

(2021) 02 P&H CK 0378

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12981 Of 2020(O&M)

Lovish Kathuria

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 09-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41A, 160
Indian Penal Code, 1860 — Section 34, 201, 417, 419, 420, 465, 467, 468, 471
Constitution Of India, 1950 — Article 226(2)

Citation : (2021) 02 P&H CK 0378

Hon'ble Judges : Sudhir Mittal, J

Bench : Single Bench

Advocate : Suvir Sidhu, Harlove Singh Rajput, Charanpreet Singh, Vijendra Mishra, Santosh Kotwal

Final Decision : Allowed

Judgement

Sudhir Mittal, J

The petitioner has filed this writ petition for quashing notice dated 22.08.2020 (Annexure P-2) under Section 160 Cr.P.C. issued by Criminal Intelligence Unit, DCB, CID, Crime Branch, Mumbai as well as notice dated 02.09.2020 issued under Section 41-A Cr.P.C.

2. The Mumbai police has registered a case namely DCB CR No.108/2020 under Sections 417, 419, 420, 465, 467, 468, 471, 201, 34 of IPC read with 43(a), 66, 66C, 66D of Information Technology Act, 2000 against certain persons. The notices aforementioned have been issued in relation to the said case. The allegations in the case are that certain persons have misused social platforms for creating fake identities for promotion of a song sung by Aditya Prateek Singh Aka Badshah.

3. Learned counsel for the petitioner has submitted that notice dated 22.08.2020 (Annexure P-2) is illegal and without jurisdiction as the said notice could only be

issued to summon a witness residing within the territorial jurisdiction of the concerned police station or any adjoining police station. The petitioner is a resident of Sri Muktsar Sahib and could not have been summoned under Section 160 Cr.P.C. Regarding the notice under Section 41-A Cr.P.C., it has been argued that the said notice was issued during the pendency of the writ petition. There is no material available with the police to nominate the petitioner as an accused and thus, the said notice is malafide.

4. Learned counsel representing respondents No.3 & 4 has referred to an email dated 20.08.2020 received by the Commissioner of Police, Mumbai from some individual alleging wrong doing by the petitioner. He has also referred to the statement of Aditya Prateek Singh Aka Badshah wherein the said person has acknowledged that he knows the petitioner and that he is associated with Sony Music India. It has also been acknowledged that he deals in digital marketing. On the basis of this evidence, it has been argued that the police have reasonable suspicion against the petitioner and possessed the jurisdiction to summon him as an accused.

5. Sections 41-A and 160 Cr.P.C. are reproduced below for ready reference.

"41A. Notice of appearance before police officer.-- (1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

"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

65 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."

6. A perusal of the aforementioned statutory provisions leaves no manner of doubt that under Section 160 Cr.P.C. a police officer investigating a case can require the attendance of any person who is residing within the limits of his own police station or any adjoining police station and who appears to be acquainted with the facts of the case under investigation. The petitioner is a resident of Sri Muktsar Sahib and thus, the concerned police officer lacked the jurisdiction to require his attendance in connection with the case registered at Mumbai.

7. Section 41-A Cr.P.C. is for summoning a person against whom credible information exists regarding commission of a cognizable offence but who is not required to be arrested. Thus, the logical question would be to inquire into the basis of treating the petitioner as an accused rather than a witness. Learned counsel for respondents No.3 & 4 has only referred to email dated 20.08.2020 as well as statement dated 21.08.2020. Both these pieces of evidence are anterior to 22.08.2020. There is thus no material before me on the basis of which it can be concluded that credible information is available with the investigating agency on the basis of which the petitioner could be nominated as an accused. For this reason as well as on account of the fact that the said notice was issued during the pendency of the writ petition it becomes clear that the same is mala fide.

8. Learned counsel for respondents No.3 & 4 has also argued that this Court lacks jurisdiction in the matter as the notice under Section 41-A Cr.P.C. was issued at Mumbai.

9. To counter this argument, learned counsel for the petitioner has submitted that the said notice was received by the petitioner at Sri Muktsar Sahib and thus, part of the cause of action arose within the territorial jurisdiction of this Court. Under the circumstances, it cannot be said that this Court lacks jurisdiction in the matter.

10. Article 226(2) of the Constitution of India confers power on a High Court to issue prerogative writs against Governments or other authorities whose seat does not lie within the territorial jurisdiction of the High Court if cause of action has wholly or in part arisen within the territorial jurisdiction thereof. The notice under Section 41-A Cr.P.C. has been received by the petitioner within the territorial jurisdiction of this Court and thus, it cannot be said that this Court lacks jurisdiction in the matter.

11. For the aforementioned reasons, the writ petition is allowed and impugned notices dated 22.08.2020 and 02.09.2020 are quashed.

12. The Mumbai police shall however be at liberty to proceed against the petitioner in accordance with law.