
(1974) 05 SHI CK 0015
In the High Court Of Himachal Pradesh

Krishan Bans Bhadur and Another

APPELLANT

Vs

The state of Himachal Pradesh

RESPONDENT

Date of Decision : 21-05-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 160, 561A
Penal Code, 1860 (IPC) — Section 174

Citation : (1975) CriLJ 620 : (1974) 3 ILR HP 452

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Judgement

R.S. Pathak, C.J.—This petition u/s 561-A of the Code of Criminal Procedure prays for the quashing of proceedings for the trial of the petitioners u/s 174 of the Indian Penal Code.

2. An order was issued u/s 160 of the Code of Criminal Procedure requiring the petitioners to present themselves at Police Station Chhota Simla, District Simla,, on October 1. 1973 in connection with "the investigation of a case. The order was served on them at New Delhi on September 28. 1973. The petitioners were unable to attend at the Police Station in compliance with the order. Consequently a challan was entered by the Assistant Public Prosecutor in the Court of the Chief Judicial Magistrate. Simla, against the petitioners in respect of an offence u/s 174 of "the Indian Penal Code. Summons were issued to the petitioners and the case against them is pending before the said Chief Judicial Magistrate. The petitioners assail the validity of those proceedings.

3. It is evident that the petition must succeed. Clearly the petitioners are not guilty of any non-compliance with the orders issued u/s 160 of the Code of Criminal Procedure. Section 160 empowers a police officer making an investigation to 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 circumstances of the case and. Section 160 adds, such person must attend as so required 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, nor of any adjoining station. The address of the petitioner mentioned in the order indicates that they were present at New Delhi. There is no evidence whatever 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.

4. The petition is allowed. The proceedings pending against the petitioners before the Chief Judicial Magistrate, Simla, are quashed.