

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 7164 of 2006 (C)

PETITIONER:

J.S. PREKASH,
(ROSE DALE', PLOT NO.31), SANTHOSH NAGAR
MUTTADA, THIRUVANANTHAPURAM.

BY ADV. SRI.R.ANIL

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI.

2. THE CUSTOMS, EXCISE AND SERVICE
TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH, K.G. ROAD
BANGALORE, REPRESENTED BY ITS REGISTRAR.

3. THE COMMISSIONR OF CUSTOMS,
I.C.E. BHAVAN, PRESS CLUB ROAD, THIRUVANANTHAPURAM.

R,R1 TO 3 BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG
R,R1-3 BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
R,R3 BY ADV. SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCIS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONER'S EXHIBITS:

P1: COPY OF REPLY DT.6.4.02 TO THE SHOW CAUSE NOTICE.

P2: MEMORANDUM OF AGRUMENT NOTE DT.5.6.03 FILED BEFORE R3.

P3: COPY OF THE ORDER IN ORIGINAL NO.22/2003 DT.31.7.03 PASSED BY R3.

P4: COPY OF THE MEMORANDUM OF APPEAL FILED BY THE PETITIONER BEFORE R2.

P5: COPY OF APPLICATION WITH AFFIDAVIT FILED ALONG WITH EXT.P4 APPEAL

P6: COPY OF STAY ORDER DT.8.7.04 PASSED BY R2.

P7: COPY OF FINAL ORDER NO.1534/05 DT.31.8.05 IN C.APPEAL NO.347/03 OF R2.

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

K.SURENDRA MOHAN, J.

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Dated this the 25th day of March, 2015

JUDGMENT

The petitioner has filed this writ petition challenging Exts.P3, P6 and P7 proceedings of the respondents. Ext.P3 is an adjudication order passed by the third respondent under the Foreign Exchange Management Act, 1999 (hereinafter referred to as the "Act" for short) and the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 (hereinafter referred to as the Regulations for short). The petitioner had challenged Ext.P3 in appeal before the second respondent. He had also sought for a stay of Ext.P3. As per Ext.P6 proceedings, the second respondent directed the petitioner to deposit an amount of ₹10,00,000/- as condition for grant of the interim order. On deposit of the said amount, it has been ordered in Ext.P6 that the condition of principal deposit shall stand waived. Since no deposit was made as directed in Ext.P6, within the stipulated time, Ext.P7 order has been issued dismissing the

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appeal filed by the petitioner. This writ petition is filed challenging Exts.P3, P6 and P7.

2. According to the petitioner, he is engaged in the business of importing ruff ophthalmic blanks from abroad and exporting powered lenses. For business purposes the petitioner used to undertake frequent travels to foreign countries. Since his frequent travels entitle him to concessions in air fares, he also used to engage in the business of issuing air tickets on commission basis. His case is that, he has been implicated in the present case, by the respondents, for the reason that, one of the persons to whom he had provided air ticket on concessional basis had been apprehended with a huge quantity of currency. The currency, that was seized, included both Indian as well as currencies of various foreign countries. It was on the basis of the statements made by the said person, one Siddhiek Vayalilakath @ Siddique that the petitioner was implicated. The case of the petitioner is that, he had nothing to do with the currency that was attempted to be exported out of India. He also alleged that he has powerful and influential business rivals who have

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implicated him in the case to tarnish his image. According to him, since he was abroad at the time when he received summons from the respondents, he could not appear. Since there is no material or evidence to connect him to the incident, it is contended that there is no justification for the direction to make the pre-deposit. It is further alleged that, though he had sought for permission to cross examine Sri.Siddhiek , no such opportunity was granted to him. Ext.P1 is the reply to the show cause notice. He had also submitted Ext.P2 argument notes to the third respondent. However, without considering his contentions, Ext.P3 has been issued. The petitioner therefore seeks the issue of appropriate directions for quashing Exts.P3, P6 and P7.

3. Adv.Sri.N.Nagaresh, learned Assistant Solicitor General of India appears for the first respondent. Adv.Sri.John Varghese appears for respondents 2 and 3. A counter affidavit has been filed on behalf of the respondents. According to the learned counsel for the respondents, a large amount of ₹2,55,86,013.85/-was seized from Sri.Siddhiek at Thiruvananthapuram airport, on getting information that the said

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person was trying to take out currency notes concealed in his baggage. On apprehending the said person and searching his baggage, a huge amount of currency notes was detected. When he was questioned, he gave information that he had been carrying the amount at the behest of the petitioner herein as well as one Sri.George Koshy. Investigations revealed that the flight ticket on which the said person was travelling had been purchased in the account of the petitioner. An examination of the Passport of the petitioner as well as Sri.George Koshy revealed that, they had been frequently travelling abroad. The details of the travels undertaken by the petitioner, Sri.George Koshy as well as Sri.Sudhakaran are tabulated in Ext.P3 adjudication order of the third respondent. It is also stated that, the ticket of Sri.Siddhiek Vayalilakath was issued to the account of Sri.Prakash C/o.Rose Opticals, Thiruvananthapuram (the petitioner). A statement of the petitioner's wife was also recorded. It was after collecting all the evidence that the petitioner was also included as an accused in the case. According to the learned counsel for the respondents, no request to cross

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examine Sri.Siddhiek had been made by the petitioner as alleged, though he had expressed a desire to cross examine the person. When a personal hearing was scheduled on 5.6.2003, he did not appear. Only his lawyer appeared and submitted his arguments. The counsel for the respondents points out that foreign currency equivalent to ₹10,93,470.20/- was seized by the Directorate of Revenue Intelligence from the petitioner on 20.8.2003 when he attempted to illegally export the same without declaring to the Customs authorities. A case relating to the said incident is also pending. In view of the above, according to the learned counsel for the respondents, the claim of innocence put forward by the petitioner is without any basis whatsoever. According to the learned counsel, the impugned proceedings are all in order and do not call for any interference by this Court.

4. Heard. This is a case in which, a huge amount of currency has been seized from Sri.Siddhiek at Thiruvananthapuram airport. It was on the basis of the information supplied by the said person in his statement that the

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authorities had identified the petitioner as the person on whose behalf the currency was attempted to be exported. It cannot be said that the petitioner had no connection with the said person. This is for the reason, the authorities have found that tickets, on the strength of which Sri.Siddhiek was travelling, had been issued in the account of M/s.Rose Opticals, of which the petitioner is the owner. Of course he has a contention that he had issued the said tickets at concessional fares, on commission basis. However, that is a matter on which proper proof and evidence are required. The further fact that the petitioner himself had been apprehended with a huge quantity of foreign currency when he attempted to take the same out of India, cannot be lost sight of. I notice that all the aspects of the case have been taken note of, considered and appreciated by the third respondent in Ext.P3 order of adjudication. Therefore, on the records produced before me, I do not find any grounds to interfere with the said proceedings.

5. As per Ext.P6, the second respondent had granted waiver of the deposit amount, to a substantial extent. However, the

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petitioner did not comply with the conditions stipulated by the said order within the time limit. For the above reason, the appeal itself has been dismissed by Ext.P7. I do not find any infirmity in the said proceedings also.

For the above reasons, I find no grounds to interfere with the impugned proceedings or to grant any of the reliefs sought for, in the writ petition. The same is therefore dismissed.

Sd/-

**K.SURENDRA MOHAN,
JUDGE.**

rkc.