

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.32406 OF 2016

ORDER:

Heard Mr.P.Siharinath for petitioner and the Assistant Government Pleader for Home.

The petitioner challenges notice issued under Section 91 of the Criminal Procedure Code (Cr.P.C). At the instance of one Shaheda Begum w/o. Mohd.Qutubuddin, a case in Crime No.155/2016 under Section 420 of Indian Penal Code was registered by 2nd and 3rd respondents. The 2nd and 3rd respondents filed final report in Crime No.155/2016. The complainant filed protest petition and it is submitted by the counsel appearing for the parties that protest petition is allowed and the matter is under investigation. The 2nd respondent issued notice under Section 91 of Cr.P.C. The notice reads thus:

"No.155/Cr-B1/2016

Police Station House,
Sangareddy Town PS,
Dated:11-09-2016

NOTICE U/s. 91 of Cr.P.C.

"You are hereby informed that on 12-05-2016, the complaint namely Smt.Shaheda Begum w/o. late Mohd.Qutubuddin, aged about 42 years, Muslim by caste, Occ:housewife, r/o.H.No.4793, BHEL New MIG Road No.18, Ramchandrapuram Medak District has filed complaint against 1) Mohd.Khader Moinuddin S/o.Md.Moinuddin, 50 years, business, r/o.H.No.3-4-42, FRS Darga, Sangareddy and 2) Smt.Fareeda Sulthana w/o.Mohammed Abdul Khadeer, 54 years, housewife, r/o.H.No.9-4-61/A/1/1, Meraj Colony, Towli Choki, Golconda, Hyderabad by making allegations U/s.420 IPC.

On receipt of the same, a case in Cr.No.155/2006 U/s.420 IPC was registered in this PS and presently the case is under investigation for want of collection of evidence.

You have well known about the allegation made and its circumstances, but you have not produced any witness to prove your innocence in this case. Therefore you are once again informing that you have to produce original and relevant documents or any other records pertaining to this crime within (3) days of receipt of this Notice for the purpose of investigation.

Sd/-
Inspector of Police
PS Sangareddy Town.”

The petitioner challenges the notice on the ground of lack of jurisdiction, beyond the scope of Section 91 of Cr.P.C. and the insistence of production of documents as evidence is contrary to the mandate under Article 20(3) of the Constitution of India. The counsel for petitioner relies upon the decision in K.Senthamarai and Ors. v. State¹. The relevant portion reads thus:

“14. After referring to the fundamental canons of the British System of Criminal Jurisprudence that the accused should not be compelled to incriminate himself, the Courts have stated that if the legislature were minded to make [Section 91, Cr.P.C.](#) applicable to an accused person, it would have said so in specific words. The object of the section is that he cannot be compelled to disclose documents which are incriminatory and based on his knowledge. If [Section 91, Cr.P.C.](#) were to be constructed to include an accused person, as pointed out by the Apex Court, many unfortunate consequences would follow. As per these decisions, the guarantee under [Article 20\(3\)](#) would extend to any compulsory

¹ 1998 (1) ALD (CrI.) 658 (Mad.)

process of production of evidentiary documents which are likely to support the prosecution against the accused.

15. The words of Justice K.T. Thorns as Acting C.J. of Kerala, while presiding over the Division Bench in this context is quite relevant and the same is reported in [V.G. Nayanar v. K.V.S. Nambiar](#), 1996 CrI.L.J.1302 as under:-

" We may point out, at this stage itself, that a majority of the Constitution Bench of the Supreme Court has held in [State of Gujarat v. Shyamlal](#), AIR 1965 SC 1251 : 1965 (2) CrI. L.J. 256. that this section (it was the corresponding section of the old Code which was dealt with in the decision) does not apply to an accused. It was decided so on the premise that the protection contained in [Article 20\(3\)](#) of the Constitution would insulate an accused from being ordered to produce document or thing. Even today the said ratio stands undisturbed and hence we are bound to follow the same . Hence the only limited question which needs consideration now is whether a person arrayed as accused in a complaint filed before a Magistrate is "a person accused of any offence" as contemplated in [Article 20\(3\)](#) of the Constitution until the Magistrate has issued process to him."

16. In the instant case, the impugned order also would show that if the direction given by the Court is not complied with, the coercive steps would be taken for compelling their attendance. This would indicate that while invoking [Section 91](#), [Cr.P.C.](#), the learned Chief Judicial Magistrate has also reflected the nature of the compulsion in his proceedings. In this connection, some of the paragraphs in State of Gujarat v. Shyamlal, A.I.R. 1965 S.C.1251 would be useful reference:

"(33) Keeping the above considerations in mind, let us look at the terms of the section. It will be noticed that the language is general, and prima facie apt to include an accused person. But there are indications that the Legislature did not intend to include an accused person. The words 'attend and produce' are rather inept to cover the case of an accused person. It would be an odd

procedure for a Court to issue a summons to an accused person present in Court to attend and produce' a document. It would be still more odd for a police officer to issue a written order to an accused person in his custody to 'attend and produce' a document.

(36) If, after a thing or a document is produced, its admissibility is going to be examined and the document or thing in question is not going to be admitted in evidence if it incriminates the accused person, the order to produce the thing or document would seem to serve no purpose; it cannot be overlooked that it is because the document or thing is likely to be relevant and material in supporting the prosecution case that on most occasions the power under [Section 94\(l\)](#) would be resorted to, so that on the alternative view which seeks to exclude incriminating documents or things, the working of [Section 94\(l\)](#) would yield no useful result."

17. In the light of the discussion made in the above paragraphs (33) and (36), the Apex Court held that [Section 94](#) (presently 91) [Cr.P.C.](#), on its true construction, does not apply to an accused person. These decisions would make it clear that the order of the Magistrate issuing summons to the accused to produce documents which are not only incriminating but also likely to be incriminatory is illegal."

Hence prays for setting aside the notice impugned in the writ petition.

The Assistant Government Pleader taking note of the position of petitioner as accused in Crime No.155 of 2016, submits that the notice impugned in the writ petition cannot be sustained. The notice is already excerpted. The scope and the object of Section 91 of Cr.P.C. have been considered in a catena of decisions and legal position is well settled. Hence by referring to the decision (supra), the notice impugned in the writ petition is set aside.

The writ petition is ordered accordingly. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 07.08.2017

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