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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: November 01, 2010

Date of Order: November 30, 2010

+ W.P. (Crl.) No.152/2010

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Satish Mohan Agarwal & Anr.

30.11.2010

...Petitioner

Versus

UOI & Ors.

...Respondents

Counsels:

Mr. Subodh Markandeya, Sr. Adv. with Ms. Chitra Markandeya and Ms. Noorjahan for petitioners.

Mr. Vikas Pahwa, Standing Counsel for CBI/respondent.

Mr. Baldev Malik, Advocate for UOI

AND

+ W.P. (Crl.) No.1422/2008

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Satish Mohan Agarwal & Anr.

...Petitioner

Versus

UOI & Ors.

...Respondents

Counsels:

Mr. Subodh Markandeya, Sr. Adv. with Ms. Chitra Markandeya and Ms. Noorjahan for petitioners.

Mr. Vikas Pahwa, Standing Counsel for CBI/respondent.

Mr. Baldev Malik, Advocate for UOI

JUSTICE SHIV NARAYAN DHINGRA

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the reporter or not? | Yes. |
| 3. | Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

1. By this common order, I shall dispose of the above two writ petitions preferred by the petitioners. The writ petition no. 152 of 2010 has been filed by the petitioners with

prayer that Section 160 of Cr.P.C be declared unconstitutional being contrary to Articles 14 and 21 of the Constitution of India as it conferred unbridled powers on a lowest rank of police official and lays down no guidelines for exercise of the powers of issuing notice so as to ensure that there was no misuse or abuse of power. It is submitted that Section 160 Cr.P.C was also violative of Article 21 of the Constitution of India as it encroaches upon the liberty of a citizen. The facts stated in the petition are peculiar to the petitioners and not relevant in considering the question whether Section 160 Cr.P.C is unconstitutional or not. The constitutionality of Section 160 has to be considered per se. The petitioners also prayed for quashing notices dated 21st January 2010 under Section 160 Cr.P.C issued by the respondents No.4 in RC-3 (E) 2006/EOW-1/DLI registered at the instance of respondent no.3 at police station EOW.

2. Section 160 Cr.P.C 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 woman 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.”

3. Section 160 is falls in Part-XII of Cr.P.C which deals with information to the police and their powers to investigate. Under section 154 Cr.P.C whenever an information regarding commission of a cognizable offence is given either orally or in writing to officer in charge of a police station, the same is to be reduced into writing by him or under his directions and entered into a book to be kept for this purpose at the police station. This record of information is called the first information report and once an information is

recorded, Section 156 Cr.P.C obliges and casts a duty upon the officer in charge of the police station either to personally investigate the cognizable offence disclosed to have been committed as per the information or to assign this investigation to a police officer working under him. Section 157 Cr.P.C obliges the incharge of police station (SHO) to send a copy of this information forthwith to the area magistrate as well and to proceed with the investigation personally or send some person for this purpose. Section 160 Cr.P.C empowers a police officer doing investigation under Chapter XII of Cr.P.C to require attendance before him of any person within the limits of his own police station or adjoining police station, who in his opinion appears to be acquainted with the facts and circumstances of the case. Thus, Section 160 Cr.P.C enables a police official to investigate the crime by calling such persons who have some kind of knowledge about the crime. Section 160 specifies that only a police official assigned with the investigation, can issue the notice only to any person. Thus power under Section 160 Cr.P.C of issuing notice is a power exercised in investigation of a crime and to know the facts and circumstances of the case from those who are acquainted with the facts and circumstances of the case. Notice under Section 160 Cr. P.C can be issued to any witness and even to a suspect, so as to know from him the facts and circumstances of the case so that an effective investigation can be done of the crime committed. Thus, there is no question of infringement of any right of a person much less fundamental right. It is settled law that the power of investigating of a crime is a statutory right of the police and the court cannot interfere into this right of the police.

4. The powers under Section 160 Cr.P.C are necessary for the police for proper and effective investigation of a crime. A police officer who receives information that a person may be acquainted with the facts of the case can issue notice under Section 160 Cr.P.C to call such person and interrogate him. No specific guidelines are required for issuing such notice as issuance of such notice would not in any way infringes the

personal liberty of any person. Chapter IV of Cr.P.C casts a duty on the public person to provide necessary help to Magistrate and police as and when demanded regarding information about commission of a crime and help apprehending the criminals. A duty has been cast upon the public to give information of certain offences as mentioned in Section 39 Cr. P.C. Section 41 of Cr.P.C gives power to police not only to arrest a person, without warrants, if he has been involved in a cognizable offence or against whom credible information has been received of his having been involved in an offence. The Code of Criminal Procedure lays down different provisions as to how investigation is to be done. Section 160 Cr.P.C gives power to police officer to summon a person by issuing notice in writing. I find no illegality in this provision neither it encroaches upon any of the fundamental rights of a person nor give unbridled powers to police officials.

5. I find no force in this petition. The petition is hereby dismissed.

6. In W.P. (Crl.) No.1422/2008, the petitioners have made the following prayers:

- “(a) to quash notices under Section 160 of Cr.P.C issued by respondents no.4 in RC-3(E)2006/EOW-1/DLI issued by respondent no.4 registered at the instance of respondent no.3 at PS EOW-I o n 18.10.2008 without providing copy of the complaint;*
- (b) to provide the details of above complaint under which the petitioners are required by respondent no.4;*
- (c) to issue a writ of prohibition or any other order or direction restraining respondents from taking any further steps in respect of above mentioned case against the petitioners; or keeping surveillance on their telephones; and*
- (d) to issue such further writ, direction or order as is considered expedient and proper in the facts and*

circumstances of the case.”

7. The petitioners are allegedly involved in a crime of forging bills of lading and other documents to show false export of goods and thereafter claiming duty drawback from the public exchequer fraudulently. CBI in its report had given the details about the manner in which the crime was committed in following terms:

“(f) That M/s R.K. Traders submitted five bills of lading purportedly issued by M/s WSA Shipping (Bombay) Pvt. Ltd., Mumbai to DGFT authorities as genuine. Shri Nitin Namdeo Patil, Manager (Documentation) of the said Company vide their letter dated 10.06.2008 has confirmed that they had not issued Bills of lading, in question nor handled the consignments of M/s Saudagar Exports and M/s Shanti Enterprises, New Delhi (Annexure-III) .

(g) That after obtaining 6 Duty Entitlement Pass Book (DEPB) licenses from DGFT, New Delhi, accused Rajinder Gupta, Pop of M/s R.K. Traders managed to get 5 DEPB licenses verified from Custom authorities, Nhava Sheva, Mumbai and one license could not be got verified due to DRI alert. The said 5 DEPB licenses were sold to the bona fide importers based in Chennai by Satish Mohan Agarwal, petitioner no.1 through one Shri Shashi Prakash Lohia, Proprietor of M/s P.I. Trading Corporation, a DEPB broker based at Chennai. During the course of investigation, Shri Shashi Prakash Lohia has stated to this effect and that at the instance of Shri Satish Mohan Agarwal, petitioner no.1, the payment of Rs.22 lacs approx against 5 licenses was made to him through cheques favouring M/s Casino Electronics Pvt. Ltd. New Delhi. It has further revealed that Shri Satish Agarwal and accused Rajinder Gupta are the Directors of M /s Casino Electronics Pvt. Ltd. Investigation has further revealed that Shri Satish Mohan Agarwal has utilized the fraudulent funds so obtained by way of issuance of following cheques in favour of various firms and cash withdrawals against funds so credited:-

S.No.	Cheque no. and amount debited on	Amount	In favour of
1.	570038/07.11.2003	450000	UNIQUE ENTP
2.	570036/10.11.2003	150000	DO
3.	570037/10.11.2003	350000	DO
4.	426003/02.12.2003	350000	SN INDO GLOBAL
5.	426005/05.12.2003	200000	SELF
6.	570028/06.12.2003	450000	PI TRADING
7.	426025/17.1.2004	250000	SELF
8.	426030/28.1.2004	500000	SN INDO GLOBAL
9.	426035/03.2.2004	100000	SELF

(h). That for the purpose of investigation, number of notices were sent to S/Shri Rajinder Gupta and Satish Mohan Agarwal through Special Messenger and speeded post on the addresses available on record but all the notices were received back as undelivered. Shri Rajinder Gupta after sustained efforts could be arrested on 15.9.2008 and is in judicial custody since 20.9.2008. Investigation has disclosed that he is a front man of petitioner Shri Satish Mohan Aggarwal, brain behind commission of crime."

8. In context of above crime RC-3 (E) 2006/EOW-1/DLI was registered and notices under Section 160 Cr.P.C were issued to the petitioners and the petitioners made this writ petition.

9. The petitioners have already obtained a copy of complaint by using provisions of RTI Act. It is not obligatory on the part of the police to furnish a copy of FIR/complaint to the accused. Section 154(2) puts an obligation on police to furnish a copy of FIR/complaint to the complainant and not to the accused. Police has got every right to issue notice under Section 160 Cr.P.C and notice under Section 160 cannot be quashed by a Court. Notice under Sections 160 Cr.P.C is a step in furtherance of investigation and the court cannot interfere into investigation. If the petitioners were apprehending arrest on account of their alleged involvement, the appropriate course available for the

petitioner was to apply for bail and not to approach this Court for quashing the notices under Section 160 Cr.P.C. As far as allegations of surveillance by taping the phones of petitioners are concerned, no material has been placed on record by the petitioners on record to substantiate their allegations.

10. Both the petitions are frivolous in nature and are liable to be dismissed with cost. The petitions are dismissed with cost of Rs.25,000/- each. Cost is payable to State.

November 30, 2010
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SHIV NARAYAN DHINGRA, J