

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

112

CWP-3205-2024 (O&M).
Date of Decision: 28.02.2024.

POOJA @ POOJA NAGRA AND ANOTHER

... Petitioners

Versus

STATE OF HARYANA AND OTHERS

.. Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ankit Chauhan, Advocate, for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present writ petition is for seeking declaration that summons served upon the petitioner for 31.01.2024 and 03.02.2024 requiring the petitioner to participate in the pending inquiry by the Investigating Officer are violative of Article 19 (1) (a) and Article 20 (3) of the Constitution of India.

Learned counsel for the petitioner contends that petitioner No.1 has been served with the above said notice requiring her to appear before the Investigating Agency and that any such act on the part of the Investigating Agency violates the mandate of Article 19 (1) (a) of the Constitution of India since the petitioner is not given complete information about the offence and the same may prejudice her. It is also argued that Article 20 (3) of the Constitution of India mandates that no person accused of any offence can be compelled to be a witness against his/her own interest

and therefore from the notice served by the Investigating Agency requiring the petitioner to participate in the inquiry proceedings, it may be perceived that the petitioner may be required or being forced to give evidence against her and would prejudice her interest.

No other argument has been raised.

I have heard learned counsel appearing for the petitioner and have also gone through the documents appended along with the present petition.

Before proceeding further, it is deemed appropriate to make a reference to the communication dated 31.01.2024 sent by the Investigating Agency to the petitioner and impugned herein as Annexure P-1. The same reads as under:-

“You, Pooja Nagra wife of Arvind Nagra, resident of H. No. 178, Ground Floor, Hillwayu Enclave, Dakoli, Police Station Dakoli, District Mohali, Punjab are being informed vide this letter to involve in the investigation of case No. 723 dated 03.09.2021 under section 406, 420, 506 of IPC, Police Station City, Yamuna Nagar and complainant is Shri Devi Lal son of Shri Dhan Singh resident of Badarpura Lathana, Indri, District Karnal, against Gourav Arora in regard of Section 406, 420, 506 of IPC, for presenting your side in the above said case, came present on dated 02.02.2024 at time 11 AM at Police Station City, Yamuana Nagar, along with concerned documents/evidences, so that the case may be decided according to the rules, if you do not present your side, then it will be understood that in this regard, you do not want to say anything. And without knowing your side, according to the rules, further action will be taken on the basis of the available evidences.”

Reference is also made to the subsequent notice dated 03.02.2024 (Annexure P-2) which is extracted as under:-

“You, Pooja Nagra wife of Arvind Nagra, resident of H. No. 178, Ground Floor, Hillwayu Enclave, Dakoli, Police Station Dakoli, District Mohali, Punjab is being informed vide this letter that one complaint FIR no. 723 dated 03.09.2021 under Section 406, 420, 506 of IPC, Police Station City, Yamuna Nagar is received from appropriate mode for investigation from Shri _____ Resident of _____ against _____ subject _____. The copy of the complaint is attached herewith. You came present in Police Station City, Yamuna Nagar on dated 07.02.2024 at time 10 AM for presenting your side along with concerned documents and evidences, so that the case be disposed of according to the rules. If you do not present your side, then it will be understood that in this regard, you do not want to say anything. And without knowing your side, according to the rules, further action will be taken on the basis of the available evidences.

In addition to this, it is being informed you that till now in regard of this complaint, no any First information report is registered and there is no possibility of your arrest on today.”

It is evident from the perusal of the above said communication that one complaint dated 03.09.2021 had been submitted against one Gourav. During the course of inquiry into the said complaint, a notice had been served upon the petitioner to put forth her evidence, if any, against the allegations leveled by the complainant. The subsequent letter dated 03.02.2024 also shows that no FIR has been registered (even though it has

been seemingly wrongly mentioned in the first para that one FIR No.723 dated 03.09.2021, under Sections 406, 420 and 506 of the Indian Penal Code, 1860 has been registered). However, the clarificatory order is reflected from the concluding part of the communication dated 03.02.2024 stating that there is no possibility of arrest.

So far as the contention of the petitioner regarding her right under Article 19 (1) (a) of the Constitution of India is concerned, I am afraid that such a contention is grossly misconceived. The mandate of Article 19 (1) (a) of the Constitution of India is subject to the restrictions imposed under Articles 19 (2) of the Constitution of India. It is thus specifically prescribed that the above said Article shall not affect the operation of any existing law or prevent the State from carrying out any such act. It is in the interest of integrity, security or incitement to an offence. Hence, any investigation/inquiry being conducted by any Investigating Agency cannot be sought to be thwarted by taking recourse to Article 19 (1) (a) of the Constitution of India. Further, even otherwise, provisions of the Code of Criminal Procedure mandate that in the matter of conducting any inquiry in a complaint received by the police, appropriate notice is required to be issued under Section 41-A or under Section 160 of Code of Criminal Procedure, 1973. Thus, a notice issued in compliance of the statutory mandate cannot be seen as impinging upon the constitutional right of the petitioner.

In so far as the contention of the petitioner that the above said notice violates the provisions of Article 20 (3) of the Constitution of India, as the petitioner may be forced to make a deposition against her, is

concerned, the same is grossly misconceived. The Constitution of India prohibits any person to depose against him/her and not against issuance of summons to participate in an inquiry in order to unearth the truth. The mandate of law is to carry out a fair and impartial inquiry and should also consider the defence, if any, and/or the documents that may be relied upon by a suspect/witness for establishing his/her non-involvement and the same cannot be equated as being forced to making a deposition against himself/herself. Besides, the notice does not, in any manner, compel the petitioner to appear or to make a statement and is only an opportunity to the petitioner to put forth her defence, if she is so interested and cautions that in the event of the petitioner does not put forth her defence or supply the documents, as may be necessary, for the petitioner to pursue her rights, the Investigating Agency shall proceed further by drawing conclusions which may have an adverse effect upon the petitioner. The said process, I do not find, to be violative of Article 20 (3) of the Constitution of India.

The present writ petition is thus grossly misconceived and based upon misconceived notions of the operation of the Constitutional mandate. The same is accordingly dismissed.

Since the main case itself has been decided, pending, misc. application (CM-2905-CWP-2024) seeking preponement of the date of hearing is disposed as having been rendered infructuous.

February 28, 2024
raj arora

(VINOD S. BHARDWAJ
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No