdul Kareem for M/s. M. Abdul Nazeer and S.M. Raziaq Ali, for the Appellant; C.A. Sundaram, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

K.S. Bakthavatsalam, J.—W.P. Nos. 519, 521 & 523 of 1992 :

The prayer in the writ petitions is as follows :

To issue a writ of mandamus or any other appropriate writ or order or direction in the nature of a writ directing the respondents to forbear from

taking any proceedings against the petitioner on the allegation of illegal exports of goods pending disposal of C.C. Nos. 231 and 232/92 filed by S.

K. S. Hameed and S. Balasubramaniam respectively on the file of the Judicial Magistrate-1. Saidapet, Madras and pass such other further order

or orders

2. It came to the notice of the Customs Department-respondents that certain consignments have been exported by forgery of Customs documents

viz., the shipping bills as though the same had been examined and passed by the competent officers of the Customs Department. An investigation

was lodged into the matter on the basis of three consignments. In connection with such investigation summons were issued to the petitioner and to

Mr. S. K. S. Hameed, petitioner in W.P. No. 519 of 1992 and the petitioner in W.P. No. 521 of 1992, who is the Director of the petitioner in

W.P. No. 523 of 1992. There the petitioner is employed. The Officers of one Mackt Travels and Cargo (P) Limited who were the agent for

Malaysian Airlines and to whom the consignment had been entrusted were also interrogated. On 25-12-1991 interrogation was conducted

between 11 a.m. and 5 p.m. mainly with the employees of Mackt Travel and Cargo (P) Limited and with the petitioner in W.P. No. 521/92, S. K.

S. Hammed. It seems when the interrogation was not completed the petitioner in W.P. No. 519/92 and W.P. No. 521/92 were asked to come

next day i.e. on 26-12-1991 and they themselves undertook in writing to come the next day. When they came back on 26-12-1991 they were

interrogated till 5 p.m. It seems the petitioner in W.P. 522/92 one S. K. S. Hameed, has given a statement on 25-12-1991 and there was nothing

further required from him on 26-12-1991 he left the place at 3 p.m. The petitioner in W.P. No. 519/92 one Balasubramaniam left the place at 5

p.m. Pursuant to the statements of the petitioners, further investigation have been continued with other persons also apparently involved in the

activities and it transpires that apart from the three consignments at least 17 consignments within the period July 1990 to December 1991 have

been sent out to foreign countries through forgery of Customs documents. At this stage the petitioners have come up to this Court with the above

said prayer.

3. Notice of motion has been ordered by me on 21-1-1992.

4. Mr. C. A. Sundaram, Additional Central Government Standing Counsel filed a counter-affidavit. In the counter-affidavit it is stated that the

entire writ petition is aimed at putting a stop to any proceeding which may be initiated against the petitioner and to scuttle the investigations which

are in progress and that the writ petition is not maintainable. It is also stated that the allegations made in the affidavit are wide in nature regarding

the voluntariness or otherwise and such questions cannot be decided in proceedings under Art. 226 of the Constitution, being heavily disputed

questions. This has been concluded by a Division Bench judgment of this Court in

W.A. No. 360 of 1989 batch dated 25-8-1989. This has been followed by Kanakaraj, J. in W.P. No. 3091 of 1991 dated 15-4-1991. It is further pointed out in the counter-affidavits that no violent methods have been used and wide ranging and reckless averments were made against the respondents and that they have denied. It is also stated that the averments that the Customs Officials are starting false evidence is merely an attempt of the petitioner to escape from the due process of law. It is also pointed out that mere pendency of criminal proceedings would not be a reason to stop the investigation proceedings. It is also pointed out that the writ petition is an attempt to scuttle certain investigations, and the writ petitions are benefit of merits and deserve to be dismissed.

5. Mr. M. R. M. Abdul Kareem, learned senior counsel appearing for the petitioners contends that the respondents 1 to 3 are bent upon causing serious loss by fabricating false evidence by using violent methods. It has also been pointed out by the senior counsel that the petitioners have filed

C.C. Nos. 231 and 232 of 1992 pending before the Judicial Magistrate-I, Saidapet, Madras who has seized of the matter. The respondents are not entitled to take proceedings pursuant to any statement obtained from them against the petitioners. Learned counsel contends that the petitioners

are asked to appear on 26-12-1991 for enquiry and again they were asked to come on 26-12-1991 and they were beaten indiscriminately and

were tortured. According to learned counsel when there is no point in asking the petitioner to come once again for the very same purpose and the

said prayer has to be granted in these writ petitions. Per contra, Mr. C. A. Sundaram, learned counsel for the respondents relies upon the counter-

affidavit which has been stated above and relies upon heavily on the judgment of the Division Bench of this Court and the order of Kanakaraj, J.

with regard to the going into the facts of the case or with regard to the voluntariness of the statements. Considering the arguments of the learned

counsel for the petitioner and of Mr. C. A. Sundaram, I am of the view that a writ of mandamus cannot be given for such purpose and such a

blanket prayer, I do not think this Court can scuttle the proceedings in the matter the petitioners wants to do. Investigation if any has to go and the

petitioners cannot ask for a mandamus to stop the officials of the Customs Department from proceeding with the investigation. That apart the

voluntariness of the statements, i.e. whether the petitioner has given statements voluntarily or they were tortured are all questions of fact which

cannot be gone into in proceedings under Art. 226 of the Constitution of India based on affidavit. I am of the view, the forum is entirely different to

decide the question. As rightly pointed out by learned counsel for the department that the pendency of the criminal proceedings will not be a bar

for the Customs Department to investigate into the matter or to probe into the matter thoroughly and to bring the real culprits before the eyes of

law. I am of the view that in such matters where public interest and national interest involved, a Court sitting under Art. 226 of the Constitution

should not normally use its discretion in favour of the petitioners. On the facts and circumstances of the case I am satisfied that in these matters this

Courts should not interdict at this stage of the proceedings. There are no merits in these writ petitions and these writ petitions are dismissed. No

costs.

W.P. Nos. 520, 522 and 524 of 1992 :

6. The prayer in the writ petitions is as follows :-

to issue a writ of declaration or any other appropriate writ or order or direction in the nature of a writ declaring that the persons who are

summoned by the respondents, Customs officials are entitled to have legal assistance and the lawyer can be present along with the person who are

summoned during enquiry and interrogation under the Customs Act, 1962

6. The facts are one and the same as in W.P. No. 521 of 1982 which have been disposed of. So, I do not think it is necessary for me to restate

the facts here in extenso.

7. Mr. M. R. M. Abdul Kareem, learned counsel for petitioners argues that the petitioners are entitled to have legal assistance and the lawyer can

be present along with the persons who are summoned during enquiry and interrogation under the Customs Act, 1962. Learned counsel relies upon

a direction given by a Division Bench of this Court in Writ Appeal No. 1503 and 1504 of 1991 dated 28-1-1992.

8. Per contra Mr. C. A. Sundaram, learned counsel for the Department relies upon a Division Bench judgment of this Court in Writ Appeal No.

360 of 1989 etc. batch dated 25-8-1989 for the proposition that the petitioner has no right to ask for assistance of the lawyer and it has been

categorically held so by the Division Bench of this Court. The Division Bench in that case while considering the contention of the petitioner that the persons, who were interrogated under Sections 107 and 108 of the Customs Act have a fundamental right to the presence of counsel of their own choice during interrogation. The Division Bench has taken note of another Division Bench judgment of this Court in Anil G. Merchant v. Director of Revenue Intelligence, Madras 1986 Cri. LJ 1273 apart from another Division bench judgment in W.A. Nos. 1015 etc. of 1987 and rejected the contention the persons are entitled to have legal assistance during interrogation by the officials under S. 107 or 108 of the Customs Act and that it is a fundamental right. In view of the three judgments of the Division Bench of this Court which has been followed by Kanakaraj, J. in W.P. No. 3091 of 1991 by order dated 15-4-1991 I do not think the prayer asked for can be granted.

9. It is true Division Bench consisting of Misra, J. and Swamidurai, J. in a recent unreported decision in Writ Appeal Nos. 1503 and 1504 of 1991 dated 28-1-1992 while referring the issue to a Full Bench of this Court, has granted certain interim directions considering the nature of the enquiry and nature of the goods being perishable. I do not think, on the facts of the cases, which are before me, such a direction is called for. Moreover, I am bound by the judgments of the Division Bench not one but three of this Court on the point of law and as such any directions considering the facts and circumstances of that case. The learned counsel for the petitioner relies upon a judgment of a single Judge of the Bombay High Court in Abdul Rajak Aji Mohammed v. Union of India 10 ECC 237 where the single Judge thought fit to give certain directions for the advocate to sit behind the suspect at a distance of about six feet to avoid any promptings. When the law laid down and as it stands today by the three Division Bench Judgments of this Court I do not think I can take note of the judgment of the learned single Judge of the Bombay High Court. There are no merits in these writ petitions also and these writ petitions are also dismissed. No costs.

10. Petitions dismissed.