

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 22767 of 2015 (U)

PETITIONER :

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

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

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-110003**
- 5. THE JOINT DIRECTOR
DIRECTORATE OF ENFORCEMENT, KANOOS CASTLE
MULLASSERY CANAL ROAD (WEST), KOCHI - 682 011.**
- 6. THE ASSISTANT DIRECTOR OF ENFORCEMENT,
3RD FLOOR, KENDRIYA BHAVAN, M.S.BABURAJ ROAD
KALLAI, KOZHIKODE - 673 003.**

WP(C).No. 22767 of 2015 (U)

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

**R1 & R2 BY GOVERNMENT PLEADER SMT. C.K. SHERIN
R3 TO R7 BY ADV. SMT.C.G.PREETHA, CGC
BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**P1 : TRUE COPY OF THE COMPLAINT DATED 15.11.2012 LODGED BY THE 6TH
RESPONDENT TO THE 4TH RESPONDENT.**

**P2 : TRUE COPY OF THE WRITTEN ARGUMENTS DATED 25.5.2015 SUBMITTED BY
THE PETITIONER BEFORE THE 5TH RESPONDENT.**

**P3 : TRUE COPY OF THE ORDER DATED 1.6.2015 PASSED BY THE 5TH
RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. VINOD CHANDRAN, J.

W.P.(C) No. 22767 of 2015 (U)

Dated this the 6th day of August, 2015

J U D G M E N T

The petitioner has filed the above writ petition alleging violation of Article 21 of the Constitution of India, insofar as his alleged arrest and detention by the 2nd respondent under the provisions of the Foreign Exchange Management Act, 1999 (for brevity 'FEMA'). Two contentions are taken up;

- (i) that the 2nd respondent had no jurisdiction to arrest the petitioner under FEMA, and
- (ii) that the petitioner ought to have been produced before the jurisdictional Magistrate within 24 hours of his arrest.

There is also a prayer made against Ext.P3 and seeks issuance of a writ of certiorari; setting aside the same.

2. The petitioner was apprehended by the Police since he was carrying unaccounted cash amounting to Rs.9,50,000/-. The Police had, on information, apprehended

the petitioner and one another person and the amounts were recovered from the said persons. The information received was that the petitioner was in possession of 'hawala' money; being amounts transmitted in Indian Rupees from abroad; without a proper remittance of foreign currency in India. Noticing that the petitioner and the other person were carrying unaccounted money, the 2nd respondent immediately informed the 6th respondent, who is the authorised officer under the FEMA. The 6th respondent, on information, immediately directed production of the money seized as also the persons apprehended and they were produced before him on the very next day.

3. A reading of Ext.P3 itself would indicate that the petitioner was apprehended at 14.00 hours on 13.9.2011 and even according to the petitioner, the petitioner was produced before the 6th respondent on the very next day and after taking statement; released from custody. In such circumstance, there could not have been a claim for

damages on the basis of an illegal arrest and retention in custody beyond the time provided, under the Code of Criminal Procedure.

4. Further it is to be noticed that the petitioner had earlier filed W.P.(C) No.35208/2014 which stood disposed of by judgment dated 03.02.2015. Therein the prayer was to dispose of the complaint filed by the 6th respondent herein and for return of the amount seized from the petitioners. It is pertinent that the petitioner had not, at that earlier point of time, raised any question of illegal arrest having been made and the petitioner having been retained in custody beyond the 24 hours stipulated in the Code of Criminal Procedure; without production before the jurisdictional Magistrate. Here, it is to be specifically noticed that the petitioner was apprehend on 13.09.2011. The earlier writ petition itself was filed in the year 2014. The present writ petition is filed challenging Ext.P3 order, which is one appealable under section 17 of the FEMA.

5. Section 17 of FEMA provides for a time limit of 45 days within which an appeal has to be filed and confers the authority to entertain an appeal even after the expiry of the said period of 45 days; if the delay is satisfactorily explained. The order at Ext.P3 is dated 1.6.2015 and if at all the period for filing appeal is over, the petitioner could as well approach the appellate authority with an application for condonation of delay showing satisfactory reasons for the delay caused. In that event, the delay caused between 27.7.2015 and today, when the above writ petition was pending here, shall not be determined for the purpose of delay. The issue of invocation of public law remedy on facts does not arise in the above writ petition.

The Writ Petition would stand dismissed reserving the liberty of the petitioner as stated above.

Sd/-
K.VINOD CHANDRAN,
JUDGE