

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 851 of 2020****Order reserved on 15/07/2020****Order delivered on 22/07/2020**

Mahaveer Bohra S/o Ratanlal Bohra, Aged about 38 years, R/o Navratan Saree, Mahalakshmi Market, Shop No. A-16, Minimata Chowk, Pulgaon, District Durg, Chhattisgarh.

---Petitioner**Versus**

- 1.State of Chhattisgarh through Secretary Department of Home Affairs, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh.
- 2.Superintendent of Police, Durg, District Durg.
- 3.Station House Officer, P.S. Pulgaon, District Durg, Chhattisgarh.
- 4.Siremal Manak Lal Deshlehra through partner Naveen Deshlehra, S/o Manaklal Deshlehra, R/o Shop No. 345, Wholesale Cloth Market, Minimata Chowk, Pulgaon, District Durg, Chhattisgarh.

--- Respondents

For Petitioner	:-	Mr. Prasoon Agrawal, Advocate
For State	:-	Mr. Mateen Siddiqui, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

- 1.This Cr.M.P. has been taken up for final hearing through video conferencing.

2. The petitioner herein issued a cheque in favour of respondent No. 4 which became dishonor for want of sufficient funds. Thereafter, on 04/02/2020, respondent No. 4 chose to file a complaint against the petitioner before respondent No. 2 alleging fraud and cheating in which respondent No. 3 herein issued a notice to the petitioner under Section 160 of Cr.P.C. calling upon the petitioner to appear before him on 16/03/2020 and thereafter, again on 16/06/2020, a notice was sent to the petitioner to appear before the police authorities on 18/06/2020.

3. The petitioner has filed this petition under Section 482 of the Cr.P.C. complaining that though he is not an accused and is not standing investigation for any offence, yet notice under Section 160 of Cr.P.C. has been served to him which is without jurisdiction and authority of law and it simply amounts to harassment, therefore, necessary direction be issued to respondent No. 1 in this regard.

4. On notice being sent to the respondents, on behalf of the State, an affidavit of the Additional S.P., Durg, has been filed on 14/07/2020 stating that for verification of the complaint made against the petitioner, he was served with notice and called

to verify whether cognizable offence is made out against him or not, as such, no case is made out for issuing any direction to respondent No. 1.

5. Mr. Prasoon Agrawal, learned counsel for the petitioner, would submit that issuance of notice under Section 160 of Cr.P.C. to the petitioner who is not standing any investigation for any offence, by respondent No. 3, is without jurisdiction and authority of law. He would rely upon the decisions rendered by the Delhi High Court in the matter of Amandeep Singh Johar v. State of NCT of Delhi and Anr.¹ and V.N. Pachaimuthu v. The Superintendent of Police, Villupuram and Ors.² rendered by the Madras High Court. He would further submit that this action of respondent No. 3 amounts to harassment necessarily branding the petitioner as an accused though he is not an accused and no offence has been registered against him, therefore, necessary direction be issued to respondents No. 1 to 3 for not harassing the petitioner unnecessarily.

6. Mr. Mateen Siddiqui, learned State counsel, would submit that the petitioner was served with notice

1 (2018) 2 Crimes 601 (Delhi)

2 2012 SCC Online Mad 1020

and called to appear only to verify the complaint lodged against him by respondent No. 4.

7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

8. Section 160 of Cr.P.C. states 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 so as 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."

9. The aforesaid provision empowers the police officer to require attendance of witnesses. Any police officer making an investigation under Chapter XII of the Cr.P.C. may, by order in writing, require the attendance before himself or 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. For requiring attendance of a person, sine qua non is that the police officer must be making investigation of an offence. A proposed accused or a person against whom a complaint has been made cannot be issued summons under Section 160 of Cr.P.C. Therefore, the police officer, if he is not making any investigation after registration of an offence, cannot call a person under Section 160 of Cr.P.C. The notice can only be issued under Section 160 of Cr.P.C. when investigation has commenced and it is well-settled law that investigation commences only after an FIR has been lodged and offence is registered.
10. The Delhi High Court, in the matter of Amandeep Singh Johar (supra), laid down the procedure to be followed by the police officers in this regard.

11. Similarly, the Madras High Court, in the matter of **V.N. Pachaimuthu** (supra), clearly held that notice under Section 160 of Cr.P.C. can be issued to the witness in pending FIR, but it cannot be issued to a person, who is not an accused in a complaint or before registration of the case.
12. Thus, it is quite vivid that notice under Section 160 of Cr.P.C. cannot be issued before registration of FIR against a person and at the best, notice under Section 41-A of Cr.P.C. can be issued in such a case.
13. Reverting to the facts of the present case, admittedly, the police officer respondent No. 3 is not investigating any offence as FIR is not registered against the petitioner, yet vide Annexure P/3, notice under Section 160 of Cr.P.C. has been issued to him on 13/03/2020, which is absolutely without jurisdiction and authority of law. The power conferred upon the police officer with regard to issuance of notice under Section 160 of Cr.P.C. has been exercised by respondent No. 3 against the petitioner branding him to be an accused whereas he is not an accused of any offence and it simply amounts to harassment of an innocent person against whom FIR is not registered. Therefore, the action of respondent

No. 3 in issuing notice under Section 160 of Cr.P.C. against the petitioner is unsustainable and bad in law and such a practice on the part of the police and its authorities is deprecated. Respondents No. 1 is hereby directed to issue effective guidelines in this regard for ensuring transparency in working of the police authorities and further ensuring justice and fairness towards the persons who are required to appear before the police.

14. With the aforesaid direction, this petition under Section 482 of Cr.P.C. is accordingly disposed of. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet