

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.375 of 2019

Arising Out of PS. Case No.-259 Year-2017 Thana- SHRIKRISHNAPURI District- Patna

1. Ramshlok Ray, Son of Late Raja Ray
2. Lalit Ray, Son of Ramshlok Ray,
Both are resident of village- Kaladiyara P.S. Salimpur, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna
2. The Principal Secretary Home Department Government of Bihar, Patna
3. The Director General of Police, Bihar, Patna
4. The Senior Superintendent of Police, Patna
5. The Station Head Officer, S.K.Puri Police Station, Patna
6. Mr. Satyendra Kumar, A.S.I. S.K.Puri Police Station, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs.Usha Kumari Singh, Advocate
For the Respondent/s	:	Mr.Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 14-02-2019

The defects, as pointed out by the registry, are ignored.

2. This writ petition has been filed by the petitioners for quashing the notice issued by the Officer-in-charge, S.K. Puri Police Station on 29.11.2018 whereby the petitioners have been asked to appear in the police station for enquiry in connection with S.K. Puri Police Station Case No. 259 of 2017 registered under Sections 363 and 366 read with 34 of the Indian Penal Code. Another prayer of the petitioners is to direct the investigating officer to investigate the case properly



and not to implicate innocent persons.

3. learned counsel for the petitioners submitted that the first information report (for short 'FIR') of S.K.Puri Police Station Case No. 259 of 2017 was registered on the basis of information given by one Satyendra Kumar, who has alleged that on 26.09.2017 his daughter had gone to attend coaching classes at about 3:00 p.m., but when she did not return home till 6:00 p.m., an inquiry was made from the teacher, who stated that after attending the class she had left the institute. Since she did not return home and despite hectic search, since no clue of her whereabouts could be noticed, the FIR was registered against unknown.

4. He contended that in the name of investigation, the police are trying to implicate the petitioners in the said case. He further contended that the notice has been issued to the petitioners by the Station House Officer under Section 91 of the Code of Criminal Procedure (for short 'Cr.P.C.'). The said provision does not authorize the police to summon an accused rather Section 91 of the Cr.P.C. provides for issuance of summons to produce document or other things. The illegal notice issued by the Station House Officer of the S.K.Puri Police Station amounts to infringement upon the right to



liberty of the petitioners, it is violative of Article 21 of the Constitution of India. The investigating officer has failed to collect any materials against the petitioners in respect of the offence alleged and now they want to implicate them with oblique motive.

5. Per contra, learned counsel appearing for the State submitted that though notice has been issued under Section 91 of the Cr.P.C., the police may require attendance of any person before it in exercise of powers conferred under Section 160 of the Cr.P.C. Merely because the notice has been issued under a wrong provision of law, the same would not be illegal, if otherwise the police have power to require attendance of a person acquainted with the facts and circumstances of the case. He further contended that if a person is called to attend enquiry or investigation of a case, the same, by no stretch of imagination, can be considered to be an infringement on the personal liberty of a person.

6. I have heard learned counsel for the parties and perused the record.

7. True it is that Section 91 of the Cr.P.C. under which notice has been issued by the Station House Officer of S.K. Puri Police Station provides that whenever any court or any



officer in charge of a police station considers that production of any document or thing is necessary or desirable for the purpose of any investigation, enquiry, trial or other proceeding under the Cr.P.C. by or before such court or officer, such court may issue a summons or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. However, Section 160 of the Cr.P.C. confers power to the police officer to require attendance of witnesses. It provides that any police officer making an investigation under Chapter-XII of the Cr.P.C. 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.

8. Thus, Section 160 of the Cr.P.C. authorises a police officer to make an investigation to require attendance before himself of any person, who appears to be acquainted with facts and circumstances of the case. It authorises the investigating officer to enforce attendance of a witness who can furnish relevant information relating to the case.



9. It has rightly been submitted by the learned counsel for the State that merely because the notice has been issued under Section 91 of the Cr.P.C. summoning of the petitioners cannot be held to be illegal.

10. As far as the contention of the petitioners that their summoning is violative of Article 21 of the Constitution of India is concerned, the same is totally misconceived. Article 21 of the Constitution of India lays down that no person shall be deprived of his personal liberty except according to the procedure established by law. Since the procedure established by law empowers and authorizes the police to require attendance of a person acquainted with the facts and circumstances of the Case and the petitioners have been summoned in exercise of that power, by no stretch of imagination, the same can be considered to be violative of Article 21 of the Constitution.

11. Another plea taken by the petitioners that there is no material against them before the police and, therefore, they should be directed not to implicate them in the case has been noted only to be rejected. It is well known that investigation into a cognizable offence is confidential in nature. At the stage of investigation, the accused is not entitled to look



into the materials collected by the police. When investigation itself is confidential in nature, the petitioners cannot urge that there is no material against them. Whether there is any material against them or not would be seen by the court, when the investigation would be completed and a report under Section 173(2) of the Cr.P.C would be filed before the court.

12. In view of the discussions made above, I see no merit in this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
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