
(2014) 11 MP CK 0052
In the Madhya Pradesh High Court
Case No : Writ Petition No. 13230/2013

Manish

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 160, 160(2), 161
Penal Code, 1860 (IPC) — Section 34, 420, 467, 468, 471

Citation : (2015) 1 JLJ 358 : (2015) 2 MPHT 21

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Judgement

S.C. Sharma, J.—Parties through their Counsel.

The present writ petition has been filed against the summons issued under Section 161 of Code of Criminal Procedure, 1973, dated 29-10-2013 and 2-11-2013 by the Senior Inspector of Police Economic Offence Wing, Unit III, Crime Branch, CID Police Office, Compound Erawford Marg, Mumbai.

The facts of the case reveal that some criminal case has been registered against certain individuals for the offence under Sections 420,467,468,471,34 of IPC and notices have been issued under Section 160 of Cr.P.C. to the present petitioner to appear before the respondent No. 2 at Mumbai.

2. Shri Sethi, learned Sr. Counsel at the outset has drawn the attention of this Court towards Section 160 of Code of Criminal Procedure, 1973 and his contention is that the witness cannot be called to Mumbai in light of the statutory provisions of law. To buttress his argument, he has placed reliance upon a judgment delivered by the Gauhati High Court in the case of Puma Investment Pvt. Ltd. and Others Vs. State of Meghalaya and Others, .

3. On the other hand, it has been argued by learned Counsel for the respondent No. 3 before this Court that the petitioner as he is a witness can certainly be called to Mumbai for recording his statement and the notices have been issued in

consonance with the statutory provisions as contained under Section 160 of Code of Criminal Procedure, 1973.

4. Heard learned Counsel for the parties and perused the record.

5. The statutory provision governing the field as contained under Section 160 of Code of Criminal Procedure, 1973 reads as under:--

"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 woman 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. Paragraph 5 of the judgment delivered by the Gauhati High Court in the case of M/s. Pusma Investment Pvt. Ltd. (supra), reads as under:--

"5. Section 160, Cr.P.C. authorises a police officer making an investigation, by order in writing, (i) to require the attendance before himself, (ii) of any person, who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case, and (iii) who is residing within the limits of his own police station or any adjoining police station. The expression "who being within the limits of his own" read with the words following it, namely, "or any adjoining station" can only mean the person, who is to be summoned, must reside within the limits of the police station of the police officer the investigation. So read, it becomes clear that such police officer making the investigation can enforce the attendance of a person acquainted with the facts and circumstances only if the latter resides within the limits of his own police station or adjoining station. If the person being summoned does not reside within the limits of the police station of the police officer making the investigation or, at any rate, within the limits of the adjoining police station, it appears that such police officer cannot enforce his attendance even though he may be acquainted with the facts and circumstances of the case being investigated by him. The proviso to sub-section (1) of Section 160 says 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. Then, sub-section (2) of Section 160 further provides that the State Government may, by rules made in this behalf, provide for the payment by the officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence. Conjoint

reading of both the sub-sections and the proviso to sub-section (1) of Section 160 plainly indicate, firstly that the person to be summoned by the officer making the investigation must reside within the local limits of his own police station or within the adjoining area, secondly, that in the case of a male person under the age of fifteen years or woman, their attendance cannot be enforced at any place other than either residence even if they reside within the limits of the police station of the police officer making the investigation or within the limits of the adjoining police station and, thirdly, that reasonable expenses of every person other than a male person under the age of fifteen years or woman attending such requisition at any place within the limits of the police station shall have to be paid by the concerned police officer as per rules framed by the State Government in this behalf. If the contention of the learned Additional Advocate General that under Section 160, the police officer making the investigation is not disabled from requiring the attendance of a witness residing beyond the local limits of this police station or adjoining station, is accepted, that will amount to ignoring the words "being within the limits of his own or any adjoining station". In my opinion, such interpretation is against all canons of interpretation. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute (See: *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, . "In the interpretation of statutes", observed *Das Gupta, J.* In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, , "the Courts presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect". The Legislature is deemed not to waste its words or to say anything in vain and a construction, which attributes redundancy to the Legislature will not be accepted except for compelling reasons. When the language of Section 160 is plain and unambiguous, this Court cannot plunge headlong into a discussion of a reason, which motivated the Legislature into enacting this provision and took into consideration the hardship and inconvenience being caused to the investigating agency if they are not allowed to enforce the attendance of witnesses residing beyond their police station or adjoining police station. The rule of purposive construction cannot also be invoked in this provision. The correct principle, according to the learned Author, *G.P. Singh, J.*, is that after the words have been construed in the context and it is found that the language is capable of bearing only one construction, the rule in *Heydon's* case ceases to be controlling and gives way to the plain meaning rule. But the rule cannot be used to "the length of applying unnatural meanings to familiar words or of so stretching the language that its former shape is transformed into something, which is not only significantly different but has a name of its own especially when "the language has no evident ambiguity or uncertainty about it. (See: *Principles of Statutory Interpretation*, 9th Edn. pp. 119-120). In the view that I have taken, the impugned notices are ultra vires the provisions of Section 160 of the Code of Criminal Procedure, 1973 and cannot be sustained in law. I have carefully gone

through the case Anirudha S. Bhagat Vs. Ramnivas Meena and Another, , cited by the learned Additional Advocate General, but, with respect, I find myself unable to agree with view taken by the Division Bench of the Bombay High Court for the reasons already stated in the foregoing."

The aforesaid statutory provision coupled with the judgment delivered by the Gauhati High Court, the petitioner who is a witness residing at Indore cannot be called to Mumbai as he is not residing within the limit over which the respondent No. 2 is exercising his jurisdiction, meaning thereby at Mumbai.

7. It is true that this Court has earlier decided almost similar matter in the case of Vinod Patidar v. State of M.P. and another, decided on 7-9-2012 (W.P. No. 2245/2012), wherein persons residing at Mhow were directed to appear before the National Investigation Agency, Hyderabad. In the aforesaid case, a crime was registered at Police Station, National Investigation Agency, Hyderabad and the statutory provisions of National Investigation Agency Act, 2008 permitted the Investigating Officer to call the witness to Hyderabad. Section 32 of the Act of 2008 did permit the Station House Officer, Police Station, National Investigation Agency, Hyderabad to call a witness residing anywhere in the country and in those circumstances, the aforesaid judgment was delivered. Paragraph Nos. 7 to 9 of the aforesaid judgment read as under:--

"7. Learned Counsel for the petitioner has placed reliance upon a judgment delivered by Gauhati High Court of learned Single Judge, in the case of M/s. Puma Investment Pvt. Ltd. (supra). This Court has carefully gone through the aforesaid judgment and in the aforesaid case the persons involved, residing at Delhi were required to attend the Office of Investigating Officer at Shillong. Offences in the aforesaid case were relating to the Indian Penal Code and was not a case at all registered by the NIA, and therefore, the judgment relied upon by the learned Counsel is of no help to the petitioner. The Division Bench of Bombay High Court while dealing with the similar controversy in two cases has upheld the action of NIA in summoning the witness in the same manner in which, it is being done in the present case. In the case of Maruti Keshavrao Wagh (supra) and in the case of Anirudha S. Bhagat Vs. Ramnivas Meena and Another, , the Bombay High Court justified the action of the NIA in issuing summons to the witnesses, who were from different states/different police station. The Division Bench of Bombay High Court in the case of Maruti Keshavrao Wagh (supra), in Paragraphs 7, 8,9,10,11 and 12 has held as under:--

"7. Shri Dixit, learned Sr. Advocate placed reliance on the reported judgments in the cases of (1) Mathews Peter Vs. Asst. Police Inspector, Crime Branch-II and Others, , and (2) Puma Investment Pvt. Ltd. and Others Vs. State of Meghalaya and Others, . Shri Sharma, learned ASG has placed reliance on the reported judgment of the Division Bench of the Bombay High Court in the case of Anirudha S. Bhagat Vs. Ramnivas Meena and Another, .

8. We have considered the submissions advanced, perused the documents placed

on record and the case law cited *supra*.

9. The Division Bench of this Court in the case of Anirudha S. Bhagat (*supra*), has held in Paragraph No. 11 as under:--

"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, under Section 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."

10. In the facts of the case, we find that the statement is made on behalf of the respondents by Shri Sharma, learned ASG that in case the petitioner find any difficulty in making necessary arrangements in short time at his disposal for attending the office at Delhi, then the petitioner would be provided some more time so that he can make necessary arrangements to reach the Office of Investigating Agency at Delhi.

11. We are not convinced to take a different view than the view adopted by the Division Bench of Bombay High Court in the case of Anirudha S. Bhagat (supra).

12. Writ petition is rejected".

8. This Court has carefully gone through the judgment of Division Bench of Bombay High Court delivered in the case of Anirudha S. Bhagat (supra) and Maruti Keshavrao Wagh (supra), and is of the considered opinion that the interpretation of Section 160 as offered by the learned Counsel for the petitioner would defeat the provisions of law under the said section.

9. The same view has been expressed by the Delhi High Court in the case of Anant Brahmachari (supra), wherein again issuance of summons by NIA, Police Officer to a person beyond territorial jurisdiction of the Police Station has been upheld. The contention of the learned Counsel for the petitioner regarding territorial jurisdiction and the summons issued by the Investigating Officer of NIA is hereby rejected. This Court is of the considered opinion that the Investigating Officer in exercise of power conferred under the Act of 2008 read with Code of Criminal Procedure, 1973 has rightly been issued as Annexure P-1, directing the presence of the petitioner at Hyderabad. No case of interference in the matter is made out and the writ petition deserves to be dismissed. Accordingly, it is dismissed. However, as the date required for attendance of summon was 1st/2nd day of March, 2012, the Investigating Officer shall be free to issue fresh summons directing presence of the petitioner in accordance with law."

8. In light of the aforesaid judgment in which this Court has again discussed the provisions of Section 160 of Code of Criminal Procedure, 1973, is of the considered opinion that the petitioner cannot be called to Mumbai in the peculiar facts and circumstances of the case. The respondent No. 2 in case requires the statement of petitioner, he is certainly free to visit Indore and to record the statement of the petitioner keeping in view the statutory provisions as contained under the Code of Criminal Procedure, 1973. The summons dated 29-10-2013

and 2-11-2013 are quashed. With the aforesaid, the writ petition stands allowed.
No order as to costs.