

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

WA.No. 2402 of 2015 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 22767/2015 DATED 06-08-2015)

APPELLANT/PETITIONER:

**V.K.HAMSA, S/O. HASSANKUTTY,AGED 45 YEARS,
RESIDING AT VARIKAMKUZHIYIL HOUSE,
NEAR PANOLIKAVU, CHUNDAPURAM P.O., KODUVALLY,
KOZHIKODE - 673 572.**

**BY ADVS.DR.V.N.SANKARJEE
SRI.S.SIDHARDHAN
SRI.V.N.MADHUSUDANAN
SMT.R.UDAYA JYOTHI**

RESPONDENT(S)/RESPONDENTS:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY, HOME DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE SUB INSPECTOR OF POLICE,
KODUVALLY POLICE STATION,
KODUVALLY, KOZHIKODE - 673 572.**
- 3. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF FINANCE, 6TH FLOOR, LOK NAYAK BHAVAN,
KHAN MARKET, NEW DELHI - 110 003.**
- 4. THE DIRECTOR OF ENFORCEMENT,
MINISTRY OF FINANCE, 6TH FLOOR,
LOK NAYAK BHAVAN,
KHAN MARKET, NEW DELHI - 110 003.**
- 5. THE JOINT DIRECTOR,
DIRECTORATE OF ENFORCEMENT, KANOOS CASTLE,
MULLASSERY CANAL RAOD (WEST),
KOCHI - 682 011.**

W.A.NO.2402/2015

6. THE ASSISTANT DIRECTOR OF ENFORCEMENT,
3RD FLOOR, KENDRIYA BHAVAN, M.S. BABURAJ ROAD,
KALLAI, KOZHIKODE - 673 003.

7. THE ASSISTANT DIRECTOR OF ENFORCEMENT,
SUB ZONAL OFFICE, 5/2145, Wafa Bhavan,
MAVOOR ROAD, KOZHIKODE - 673 004.

R1 & R2 BY SR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R3 TO R7 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
ADV. SMT.C.G.PREETHA, CGC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 26-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 2402 of 2015

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Dated this, the 26th day of November, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Heard. This writ appeal has been filed against judgment dated 6th of August, 2015 in WP(C) No.22767/2015 by which judgment the writ petition filed by the appellant has been dismissed.

2. Appellant filed the writ petition with the following prayers;

“(a) Issue a writ of mandamus or any other appropriate writ, order or direction directing respondents 1, 2, 3 and 6 to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the petitioner for having the petitioner been arrested and detained illegally.

(b) Issue a writ of certiorari or any other appropriate writ, order or direction directing quashing Ext.P3 order after calling for the records leading thereto.”

3. On 13/9/2011, Sub Inspector of Police has seized an amount of ₹9,50,000/- in Indian Currency from the petitioner.

Petitioner was produced before the 6th respondent on next day and was released. A mahazar was prepared for seizure of the money. Writ petition was filed by the petitioner in the year 2014 being WP(C) No.35208/2014 challenging the proceedings under the Foreign Exchange Management Act, 1999 (hereinafter referred to as 'FEMA'), which writ petition was disposed of by this Court on 3/2/2015. In the said writ petition, neither any relief nor any prayer was made for any compensation alleging illegal arrest.

4. Director of Enforcement, FEMA passed Ext.P3 order on 1st June, 2015, by which penalty was imposed for violation of Section 3(c) of the FEMA. After the said order was passed, petitioner filed WP(C) No.22767/15 giving rise to this writ appeal claiming compensation and alleging violation of Article 21 of the Constitution of India which has been dismissed by the learned Single Judge. Learned counsel for the appellant contended that public law remedy is available for violation of Article 21 and Sub Inspector of Police has no jurisdiction or authority to detain the petitioner on 13/9/2011 or to seize the amount of ₹9,50,000/- from him. He has placed reliance on the judgment of the Madras High Court reported in K.A.Mansoor v. Assistant Director, Enforcement, Directorate, Chennai [(2009) 0 Supreme (Mad)

5014] .

5. We have considered the submission of the learned counsel for the appellant and perused the record. There cannot be any dispute to the proposition that for violation of rights under Article 21, a person can invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. However, whether the writ court should entertain such challenge and decide compensation is a question which depends on the facts of each case. In the present case, on 13/9/2011, petitioner was apprehended for 14 hours along with an amount of ₹9,50,000/- and on the next day he was produced before the 6th respondent, the Assistant Director of Enforcement, who after referring to the money seized as hawala money directed for appropriate action and on 14/9/11 itself, petitioner was released. Subsequently complaint was filed and proceedings have been initiated and order was passed for violation of Section 3(c) of the FEMA, which petitioner himself has brought on the record as Ext.P3.

6. In so far as the judgment of the Madras High Court relied by the petitioner is concerned wherein the summons issued by the respondents under Section 37 of the FEMA were challenged and the Court was asked to interdict on the ground

that there was non application of mind and the documents sought for would amount to a roving enquiry by the Directorate. The writ petition was not entertained by the Madras High Court and the writ petition was dismissed. The observations relied regarding the object and purpose of the FEMA in the judgment needs no consideration for the purpose of the present case since against Ext.P3 order, petitioner has a statutory remedy of appeal and it is always open for the petitioner to take all such contentions in law and facts which are permissible for challenging Ext.P3 order.

7. In the facts of the present case, we are of the view that present is not a case which could have been entertained as a public law remedy for violation of Article 21 and the learned Single Judge did not commit any error in not entertaining the writ petition.

Writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp26/11/2015

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PS to Judge