HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

Interlocutory Application No.1 of 2020 in Interlocutory Application No.3 of 2019
and
Interlocutory Application No.2 of 2020 in Interlocutory Application No.2 of 2019
and
Interlocutory Application No.1 of 2019 in Interlocutory Application No.3 of 2019
in/and
Writ Petition No.28268 of 2019

COMMON ORDER: *(Per Sri Justice M.S.Ramachandra Rao)*

The question which arises for consideration in this Writ Petition is whether officials belonging to the G.S.T. Intelligence Department of the Union of India such as respondent nos.5 to 9 in the Writ Petition can resort to physical violence while conducting interrogation of the petitioners and their employees in connection with proceedings initiated against the petitioners by the respondents under the C.G.S.T. Act, 2017 and I.G.S.T. Act, 2017.

The admitted facts

2. The admitted facts are that the 1st petitioner is a Private Limited Company incorporated under the Companies Act, 1956 involved in the business of steel and 2nd petitioner is its Director. The 3rd petitioner is alleged to be brother of the 2nd petitioner involved in his own business unconnected and unrelated to the business and affairs of the 1st petitioner. The 4th petitioner is a relative of petitioner nos.2 and 3 and is alleged to be engaged in trade with the 1st petitioner but not involved in the business affairs of 1st petitioner.

3. The 1st petitioner is registered under the C.G.S.T. Act, 2017 w.e.f. 01.07.2017.

4. Admittedly, on 11.12.2019, officials attached to the Directorate General of G.S.T. Intelligence, New Delhi (2nd respondent) conducted simultaneous raids on business units of the 1st petitioner and the residential house of the 2nd petitioner around 08:30 a.m., without any prior intimation or show-cause notice.

<u>The case of the Writ Petitioners</u>

5. It is claimed by petitioners that the 1st petitioner had always adhered to all G.S.T. and other taxation compliances and that it was filing its tax returns regularly; that the 1st petitioner was recognized as the highest G.S.T. payer for the State of Telangana within the TMT Steel Industry ; that the 1st petitioner was recognized as a 'Star Export House' under the Foreign Trade Policy of 2004 – 09 and 2009 – 14; that the 2nd petitioner was issued a Certificate of Appreciation by the Ministry of Finance, Central Board of Direct Taxes, recognizing him to be a 'Silver Category Tax Payer' for the Assessment Year 2018-19; and that even the 4th petitioner had been issued a certificate of Appreciation by the Ministry of Finance, Central Board of Direct Taxes, recognizing him to be a 'Bronze Category Tax Payer' for the Assessment Year 2018-19.

6. It is the contention of petitioners that the employees of the 1st petitioner and also 2nd and 3rd petitioners co-operated with the search operations conducted on 11.12.2019; that at the time of commencement of such search operations, petitioner nos.2 and 3 were present at their residential address; that 3rd petitioner was taken therefrom by the officials attached to the office of the 2nd respondent to the office premises of the 1st petitioner at around 02:00 p.m. purportedly to assist the officials leaving the 2nd petitioner behind; and the 3rd petitioner was taken only on account of the said individual being the brother of the 2nd petitioner despite repeatedly being informed that the 3rd petitioner was in no manner connected or concerned with the 1st petitioner.

7. It is the further contention of the petitioners that the 2nd petitioner was subsequently called to the office of 1st petitioner around 03:30 p.m.; and it is alleged that respondent nos.5 to 9 coerced 3rd petitioner to call 4th petitioner to the office of the 1st petitioner under the pretext of assisting and helping the 3rd petitioner in the process of enquiry; that 2nd and 3rd petitioners were initially questioned inside the chambers of the 2nd petitioner and thereafter the 4th petitioner was questioned at about 05:30 p.m.; that all the phones of petitioner nos.2 to 4 were seized; during the course of questioning, respondent nos.5 to 9 allegedly abused the 4th petitioner in filthy language for not giving satisfactory replies **and physically assaulted 4th petitioner repeatedly**; that respondent nos.5 to 9 also **physically assaulted petitioner nos.2 and 3** without any regard to their old age when they tried to stop the physical assault on the 4th petitioner after hearing his loud cries; and as a result of such assault, the 4th petitioner was hurt on the lips which got swollen and cut with bleeding and also suffered severe tooth pain. It is the contention of the petitioners that several employees of 1st petitioner were also assaulted by the 2nd respondent's officials/ respondent nos.5 to 9 at the other business units of the 1st petitioner.

8. It is contended that when petitioner nos.2 and 3 were requesting repeatedly the respondents not to resort to violence and to spare the 4th petitioner, respondent nos.5 and 6 committed aggravated assault on the person of the 3rd petitioner and grievously hurt his leg.

9. According to petitioners, the 3rd petitioner was unable to stand and with the help of employees of the 1st petitioner, he was rushed to the Sunshine Hospital as a Medico-Legal case. Copy of the Out-Patient Discharge advice is filed as **Annexure P-4** along with the Writ Petition which indicated that there was a blunt injury to the thigh of the 3rd petitioner on account of the assault on his person, and he was discharged at 07:45 p.m. by the said hospital.

10. Prior thereto, a complaint appears to have been made by the employees of petitioners by dialing phone number 100 (to contact the local police) at 06:39 p.m.; an acknowledgment of receipt of the said call with Case I.D.No.20190021545598 was given; and the said case was assigned to Mahankali Police Station, Secunderabad with assurance that concerned officer will contact the complainant soon. This is filed as **Annexure P.5** by the petitioners.

11. According to petitioners, though some Police Officials arrived at the office premises of the 1st petitioner, they refused to take any action due to the insistence of the respondents.

12. Petitioners allege that respondent nos.5 to 9 continued the alleged search till midnight on 11.12.2019 and during the course of the same, they allegedly coerced petitioner nos.2 and 4 to sign a prepared statement without even allowing them to read or verify its contents.

13. More importantly, at 00:00 hrs on 12.12.2019, the 4th respondent issued summons dt.12.12.2019 vide proceedings F.No.574 / CE / 198 / 2019 / INV summoning the 2nd petitioner to appear in person before the 4th respondent at 00:30 hrs. in the office of the 1st petitioner to tender true and correct statement concerning the alleged enquiry. The said summons dt.12.12.2019 is filed as **Annexure P.6** to the Writ Petition.

14. According to petitioners, the illegal and arbitrary search by respondents went on till the afternoon of 12.12.2019, and thereafter, respondent nos.5 to 9 handed over petitioner nos.2 and 4 to local police officials who then released them by issuing notice under Section 41-A of Cr.P.C. asking the petitioners to appear on 08.12.2019. Petitioners contend that at the time of handing over of the petitioners to the police, respondent nos.5 to 9 threatened petitioner nos.2 and 4 that they would force the petitioners to come to Delhi and would see their end.

15. According to petitioners, they came to know that the 9th respondent had filed a false complaint against the petitioners, i.e., FIR.No.232 of 2019 on 11.12.2019 at 20:30 hrs alleging that it was the petitioners who assaulted 5th respondent, that all the petitioners and their relatives misbehaved with the officers who had participated in the search operations and threatened them, and alleging that the petitioner nos.2 to 4 committed offences under Sections 332, 186, 506, 504 read with Section 34 of I.P.C.

16. Petitioners allege that the said F.I.R. was lodged as a counter-blast to the complaint lodged by the employees of the 1st petitioner with the Police at 06:39 p.m. on 11.12.2019 with false allegations.

17. Petitioners contended that they secured anticipatory bail in Crl.M.P.No.4525 of 2019 on 17.12.2019 in Crl.M.P.No.1503 of 2019 in Crl.M.P.NO.4525 of 2019 from the Special Judge for Trial of Offences under SCs and STs (POA) Act – cum – VI Additional Metropolitan Sessions Judge, Secunderabad.

18. Petitioners allege that they have no intention to scuttle any enquiry initiated against them under the C.G.ST. Act, 2017 and would co-operate with the said enquiry, but the respondent nos.2 to 9, being statutory authorities, are not entitled to violate the petitioners' life and liberty contrary to Article 21, and they cannot subject the petitioners to torture or physical violence.

19. Petitioners sought the following reliefs :

"A. Declaring the action of respondent nos.2 to 9 in harassing, manhandling and assaulting petitioner nos.2 to 4 purportedly conducted in furtherance of inquiry proceedings F.No.574 / CE / 198 / 2019 / INV initiated against the 1st petitioner as illegal, arbitrary and unconstitutional apart from being violative of rights guaranteed under Articles 14 and 21 of the Constitution of India; and consequently

B. Direct the 2nd respondent to transfer of conduct of enquiry F.No.574 / CE / 198 / 2019 / INV initiated against 1st petitioner to 10th respondent or any other unit / wing established under the CGST Act;

C. In the alternative to Prayer (B), direct the respondents to follow the due process of law and comply with the principles of natural justice, in initiating any further investigation against the petitioners pursuant to the search conducted on the offices of 1st petitioner and the resident premises of 2nd and 3rd petitioner on 11.12.2019.;

… .. … "

The interim Applications filed by the Writ Petitioner

20. Along with the Writ Petition, the petitioners filed I.A.No.1 of 2019 seeking a direction to the 2nd respondent to transfer the conduct of enquiry proceedings F.No.574/CE/198/2019/INV initiated against the 1st petitioner company to any other Unit/Wing established under the CGST Act, 2017.

21. Petitioners also filed I.A.No.2 of 2019 to permit the petitioners to appear before the respondents pursuant to any further summons issued by them only in the presence of their advocates.

22. I.A.No.3 of 2019 was also filed to stay all further proceedings by respondents 2 to 9 including arrest of petitioners 2 to 4 pursuant to the enquiry proceedings F.No.574/CE/198/2019/INV.

Events after filing of the Writ Petition

23. On 19.12.2019, the Writ Petition was admitted after hearing submissions of Sri S.Niranjan Reddy, Senior Counsel for Sri N.Naveen Kumar, Counsel for the Writ Petitioners and Sri B.Narasimha Sarma, Senior Counsel for the Central Taxes Dept, Union of India, and:

(i) in I.A.No.2 of 2019, this Court directed that the statement of the petitioners shall be recorded only between 10.30 AM and 5.00 PM in the presence of a counsel engaged by them;

(ii) I.A.No.3 of 2019, this court granted interim stay of arrest of the petitioners by respondents 2 to 9 up to 31.01.2020. The said order was extended subsequently as well up to 31.03.2020.

24. I.A.No.1 of 2020 was filed by respondents 1 to 4 and 10 to vacate the order dt.19.12.2019 in I.A.No.3 of 2019; and I.A.No.2 of 2020 was filed by them to vacate the order dt.19.12.2019 in I.A.No.2 of 2019.

The stand of the respondents 1 to 4 and 10

25. It is contended by the respondents 1 to 4 and 10 that the petitioners are not cooperating with the investigating agency; they are not joining inquiries; vide letter dt.23.12.2019, petitioners 1 and 2 were requested for appearance before the Senior Intelligence Officer on 30.12.2019 for forensic examination of certain electronic devices; vide letter dt.28.12.2019, the 1st petitioner did not agree for appearing before the officers of the 2nd respondent; vide summons dt.31.12.2019, Pramod Aggarwal, 2nd petitioner, has been summoned for 06.01.2020 to witness the forensic examination of the electronic devices; that the inquiries are being conducted in a fair manner by the respondents strictly in accordance with law under the supervision of senior officers.

26. It is contended that preliminary investigation in the matter has revealed evasion of GST of Rs.5,00,00,000/- by 1st petitioner and this quantum is expected to increase substantially as analysis of all kacchi parchis, digital documents and fake invoices is being conducted.

27. It is contended that during the course of search operation petitioners 2 to 4 tried to hamper and obstruct by way of physical assault on two officers of the rank of Deputy Directors; that 3rd petitioner allegedly fled away from the scene with crucial evidence; subsequently police protection was sought and search proceedings were concluded under police protection; F.I.R.No.232 of 2019 had to be lodged against petitioners 2 to 4 with Hyderabad Police under Sections 186, 332, 504 and 506 of IPC when the 5th respondent was allegedly hit on his mouth and jaw by employees of the petitioners; that petitioner No.3 went to a private hospital of his choice and he had not been taken there by police officials which implies that he wanted to implicate Officers of DGGI in a false case.

28. The respondents denied that the 3rd petitioner was taken by the officers of respondents to the office premises of petitioner No.1. They alleged that petitioner No.3, being the brother of petitioner No.2 was also found to live under one roof, and he had allegedly voluntarily offered himself to accompany the officials of DGGI to the office of petitioner No.1 to assist them in the search proceedings.

29. According to them, petitioner No.3 called petitioner Nos.2 and 4 at the premises of petitioner No.4 and they started obstructing the official work under a criminal conspiracy and petitioner no.3 allegedly ran away with crucial evidence on the pretext of being injured.

30. They contended that the search proceedings were carried out under proper and applicable law and procedure, and no harm or damage were done to any human/person or property and no sentiments were hurt which was also clearly mentioned in the panchanama dt.11/12.12.2019 drawn on spot in the presence of two independent witnesses and the copy of the same was given to one of the staff of petitioner No.2.

31. It is contended that there was necessity to record statement of 2nd petitioner (in pursuance of summons issued under Section 70 of CGST Act, 2017) on the spot as preliminary investigation clearly suggested his role in the tax evasion by petitioner No.1; that he was available at the spot i.e. Corporate Office of petitioner No.1 and so he was served summons in his office after midnight, in the early hours of 12.12.2019. According to the respondents, **there is no bar in making enquiries under Section 70 of GST Act, 2017 in the night**.

32. The respondents state that it is absurd that the petitioners can claim that anyone can threaten a local business tycoon in the presence of local police.

33. It is stated that only the complaint of respondent No.9 was taken cognizance by the police and not that of the petitioners and this itself is a testament to the veracity of the complaint made by the 9th respondent.

34. It is stated that the officers of respondent No.1 were rational and professional in their conduct and behaviour, and on the contrary, the language of petitioner No.2 to 4 was discourteous and provocative, aiming to irritate and annoy the search team. However, the Officers, using their wisdom and experience, remained calm and composed throughout the search proceedings, despite incitement, non-cooperation and provocation on the part of petitioners.

35. It is alleged that the allegation of torture was made by the petitioners to deliberately get the investigation in the matter transferred from respondent No.1 to respondent No.10 or any local GST Wing with an ulterior motive to influence the investigation and its outcome in their favour by using their local influence and clout. It is stated that Officers of respondent No.1 are responsible officials and they would not do anything which violates basic human and fundamental rights of the citizens of the country.

36. They contended that the present Writ Petition is not maintainable either in law or on facts and that there are disputed questions of facts which cannot be determined in Writ jurisdiction.

37. It is contended that the officers posted at the Headquarters of the DGGI at New Delhi have all India jurisdiction while the officers posted at DGGI, Hyderabad Zonal Unit have only local jurisdiction and wide ranging investigation has therefore to be conducted as the case has ramifications outside Hyderabad; DGGI, Hyderabad Zonal Unit have limited manpower and resources to investigate such a serious offence of a large scale and ramifications across India; almost every major case, irrespective of the Zonal Unit to which it pertains is investigated at Delhi; any interference by this Court will prejudice the investigation.

38. According to the respondents, investigation cannot be transferred and assistance of lawyer cannot be allowed while examination of a person is being done under the CGST Act. It is alleged that investigation into an offence is the statutory function of the police, that superintendence thereof is vested in the State Government and the Court is not justified, without any compelling and justifiable reason, to interfere with investigation. According to the respondents, frequent interference by superior Courts at interlocutory stages tends to defeat the ends of justice.

39. They relied on the decisions in **Rakesh Bagla Vs. Director General Anti Evasion**[1]**, P.V.Ramana Reddy and others Vs. Union of India**[2]**,** and decisions of Delhi High Court in W.P. (Crl) No.2686 of 2019 – **Sudhir Kumar Agarwal Vs. DGGI,** and **Sudhir Gulati Vs. Union of India**[3] and **Poolpandi Vs. Superintendent, Central Excise**[4].

40. Respondents 6 to 9 filed counter affidavits adopting a similar stand to respondents 1 to 4 and 10.

REPLY AFFIDAVIT FILED BY PETITIONERS TO THE STAND OF RESPONDENTS

41. The petitioners denied that they did not cooperate with the investigating agency or that they were not joining the inquiries.

42. It is contended that the respondents had caused summons vide letters dt.23-12-2019 to appear in person or authorize any person to present for forensic examination of the e.devices seized; and that in view of the high handed and unlawful procedures/means adopted by respondent Authorities, the employees of the 1st petitioner were in fear to appear before the authorities as such the same was communicated to respondent Officials.

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[1] 1997 (93) ELT 668 ALL
[2] Order dt.18.04.2019 in W.P.No.4764 of 2019 and batch reported in (2019) 73 GST 727 = MANU/TL/0064/2019 (DB)
[3] 1998 (100) ELT 344 (Delhi)
[4] AIR 1992 SC 1795

43. It is contended that a notice dt.31.12.2019 was issued directing appearance of petitioner No.2 or any authorized representative to be present for forensic enquiry of the e.evidence seized from the premises of petitioner No.1, but not as stated that only petitioner No.2 was directed to appear.

44. Thereafter another summons dt.02.01.2019 (wrongly dated) was issued for appearance on 06.01.2020 for conducting forensic examination of the e.devices recovered from the premises of petitioner No.1. That dutifully, in compliance of the above summons, a representative appeared before the Authorities on 06.01.2020 and cooperated with the ongoing enquiry. The said enquiry was continued for 4 days. The petitioner No.1's personnel stayed at Delhi for 4 days and duly assisted with the enquiry. As the petitioners were traveling through train and due to delay caused by fog, the representative of the petitioners could not reach at indicated time in the summons and could only reach in the afternoon of the 6th January 2020. The said delay was informed to the authorities. The authorities suppressing the said facts are now trying to mislead the Court only to prejudice the Court.

45. Petitioner No.2, on the issuance of summons dt.08-01-2020 directing him to appear on 16.01.2020, appeared before the authorities whereupon petitioner No.2 was directed to deposit an amount of Rs.10 lakhs towards part-payment of the alleged tax evaded. In view of the direction of the authorities despite explaining to the authorities that there has been no tax evasion, petitioner No.2 was forced to deposit Rs.10 lakhs vide challan through his staff at Hyderabad. The respondent authorities supervised the payment and specifically directed to endorse the challan that the payment was voluntary. The petitioner No.2 paid Rs.10 lakhs vide challan No.ARN: AD 360120001932R dt.16.01.2020. On the said challan apart from endorsing the same as being paid voluntary as instructed by respondent authorities, the employee of petitioner No.1 also endorsed that the said payment was under protest. The authorities on receiving the said challan from Hyderabad and noting that the same was made under protest immediately and in a coercive manner allegedly got a statement recorded from petitioner No.2 that it was inadvertently mentioned by the staff that the same was paid under protest and that otherwise it was voluntarily paid by petitioner No.2. This is pointed out by the petitioners as yet another act of respondents which clinchingly establishes the process of the ongoing enquiry adopted by the authorities was in contravention to the procedure and norms despite the orders of this Court.

46. It is contended that petitioner No.4 was initially issued summons dt.08.01.2020 for appearance on 16.01.2020. The petitioner No.4 could not appear on the said date as he was travelling abroad from 07.01.2020 to 21.01.2020. The same was informed to the authorities by enclosing his passport; and that on receiving subsequent summons, he appeared before the authorities on 27.01.2020.

47. It is contended that Mr.Karunakar Biswal, pursuant to summons dt.24.01.2020 had appeared before the authorities on 28.01.2020; that respondents issued summons dt.08.01.2020 to another employee Mr.Dinesh directing him to appear on 17.01.2020, upon which he appeared before the authorities' likewise; and employees Mr.Ravi Dutt, Jithender Shukla, Raman Kumar Jha, Sanjay Singh Gaur and Raj Kumar Sharma were also issued summons to appear before the authorities. In furtherance to summons issued to two other employees, Karunakar Biswal and Pawan Kumar Sharma couldn't appear on the indicated date due to medical reasons. On subsequent summons, Mr.Karunakar Biswal appeared on 28.01.2020 before the authorities. It is contended that two employees i.e. Naresh Sharma and Arun Kumar Sharma, on whom summons were issued, could not appear since they had resigned from the petitioner Company and the same was informed to the authorities. It is contended that when the employees appeared before the authorities on summons again their statements were recorded by coercing the employees and they i.e. Raj Sharma, Jithender Shukla, Raman Kumar Jha and Dinesh immediately represented to the Deputy Director, DGGI about the retraction of the statement.

48. It is specifically denied that petitioners had tried to hamper and obstruct the enquiry by way of physical assault on the officers of the respondents. In fact it is contended that it was the officials of the respondents who had acted in illegal and arbitrary manner and assaulted petitioner Nos.2 to 4 causing injuries. It is denied that petitioner No.3

fled away from the scene with crucial evidence or that the search proceedings were conducted under police protection.

49. It is pointed out that it was the petitioners who had first complained about the assault being made by respondent Officials by dialling to 100 at 6.39 p.m. and making a complaint which was acknowledged by the police; but the police registered FIR against the petitioners upon the influence of respondent Officials at 8.20 p.m. only as a counter blast to the complaint filed by petitioners to conceal the illegal, arbitrary and high handed action of respondent officials.

50. It is contended that petitioner No.3 did not flee away from the scene with crucial evidence. It is only after petitioner No.3 was severely injured on being assaulted by the respondent authorities, he was taken to hospital in the presence and on instructions of the respondent authorities with support of the employees carrying him out of the premises as petitioner No.3 was even not able to stand. Petitioner No.3 was carried by employees to hospital which was recorded in the CCTV cameras installed outside the premises of 1st petitioner.

51. It is denied that there is any secret office or flat as alleged by the respondent officials'; that the said flat is owned by 1st petitioner for more than 30 years and it was made a residence for it's employees; that another premises also alleged to be secret office is a rented premises taken by the petitioners for more than 15 years; and that the allegation of evasion of Rs.5,00,00,000/- is made only to prejudice the Court.

52. It is denied that the employees of 1st petitioner had admitted about evasion of tax and it's modus operandi. It is contended that the respondent authorities, contrary to the established procedure of law, got signed some statements under the threat of assault and arrest. It is contended that no voluntary statement was recorded, and that the petitioners and employees have represented to the authorities of the respondent that they have been forcibly made to sign some statements under the threat of assault and arrest, and had retracted the statements.

53. It is contended that no proceedings were conducted in front of the panchas, that the entire process was conducted violating the fundamental rights of the petitioners, and that no procedure was followed as stipulated under the Law.

54. According to petitioners, enquiry and search operations were conducted without following the due process of law apart from being violative of the provisions of the CGST Act, 2017 and the fundamental rights guaranteed to the petitioners under Article 14 & 21; that the respondent officials further failed to disclose any search authorisation despite repeated insistence of 2nd petitioner and his employees; that the petitioners and their employees were assaulted and manhandled causing injuries; that the respondent officials harassed the employees to give false statement as dictated by the respondent officials; that Medico Legal Case reports and complaint lodged firstly by the petitioners by dialling 100 are the evidence of high handed actions and harassment caused to the petitioners and their employees; that the respondent officials have not allowed the petitioners even to use the landline phone; that one of the employee of the 1st petitioner called up and reported to police No.100 through his personal mobile phone to alert the police, but however, due to the influence of the respondent officials, being the top bureaucrats, police registered FIR only on the complaint of the respondent authorities against the petitioners and the respondent officials were taken to medical examination only to create record against the petitioners.

55. According to the petitioners, the 5th respondent himself got hurt when he was assaulting the 4th petitioner, as the 4th petitioner had put his hands across his face and head defending the assault of the 5th respondent; that the respondents 5 & 6 called up 4th petitioner to the cabin of 2nd petitioner around 5.30 p.m. and did not even allow the 4th petitioner to sit on the chair even though it was informed that he was suffering from fever, cough and cold and was on anti-biotic treatment; that respondents 5 & 6 thereafter started using abusive, derogatory and filthy language to extract statements forcibly and when that failed, they started assaulting 4th petitioner; that hearing the loud cries of 4th petitioner, petitioners 2 & 3 entered cabin and requested respondents 4 & 5(aged around 30 to 33 years) not to assault 4th petitioner, but it all went to the deaf ears of the respondent officials and they did not stop assaulting 4th petitioner; that on presentation of petitioners 2 & 3 to not to assault having regard to the old age and ill-health of the 3rd petitioner, 3rd petitioner was severely beaten up by the respondent authorities.

56. It is contended that the respondent officials prepared the statements and coerced the petitioners to sign the same and that the petitioners on being assaulted and under the treat of arrest signed the said statements; that the averments relating to the statements of Raman Kumar Jha, Karunakar Biswal and Pavan Kumar Sharma were also recorded contrary to the procedure contemplated under law after assaulting them and under coercion and threat of arrest; and that the statements were later retracted by making representations to the respondent authorities.

57. It is denied that the 2nd petitioner had given false and misleading affidavit against Amit Kumar Gupta, 8th respondent, who was not part of search team. It is contended that the petitioner on verification came to know that the officer, who was present is Mr.Amit Kumar and that petitioner was not knowing complete details regarding Mr.Amit Kumar, had inadvertently shown his name as Amit Gupta, and that the answering respondents are mischievously taking advantage of the inadvertent mention of wrong surname and are trying to mislead the Court.

58. It is denied that it was imperative for the authorities to record the statements of 2nd petitioner on spot. It is denied that the statement of 2nd petitioner was recorded as per Section 70 of the GST Act, 2017. It is contended that it is completely untenable and illegal to state that there is no bar in making enquiry in the night as provided under Section 70 of the Act; that the conduct of the proceedings by the authorities running into mid-night itself was improper more particularly in the aforementioned facts.

59. It is contended by the petitioners that they are seeking transfer of the present enquiry and investigation on the reason of the high handed and illegal procedure being adopted by the authorities and that the authorities gave severe threat to the petitioners of seeing their end once they start calling the petitioners to Delhi. It is contended that the petitioners dutifully and obediently assisted and cooperated with the entire proceedings of the enquiry and the material on record clinchingly establishes the manner and procedure of the enquiry more particularly, the conduct of the respondent officials, in furtherance of the alleged enquiry/evasion against the petitioners; and that the authorities are now determined to frame and fix the petitioners in the alleged evasion of GST which does not exist at all.

The consideration by the Court

60. We have set out the pleadings of the parties in detail so as to understand their respective pleas and contentions both on law and fact.

61. The material on record indicates that the search on the several premises connected with the petitioners started from 8.30 am on 11.12.2019 till the following day i.e., 12.11.2019.

62. As to the events which transpired during this period there are conflicting versions.

63. While the petitioners allege that there was use of violence and coercion against the petitioners and their employees by respondents 5 to 9 during the said search operations, the respondents deny the same and allege that it was the petitioners and their employees who had obstructed the search operations and allegedly assaulted the 5th respondent. This is vehemently denied by the petitioners.

64. Normally these disputed questions of fact are not to be gone into in a Writ proceeding under Art.226 of the Constitution of India.

65. But we cannot ignore the material such as **Annexure P-4** which is the Out patient Discharge advice of Sunshine Hospital given at 7.45 pm after treatment of the 3rd petitioner by the emergency physician there on 11.12.2019 which stated that '*assault today; injury to the left thigh; unable to walk and bear weight;.. blunt injury at left thigh*".

66. This suggests that the 3rd petitioner was injured to such a degree that he was unable to walk and required medical treatment.

67. That the 3rd petitioner was with respondents 5 to 9 on that day from the morning is admitted by them in the counter affidavit filed by respondents 1 to 4 and 10, though they say that such a thing had not happened.

68. Though the respondents seek to suggest that such evidence procured by the petitioners ought to be disbelieved by us because Sunshine Hospital is a 'private hospital' and not a Government Hospital, we do not agree with such contention because there is no presumption in law that Doctors in private hospitals do not speak the truth and only Government doctors speak the truth. An injured person is likely to go the nearest available hospital for treatment instead of searching for a Government hospital at that juncture.

69. We cannot also ignore the **Annexure P5** which is an acknowledgement given by the Police at 6.39 pm on 11.12.2019 that there was a call made by an employee of the 1st petitioner to Phone No.100 and that a case No.20190021545598 was assigned to it and that it was assigned to the Mahankali Police station in Secunderabad.

70. In contrast, the FIR 232 of 2019 was registered by the Police at the instance of the respondents much later at 8.30 pm on 11.12.2019 against the petitioners 2 to 4 i.e., 2 hours after the police were contacted by the petitioners employee at 6.39 pm, and 1 hour after the 3rd petitioner was treated in Sunshine Hospital for alleged assault and injury to his left thigh.

71. We are not saying that this material is conclusive of any violence used by the respondents against the petitioner no.2 to 4 or their employees but prima-facie it suggests such a possibility.

72. The fact the police did not register any FIR on the complaint made by the petitioners, in our opinion, is not that significant because it is not at all unusual for the police to refuse to register any complaint against Government Officials.

73. The omission of the police to register any FIR at the instance of petitioners does not mean that what the respondents allege is true. This is because admittedly no charge sheet has been filed by the police till date against the petitioners 2 to 4, and the petitioners have admittedly secured anticipatory bail from the competent criminal court later.

74. No provision of any law is cited before us by the respondents to say that they are entitled to use physical violence against persons they suspect of being guilty of tax evasion while discharging their duties under the CGST Act, 2017.

75. Merely because the authorities under the CGST Act, 2017 are not to be treated as police officials, they cannot claim any immunity if they indulge in acts of physical violence against persons they suspect of being guilty of tax evasion.

76. After India adopted the Constitution of India, protection against torture by State actors has been recognized as part of right to life and liberty guaranteed by Art.21 of the Constitution of India.

77. The Supreme court in **D.K. Basu v. State of W.B[5].** considered this aspect in considerable detail and held:

[5] (1997) 1 SCC 416

*"**10.** "Torture" has not been defined in the Constitution or in other penal laws. "Torture" of a human being by another human being is essentially an instrument to impose the will of the "strong" over the "weak" by suffering. The word torture today has become synonymous with the darker side of human civilisation.*

"Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself."

— Adriana P. Bartow

***11.** No violation of any one of the human rights has been the subject of so many Conventions and Declarations as "torture" — all aiming at total banning of it in all forms, but <u>in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward — flag of humanity must on each such occasion fly half-mast.</u>*

***12.** In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.*

***13.** "Custodial violence" and abuse of police power is not only peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Despite the pious declaration the* *crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication.… …*

17. *Fundamental Rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. <u>The expression "life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries</u>. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens. Chapter V of the Criminal Procedure Code, 1973 deals with the powers or arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41 CrPC confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this section no formality is necessary while arresting a person. Under Section 49, the police is not permitted to use more restraint than is necessary to prevent* *the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the Magistrate to hold an enquiry into the cause of death."*

78. We would also point out that our country has enacted the Protection of Human Rights Act, 1993 for protection of human rights in the country in fulfillment of its obligations as a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16.12.1966. Under this Act, there are provisions for constitution of a National Human Rights Commission and also State Human Rights Commissions and their powers are set out with clarity under the Act. Reference can also be made to Section 30 of the said Act which provides for specification of a Court of Session in each District to be a Human Rights' Court by the State Government so that offences arising out of violation of human rights are tried and disposed of speedily.

79. In view of this statutory regime already in place, it would be futile for the respondents to claim any liberty to torture or use physical violence during the course of search, investigation or interrogation under the CGST Act, 2017 against persons suspected of tax evasion like the petitioners or their employees.

80. The learned Additional Solicitor General Sri Harpreet Singh, also fairly did not contend that officials of the GST Department / respondents have any privilege to use physical violence or torture against persons suspected of tax evasion, though he disputed that any such thing occurred.

81. However, in view of the material on record, we are constrained to observe that the possibility of the use of violence by respondent nos.5 to 9 against petitioner nos.2 to 4 and the other employees of petitioner no.1 cannot be entirely ruled out having regard to Ex.P.4, in particular.

82. In addition to the above, the summons **Annexure P-6** issued under Sec.70 of the CGST Act, 2017 to the 2nd petitioner by 4th respondent is also worth mentioning.

83. It bears a date 12.12.2019 and asks the 2nd petitioner to appear before 4th respondent at 00:30 hrs on 12.12.2019.

84. This prima-facie indicates that it was issued after midnight on the intervening night of 11.12.2019 and 12.12.2019 asking the 2nd petitioner to appear at the ungodly hour of 00:30 hrs on that day.

85. What was so important to be recorded at such a time, which cannot wait till the morning of 12.12.2019, is not disclosed by the respondents.

86. We shall here refer to the plea in para 35 of the counter filed by the respondents 1 to 4 and 10 in this regard. They state as follows:

> " *…it was imperative to record statement of Shri Pramod Agarwal (in pursuance of summons issued under sec.70 of the CGST Act, 2017) on the spot as preliminary investigation clearly suggested his role in the tax evasion by petitioner no.1.* ***The petitioner no.2 was available at the spot i.e the Corporate Office of petitioner no.1. He was served the summons in his office. There is no bar to making enquiries under sec.70 of the GST Act, 2017 in the night itself…"***

87. We are unable to accept this explanation offered by the respondents to justify the issuance of summons to the 2nd petitioner after the midnight of 11.12.2019 i.e., after 00:00 hrs on 12.12.2019 and asking him to appear before the 4th respondent at 00:30 hrs on 12.12.2019.

88. The Supreme Court in **D.K. Basu** (5 Supra) also held that even a prolonged interrogation by an investigative agency may take the colour of deprivation of personal liberty in the following manner:

> ***"18.*** *However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or* ***describing the deprivation of liberty merely as a***

> ***prolonged interrogation.*** *A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder."(emphasis supplied)*

89. The respondents cannot say that detention of the 2nd respondent in the office of the 1st respondent till much after midnight on the intervening night of 11.12.2019 and 12.12.2019 is a routine thing. Prima-facie it amounts to deprivation of the liberty of the 2nd petitioner since he was forced to be present with the respondents 5 to 9 at that late hour on that night.

90. In our opinion, the respondents cannot contend that they will interrogate the persons suspected of committing any tax evasion as per their sweet will forceably keeping them in their custody for indefinite period. If it is done, it has to be construed as *informal custody* and the law relating to an accused in custody has to be expressly or impliedly applied. If accused can get all the benefits under Art.22 of the Constitution, a person in such informal custody can say that he is also entitled to get relief under Art.21 of the Constitution of India. This view has been taken by the Gujarat High Court in **Jignesh Kishorbhai**

Bhajiawala v. State of Gujarat[6] while dealing with similar actions of authorities under the Prevention of Money Laundering Act, 2002.

91. In view of the admitted fact that the search operations were continued well past midnight and summons were issued to 2nd petitioner to appear at 00:30 hrs on 12.12.2019, we do not accept the plea of the respondents that they did not act contrary to established procedure, that the search proceedings were carried out under proper and applicable law and procedure, and no harm or damage were made to any human/person or property and no sentiments were hurt.

92. No doubt in **P.V.Ramana Reddy** (2 supra) a Division Bench of this court held that enquiry by officers of the GST Commissionerate is not a criminal proceeding, but it is a judicial proceeding; and under Sub-Section (1) of Section 70 of the CGST Act, 2017, the proper officer under the CGST Act has the power to summon a person either to give evidence or to produce a document; that if such person who is issued a summons gives false evidence or fabricates false evidence or intentionally offers any insult or causes any interruption to any public servant, under Sections 193 and 228 of the IPC, he would be liable for punishment; that though the High Court can entertain an application for pre-arrest protection under Article 226 of the Constitution of India, such power should be exercised by the High Court sparingly; that under Section 69 of the CGST Act there is power to order arrest in cases where

[6] 2017 Crl.L.J.1760 para 19 at pg.1777

the Commissioner has reasons to believe that a person has committed any offence specified in Clauses (a) to (d) of Sub-Section (1) of Section 132 of the said Act; that such power is confined to cognizable and non-bailable offences; under Sub-Section (3) of Section 69 bail can also be obtained by persons arrested in connection with non-cognizable and bailable offences; and Section 41 and Section 41A of CrPC would apply in the event the Commissioner intends to arrest any person; and that normally relief of protection against arrest ought not to be granted. It is also contended that the Commissioner exercising power under Section 69(1) is not a police officer.

93. The above decision in **P.V. Ramana Reddy** (1 supra) is binding on us. Following the principle laid down therein that the High Court can entertain an application for pre-arrest protection under Article 226 of the Constitution of India, but such power should be exercised by the High Court sparingly, we hold that having regard to the facts and circumstances set out above, this case falls under the exceptional category and this Writ Petition is undoubtedly maintainable.

94. Coming to the plea of the petitioners for transfer of investigation is concerned, though normally such transfer is not to be done, in view of the facts and circumstances of this case and the absence of counter-affidavit by the 5th respondent denying the allegations of physical violence by him in the course of the search operations against the 3rd petitioner, we feel that it would not be appropriate for the 5th respondent to be a participant in the proceedings initiated by the respondents against the petitioners. Sri Harpreet Singh, learned Additional Solicitor General himself stated, on instructions, that henceforth the 5th respondent will not participate in any proceeding initiated against the petitioners by the respondents. We appreciate the fair statement of the learned Additional Solicitor General appearing for the respondents.

95. Next we shall deal with the question whether presence of a lawyer can be allowed at the time of examination of petitioner nos.2 to 4 and their employees.

96. Though the respondents have strongly objected to the same by placing reliance on the decision of the Supreme Court in **Poolpandi** (4 supra) and the decisions of the Delhi High Court in W.P. (Crl) No.2686 of 2019 **Sudhir Kumar Agarwal** and **Sudhir Gulati** (3 supra), there is no such absolute bar to permit interrogation of the petitioners in the presence of a lawyer within visible range, but at a distance beyond hearing range.

97. We may refer to the decision in **Jignesh Kishorbhai** (6 supra) of the Gujarat High Court wherein reference is made to similar orders granted by the Supreme Court in several matters such as **Vijay Sajnani and another vs. Union of India and another**[7], **Vijay Sajnani and another vs. Union of India and another**[8], **Birendra Kumar Pandey**

[7] CRLMP.No.10117 of 2012 in Writ Petition (Cri.) No.29 of 2012 decided on 25th April, 2012
[8] CRLMP.No.10117 of 2012 in Writ Petition (Cri.) No.29 of 2012 decided on 25th April, 2012

and another vs. Union of India and another[9]**, Nayasa Exports Pvt. Ltd. vs. Union of India and another**[10]**, Sri Parkarsh Aggarwal vs. Union of India and another**[11]**, Anandprakash Choudhari vs. Union of India and another**[12]**,** etc.

98. In **Birendra Kumar Pandey** (9 supra), referred to in **Jignesh Kishorbhai** (6 supra), even though the decision in **Poolpandi** (4 supra) was also cited, the Supreme Court referred to its own decision in **Senior Intelligence Officer, Directorate of Revenue Intelligence vs. Jugal Kishore Samra**[13] and held :

> *"Taking a cue, therefore, from the direction made in **D.K. Basu** and having regard to the special facts and circumstances of the case, we deem it appropriate to direct that the interrogation of the respondent may be held within the sight of his advocate or any other person duly authorized by him. <u>The advocate or the person authorized by the respondent may watch the proceedings from a distance or from behind a glass partition but he will not be within the hearing distance and it will not be open to the respondent to have consultations with him in the course of the interrogations</u>." (emphasis supplied)*

99. Therefore, we reject the contention of the respondents that under no circumstances can there be examination of a person by officers under GST Act in the presence of a lawyer.

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[9] Writ Petition (Cri.) No.28 of 2012 with W.P. (Cri.) No.29 of 2012 decided on 16th April, 2012.
[10] W.P.(C).No.822 of 2010 decided on 16th February, 2010 by the Delhi High Court
[11] Writ Petition (Cri.) Nos.85 of 2010 decided on 4th August, 2010.
[12] CRLMP.No.23956 of 2010 in Writ Petition (Cri.) No.122 of 2010 decided on 24th November, 2010
[13] (2011) 12 SC.C. 362

100. We hold that in the special facts and circumstances of the case, the petitioner nos.2 to 4 or their employees shall be examined in the visible range of their counsel, though not in hearing range.

101. We may also note that in the reply-affidavit filed by the petitioners they stated that they had co-operated with the respondents and participated in the investigation on several dates after the interim order was granted by this Court on 19.12.2019 in I.A.Nos.2 and 3 of 2019, which has not been disputed by the learned Additional Solicitor General. This conduct of the petitioners supports their plea that they have no intention to scuttle any enquiry initiated against them under the Act.

102. The next point to be considered is with regard to the plea raised by the respondents in their counter-affidavit that they would like to carry on investigation at New Delhi where the Headquarters of DGGI is located.

103. On a query from us, the learned Additional Solicitor General stated that at least 50 persons including petitioner nos.2 to 4 would have to be interrogated at New Delhi by the respondents.

104. We may point out that we are in the midst of the COVID-19 Pandemic and there are serious risks involved in people traveling to and from New Delhi and their family members because there is no dispute that New Delhi has several cases of Corona virus infections for the last several months. In the coming winter months, the prediction of the health experts is that there could be more infections and even fatalities caused by the said virus. Also it would entail considerable expense for that many people to travel to Delhi and back apart from high boarding and lodging costs.

105. While the need to proceed with the investigation and take it to the logical conclusion cannot be disputed, whether the respondents can be permitted to put at risk the health and lives of the persons they wish to interrogate in connection with the alleged GST evasion by the 1st petitioner and make them incur a huge amount of expenditure, is to be considered.

106. When the respondents have a Zonal Unit at Hyderabad where they can certainly carry on any enquiries or interrogation, we do not think that it is desirable, on account of COVID -19 Pandemic situation and the high cost involved, to allow the respondents to summon 50 or more persons in connection with the investigation of alleged GST evasion by the 1st petitioner to New Delhi by endangering their health and lives.

107. The learned Additional Solicitor General fairly stated that petitioner nos.2 to 4 may be directed to attend the New Delhi office of the respondents and submit themselves to interrogation once for duration of two to three days and that the other persons would be interrogated by the officials of the 2nd respondent at Hyderabad in their zonal unit. We place the said statement on record.

108. We therefore allow the Writ Petition with the following directions:

(a) the respondents shall not use any acts of violence or torture against petitioner nos.2 to 4 or their employees in furtherance of enquiry proceedings F.No.574 / CE / 198 / 2019 / INV initiated against the 1st petitioner;

(b) the enquiry in the above proceedings against the 1st petitioner shall not be handled by the 5th respondent, and he shall not participate in such enquiry, and it shall be transferred to another official to be designated by the 2nd respondent;

(c) any interrogation of petitioner nos.2 to 4 or their employees shall be between 10:30 a.m. and 05:00 p.m. on week days in the visible range of an Advocate appointed by them, who shall not be in hearing range;

(d) the petitioner nos.2 to 4 alone can be summoned to New Delhi for the purpose of the above enquiry by the respondents on one occasion for two to three days, and rest of their interrogation and those of their employees shall be conducted at Hyderabad by the respondents; and

(e) the respondents shall adhere to the provisions of the CGST Act, 2017 in conducting search, investigation or enquiry in relation to the alleged tax evasion by the petitioners.

(f) I.A.No.s 1, 2 & 3 of 2019 and I.A.No.1 of 2020 are accordingly disposed of.

(g) I.A.No.2 of 2020 is dismissed.

109. We make it clear that we did not express any opinion on any of the other contentions raised by the petitioners or by the respondents.

110. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed. No order as to costs.

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M.S.RAMACHANDRA RAO, J

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T.AMARNATH GOUD, J

Date: 6 .11.2020
Ndr/Vsv/Gra/Svv

Note: Issue CC today.
B/o(gra)