2021 INSC 833

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 302 OF 2019

C. SIVASANKARAN **Petitioner(s)**

VERSUS

UNION OF INDIA & ORS. **Respondent(s)**

O R D E R

Heard learned counsel for the parties.

The relief(s) claimed in this writ petition under Article 32 of the Constitution of India is founded on the assertion that the petitioner being an Ambassador-at-large of Seychelles, enjoys diplomatic immunity and, therefore, cannot be proceeded with before the Courts in India much less by way of criminal action. This very argument was canvassed by the petitioner in the writ petition filed before the High Court of Judicature at Madras, which after considering all the relevant aspects, came to be rejected vide judgment and order dated 06.11.2019.

Having perused the said judgment, we are in agreement with the view expressed therein. For, the petitioner

does not come within the sweep of definition of "diplomatic agent" or for that matter any other category of officials referred to in Article 1 of the Vienna Convention on Diplomatic Relations Done at Vienna on 18.4.1961. This is precisely the opinion expressed by the Madras High Court, which, we hereby affirm. That is a question of fact as well as of law.

The affidavits filed by the respondents including the Central Bureau of Investigation (CBI), for resisting the present writ petition have amongst other, brought on record communications dated 16.08.2019 and 19.08.2019 issued by the Ministry of External Affairs, Government of India, which, in turn, refer to the communication received by it from Seychelles Government clarifying that the petitioner is Ambassador-at-large of that country and has been issued a diplomatic passport, but his presence in India was not on any official duty on behalf of that Government. There is no reason to doubt the correctness of the position so stated in the communications and reiterated on affidavit filed before this Court dated 2.7.2020. Further, the affidavit also points out that the petitioner is not covered by Article 31 of the

Convention, but falls in the exception contained therein, as his activities being investigated, do not pertain to any official functions but in respect of his commercial activities as such.

As a matter of fact, the judgment of the Madras High Court stares at the face of the petitioner, which has remained unchallenged; and as aforesaid, we are in agreement with the view expressed therein particularly regarding the real status of the petitioner herein being only an Ambassador-at-large. It must, therefore, follow that the petitioner cannot be heard to invoke the argument of diplomatic immunity and if that contention fails, further reliefs claimed in the writ petition regarding quashing of concerned criminal cases cannot be taken forward.

Notably, the first relief claimed by the petitioner in the writ petition is on an erroneous assumption that the provisions of the Vienna Convention and of the Diplomatic Relations (Vienna Convention) Act, 1972 are *ultra vires* and, thus, urge upon this Court to read down certain provisions such as Sections 2 and 3 of the Act. The question of reading down any provision would arise

only if the petitioner is able to demonstrate that the impugned provision was otherwise *ultra vires* the Constitution and the law. The latter has not been pleaded nor established in the first place.

As aforesaid, on facts as well as in law, the petitioner is not entitled to diplomatic immunity and as a consequence thereof, the further reliefs claimed in the writ petition cannot be taken forward. Hence, this writ petition deserves to be dismissed and we so order.

We place on record our serious concern about the manner in which the proceedings have been pursued by the petitioner before this Court. In the first place, this writ petition was filed without annexing copy of the stated judgment of the Madras High Court though a relevant and material document.

Further, in the rejoinder affidavit, the petitioner has annexed copy of the legal opinion given by a former Judge of this Court. That cannot be countenanced at all. It needs to be deprecated in strong terms and we do so.

At the same time, we place on record sincere apology given by the learned senior counsel appearing for the

petitioner concerning filing of the opinion of the former Judge of this Court by the Advocate-on-Record or the counsel advising the petitioner, as the case may be.

Interim relief(s), if any, stands vacated forthwith.

.....,J.
(A.M. KHANWILKAR)

.....,J.
(DINESH MAHESHWARI)

.....,J.
(C.T. RAVIKUMAR)

NEW DELHI;
December 07, 2021.

ITEM NO.6 COURT NO.3 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Criminal) No(s). 302/2019

C. SIVASANKARAN **Petitioner(s)**

VERSUS

UNION OF INDIA & ORS. **Respondent(s)**

([FOR PHYSICAL HEARING]
IA No. 23054/2021 - APPLICATION FOR PERMISSION
IA No. 35071/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES
IA No. 170769/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES
IA No. 169692/2019 - STAY APPLICATION)

Date : 07-12-2021 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s)
Mr. Maninder Singh, Sr. Adv.
Mr. Varun Shankar, Adv.
Mr. Arnav Narain, AOR
Mr. R.S. Lakshman, Adv.
Mr. Atharv Koppal, Adv.
Mr. Rakshit Ranjan, Adv.

For Respondent(s)
Mr. Tushar Mehta, learned S.G.
Mr. Mayank Pandey, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Zoheb Hussain, Adv.
Mr. Arvind Kumar Sharma, AOR
Mr. Mukesh Kumar Maroria, AOR

Mr. Avadh Bihari Kaushik, AOR

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

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

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]