

(2023) 11 MP CK 0082

In the Madhya Pradesh High Court

Case No : Writ Petition No. 29365 Of 2023

Rakesh Kumar Upadhyay

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 28-11-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41(1)

Citation : (2023) 11 MP CK 0082

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : Aditya Ahiwasi, Alok Agnihotri

Final Decision : Allowed

Judgement

Sanjay Dwivedi, J

1. By this petition, the petitioner is challenging the action of the respondents whereby the Station House Officer, Police Station Seoni Malwa has issued a notice to the petitioner on 20.11.2023 (Annexure P/1) saying that the notice is under Section 41(1) of the Code of Criminal Procedure asking petitioner to appear before the police on 22.11.2023. It is also mentioned in the notice that the notice has been issued in compliance of the direction of the High Court whereby it has been directed that before arrest notice be issued to the petitioner.

Learned counsel for the petitioner submits that the Station House Officer, Police Station Seoni Malwa has misinterpreted the direction given by the Court. The Court has directed the authority to first make an enquiry, take assistance from the petitioner and even thereafter if it is found that the petitioner is prima-facie guilty or other persons are involved in the matter then only they would be required to be arrested. Counsel submits that in pursuance to the direction of the Court, no enquiry has been done and nothing has been ascertained, the notice issued to the petitioner is nothing but an empty formality for ensuring his arrest and complying the order of the Court, but it is not the object of the Court.

Learned counsel for the respondents/State on the other hand submits that petitioner has been given notice does not mean that he would be arrested. It is nothing but a part of the enquiry and presence of the petitioner will provide assistance to the police officer for concluding the enquiry, if any is required to be done.

Considering the arguments advanced by the learned counsel for the parties, the order passed by this Court on earlier occasion and after perusal of the record, I am directing Superintendent of Police, Narmadapuram and also the Station House Officer, Police Station Seoni Malwa that the direction issued by this Court is for making an enquiry. Meaning thereby, unless the material is collected or petitioner is prima-facie found guilty then only after issuing notice he should be arrested. It has also been directed that petitioner may be called to provide assistance so that if any enquiry is being conducted, some information could be collected from the petitioner, but if it is not done and the order of the Court is being misinterpreted that is not proper. The arrest would be made only after making enquiry, collecting material and on the basis of material if it is found that the petitioner is required to be arrested then only his arrest may be made but arrest shall not be made only at the instance of any officer who is behind the petitioner and without enquiry petitioner is found to be guilty

Accordingly, this petition is allowed. The impugned notice dated 20.11.2023 (Annexure P/1) issued to the petitioner under Section 41(1) Cr.P.C. by the Station House Officer, Seoni Malwa is hereby set aside.