

A

C. SAMPATH KUMAR

v

THE ENFORCEMENT OFFICER, ENFORCEMENT
DIRECTORATE, MADRAS

B

SEPTEMBER 16, 1997

[DR. A.S. ANAND AND K. VENKATASWAMI, JJ.]

Foreign Exchange Regulation Act, 1973 :

C

S.40—Summons issued under the section—Statement of the person to whom summons issued recorded—Writ petition filed by him challenging the issuance of summons and contending that he could not be compelled to give his Statement in writing—Writ petition dismissed by High Court—Held, a person to whom summons are issued under S.40 may be called upon to give his statement in writing and sign it and such a course is not prohibited either

D

by the statute or the Constitution—Administration of caution to such a person that not making a truthful statement would be an offence cannot be construed as use of “pressure” to “extract” the statement—Such a caution has statutory backing of S.40(3) itself and is in effect in the interest of the person who is making the statement in view of the provisions of S. 40 (4).

E

Amba Lal v. Union of India & Ors., AIR (1961) SC 264, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6446 of 1997.

F

From the Judgment and Order dated 28.3.96 of the Madras High Court in W.A. No. 329 of 1996.

S.S. Ray, T.S. Arunachalam, K.T.S. Tulsi, S.B. Wad, Jinasenani, N. Jothi, K.K. Mani, K.V. Vishwanathan, Vikas Pahwa, K.V. Vijayakumar, S.N. Bhat, Manoj Wad and V.K. Verma for the appearing parties.

G

The following Order of the Court was delivered :

Leave granted.

H

This appeal is directed against the judgement and order of the High Court dated 28th March, 1996 in Writ Appeal No. 329 of 1996.

Summons were issued by the respondent to appellant under Section 40 of the Foreign Exchange Regulation Act, 1973 (hereinafter called as FERA) to appear before him on the fixed date. After putting in certain conditions for his appearance, the appellant appeared before the respondent on 15th May, 1996 when his statement was recorded. His statements were also recorded on 9th July, 1996 and 12th July, 1996. The appellant filed a writ petition in the High Court challenging the issuance of summons to him and in the writ petition precise grievance made was that the appellant cannot be “compelled” to give his statement in writing in connection with an offence under FERA. A learned single judge of the High Court after detailed discussion dismissed the writ petition. The appellant took the matter in a writ appeal. The writ appeal by a detailed order, was dismissed at the stage of admission itself. By special leave, this appeal has been filed in this Court.

We have heard learned counsel for the parties.

It is not denied that the statements of the appellant have been recorded by the respondent on 15th May, 1996, 9th July, 1996 and 12th July, 1996. Learned counsel for the appellant did not dispute and rightly so that person to whom summons are issued under Section 40 of FERA may be called upon to give his statement in writing and sign it and such a course is not prohibited either by the statute or the Constitution. In our opinion there is no presumption that such a statement is always “involuntary”. In *Amba Lal v. Union of India and others*, AIR (1961) SC 264 a Constitution Bench of this Court opined that such a course was desirable and observed that the giving of the statement in writing under the signatures of the maker safeguards the interest of the maker as well as the department and eliminates the possibility of making a complaint subsequently that the statement was not correctly recorded by the authorities. What has, however, been urged before us is that he cannot be “compelled” to give such a statement. Apart from the assertion of the appellant in the Court that the statements are “extracted” under ‘compulsion’, which fact has been denied by the respondents, there is no other material placed on the record from which we may assume any element of “compulsion” being exercised as alleged by the appellant.

Despite our giving opportunities to the appellant to file copies of those statements in this Court to satisfy ourselves whether there was any element of “compulsion” visible from those statements, copies of those statements have been withheld for reasons best known to the appellant. As a matter of fact copies of those statements ought to have been filed with the special

- A leave petition itself. It is, therefore, not possible for us to assume that any “compulsion” was exercised by the respondent to force the appellant to give his statements in writing. Administration of caution to the person summoned under Section 40 of FERA that not making a truthful statement would be an offence cannot by any stretch of imagination be construed as use of “pressure” to “extract” the statement. Administration of such a caution, which has the statutory backing of Section 40(3) of FERA itself, is in effect in the interest of the person who is making the statement in view of provisions of Section 40(4) of FERA.

- C Thus, for what we have said above and for the reasons given by the High Court, we find no merit in this appeal. This appeal, therefore, fails and is hereby dismissed. The interim direction shall stand vacated. The appellant shall pay Rs. 5,000 as costs.

RP.

Appeal dismissed.