

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN**

WP.No. 27058 of 2019

ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

Heard counsel for the petitioner and Sri N.Rajeshwar Rao,
Assistant Solicitor General for respondents.

2. Petitioner has challenged the summons in proceedings F.No.DRI/HZU/48A/ENQ-55(INT-33)/2019 dt.27.11.2019 issued by the 2nd respondent directing the petitioner to appear before him on 28.11.2019 at 11.00 hours in connection with the seizure of 40 pieces of gold bars weighing 4000 grams totally valued at Rs.1,57,52,000/- from the premises of Jagadeesh Villa, H.No.10-3-14, East Marredpally, Secunderabad.

3. The said notice states that petitioner's presence is necessary to give evidence/statement and produce documents or things of the description mentioned in the said summons in petitioner's possession or under control, but the description of the documents or the things is not given in the summons.

4. Petitioner contends that similar notices were issued to other parties in regard to the seizure of the gold, but during the examination, by coercion, the said persons' statements were obtained from them after manhandling them; that out of fear, the statements prepared by the authorities were signed by the cousin of the petitioner as well as the worker of the shop of the petitioner,

who were manhandled; that he is only an employee in jewellery shop and he has no knowledge of the transaction and he is not involved in the day to day affairs of the shop. He therefore seeks permission to appear before the 2nd respondent through his authorized representative or along with his advocate, though he states that he would cooperate with the authority.

5. Sri N.Rajeshwar Rao, Assistant Solicitor General, appearing for respondents states that the apprehension of the petitioner is misplaced and the allegations leveled by the petitioner about manhandling other persons in connection with the seizure of the gold, are not correct. But, the Assistant Solicitor General does not dispute the statutory protection under Article 20(3) of the Constitution of India which states that no person accused of any offence shall be compelled to be a witness against himself and there is also protection against coercion and torture flowing from Article 21 of the Constitution of India to every citizen.

6. It is not in dispute that statements obtained from persons under Section 108 of the Customs Act, 1962 are admissible in evidence and the prohibition relating to confessions given to police does not apply.

7. In several cases, the Supreme Court has also adverted to right of consultation with a legal practitioner in respect of Article 22 of the Constitution of India.

8. It is also not in dispute that the Supreme Court in **Poolpandi and Others vs. Superintendent, Central Excise and Ors.**¹ held that persons summoned are entitled to have the presence of a lawyer when he is questioned during investigation under the provisions of the Prevention of Money Laundering Act, 2002, as well.

9. The Gujarat High Court in **Jignesh Kishorbhai Bhajiawala v. State of Gujarat and Ors.**² on an application filed by a person under Section 482 of Cr.P.C., who was served with summons under Prevention of Money Laundering Act, 2002, referring to the above legal principles, directed the respondents therein to permit an advocate of the applicant to be present during the interrogation of the applicant mentioning that the advocate concerned should be made to sit at a distance beyond the hearing range, but within the visible distance, and the lawyer must be prepared to be present whenever the applicant is called upon to attend the said interrogation.

10. We are inclined to follow the said procedure in the instant case as well

11. While granting liberty to the 2nd respondent to issue fresh summons under Section 50 of the Prevention of Money Laundering Act, 2002, we direct the 2nd respondent to permit an advocate of the petitioner to be present during the interrogation of

¹ AIR 1992 SC 1795

² 2017 CrLJ.1760

the petitioner by making the advocate to sit at a distance beyond the hearing range, but within the visible distance of the place of the interrogation. The Advocate must be prepared to be present whenever the petitioner is called upon to attend such interrogation.

12. The Writ Petition is disposed of with the above directions.

No order as to costs.

13. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

06th December, 2019.

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