

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 17TH DAY OF DECEMBER 2020 / 26TH
AGRAHAYANA, 1942

WP(C).No.28049 OF 2020(E)

PETITIONER/S:

C.M.RAVEENDRAN
AGED 61 YEARS
S/O. CHAKKERI MEETHAL CHOYI, GAZETTED OFFICERS
FLAT NO. 11, JAWAHAR NAGAR, KOWDIAR,
TRIVANDRUM-695 003

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SHRI.MAHESH BHANU S.
SMT.S.LAKSHMI SANKAR
SHRI.RESSIL LONAN
SRI.R.ANIL

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY, GOVERNMENT OF
INDIA, MINISTRY OF FINANCE, DEPARTMENT OF
REVENUE, 6TH FLOOR,B WING, JANPATH BHAVAN,
JANPATH, NEW DELHI-110 001
- 2 ASST. DIRECTOR,
ENFORCEMENT DIRECTORATE, KOCHIN ZONAL OFFICE,
KANOOS CASTLE, A.K. SHEDHADRI ROAD, KOCHIN-682
011

R1 BY ADDITIONAL SOLICITOR GENERAL OF INDIA
SRI SURYA PRAKASH V RAJU
R1-2 BY ADV. T.A.UNNIKRISHNAN, CGC &
SPECIAL COUNSEL FOR ENFORCEMENT DIRECTORATE
SRI ZOHEB HOSSAIN

OTHER PRESENT:

ASG P.VIJAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.G.ARUN, J.

W.P(C).No. 28049 of 2020

Dated this the 17th day of December, 2020

O R D E R

The petitioner is working as the Additional Private Secretary to the Chief Minister of Kerala. The Enforcement Directorate has issued summons to the petitioner under Section 50 of the Prevention of Money Laundering Act, 2002 ('the Act', for short). Petitioner apprehends that on his appearance in response to the summons, he will be restrained for long hours and coerced into giving statements against his will. The petitioner therefore prays for a direction to the 2nd respondent to refrain from detaining the petitioner beyond reasonable time and to permit the presence of a legal practitioner during questioning.

2. The dates and events, as narrated in the writ petition, are as follows;

Exhibit P1 summons was issued by the 2nd respondent, requiring the petitioner to appear in person on 6.11.2020. As the petitioner was not keeping well, he requested to extend the date for appearance by four days. On 6.11.2020, petitioner tested positive for Covid-19 and

was admitted at the Medical College, Thiruvananthapuram. He was discharged on 18.11.2020. The 2nd respondent was informed about these developments, in spite of which, Exhibit P5 summons was issued, requiring the petitioner's presence at the Directorate on 27.11.2020. Again, the petitioner sought postponement of the date as he had not fully recuperated from the after effects of the viral infection. Thereafter, another summons was issued, asking the petitioner to appear on 10.12.2020. The petitioner expressed inability to appear on that day, since he had to be at the Hospital for review on 10.12.2020. Thereupon, Exhibit P11 summons was issued requiring the petitioner to appear before the 2nd respondent on 17.12.2020. Hence, the writ petition.

3. Heard Sri.R.Anil, learned counsel for the petitioner and Sri.S.V.Raju, learned Additional Solicitor General.

4. Learned counsel for the petitioner submitted that the challenge in the writ petition is not against the power to issue summons, but against the injudicious manner in which the power is being exercised. According to the learned counsel, repeated summoning of the petitioner, in spite of his ailments and weak physical condition, speaks volumes about the arbitrariness and mala fides behind the action. Therefore, the apprehension of the petitioner that he will be detained for long hours and made to give statements against his will, is well founded. It is pointed out that continuous

interrogation for long hours will have adverse impact on the already weak health condition of the petitioner. It is submitted that, even if the presence of a lawyer during questioning is not allowed, there may at least be a direction to confine the questioning to a reasonable period of time.

5. The learned ASG raised preliminary objection regarding maintainability of the writ petition. It was contended that the writ petition is liable to be dismissed as premature since, mere issuance of summons under Section 50 of the Act does not give rise to any cause of action. In support of this contention reliance is placed on the decision of the Apex Court in ***Kirit Shrimankar v. Union of India and Others*** [order dated 20.11.2014 in WP(Crl.). No.110/2013] and ***Union of India and Another v. Kunisetty Satyanarayana*** [(2006) 12 SCC 28]. In ***Kirit Shrimankar***, the petitioner approached the Apex Court after officials from the Customs Department conducted 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 regarding the genuineness of his caste certificate. After adverting to precedents, on 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.”

The decision of the High Court of Delhi in **Virbhadra Singh and Another v. Directorate of Enforcement and Another** [2017 SCC Online Del 8930] was cited to contend that no person is entitled in law to evade the command of the summons issued under Section 50 of the Act on the ground that he may be prosecuted in future. Attention was drawn to the observations of the Honourable Supreme Court in **Pool Pandi v. Superintendent, Central Excise** [(1992) 3 SCC 259] on 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.”

To drive home the limited scope of interference at the investigation stage, learned ASG cited the decision in **Commissioner of Customs, Calcutta and Others v. M.M.Exports and Another** [(2010) 15 SCC 647], wherein the Apex Court had cautioned that, as far as possible, High Courts should not interfere at the stage when the Department has issued summons. 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 and the Honourable Supreme Court observed that it is not the function of the court to monitor investigation processes so long as such investigation does 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, is best left to the discretion of the investigating agency.

6. I find substantial force in the preliminary objection regarding maintainability raised by the learned ASG. Exhibit P11 summons is

issued under Section 50(2) of the Act. A person issued with summons is bound to attend in person or through authorised agents, as the officer issuing the summons directs, and is bound to state the truth upon any subject respecting which he is examined or makes statements and to produce such documents as may be required. As held by the Apex Court in **Kirit Shrimankar**, no cause of action arises merely for reason of a person being called upon to state the truth or to make statements and produce documents. I am unable to accept the submission of the learned counsel for the petitioner that the cause of action is based on the repeated summoning of the petitioner in spite of his illness, which gave rise to the reasonable apprehension that the petitioner will be forced to give statements against his will. I find no basis for such apprehension inasmuch as the date for appearance was changed by the 2nd respondent on three occasions, acceding to the request made by the petitioner. Having commenced an investigation or proceeding, the 2nd respondent cannot be expected to wait indefinitely to suit the petitioner's convenience. 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. I find the following observations by Justice R.K.Gauba in **Virbhadra Singh** to be contextually relevant;

“Suffice it to observe in this context, and at this stage, that those in public life are expected to be open to probity. Higher the position in life (or polity), higher the

obligation (moral, if not legal) to be accountable. Endeavours to stall investigation into their affairs by the law enforcement agencies, particularly on technical grounds, have the potency of giving the impression that there is something to hide.”

In the result, the writ petition is dismissed.

**Sd/-
V.G.ARUN, JUDGE**

vgs

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE SUMMONS DATED
4.11.2020 ISSUED BY THE SECOND RESPONDENT
- EXHIBIT P2 THE TRUE COPY OF THE REPLY DATED 5.11.2020
- EXHIBIT P3 THE TRUE COPY OF THE DISCHARGE SUMMARY OF
PETITIONER DATED 18.11.2020 ISSUED FROM
MEDICAL COLLEGE HOSPITAL,
THIRUVANANTHAPURAM.
- EXHIBIT P4 THE TRUE COPY OF THE E-MAIL DATED 9.11.2020
TO THE 2ND RESPONDENT.
- EXHIBIT P5 THE TRUE COPY OF THE SUMMONS DATED
20.11.2020.
- EXHIBIT P6 THE TRUE COPY OF THE E-MAIL DATED
25.11.2020.
- EXHIBIT P7 THE TRUE COPY OF THE DISCHARGE SUMMARY OF
THE PETITIONER AT MEDICAL COLLEGE HOSPITAL,
THIRUVANANTHAPURAM DATED 27.11.2020.
- EXHIBIT P8 THE TRUE COPY OF THE PETITIONER'S
REPRESENTATION TO THE 2ND RESPONDENT DATED
29.11.2020.
- EXHIBIT P9 THE TRUE COPY OF THE SUMMONS DATED
3.12.2020.
- EXHIBIT P10 THE TRUE COPY OF THE REPLY TO THE 2ND
RESPONDENT DATED 9.12.2020.
- EXHIBIT P11 THE TRUE COPY OF THE SUMMONS DATED
12.12.2020.