
(2005) 04 BOM CK 0017

In the Bombay High Court

Case No : Criminal Writ Petition No. 1979 of 2004

Anirudha S. Bhagat

APPELLANT

Vs

Ramnivas Meena and Another

RESPONDENT

Date of Decision : 20-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 10, 160, 160(1), 160(2), 161
Penal Code, 1860 (IPC) — Section 174, 304A, 337, 338
Prevention of Damage to Public Property Act, 1984 — Section 3, 4

Citation : (2005) 4 MhLj 41

Hon'ble Judges : R.M.S. Khandeparkar, J;P.V. Kakade, J

Bench : Division Bench

Advocate : Devverta Singh, instructed by Thakordas and Madgavkar, for the Appellant; Dipesh Mehta, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard, Rule. By consent the rule is made returnable forthwith. Perused the record.

2. The petitioner challenges the summonses issued to the petitioner by the Investigating Agency on two grounds, namely that the Investigating Agency has no jurisdiction or power to issue summons to a person residing or carrying on business beyond the territorial limits of the police station to which the Investigating Agency is attached and secondly that summons for production of document can only be issued u/s 91 of the Code of Criminal Procedure and not u/s 160 thereof. On both the counts according to the petitioner, the summonses issued u/s 160 of the Code, which are essentially issued merely for production of document in the nature of original designs of the collapsed bridge, are bad in law and need to be quashed.

3. The facts relevant for the decision are that there existed a bridge over Damanganga river in the Union Territory of Daman which was constructed in the year 1983. Some repairs were carried out to the said bridge in the year 2001,

however, the bridge collapsed on 28-8-2003 taking the lives of about 25-30 people. The F.I.R. came to be lodged by the Circle Police Inspector, Daman on 28-8-2003 under Sections 3 and 4 of Prevention of Damage to Public Property Act, 1984 as well as Sections 304A, 337 and 338 of Indian Penal Code. The petitioner is a Chairman and Managing director of a company known as M/s. Quadricon Pvt. Ltd. and the said company is engaged in the business of construction of bridge through patented construction system in quadricon. The said bridge was also constructed by the said company.

4. A summons u/s 160 of the Code of Criminal Procedure dated 7-10-2003 came to be served upon the petitioner, which was sought to be replied by the petitioner through his advocate dated 11-10-2003. The petitioner was then served with another summons on 20-10-2003 u/s 10 of the Code, which was again replied by the petitioner's advocate letter dated 27-10-2003. The petitioner apprehending the arrest preferred an anticipatory bail application before this Court being the Application No. 4438 of 2003, which was disposed of by an Order dated 31st October, 2003. The petitioner filed another application for bail being Application No. 4596 of 2003, which came to be disposed of by an order dated 8th April 2004. By the said order the respondents were directed to give 72 hours notice to the petitioner in the event of they intending to arrest the petitioner, while directing the petitioner to co-operate with the Investigating Agency. Another summons u/s 160 of the Code came to be issued on 26th May, 2004 requiring the petitioner to remain present in the office of the 1st respondent on 4th June, 2004. It was sought to be challenged by writ petition No. 1085 of 2004 and the said petition was disposed of by order dated 31st August, 2004. By the said order the petitioner was required to attend the office of the 1st respondent on 13th/14th September, 2004 in relation to the said investigation. Pursuant thereto the petitioner remained present before the 1st respondent on 13th and 14th September, 2004 and his statement was recorded u/s 161 of the Code. An another summons dated 14th September, 2004 came to be served upon the petitioner in his office on 23rd September, 2004 requiring the petitioner to remain present before the 1st respondent on 20th September, 2004. All these summonses are under challenge in this petition on the grounds mentioned above,

5. As regards the summonses issued prior to 14th September, 2004 are concerned, the question of entertaining the petition at this stage does not arise at all. It is a matter of record that the petitioner had challenged the summons dated 7th October, 2003 in Writ Petition No. 1085 of 2004. While disposing of the said writ petition, the petitioner was specifically required to attend the police station on 13th and 14th September, 2004 in the office of the respondent at Daman in answer to the said summons in relation to the concerned investigation. It is also a matter of record that the petitioner did attend the office of the respondent for recording his statement in terms of the said summons and the order passed by this Court on 31st August, 2004. Being so, the challenge to the summonses issued prior to 31st August, 2004 cannot be subject matter of a fresh petition. If at all the petitioner had any grievance in relation to any

summons issued prior to 31st August 2004 it was necessary for the petitioner to challenge or make grievance about the same while disposing the said Writ Petition No. 1085 of 2004, which was disposed of on 31st August, 2004. The petitioner having not made any grievance in relation to those summonses and on the contrary, having invited the order dated 31st August, 2003 and appeared before the police authorities on 13th and 14th September, 2004, it is too late for the petitioner to challenge those summonses at this stage. Besides, the petitioner having appeared before the authority in pursuance of" the summons and the order of this Court dated 31-8-2004, any grievance regarding the summons issued prior to 31-8-2004 is to be held as stale one and obviously the challenge to the summonses issued prior to 31st August, 2004 being merely of academic interest, no adjudication in that regard is called for nor any order of this Court is warranted.

6. As regards the summons dated 14th September, 2004 undisputedly the same was issued u/s 160 of the Code. Plain reading of the said summons discloses that the same has been issued in the course of investigation pursuant to the lodging of C.R. No. 160 of 2003 which pertains to the collapse of the concerned bridge which was admittedly constructed by M/s. Quadricon Pvt Ltd., Mumbai of which the petitioner is the Managing Director. The summons nowhere directs production of documents etc. Undisputedly it discloses that the petitioner is required to attend the police station along with the documents relating to the design of the bridge which had collapsed. That by itself does not amount to say that the summons was issued for the production of any document; on the contrary it discloses that the summons was for the purpose of elucidating certain facts in relation to the construction of the bridge and/or collapse of the bridge which was admittedly constructed by the company of which the petitioner is the Managing Director. Being so, on the face of the summons, it cannot be said that no such summons could have been issued in exercise of powers u/s 160 of the Code of Criminal Procedure.

7. Undisputedly Section 91 of Criminal Procedure Code specifically empowers the Investigating Agency to issue summons for production of a document relevant for the purpose of investigation. But at the same time it is well settled law that in case of a wrong mentioning of any statutory provision that by itself would not render any order issued by the competent authority to be bad in law. Once power exists in any office to perform a particular function, merely because the authority while exercising such function makes reference to an incorrect provision of law, that itself will not divest such authority from performing the function, nor the exercise of function would be rendered illegal on that count. Being so, merely because summons referred to Section 160 of the Code while directing the party to produce the document or that it requires the party to appear before the Investigating Officer along with any particular document that by itself will not render the summons to be illegal or contrary to the provisions of law.

8. The learned Advocate for the petitioner has drawn our attention to the

decision of the Calcutta High Court, in Rukmani Debi Kashuka Vs. Jadu Nath Misra and Others, wherein it was held that the provisions of law comprised u/s 160 of the Code do not authorise the officer to requisition the documents. That was a case where a woman was served with notice dated 4th June, 1970 by an Investigating Officer belonging to the Orissa Criminal Investigation Department for production of six items of documents at his office at Cuttak. The notice in that regard was issued u/s 160 of the Code by the Investigating Officer. Holding that Section 160 of the Code merely authorises the Investigating Officer to enforce attendance of witnesses who can furnish relevant information, regarding the case and provision nowhere empowers the authority for issuing direction for production of documents for which another provision has been made in the Code itself, it was held that the act of the Investigating Officer was wholly beyond his jurisdiction in requisitioning the production of documents in colourable exercise of his powers u/s 160 and not taking recourse to the appropriate provision of the Code. With utmost respect we are unable to persuade ourselves to agree with the view expressed by the Calcutta High Court in Rukmini Debi's case. Once it is apparent that the Code makes elaborate provisions for exercise of various powers in the course of the investigation proceedings which include, the power to issue summons to any person having relevant information regarding the case as also the power to issue summons to any person for production of the documents, merely because wrong section is quoted in the notice issued either for appearance of the person to furnish the necessary information or to produce the documents, that by itself would not render the notice to be bad in law. It should not be forgotten that the provisions u/s 91 and 160 of the Code relate to the procedure to be followed by the Investigating Officer in the course of the investigation. The procedure prescribed is necessary to assist the Investigating Officer to bring out the truth relating to the offence in relation to which the Investigating Officer investigates into a matter. Being so, mere mentioning of a wrong provision of law that itself cannot render the action to be bad in law. Once it is clear that the authority is empowered under the statutory provision to do an act or to perform particular function, merely because while doing the act or performing the particular function, the authority mentions a wrong provision of law, that by itself cannot render the exercise of powers to be bad in law and for the same reason the act or the performance of the function cannot be a nullity. Viewed from this angle, therefore, even though the notice is issued u/s 160 for production of document, that by itself, will not render it to be bad in law once such power is available u/s 91 of the Code.

9. It is the contention of the learned Advocate for the petitioner that in exercise of powers u/s 160 of the Code summons can be issued only in cases where the addressee is either residing or carrying on business and, therefore, available within the territorial limits of the police station to which the Investigating Officer is attached to or at the most within the territorial limits of the adjoining police station. Section 160(1) provides that "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 woman shall be required to attend at any place other than the place in which such male person or woman resides." Reliance is placed in the decision of the learned single judge of Himachal Pradesh High Court in the matter of Krishan Bans Bhadur and Another Vs. The state of Himachal Pradesh, .

10. In Krishan Bans" case, the criminal proceedings initiated in terms of Section 174 of Indian Penal Code were sought to be quashed. Those proceedings were initiated on account of failure to comply with the summons issued by the Investigating Officer u/s 160 of the Code. The facts of the case revealed from the decision disclose that an order was issued u/s 160 of the Code of Criminal Procedure to Krishan Bans and others requiring them to present themselves at Police Station, Chhota Simla on October 1, 1973 in connection with the investigation of a case. The order was served upon them at New Delhi on 28th September, 1973. The petitioners could not attend the police station in compliance with the order. Consequently a challan was entered by the Assistant Public Prosecutor against the petitioners in respect of an offence u/s 174 of the Indian Penal Code. Summonses were issued to the petitioners which were sought to be challenged before the learned single Judge of Himachal Pradesh High Court. It was held by the learned single Judge that "From the record of the present case it is apparent that when the orders u/s 160 of the Code of Criminal Procedure were issued the petitioners were not within the limits of the police station of the police officer issuing the order of any adjoining station. The address of petitioners mentioned in the order indicates that they were present at New Delhi. There is no evidence whatsoever to show that they were in Simla at all. Ex-facie, the order u/s 160 of the Code of Criminal Procedure is without jurisdiction. The order did not proceed from a public servant legally competent as such public servant to issue it. Accordingly, no offence can be said to have been committed within the purview of Section 174 of the Indian Penal Code." Apparently decision is not on the point sought to be argued before this Court. It was on the point that in order to investigate in relation to the offence u/s 174 of I.P.C., the order, non-compliance of which is alleged, must be issued by a legally competent authority to issue the order and in that case it was not so issued and that, therefore the proceedings u/s 174 were not maintainable. Whether the notice can be issued to a person residing or carrying on business beyond the limits of the police station or any adjoining station was not the subject-matter of decision in the said case but the matter proceeded on the assumption that such officer had no jurisdiction to issue a notice to a person beyond the limits of his own police station or any adjoining police station. Needless to remind that it is well settled principle of law that a decision is what it decides and not what may follow from it. The ratio of the decision has to be understood by referring, to the, facts of the case and the point considered and decided therein

11. As regards Section 160 is concerned undoubtedly it states that summons can be issued to any person being within the limits of his own or any adjoining station. We are concerned here with the main body of the Section 160. We are not dealing with the proviso thereto. The said provision of law nowhere states that such person must be within the limits of such police station or adjoining police station at the time of issuance of the summons but it specifically refers to the fact that such summons can be issued to any person for the purpose of gathering the information from such person, he being acquainted with the facts and circumstances of the case. Obviously, the provision is made in that regard in order to enable the Investigating Officer to collect the required information from every person who is acquainted with the facts and circumstances of the Case in respect of which the investigation is being carried out. At the same time it is also to be noted that, u/s 160(2) it is provided that the State Government may, by rules made in that behalf, provide for payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence. In other words, a person residing at one place can be required to appear at different place and any expenditure incurred by such person for such attendance can be reimbursed in accordance with the rules framed by the State Government in that regard. This apparently discloses the intention of the legislature to make necessary provision which can enable the Investigating Officer to secure the attendance of a person in the Police Station or at any other place required by Investigating Officer, albeit person must be one who is acquainted with the facts and circumstances of the case. The very purpose of the provision being to enable the Investigating Officer to gather the information from whomsoever is acquainted with the facts and circumstances of the case in relation to which the investigation is carried out, the provision of law cannot be interpreted in a manner which will defeat very purpose for which the provision is introduced in the said Code. If the contention of the learned Advocate for the petitioner is accepted, it will virtually result in reading down the provision of Section 160 in the manner in which it nowhere states that at the time of issuance of the summons the person against whom summons is issued has necessarily to be a resident or a person carrying on his business within the limits of local police station or that he should be from the territorial limits of the adjoining police station. Once it is revealed to the Investigating Officer that at the relevant time the person had occasion to be acquainted with the facts and circumstances of the case in respect of an offence which had occurred or he had been within the territorial limits of the police station to which the police officer is attached to or in the territorial limits of the adjoining police station, nothing prevents the police officer to summon the person even though at the time of issuance of the summons, the person is found to be either residing or carrying business beyond the territorial limits of the police station to which the Investigation Officer is attached to. Any other interpretation of Section 160 would defeat the very purpose of the provision of law comprised under the said section. Being so, the contention sought to be raised by the petitioner regarding absence of territorial jurisdiction for issuance of the summons by the Investigating Officer

is to be rejected. The view that we are taking in the matter is very clear from the proviso to the section itself. Only exception made under the proviso is in relation to the minors of certain age and females.

12. It was also sought to be argued that the summons has been issued merely to harass the petitioner when the respondents are fully aware that the petitioner is not in possession of the construction designs and those designs are in the possession of the Government of Goa. It was sought to be contended on behalf of the petitioner that there is a clear observation in that regard in the proceeding before the Commission presided over by Shri Justice R. J. Kochar, (Retd.). Attention was drawn to the proceeding sheets of the said Commission dated 18-2-2005 and 4-3-2005. In the proceedings sheet dated 18-2-2005, it has been stated that "Shri Joshi, the learned counsel for M/s. Quadricon Pvt. Ltd., further submits that as far as the original design to scale of the Daman Ganga Bridge is concerned, Mrs. Shakuntala Bhagat, who had originally drawn the design, is suffering from multiple steroids and has been unable to recollect the design. Shri Joshi assures the Commission that he will try his level best to get the said design done by her if it is possible. Shri Joshi shall also try to get the original design from the Goa Government. The Chief Secretary and the Principal Engineer, PWD, shall act on the copy of this order and co-operate." In a proceeding sheet dated 1 lth March, 2005 it has been recorded that "Shri Kulkarni, the learned counsel, for the Administration/ PWD, has handed over a copy of the letter dated 4-3-2005 addressed by Shri Dharmendra, Secretary (Finance and PWD) of the Union territories, to the Chief Secretary, Government of Goa, requesting him to find the original design of the Bridge and submit to the Commission as stated in the letter. The Chief Secretary, Government of Goa, is hereby directed to comply with the said request of the Finance Secretary, Union Territories, failing which, suitable orders would be passed in that respect." The said proceeding sheets before the Commission nowhere disclose any finding by the Commission to the effect that the original designs are with the Government of Goa. There is only recording of a submission in that regard by Shri Kulkarni, counsel appearing for the Administration/PWD and Shri Joshi, counsel appearing for M/s. Quadricon Pvt. Ltd. The submission made on behalf of the party cannot partake the nature of the finding by the Commission. Being so, even assuming that the summons is issued by the Investigating Officer to the petitioner requiring him to remain present along with the structural design and other details, that by itself would not amount to harassment to the petitioner on assumption that the designs are with the Government of Goa.

13. Further drawing attention to the order passed by this Court in Writ Petition No. 1085 of 2004, it was sought to be contended that the appearance of the petitioner before the Investigating Officer was allowed only for the purpose of giving information and production of whatever papers which they are having with them and once it is told by them that they do not possess the structural design of the collapsed bridge, the respondent could not have issued further summons. The order in fact merely required the petitioner to appear before the

Investigating Officer at Daman on 13th and 14th September, 2004. It was the advocate for the petitioner who had made a statement before the Court and the said statement was recorded which read to the effect that "Mr. Joshi states that 1st petitioner will attend in the office of the respondents at Daman accordingly on the aforesaid dates, with whatever papers he is having with respect to the work that he had executed." Recording of the statement of the advocate for the petitioner in the above manner while allowing the petitioner to appear on 13th and 14th September, 2004 in the office of respondent at Daman that itself cannot be construed to mean that the order had imposed the condition upon the respondents to the effect that they could not issue any summons for production of documents by the petitioner in relation to the structural design pertaining to the collapsed bridge. Certainly there is an FIR registered on account of collapse of the bridge and investigation in that regard is in progress. Admittedly the bridge was constructed by M/s. Quadricon Pvt. Ltd. of which the petitioner is the Chairman and Managing Director. Being so, if the Investigating Officer requires necessary cooperation from the petitioner in the matter of collecting information pertaining to the structural design which was used for the purpose of construction of the collapsed bridge, it cannot be said, by any stretch of imagination, that the Investigating Officer is acting beyond his powers or authority in any manner. Certainly it cannot be said to be a harassment to the petitioner to render necessary co-operation to the Investigating Officer in process of collecting the necessary information relating to the collapsed bridge, which was admittedly constructed by the company of which the petitioner is the Chairman and the Managing Director. Being so, there is no merit in the grievance of the petitioner.

14. For the reasons stated above, therefore, the petition fails and is dismissed. Rule is discharged with no order as to costs.