

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6558 OF 2021

- | | | | |
|----|--------------------------------|---|-----------------------|
| 1. | Ronak Kumar S/o Jasraj Jain |] | |
| | (Pakgota) |] | |
| 2. | Jasraj Jain (Palgota), S/o |] | |
| | Chhagan Lal Jain and |] | |
| 3. | Chetan Kumar S/o |] | |
| | Jasraj Jain (Palgota) |] | |
| | Residing at Flat No. 1/404, |] | |
| | Tardeo Road, Opp: Film Centre, |] | |
| | Mumbai – 400 034. |] | ...Petitioners |

Vs.

- | | | | |
|----|------------------------------|---|-----------------------|
| 1. | Manish Roy |] | |
| | Senior Intelligence Officer, |] | |
| | Directorate of Revenue |] | |
| | Intelligence |] | |
| | Mumbai Zonal Unit, |] | |
| | 13, Sir Vithaldas Thackersay |] | |
| | Marg, |] | |
| | New Marine Line, Mumbai – 20 |] | |
| 2. | Union of India |] | |
| | Through Secretary, |] | |
| | Ministry of Finance, |] | |
| | North Block |] | |
| | New Delhi – 100 001. |] | ...Respondents |

Mr. Prakash Shah a/w Mr. Jas Sanghvi i/by Ms. Aishwarya
Kantawala - Advocate for the Petitioners

Mr. P. S. Jetly – Sr. Advocate a/w Mr. J. B. Mishra - Advocate for the
Respondent-Union of India

CORAM : R. D. DHANUKA AND
S. M. MODAK, JJ.

DATE : 01st FEBRUARY, 2022
(Through Video Conference)

ORAL JUDGMENT (PER R. D. DHANUKA, J.) :-

. Rule. Mr. P. S. Jetly, the learned Senior Advocate for the Respondents waives service of notice on behalf of Union of India. By consent of the parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioners are seeking direction directing the Respondent No. 1 to issue Summons to the Petitioners for their appearance to record their voluntary statement under Section 108 of the Customs Act, 1962 by endorsing permission to allow the presence of their Advocate at visible but not audible distance, and videography of their interrogation at the cost of the Petitioners.

3. Mr. Prakash Shah, the learned counsel for the Petitioners invited our attention to the Summons already issued by the Respondent No.1 annexed at Exhs. 'A' to 'F' of the petition under Section 108 of the Customs Act, 1962, on various dates.

4. It is submitted that the Petitioners have filed Writ Petition

bearing No. 1401 of 2020 before the Supreme Court under Article 32 of the Constitution of India for safeguarding their rights *inter-alia* praying for an appropriate Order or direction against the Respondent No. 1 to comply with the mandatory procedure under Chapter XII of Code of Criminal Procedure, 1973 including Sections 154, 157, 167, 172 etc. for valid commencement and continuation of the investigation into any offence qua the Petitioners in respect of investigation arising out of DRI File no. DRI/MZU/B/INT-93/2020 and for other reliefs.

5. The learned counsel invited our attention to the interim Order passed by the Supreme Court in Writ Petition No. 1401 of 2020 on 15/12/2020, directing that no coercive steps shall be taken against the Petitioners and directed to issue notice. He submits that the said interim Order is still in force as on date.

6. Though the Respondents have already issued those summonses, in view of the Order dated 15/12/2020 granting interim protection by the Supreme Court not to take any coercive action, the Respondents have not issued any further date for the presence of the Petitioners in response to those summonses. The Petitioners are ready and willing to appear before the Respondents

for recording their voluntary statement under Section 108 of the Customs Act, 1962.

7. Mr. Prakash Shah, the learned counsel for the Petitioners placed reliance on judgment of this Court in case of *Rajuram Purohit Vs. Union of India*¹ in support of the submission that the presence of Advocates during investigation at visible but not audible distance can be granted while recording voluntary statement under Section 108 of the Customs Act, 1962. He placed reliance upon several such Orders passed by this Court and also the Orders passed by the Hon'ble Supreme Court granting such permission.

8. Mr. P. S. Jetly, the learned Senior Counsel for the Respondents on the other hand submits that the Petitioners have already filed writ petition before the Supreme Court under Article 32 of the Constitution of India for similar reliefs and at this stage there is no cause of action for filing this petition under Article 226 of the Constitution of India.

9. A perusal of the prayers in the said writ petition filed by the Petitioners before the Supreme Court indicates that the Petitioners seek fair investigation into the offence qua the Petitioners in respect

1 2019 (366) E.L.T. 814 (Bom.)

of investigation arising out of DRI File No. DRI/MZU/B/INT-93/2020. The Supreme Court has already granted interim relief that no coercive steps shall be taken against the Petitioners in the meantime. The said writ petition is still pending before the Supreme Court.

10. In so far as, this writ petition is concerned, the limited prayer of the Petitioners is that the Respondent No. 1 shall be directed to issue Summons to the Petitioners for their appearance to record their voluntary statement under Section 108 of the Customs Act, 1962 by endorsing permission by allowing the presence of their Advocate at visible but not audible distance and for permission for videography of their interrogation at the cost of the Petitioners and to interrogate and record statements of the Petitioners during reasonable office hours.

11. In case of *Rajuram Purohit* (Supra) this Court has permitted the presence of the Advocate at visible but not audible distance and also the videography. We are respectfully bound by the view taken by this Court in case of *Rajuram Purohit* (Supra) following principles of law laid down by the Supreme Court in judgment of *Om Prakash Vs.*

*Union of India*².

12. In view of the fact that the Respondents have already issued Summonses annexed at Exh. 'A' to 'F' of the Petition, the Respondents are not required to issue fresh summons upon the Petitioners.

13. Mr. Prakash Shah, learned counsel for the Petitioners states that the Petitioners who are already issued summonses would appear before the Respondent No. 3 on the date as may be assigned by the Respondent No. 3 alongwith their advocate for recording their voluntary statement at visible but not audible distance and would record the interrogation by videography at the cost of the Petitioners. The statement is accepted.

14. The Respondents are directed to issue 72 hours clear notice to the Petitioners before fixing the date on which they require their presence in response to the summonses already issued to the Petitioners. The Petitioners shall not seek any unnecessary adjournment before the Respondent No. 1.

15. The Petitioners are allowed to remain present in presence of their advocates at visible but not audible distance. Videography is also permitted to record their interrogation at the cost of the

2 2011 (272) E.L.T. 321

Petitioners.

16. The interrogation and the recording of statement of the Petitioners shall be done during the office hours.
17. Writ petition is allowed in the aforesaid terms.
18. Rule is made absolute. No order as to costs.
19. Parties to act on the authenticated copy of this Order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]