

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.3065 of 2018
Date of Decision: 09.02.2018

Sh. Rajiv Dadlani

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Alok Kumar Jain, Advocate, and
Mr.Amit Prasad, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed for seeking a writ in the nature of certiorari for quashing the notice dated 18.1.2018 issued by respondent No.4 under Section 41-A of the Code of Criminal Procedure, 1973 [for short 'the Cr.P.C.'].".

The facts given to me, during the course of the hearing, are that an application was made in the Chief Minister single window against as many as 10 persons including the petitioner, who was at No.8 in the said list. Thereafter the petitioner received a notice purported to have been issued under Section 41-A of the Cr.P.C. on 4.12.2017 asking him to appear in person before the Economic Offences Wing [for short 'the EOW'], Karnal on 18.12.2017 to submit his response in relation to the complaint filed against him and in relation to the fraud worth lakhs of rupees committed by his company in connection with the insurance and sale of mobile phone kits (Coupons). It is submitted that the petitioner has submitted his response not in person but through his Advocate Mr.Ayodhya Prasad. The petitioner has

now received the impugned notice dated 18.1.2018 in which there is a reference of non-appearance before the EOW, Karnal on 9.1.2018 and the petitioner has again been asked to appear in person on 30.1.2018 along with record. It is submitted that the petitioner has given the response to the notice on 28.1.2018 through his Advocate. It is thus submitted that the petitioner is being unnecessarily harassed by the Investigating Officer of the EOW, Karnal and the proceedings initiated against him under Section 41-A of the Cr.P.C. are patently erroneous.

I have heard learned counsel for the petitioner and after taking into consideration the facts and circumstances, am of the considered opinion that there is no force in the arguments raised by counsel for the petitioner.

Section 41-A of the Cr.P.C. read as under: -

“41-A. Notice of appearance before police officer –

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

- (2) *Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.*
- (3) *Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.*
- (4) *Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”*

The aforesaid provision is an exception to Section 41 of the Cr.P.C. which is a part of Chapter V of the Cr.P.C., in which it is provided that as to in what condition the police can arrest without warrant. As per Section 41-A of the Cr.P.C. the police officer, in all cases, where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a

reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice. Section 41-A(2) of the Cr.P.C. provides that in case a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice. Section 41-A(3) of the Cr.P.C. further provides that if such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for the reasons to be recorded, the police officer is of the opinion that he requires to be arrested but Section 41-A(4) of the Cr.P.C. empowers the police/Investigating Officer that in case such a person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself for the purpose of investigation, the police can arrest that person.

In this case, the petitioner had at no time appeared in person before the Investigating Officer/EWO, Karnal and has sent the response through an Advocate that is why notice under Section 41-A of the Cr.P.C. was issued to him because he was asked to appear in person and this is what the language has been used by the legislature that the notice under Section 41-A of the Cr.P.C. is issued to direct the person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has committed any cognizable offence to appear before him or at such other place as may be specified in the notice. I do not know as to why the petitioner has been shying away from appearing before the EWO, Karnal especially in terms of Section 41-A of the Cr.P.C. as per which the arrest of the person is not required.

Thus in view of the aforesaid facts and circumstances, if any notice is served upon the petitioner under Section 41-A of the Cr.P.C. then he should appear before the Investigating Officer to join the investigation.

With these observations, the present petition is hereby dismissed.

09.02.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No