

IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO.28 OF 2012

BIRENDRA KUMAR PANDEY & ANR. PETITIONER(S)

VERSUS

UNION OF INDIA & ANR. RESPONDENT(S)

O R D E R

1. This petition under Article 32 of the Constitution of India claims the following relief:

“(a) Issue an appropriate writ, order or direction to the Respondents to permit the petitioners’ interrogation and recording of statements under Section 108 of the Customs Act, 1962 in presence of their advocate at a visible distance, may be beyond audibility.”

2. By an interim order dated 16.04.2012, this Court granted following relief to the petitioners. The said order reads as under :

“Cr1.M.P. No.9177 of 2012, has been filed on behalf of the petitioners, *inter alia*, for an order in similar terms as was passed in the case of *Rajendra Arora and Others v. Union of India and Others*, on 7<sup>th</sup> December, 2010, or in the case of *Mukund Bhai Patel v. Union of India and Others*, on 4<sup>th</sup> March, 2011, so far as the recording of statement and interrogation of the petitioners' was concerned, during the pendency of the instant petition.

As indicated hereinabove, we have had occasion to pass orders on similar applications before.

The petitioners have been served with notice under Section 108 of the Customs Act, 1962, to appear before the concerned customs authority for interrogation in connection with certain matters. The petitioners are apprehensive that coercive attempts may be made to extort confessions from them. Accordingly, they have prayed that the interrogation of the petitioners be conducted not in the immediate presence of their lawyer, but that the petitioners' lawyer should be allowed to be present during the interrogation, within a visible but beyond hearing distance.

The prayer has been opposed by the learned Additional Solicitor General, Mr. P.P. Malhotra, who has brought to our notice the decision of a Three Judges Bench in the case of *Poolpandi and Others v. Superintendent, Central Excise and Others* (1992) 3 SCC 259. Mr. Malhotra pointed out that the very first paragraph of the said judgment mentions that the common question arising in the said case before their Lordships was the stand taken by the petitioners that they were entitled to the presence of their lawyers when they were being questioned during the interrogation under the provisions of the Customs Act, 1962, or the Foreign Exchange Regulation Act, 1973. Their Lordships had noticed the difference of opinion of different High Courts in this connection and had rejected the submission made on behalf of the petitioners therein, that they were entitled to have their lawyers present at the time of interrogation. Such prayer, therefore, was disallowed.

Mr. Malhotra has also drawn our attention to the decision in *Senior Intelligence Officer, Directorate of Revenue Intelligence v. Jugal Kishore Samra* (2011) 12 SCC 362, wherein the decision in *Poolpandi's case* (supra) was also referred to and, ultimately, having regard to the facts of the case, a two-Judge Bench of this Court directed as follows:

“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. The advocate or the person authorized by the respondent may watch the proceedings from a distance or from beyond 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 interrogation."

In fact, the said direction is the very direction that the petitioners are seeking in this criminal miscellaneous petition.

Apart from the above, this Bench and other Benches of this Court have also had occasion to deal with similar matters and we had passed similar orders to the extent that the petitioners' counsel would be allowed to be present at the time of interrogation within visible distance, though beyond hearing distance.

In our view, the decision which was rendered in *Poolpandi's case* (supra) by a Bench of Three Judges, was in the context of the direct involvement of the learned counsel during the actual interrogation where the lawyer assumed an active role during the interrogation. On the other hand, the order that has been sought, as passed in various matters, does not contemplate such an eventuality. In fact, in terms of the orders which we have earlier passed, a lawyer has no role to play whatsoever during the interrogation, except to be at a distance beyond hearing range to ensure that no coercive methods were used during the interrogation.

Accordingly, we allow the criminal miscellaneous petition and direct that the petitioners' advocate should be allowed to be present during the interrogation of the petitioners but that he should be made to sit

at a distance beyond hearing range, but within visible range and the lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation.

The criminal miscellaneous petition is disposed of accordingly."

3. A perusal of the said order clearly indicates that the relief sought in the writ petition itself was granted by the interim order. As such nothing further survives in this matter.

The writ petition is accordingly disposed of.

.....J.  
(VIKRAM NATH)

.....J.  
(SANJAY KUMAR)

NEW DELHI  
08 JUNE, 2023

ITEM NO.101

COURT NO.7

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Criminal) No(s). 28/2012

BIRENDRA KUMAR PANDEY &amp; ANR.

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ANR.

Respondent(s)

Date : 08-06-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH  
HON'BLE MR. JUSTICE SANJAY KUMAR  
(VACATION BENCH)

For Petitioner(s) Mr. Sarthak Sachdev, Adv.  
Mr. Rakesh Dahiya, AOR

For Respondent(s) Mr. N. Venkatraman, A.S.G. (NP)  
Mr. Arijit Prasad, Sr. Adv.  
Mr. T.A. Khan, Adv.  
Mr. Mukesh Kumar Maroria, AOR  
Mr. V.C. Bharathi, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The writ petition is disposed of in terms of  
the signed order.

(NEETU KHAJURIA)  
ASTT. REGISTRAR-cum-PS

(RANJANA SHAILEY)  
COURT MASTER

(Signed order is placed on the file.)