

GAHC010315182019



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C) 9450/2019**

1:JAYANTA BARUAH  
S/O- LATE DEBANANDA BARUAH, R/O- MOTHER TERESA ROAD,  
GUWAHATI- 21, DIST- KAMRUP (M), ASSAM

VERSUS

1:THE UNION OF INDIA AND 9 ORS  
REP. BY THE SECRETARY TO THE MIN OF HOME AFFAIRS, NEW DELHI- 01

2:THE STATE OF ASSAM  
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM  
DISPUR  
GUWAHATI- 06

3:THE DGP  
ASSAM  
ULUBARI  
GUWAHATI- 07

4:DIRECTORATE OF ENFORCEMENT  
LOK NAYAK BHAWAN  
6FLOOR  
KHAN MARKET  
NEW DELHI 110003 REP. BY THE ED

5:SPECIAL DIRECTOR  
ED (EASTERN REGION)  
CGO COMPLEX  
3RD MSO BUILDING  
6TH FLOOR  
DF BLOCK  
SALT LAKE  
KOLKATA- 700064

6:ASSISTANT DIRECTOR (PMLA)  
ED  
EASTERN REGION  
CGO COMPLEX  
3RD MSO BUILDING  
6TH FLOOR DF BLOCK  
SALT LAKE  
KOLKATA- 700064

7:THE CBI  
REP. BY ITS DIRECTOR  
5/B 6TH FLOOR  
LODHI ROAD  
JAWAHAR NEHRU STADIUM MARG  
CGO COMPLEX  
NEW DELHI- 110003

8:THE JOINT DIRECTOR  
CBI  
KOLKATA  
DF BLOCK  
SECTOR 1  
CGO COMPLEX  
SALT LAKE  
KOLKATA- 700064

9:THE SP  
CBI  
ECONOMIC OFFENCES IV  
DF BLOCK  
SECTOR 1  
CGO COMPLEX  
SALT LAKE  
KOLKATA- 700064

10:THE INSPECTOR OF POLICE  
CBI  
ECONOMIC OFFENCES IV  
DF BLOCK  
SECTOR 1  
CGO COMPLEX  
SALT LAKE  
KOLKATA- 70006

**Advocate for the Petitioner** : MR. P N GOSWAMI

**Advocate for the Respondent** : ASSTT.S.G.I.

**BEFORE  
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**Date : 20-12-2019**

Heard Mr. K.N. Choudhury, learned Senior counsel assisted by Mr. P.N. Goswami, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned Standing counsel, Enforcement Directorate appearing for respondent nos. 1, 4, 5 and 6 and Ms. M. Bhattacharjee, learned Additional Senior Government Advocate for respondent nos. 2 and 3.

The subject-matter under challenge in this writ petition is a summons issued under the hand of the respondent no. 6 on 16.12.2019 which is stated to be issued in exercise of powers conferred upon him under sub-section (2) and (3) of Section 50 of the Prevention of Money Laundering Act, 2002 ("the PMLA Act", in short). By the said summons, the petitioner has been directed to appear in the office of the respondent no. 6 located at CGO Complex, 3<sup>rd</sup> MSO Building, 6<sup>th</sup> floor, DF block, Salt Lake, Kolkata-700064 at 11-30 a.m. on 23.12.2019.

Heard the learned counsel for the parties on the interim prayer.

Before dilating on the grounds urged as regards issuance of the summons dated 16.12.2019, it is appropriate to refer to certain events that occurred prior to 16.12.2019. The petitioner was earlier served with a notice under Section 160, CrPC on 12.12.2019 by the proforma respondent no. 10 directing his appearance before the proforma respondent no. 10 at 02-30 p.m. on 13.12.2019 in his office located at CGO Complex, DF Block, Sector-1, Salt Lake, Kolkata-700064. Subsequent to the said notice dated 12.12.2019, the petitioner was again served with a notice under Section 160, CrPC by the proforma respondent no. 10 on 14.12.2019 asking for his appearance before him at 02-00 p.m. on 15.12.2019.

Assailing the said two notices as well as the manner in which those two notices were served by the proforma respondent no. 10, the petitioner has earlier approached this Court by way of a writ petition, W.P.(C) No. 9282/2019. This Court after hearing the parties in W.P. (C) No. 9282/2019, has passed an order on 16.12.2019. As the preceding events in relation

to the case pleaded on behalf of the petitioner in this petition also, have been mentioned in detail in the said order dated 16.12.2019, I found it appropriate to reproduce the said order, instead of reiterating the events herein again, for ready reference :

*“1. Shri Jayanta Baruah has preferred this petition with the following prayers :*

*“ In the premises aforesaid, it is therefore respectfully prayed that Your Lordships may be pleased to admit this petition, call for the records and issue a Rule calling upon the Respondents to show cause as to why a writ in the nature of*

*a) Mandamus shall not be issued directing the respondents, more particularly the respondent Nos.1, 2 and 3 to desist from preventing the petitioner in broadcasting true and correct facts of agitation presently ongoing against the enactment of the Citizenship Amendment Act, 2019 in the State of Assam and democratic resistance to the same and*

*b) certiorari shall not be issued to set-aside/quash the impugned notices dated 12.12.2019 and 14.12.2019 issued by the Inspector of Police, Central Bureau of Investigation, Kolkata, whereby the petitioner has been summoned as witness in connection with CBI/EO-IV/Kolkata Case No.RC.39(S)/2014 and*

*c) mandamus shall not be issued directing the respondents to forthwith cancel/recall/ rescind and/or otherwise forbear from giving effect to the impugned notices dated 12.12.2019 and 14.12.2019 issued by the Inspector of Police, Central Bureau of Investigation, Kolkata, whereby the petitioner has been summoned as witness in connection with CBI/EO-IV/Kolkata Case No.RC.39(S)/2014 and/or,*

*d) Prohibition shall not be issued directing the respondents not to take coercive action against the petitioner, including illegal arrest and detention in connection with CBI/EO-IV/Kolkata Case No.RC.39(S)/2014 and*

*Upon cause/causes that may be shown, after hearing the parties and upon perusal of the records be pleased to make the Rule absolute and/or to pass any other appropriate order or direction as to Your Lordships may deem fit and proper in the facts and circumstances so as to give full and complete relief to the petitioner.*

*–AND–*

*Pending disposal of the Rule Your Lordships may be pleased to stay/suspend the impugned notices dated 12.12.2019 and 14.12.2019 issued by the Inspector of Police, Central Bureau of Investigation, Kolkata, whereby the petitioner has been summoned as witness in connection with CBI/EO-IV/Kolkata Case No.RC.39(S)/2014 and/or not to take any coercive steps against the petitioner, including arrest and detention in connection with the impugned notices dated 12.12.2019 and 14.12.2019 issued by the Inspector of Police, Central Bureau of Investigation, Kolkata in CBI/EO-IV/Kolkata Case No.RC.39(S)/2014, and/or to pass such further or other Order(s) as Your Lordships may deem fit and proper in order to give adequate interim protection to the petitioner.”*

*2. So far as prayer (a) is concerned, learned senior counsel for the petitioner states that the said prayer be disregarded as not pressed.*

*Ordered accordingly.*

*3. So far other prayers are concerned, it has been pleaded that the petitioner is the proprietor of daily newspaper namely 'Asomiya Pratidin' which has a wide circulation in the State of Assam. It has further been pleaded that petitioner is also the proprietor of a news channel namely, 'Pratidin Time' having highest viewers in the State of Assam. Both the forums are well established due to uncompromising and impartial reporting of news and have already earned the confidence of the people of the State of Assam.*

*4. It has been pleaded that a vast majority of population of the State have been agitating throughout the State of Assam against the Citizenship Amendment Bill (for short 'CAB;'). The news paper and the news channel run by the petitioner being impartial have been publishing the correct picture of such agitations against the Government. It has been pleaded that the Government of Assam, besides taking coercive measures against the agitating population, including by way of using force by virtue of which three persons have already lost their lives, is trying to put pressure on the press and media not to publish the correct factual picture.*

*5. It has been alleged that on 11th December, 2019 at about 4.10 P.M., the petitioner received a phone call from number 9435524555. The caller identified himself as Director General of Police, Assam and directed the petitioner not to broadcast news relating to*

*agitations. The petitioner, however, refused to do so claiming freedom of press guaranteed under Article 19(1)(a) of the Constitution of India. It has been pleaded that besides above designs of the State, the Information and Broadcasting Ministry is also trying to create disturbances in broadcasting the news channel. The settings with the satellite connections have been altered. Live broadcast of the news channel is being frequently interfered at the behest of the respondents. Tremendous pressure is being brought on the petitioner not to broadcast and, therefore, it has been pleaded that freedom of press of the petitioner is being curbed.*

*6. It has been pleaded that since the petitioner refused to concede to the unconstitutional gesture on the part of the instrumentalities of the State, as an act of vengeance, impugned notice dated 12th December, 2019 has been issued by the Inspector of Police, CBI from Kolkata. Purportedly, the petitioner has been summoned as a witness in connection with an old pending case of 2014. It has been pleaded that it is surprising that the impugned notice has been issued immediately after the directions were issued not to broadcast.*

*It has been asserted by virtue of the petition that notice dated 12th December, 2019 issued at Kolkata was served on the petitioner at Guwahati in midnight hours of 12th December, 2019 asking the petitioner to appear before Inspector of Police, CBI at Kolkata on 13th of December, 2019.*

*7. It has been pleaded that on account curfew imposed in Guwahati and obstruction in movement of citizens in this area on account of restrictions imposed by the State, the petitioner informed the Investigating Officer of his inability to appear on 13th December, 2019. This is also because flights and railways have been suspended.*

*It has been pleaded that the petitioner through his lawyers in Kolkata submitted a letter dated 13th December, 2019, Annexure-B seeking at least seven days time to appear in Kolkata.*

*8. It has been alleged that in the garb of summoning the petitioner as a witness, the petitioner reasonably apprehends that he shall be arrested only because he has resisted the pressure to broadcast news relating to agitations.*

9. It has been pleaded that strangely despite letter dated 13th December, 2019, (Annexure-B) having been served on the respondents seeking seven days' time, the CBI on 14th December, 2019 sent another communication through e-mail asking the petitioner to appear on 15th December, 2019. It has been pleaded that at around 9 P.M. on 14th December, 2019, an officer from the CBI office visited the petitioner at hospital and served a hard copy of the same notice. The petitioner informed the Officer that the health condition of the petitioner does not allow him to visit Kolkata, however, the same officer visited the petitioner again in the hospital at 11 P.M. on 15th December, 2019. Copy of the medical certificate was collected from the hospital by the officer and, thereafter, he went away.

10. It has been pleaded that as a measure of abundant caution, the petitioner through his lawyer served letter dated 15th December, 2019 in the CBI Office at Kolkata to seek extension of time to appear as a witness.

11. It has been argued that it is with malafide intent that the respondents in the second impugned notice dated 14th December, 2019 have added that examination of the petitioner is necessary as the case is being investigated as per directions of the Hon'ble Supreme Court of India with a mandate to investigate the larger criminal conspiracy and money trade, besides the main offence. Under the circumstances, the petitioner apprehends that summoning the petitioner as a witness is nothing but to take coercive action against the petitioner. It has been pleaded that since 2014 when the criminal proceedings were initiated vide the FIR mentioned in the impugned notices, not once was the petitioner examined by the investigating agency. It is for the first time, the matter has been raked up on and after 12th December, 2019, when the agitation is going on and petitioner has refused to buckle under the pressures of the respondents.

12. I have gone through the contents of the impugned notices.

Section 160 of the Code of Criminal Procedure, 1973 reads as under :

“160. Police officer's power to require attendance of witnesses.

(1) Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or

*any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:*

*Provided that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male person or woman resides.*

*(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence."*

*13. The provision above extracted, suggests that any police officer making an investigation under Chapter-XII of the Code of Criminal Procedure may, by an order in writing, request the attendance before himself of any person being within the limits of his own or adjoining station, who from the information given or otherwise appears to be acquainted with the facts and circumstances of the case.*

*The provision does suggest that a witness may be summoned to furnish information in furtherance to investigation. The permissible location of the witness has also been provided as within the jurisdiction limits; or adjoining station. Clearly Guwahati falls within none.*

*However, on going through the impugned notices, I find that the investigating agency has not indicated as to what information is sought from the petitioner; in what context; in context of which document; and the petitioner has not been asked to appear with any document or fact that might be in the custody of the petitioner; and which may assist the investigating agency in investigation.*

*15. The sequence of events as depicted from notice dated 12th December, 2019 issued in Kolkata asking the petitioner to appear on 13th of December, 2019 at 2.30 P.M; and notice dated 14th December, 2019 also issued at Kolkata asking the petitioner to appear on the very next date on 15th December, 2019 at 2.00 P.M. , appear to be strange. It does not appear to be a coincidence.*

*Likewise, from notice dated 14th December, 2019, I find that the request made on*



*behalf of the petitioner to seek seven days' time has been recognized by the officer, however, has insisted for appearance of the petitioner on 15th December, 2019 at 2.00 P.M.*

*16. It is common knowledge that there are restrictions to movements within the State of Assam. The petitioner has been asked to travel beyond the boundaries of the State at exceptionally short notice.*

*17. Shri S.C. Keyal has appeared on behalf of the Respondent-CBI.*

*18. I deem it just and proper to ask for presence of Shri Bratin Ghoshal, Inspector of Police, CBI at Kolkata to appear before this Court and respond as to in what context the petitioner has been asked to appear in Kolkata at such short notice. The presence of the Investigating Officer is further required to dispel the doubts created in the mind of the court as regards intention of the Investigating Officer. This direction is being issued considering the totality of the facts and circumstances of the case.*

*Surely, an investigating officer empowered under Chapter XII of the Code of Criminal Procedure cannot be allowed to use that power in abuse of the authority vested in him by virtue of the Code. Reasonable apprehension has been shown by the petitioner that in the garb of the notice under Section 160 of the Cr.P.C., he shall be arrested.*

*19. On request of Shri Keyal, learned Assistant Solicitor General of India, list on 3rd January, 2020, high-up on the list.*

*20. Since the investigating officer would be in Guwahati on the next date of listing, as directed, we give him liberty to question the petitioner in Guwahati and seek whatever information he wants, in Guwahati.*

*It would, however, be appropriate for the Investigating Officer to give a list of documents/information sought from the petitioner. For his convenience, the said information may be conveyed to Shri I. Choudhury, learned senior counsel appearing for the petitioner through the good office of Shri Keyal.*

*21. In the meantime, in pursuance to the notices dated 12th December, 2019 and 14th December, 2019, no action be taken against the petitioner."*

It is submitted by Mr. Choudhury that on being aware of the deficiency in the earlier notices dated 12.12.2019 and 14.12.2019, issued by proforma respondent no. 10, this time the respondent no. 6 has issued the summons making mention of certain number of documents to be produced by the petitioner at the time of his appearance in his office on 23.12.2019.

The contents of the summons dated 16.12.2019 are reproduced hereunder:

“OFFICE OF THE SPECIAL DIRECTOR/ENFORCEMENT DIRECTORATE (EASTER REGION)

CGO Complex, 3<sup>rd</sup> MSO Building, 6<sup>th</sup> Floor, DF Block, Salt Lakh, Kolkata-700064

ECIR No. : KLZO/ 08/ 2015/ AD (SM)/3934

Dated: 16.12.2019

**SUMMONS**

*Whereas I, N.K. Masha Assistant Director (PMLA) of Enforcement am making Investigatiokn under the provisions of the Prevention of Money Laundering Act, 2002 (15 of 2003) against Rose Valley Group & Ors.*

*And whereas, I consider that attendance of Sh. Jayanta BAruah necessary in connection with the said investigation.*

*Now, therefore, in exercise of the powers conferred upon me under sub-section (2) and sub-section (3) of section 50 of the said Act, I require the said Sh. Jayanta Baruah to appear before me in person or through authorized representative at my office on 23.12.2019 at 11-30 AM hrs. alongwith the documents as per Schedule below:-*

**SCHEDULE**

- 1. His/Her Passport, Adhar Card, Voter ID-Card, PAN Card or any other document for identification / Passport size Photograph.*
- 2. All documents relating to the transaction between you/your company and Rose Valley Ghy.*
- 3. Details of communications exchanged with Rose Valley Group.*
- 4. Bank Pass Book (S) with updated statement.*
- 5. Copies of Agreements with Rose Valley.*

*GIVEN UNDER MY HAND AND SEAL, THIS 16<sup>TH</sup> DAY OF Dece. TWO THOUSAND NINETEEN’*

From a reading of the notice dated 12.12.2019 and 14.12.2019 with the summons dated 16.12.2019, it transpires that the investigation carried out by the proforma respondent no. 10 and the respondent no. 6 pertain to cases registered in the years 2014 and 2015

respectively. It is submitted by Mr. Choudhury that since 2014, the petitioner was not called to appear before the proforma respondent no. 10 till 12.12.2019. Similarly, the respondent no. 6 did not call the petitioner since the year 2015 when the case was registered, till 16.12.2019 to appear before him. What is discernible, he submits, is that all these notices have been issued in close proximity of time and the order dated 16.12.2019 had aptly taken note of those events. By mentioning the requirement of production of certain documents, the respondent no. 6 has issued the summons, but the reason behind the same is to secure the personal appearance of the petitioner somehow, after having failed to secure the same in two earlier attempts made by a sister investigating agency.

Mr. Choudhury has raised bonafide in issuance of the summons dated 16.12.2019 as the same has been issued in close proximity of time from the passing of the order dated 16.12.2019 and for finding out the real reason, the decision making process which has led the respondent no. 6 to issue the summons in that manner is required to be looked into. It is submitted that the petitioner had no business transactions either with Rose valley Hotel and Entertainment Ltd. and others as indicated in the notice dated 12.12.2019 and 14.12.2019 and with Rose Valley Group. The petitioner had entered into two agreements – one Content Broadcasting Agreement and another Agreement for sale, with one Brand Value Communications Limited (BVCL) in 2013 and 2014 respectively. He submits that there is one common thread in the sense that one of the Directors of all the companies is common. As per the contentions of the petitioner, he did not receive any money from any of the companies associated with Rose Valley Group of companies, whose monetary transactions are under investigation under the two authorities. Rather, he had paid some amounts in course of business transactions with BVCL to BVCL pursuant to the agreements entered into by him with BVCL and all those amounts paid by him were duly accounted for.

Ms. Gayan, learned counsel representing the respondent Enforcement Directorate who is responsible for issuance of the summons dated 16.12.2019, has refuted the submissions made on behalf of the petitioner. She has submitted that the respondent no. 6 is duly empowered under the provisions of Section 50, PMLA Act, 2002 to summon any person whose attendance are considered necessary during the course of any investigation or proceeding under the said Act. Any person so summoned, is bound to attend in person or

through authorised agents as the empowered officer may direct and such a person so summoned, shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. It is urged by Ms. Gayan that BVCL with whom the petitioner had entered into agreements, is a subsidiary of the Rose Valley Group of companies.

Having regard to the totality of the fact situation obtaining in the case, this matter is also posted on 03.01.2020 along with W.P.(C) No. 9282/2019.

It has emerged that close on the heels of passing of that order on 16.12.2019, the petitioner has been served with the summons which is the subject-matter of challenge in this writ petition. As could be noticed from the order dated 16.12.2019, the earlier 2 (two) notices did not indicate as to what information was sought from the petitioner and in what context. By the said 2 (two) notices dated 12.12.2019 and 14.12.2019, the petitioner was not asked to appear with any document that might be in the custody of the petitioner, which may assist the investigation agency and the investigation. But in the summons dated 16.12.2019, the respondent no. 6 has made mention of a number of documents with which the petitioner has been asked to appear before him. Noticeably, the two offices wherefrom the notices dated 12.12.2019, 14.12.2019 and the summons dated 16.12.2019 have been issued, are located in the same complex.

Having taken note of the preceding events prior to the passing of the order dated 16.12.2019 and the subsequent events after passing of the order dated 16.12.2019, I am of the prima facie view that the matter of issuance of the notices and the summons, under reference, requires a further examination in view of the close proximity in time of their issuance and as regards the process which have gone into by the respondent Directorate before deciding to issue the summons on 16.12.2019 and to serve the same on the petitioner at 06-00 p.m. on 16.12.2019 and the petitioner is entitled to interim protection as like the order dated 16.12.2019.

As the summons has indicated about certain documents requiring their production before the respondent no. 6, the petitioner is granted the liberty to furnish copies of such documents, as are available with him, in the office of the respondent no. 6 through his

authorised representative before 03.01.2020.

In the interim, it is ordered that in pursuance to the summons dated 16.12.2019, the respondent nos. 3 – 6 shall not insist for the personal appearance of the petitioner in the office of the respondent no. 6 at Kolkata till 03.01.2020 and no coercive action with regard to the summons dated 16.12.2019 shall be taken against the petitioner till then.

**JUDGE**

**Comparing Assistant**