

2024.PHHC:147607



234 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-2128-2024
DECIDED ON: 23.07.2024

RAJNISH JAIN

.....PETITIONER

VERSUS

U.T., CHANDIGARH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Harlove Singh Rajput, Advocate
for the petitioner.

Mr. Deepak Dhir and Ms. Simsi Dhir Malhotra,
APP, U.T., Chandigarh.

Ms. Rachna Slath, Advocate for respondents No.2 & 3.

SANDEEP MOUDGIL, J (ORAL)

1. The instant criminal writ petition under [Article 226](#) of the Constitution of India read with [Section 482](#) of the Code of Criminal Procedure, 1973, (hereinafter "[Cr.P.C.](#)") has been filed by the petitioner-Rajnish Jain seeking issuance of a writ in the nature of *certiorari* to quash and cancel the police notice dated 29.02.2024 (Annexure P-1) issued by respondent No.3. Further prayer has been made for issuance of a writ in the nature of *Mandamus* directing the respondents No.2 & 3 to produce the records of FIR No.226 dated 19.10.2023, registered at Police Station Balh, District Mandi, Himachal Pradesh and also to record the statement of petitioner in the presence of respondent No.1.

2. The petitioner, who is a resident of House No.234, Sukhna Enclave, Khasal, Punjab, is running a business at Booth No.48 Sector 19-C, Chandigarh

under the name and style of “Jain Wool Corner”. A notice/summons dated 29.02.2024 (Annexure P-1) under Section 160 Cr.P.C. has been served upon the petitioner whereby, he has been directed to appear before respondent No.3- Station House Officer, Balh Police Station and to join investigation in FIR No. 266/2023, dated 19.10.2023, under Sections 420, 465, 468, 120-B IPC and Sections 21, 23 of BUDS Act

3. The petitioner is before this Court assailing the said summon/notice issued to him under Section 160 of the Cr.P.C.

4. Learned counsel for the petitioner submitted that the summon dated 29.02.2024, was received by him from the concerned authority and there was no other communication received by him prior to it. The petitioner moved two complaints dated 31.10.2023 and 19.12.2023 (Annexure P-2) against Rajinder Sood QFX Trade Limited and other firms of Rajinder Sood at Northview Park, 4th Floor, Zirakpur. It is submitted on behalf of the petitioner that the petitioner had never received any notice/summon, he came to know about the proceedings initiated against QFX Trade Company only on 31.10.2023 from Dainik Jagran Newspaper. The petitioner has not even provided the copy of complaint.

5. It is further submitted that the impugned summon/notice has been issued in sheer abuse of process of law, are wholly untenable, unwarranted and hence, liable to be quashed. Section 160 Cr.P.C. provides for issuance of notice for compelling attendance to witness in a pending FIR and not before the registration of case. Reliance is placed upon **V.N. Pachaimuthu vs. The Superintendent of Police, Villupuram District, Villupuram and Ors, 2012 SCC OnLine Mad 1020**, wherein the Madras High Court observed as under:-

"7. The Petitioner is, therefore, right in contending that the Police has no jurisdiction to harass a citizen, as the duty of the Police in case of

receipt of Complaint, showing cognizable offence, is to register an FIR, and thereafter proceed with the investigation under [Section 157](#) of the Code of Criminal Procedure. This can entitle the aggrieved party to work out the remedy in accordance with law, including invoking of [Section 482](#) of Cr.P.C. for quashing of FIR.

8. The Respondents also have no right or jurisdiction to direct a party to produce evidence, which may be going against them, as an Accused cannot be directed to furnish necessary documents, as it will be for the Police to collect evidence, if any offence is made out, from the Complaint.

9. The Petitioner has placed on record the notice, issued under [Section 160](#) of Cr.P.C., calling Petitioner for enquiry. This notice on the face of it is without jurisdiction and unwarranted in law, as notice under [Section 160](#) Cr.P.C., can be issued to witness in pending FIR, but cannot be issued to a person, who is an accused in a Complaint or before registration of the case.

10. This Writ Petition is, therefore, allowed to a limited extent and the notice issued by second Respondent under [Section 160](#) of Cr.P.C., calling Petitioner for enquiry, is ordered to be quashed.

11. As already observed above, Respondents can only proceed under the provisions of [Cr.P.C.](#), in case Complaint discloses any cognizable offences. A citizen cannot be called for enquiry under [Section 160](#) of Cr.P.C., in absence of any FIR. The power under [Section 160](#) of Cr.P.C., can be exercised to call a witness, after FIR is registered."

6. It is further submitted that the impugned summon is without jurisdiction since the said summon under Section 160 Cr.P.C. has been issued by the concerned Police Station from District Mandi (Himachal Pradesh), whereas, the petitioner, who lives in Punjab/Chandigarh, does not fall within the jurisdiction of the said Police Station. In support of his arguments, learned counsel has relied upon [Ravinder Singh vs. State & Anr](#), WP (Crl) No. 971/2010 dated 27th July, 2010, wherein the Apex Court held as under:-

"Reading of this Section makes it abundantly clear that notice under [Section 160 Cr.P.C.](#) can be issued by an Investigating Officer or the police person concerned to a person residing within his own jurisdiction and at the most in the adjoining police station surrounding that police station. There may be 10 police stations adjoining that police station. He can issue summons to person residing within the jurisdiction of all those 10 police stations but beyond adjoining police stations, his jurisdiction is not there to issue summons. The Section does not need help of dictionaries or other judgments for understanding its meaning when there is no ambiguity and it is so clearly written either within his own police station or in the adjoining police station.

I, therefore, consider that summons issued to the petitioner under [Section 160 Cr.P.C.](#) in Delhi, which is not adjoining police station of Rewari, is without jurisdiction and the notice is, therefore, quashed. However, quashing of this notice under [Section 160 Cr.P.C.](#) shall not prevent the concerned Investigating Officer from investigating the case himself, coming to Delhi and contacting the witnesses or the persons having information about the case nor shall quashing of this notice have any other impact on the merits of the case."

7. It is further submitted that the complaint filed is frivolous, ill-founded and misconceived with the ulterior motive to harass the petitioner. It is submitted that a bare perusal of the complaint shows that no offence, whatsoever, under the provisions of IPC, is made out against the petitioner and it has only been filed to set off a personal vendetta against him.

8. Per Contra, learned State counsel as well as the learned counsel appearing on behalf of the respondents no. 2 and 3 vehemently opposed the instant petition, the contents made therein as well as the submissions made on behalf of the petitioner.

9. It is submitted that some new facts came to light during the investigation and they were related only to the petitioner and he was only acquainted with these facts and he could tell better about these facts, therefore, rightly summoned.

10. It is further submitted that the petitioner, in sheer abuse of his rights, has approached this Court by way of filing the instant petition seeking quashing of the impugned notice under Section 160 Cr.P.C. instead of joining enquiry. It was rather issued for the purpose of investigation. The notice under Section 160 Cr.P.C. was served upon the petitioner after considering the fact that the branch office of the company named QFX Trade Limited was at Four-lane Nagchala near Shani Mandir, Tehsil Balh, District Mandi which comes under the jurisdiction of respondent No.3. Moreover, the petitioner was served through E-mail ID and on his mobile number through Whatsapp only. It is further submitted that the instant petition has been filed based on flimsy grounds besides raising disputed questions of facts, which need not be entertained by this Court at this stage. Moreover, the impugned notice/summon has been issued against the petitioner by adopting proper procedure of law. It is submitted that there is no merit in the instant petition and the same is liable to be dismissed.

11. Heard learned counsel for the parties and perused the record.

12. Respondent no. 3, issued the impugned summon/notice to the petitioner under [Section 160](#) of the Cr.P.C. A perusal of the said provision is deemed necessary at this stage and hence, the same is reproduced hereunder:-

"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 as so 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."

13. It is evident from a bare reading of the provision that a police officer may require attendance of a person who is apparently acquainted with the facts and circumstances of a case that such police officer is investigating. A summon/notice to such a person is to be issued following the due process and procedure of law. The extent of this power is, however, limited by the bounds of jurisdiction. The concerned police officer may issue notice requiring attendance of any person who is within the limits of his own Police Station or that of an adjoining Station. The language itself defines the extents of the power of requiring attendance and the same is to be abided by while proceeding under the provision.

14. In the present case, the concerned authority received the complaint made by the complainants wherein several allegations were made by them against the petitioner and the other prospective co-accused and upon receiving the complaint, it issued summons under Section 160 Cr.P.C. giving opportunity to the petitioner to appear personally for further enquiry into the complaint and the allegations levelled in it. Respondent no. 3 summoned the petitioner at the stage of preliminary inquiry, giving him opportunity to adduce oral as well as documentary evidence in pursuance to the complaint received by it.

15. The provision says that a Police Officer making investigation may require attendance of "any person being within the limits of his own or any adjoining station", thereby, clearly and unequivocally setting limits to the jurisdiction within which the police officer is permitted to act. For this point reference is also made to "[Directorate of Enforcement v. State of West Bengal](#)", **2021 SCC OnLine Del 5603**, wherein while referring to [Section 160](#) of the Cr.P.C., the Apex Court held as under:

"27. By a mere reading of the said provisions, it becomes apparent that power of the Police Officer to require attendance of a witness is circumscribed by the words "within the limits of his own or any adjoining station". It is to be noted that if the said power was in the nature of pan-India power, as has been sought to be argued by the respondents, there was no reason for the Legislature to use the terminology quoted above. To the contrary, if the same was the intention of the Legislature, the Legislature would have clearly stated so and bestowed unlimited jurisdiction on the Police Officer by using terminology in the nature of "anywhere in the country" or even "anywhere within the State" The clear departure of the Legislature and the use of the terms "within the limits of his own or any adjoining station" points towards a legislative intention to limit the jurisdiction in this regard. The reliance placed by the respondents in this regard on the judgment in [Anant Brahmachari v. Union of India](#) (supra), may not further the case of the respondents as clearly [the said judgment](#) was dealing with a separate statutory setup in the nature of the [National Investigation Agency Act, 2008](#) which would have a strong bearing on the issue as the said agency has jurisdiction across the country. Further, this Court in [Ravinder Singh v. State W.P. \(Crl.\) No. 971/2010](#) vide order dated 27.07.2010, has held as under:

"The Section does not need help of dictionaries or other judgments for understanding its meaning when there is no ambiguity and it is so clearly written either within his own police station or in the adjoining police station. I, therefore, consider that summons issued to the petitioner under [Section](#)

160 Cr.P.C. in Delhi, which is not adjoining police station of Rewari is without jurisdiction and the notice is, therefore, quashed."

28. I am, therefore, prima facie inclined to agree with the dictum in [Ravinder Singh](#) (supra). Therefore, on the issue of the competence of the Respondents to issue the impugned notices, a serious challenge has been presented by the petitioners, which prima facie, seems to have considerable merit. It may also be noted that the said issue goes to the root of the matter and if the respondents lacks jurisdiction itself to issue the impugned notices, the entire case of the respondents falls."

16. In the instant case, the impugned summon/notice was issued by the concerned authority/respondent no. 3 from District Mandi (Himachal Pradesh), however, the petitioner is the resident of House No.234, Working Women Rural Welfare Society, Block-C, Kansal, Naya Gaon, SAS Nagar (Mohali), Punjab, which is evidently outside and beyond the territorial limits of the concerned Police Station Balh, District Mandi. The bar of jurisdiction under [Section 160](#) of the Cr.P.C. is indisputably applicable to the instant matter and in such a case, the notice issued can rightly be said to be issued without jurisdiction.

17. Keeping in view the above discussion, the provisions under the Cr.P.C. as well as the observations made by Courts of the Country, it is found that the summon/notice was issued without jurisdiction from the concerned authority in Police Station Balh, District Mandi (Himachal Pradesh) to the petitioner residing beyond its own station as well as any adjoining station.

18. In light of the abovementioned observations, this Court is of the view that the impugned notice issued to the petitioner by the respondent no. 3 is liable to be set aside for the reason of being issued in contravention of the provisions of the Cr.P.C.

19. Accordingly, the instant petition is allowed and summons dated 29.02.2024 issued by Station House Officer, Police Station Balh, District Mandi (Himachal Pradesh) in FIR No. 266/2023, dated 19.10.2023, under Section 420, 465, 468, 120-B IPC and Section 21 and 23 of BUDS Act is hereby quashed
20. Pending applications, if any, also stand disposed of.

23.07.2024
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>