

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 2464 of 2022

Sutapa Adhikari and Ors.

Vs.

The State of West Bengal & Anr.

For the petitioner : Mr. Rajdeep Mazumder
Mr. Moyukh Mukherjee
Mr. Abhijit Singh
Ms. Aishwarya Bazaz

For the State : Mr. Saswata Gopal Mukhere, Ld. PP
Mr. Rudradipta Nandy

Heard on : 27.04.2023

Judgment on : 07.06.2023

Ajoy Kumar Mukherjee, J.

1. Challenging the impugned notices dated 11.07.2022 issued to the petitioners herein under section 160 of the Code of Criminal Procedure (in short Cr.P.C.) in connection with the Contai Police Station Case No. 46 of 2022, dated 31.01.2022, present application under Section 482 of the Cr.P.C. read with Article 227 of the Constitution of India has been filed. Petitioners alleged that the petitioners are the family members and have close acquaintance with the leader of the opposition in the state of West

Bengal, who are being targeted by the ruling party being hand in gloves with the police administration for their association with the leader of the opposition.

2. Petitioners' case is on 31.01.2022 a written complaint was submitted by the present opposite party no. 2, alleging commission of offence under section 120B/409/477A of Indian Penal Code, alleging interalia that certain works which were done under Contai Municipality under development scheme are deceptive in nature. It has been stated in the FIR that in the year 2017 and 2018 certain development and beautification works were undertaken at places in Contai town which were to be implemented by the Contai Municipality but it has been alleged that each work has cost crores of rupees which sounds illogical and unjustifiable. It has been further alleged all of such works have been documented to have been completed in the year of 2019, yet no work was done then. In fact actual repairing works that can be seen to have been done under the said municipality area, can no way match the expenditure cited by the agencies.

3. Petitioners contended that they came to learn that on the basis of said written complain, the investigation initiated against two persons namely Dilip Kumar Chouhan and Samir Kumar Dey. Said accused persons challenging the FIR, preferred Revisional Application before this court being CRR 414 of 2022 and obtained an interim order of stay of all further proceedings but the said revisional application was subsequently dismissed as not pressed vide order dated 17.05.2022. Such aspect raises questions in the mind of the petitioners. Petitioners contended in the above backdrop the investigating agency on the basis of aforesaid malevolent determination

and in order to carry on a *malafide* investigation, which has been initiated on the basis of aforesaid written complain, having no legal standing whatsoever, has issued the impugned notices dated 11.07.2022 under section 160 of the Cr.P.C., in order to harass the petitioners and to carry on a spiteful investigation. Petitioners had given reply to such notice through their advocate and petitioners further submit that they are not at all acquainted in any manner whatsoever with the facts and circumstances of the case for the purpose of aiding the investigation and notices have solely been issued due to their proximity with the leader of the opposition and his younger brother. Petitioners contended that investigating agency is acting as per the whims of their political overlords and are conducting a spiteful investigation in this regard. They further submit that concerned documents are matters of record and the petitioner are nowhere acquainted with the facts and circumstances of the said case and notices herein are bereft of reasons and notices are illegal arbitrary unreasonable and prejudicial to the interest of the justice and as such are liable to be set aside.

4. Mr. Rajdeep Mazumder learned counsel appearing on behalf of the petitioner submits that in the garb of a notice under section 160 of the Cr.P.C. the investigating agency has arrested innocent persons on earlier occasion. In this context he referred judgment passed by this court in CRR 3047 of 2022 in connection with GR Case No. 1357 of 2022 arising out of Contai police station Case No. 265 of 2022 dated 29.06.2022, wherein one Alok Sahoo was taken into custody in connection with the said case adopting the same procedure. He further submits that the present petitioners have also been served with notices under section 160 of the

Cr.P.C. with a motive to take them into custody. He further submits that the petitioners' apprehension of being arrested while being served with notices under section 160 Cr.P.C. is well founded and the previous instances proved the case of the petitioners as to the intention of the investigation agency and for which he has sought for quashing the said notices. In this context Mr. Mazumder has also relied upon the cases reported in ***Arnab Manoranjan Goswami Vs. State of Maharashtra*** reported in **(2021) 2 SCC 427** , ***Anirudha S. Bhagat Vs. Ramnwas Meena and another*** reported in **2005 SCC Online Bom 491** and also judgments passed by this court in CRR 2790 of 2022, WPA 20866 of 2022, WPA 17995 of 2022 and also the judgment of ***Pakala Narayana swami Vs. King-Emperor*** reported in **43 CWN 473** and ***Nandini Satpathy Vs. P.L. Dani and another Nand*** reported in **(1978) 2 SCC 424.**

5. Mr. Saswata Gopal Mukherjee, learned Public Prosecutor contended that issuance of notice under section 160 Cr.P.C. is an integral part of a free and fair investigation. He further submits that quashing a notice issued under section 160 Cr.P.C. is against the spirit of the said provision and as such is not liable to be quashed. He further submits that the entire investigation may fail if the investigating agency are restricted from examining the witnesses who are acquainted with the facts and circumstances of the case. Mr. Mukherjee learned P.P. showing the relevant page of the case diary has contended that during investigation it reveals that the petitioners are acquainted with the facts and circumstances of the case and as such the allegation leveled by the counsel on behalf of the petitioner that the petitioner are not at all acquainted with the facts of the

case is untrue. Learned public prosecutor further submits that the impugned notices have now become infructuous as said notices were valid for a particular date and as such the petitioners' prayer for quashing the said notices have become redundant since notices are not in force as on date and quashing the same will not serve any purpose.

6. I have considered submissions made by both the parties.

7. The basis of apprehension of the petitioners at the time of filing the present application is that they experienced that during investigation some persons not named in the FIR or not connected in any way in committing the offence are being called by issuance of a notice under section 160 of Cr.P.C. and when the person complied with such notice, the investigating officer in the name of interrogation implicates such person as an accused and arrested him at once. The petitioners also thus apprehending arrest, as they were also served with notices under section 160 of Cr.P.C.

8. On being asked by the court, Mr. Majumder on behalf of the petitioner submitted as to why the investigating agency would likely to adopt indirect method to arrest a person in such way, when they have the power to arrest at any time directly, if necessary, in case of cognizable offence. It is submitted, only reason may be that it is the intention of the investigating agency not to give the person the chance or the opportunity to avail of the benefit of the anticipatory bail or protective order which is available to an accused or a person apprehending arrest. Accordingly referring ***Arnab Monoranjan Goswami's case (supra)*** he submitted such intention is a violation of natural justice and also abuse of process of law. and the situation demands the exercise of the court's inherent power in the

present context in the interest of justice, inspite of the fact that impugned notices have expired and notices are not in force because nothing would prevent them from sending another notice under section 160 to the petitioners and to adopt same *malafide* procedure to put them behind the bar.

9. Admittedly the notices under section 160 of the Cr.P.C. which were issued on 11.07.2022 asking the petitioners to let them know about convenient time on 15.07.2022 to interview them, have become infratuous since it bears specific date. However Mr. Mazumder submits that this will not prevent the investigating agency from issuing further notices under section 160 of Cr.P.C. upon the opposite parties who as of now are under the protective interim order granted by this court. In the impugned notices, the investigating officer has also asked petitioners to produce certain documents but according to Mr. Mazumder the investigating agency can sought for such documents only under section 91 of the Cr.P.C. but by sending a notice under section 160 they cannot ask for producing the documents.

10. However in this context Mr. Mukherjee learned Counsel for the state has relied upon paragraph 7 of the judgment passed in **Anirudha S. Bhagat Vs. Ramnwas Meena and another** reported in **2005 SCC online Bom 491** where Their Lordship was pleased to held as follows:-

“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.”

11. Be that as it may such issue has become redundant in the present context in view of the fact that impugned notices have become infructuous which bear specific date.

12. However, the practice, if adopted by investigating agency during investigation to call someone not named in the FIR or not connected in any way in committing the offence, by a notice under section 160 of the Cr.P.C and when the person concerned complies direction of such notice, the investigating officer in the name of interrogation, implicate him as an accused and arrest him directly, such practice cannot be encouraged. Such procedure adopted by the investigating agency is not in conformity with the provisions and object as laid down in section 160 of the Cr.P.C. and also violative of principles of natural justice. Section 160 under chapter XII of the Cr.P.C empowers a police officer to require attendance of witness and therefore under the garb of section 160 of the Cr.P.C. a person unconnected with the offence, cannot be directed to appear through notice under section 160, for adopting short cut method of denying the right of such person to get his proper redressal. Even if there is any allegation of violation of notice under section 160 of Cr.P.C, The public servant can very well take steps under section 174 of the Indian Penal Code but the investigation agency cannot use section 160 of the Cr.P.C as an oppressive measure against anyone. In **Arnab Monoranjan Goswami’s Case (supra)** it has been specifically observed by the Apex Court that human liberty is a precious

constitutional value which is undoubtedly subject to regulation by validly enacted legislation. As such the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of High Court to make such orders as are necessary to give an effect to the provisions of Cr.P.C. or prevent abuse of the process of any court or otherwise to secure the ends of justice. In the said judgment Apex Court further pointed out in paragraph 67 that the public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of High Court is exercised with caution but the other end of the specter is equally important which is the recognition by section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice, is a valuable safeguard for protecting liberty. Accordingly it is concluded that it is duty of court to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum - the need to ensure the proper enforcement of criminal law on one hand and the need on the other of ensuring that the law does not become a ruse for targeted harassment.

13. Thus in order to prevent abuse of the process of law by the investigating agency as already discussed and to ensure ends of justice and having considered the rival contentions, CRR 2464 is hereby disposed of with the following direction:-

- (i)** The investigating agency in connection with Contai Police case no. 46 of 2022 dated 31.01.2022 under sections 120B/409/477A of the Indian Penal Code pending before the learned ACJM Contain Purba Medinipur (if investigation still continuing) will be free to

issue another set of notices under section 91/160 of Cr.P.C. to the petitioners, if their presence and interview is required for investigation but in that case the petitioners must be given at least 72 (seventy Two) hour notice.

- (ii)** If at any point of time the investigating agency proposes to accuse any of the petitioners of any alleged offence and proposes to implicate with the case in order to start investigation against all or any of the petitioners, the concerned petitioner(s) shall be served with a written show cause notice and he shall not be arrested for a period of 10 days, from service of such show cause notice to enable him to avail of his remedies against arrest available in law.
- (iii)** It is made clear that this court has not entered into the merit of the complain whatsoever and the observation made herein is confined to future notice, if any, under section 160/91 of Cr.P.C. in connection with present petitioners.

14. Interim order granted earlier stands vacated.

15. There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)