

(2008) 05 AHC CK 0205

Allahabad High Court

Case No: Criminal M.A. No. 10605 of 2008

Piyare Lal and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 30, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 160, 73
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 506

Citation: (2008) 3 ACR 2617

Hon'ble Judges: Ravindra Singh, J

Bench: Single Bench

Advocate: Ranjeet Saxena, Viresh Mishra and B.P. Singh Dhakray, for the Appellant;
Rakesh Kumar, G.S. Hajela, Brij Bhushan Upadhyay and A.G.A., for the Respondent

Final Decision: Disposed Of

Judgement

Ravindra Singh, J.

This application has been filed by the applicants Piyare Lal and Pravesh Kumar with a prayer that the order dated 7.4.2008, passed by learned Special Judicial Magistrate (C.B.I.), Ghaziabad, in Case No. RC-9(S)/06/CBI/SCB-II/Delhi, C.B.I. v. B. P. Singh Dhakarey and Ors., by which the N.B.W. has been issued against the applicants may be quashed.

2. The brief facts of this case are that the F.I.R. of Case Crime No. 7 of 2004 under Sections 147, 148, 149, 307 and 506, I.P.C., P. S. Rakaganj, District Agra has been registered on 7.1.2004 which is under investigation of C.B.I. During the course of investigation the Investigating Officer has moved an application before the court of learned Special Judicial Magistrate (C.B.I.), Ghaziabad for issuing the N.B.W. against the applicants and co-accused Shakti Singh Dhakrey and Bhagwan Singh, the same has been allowed and the N.B.W. has been issued against the applicants and other co-accused persons.

3. Heard Sri Ranjeet Saxena and Sri B. P. Singh Dhakray, learned Counsel for the applicants, Sri G. S. Hajela, counsel for the C.B.I. and Sri Brij Bhushan Upadhyay and Sri Rakesh Kumar for O.P. No. 4.
4. It is contended by learned Counsel for the applicants that applicants have fully cooperated with the investigation, they were always available for inquiry or interrogation to Investigating Officer of the C.B.I. even then the application has been moved by the Investigating Officer for obtaining the N.B.W. from the Magistrate concerned. The learned Magistrate concerned has not gone through the provisions of the law and illegally relied upon the provisions of Section 160, Cr. P.C. which deals with police officer's power to require attendance of witnesses. In the present case the provisions of Section 160, Cr. P.C. are not applicable. The learned Magistrate concerned has illegally issued the N.B.W. against the applicants.
5. It is further contended that Investigating Officer of this case has illegally applied for obtaining the N.B.W. and the same has been illegally issued by the learned Magistrate concerned vide order dated 7.4.2008. The impugned order dated 7.4.2008 is illegal and it may be set aside.
6. In reply of the above contention, it is submitted by learned Counsel for the C.B.I. and learned Counsel for O.P. No. 4 that in the present case the notice was issued to the applicants and other co-accused persons u/s 160, Cr. P.C. at the stage of investigation for the purpose of interrogation, it may be issued to any person whose attendance is required. The provisions are not confined up to the witnesses only. The Section 160 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.
7. There was no illegality in issuing the notice u/s 160, Cr. P.C., to the applicants, the learned Magistrate concerned has passed the impugned order after perusing the case diary which discloses that the applicants are not cooperating with the investigation even they have denied Polygraphy test. The case diary discloses that the Investigating Officer went to the residences of the applicants and other places to make the arrest but the applicants were evading their arrest. After perusing the case diary and all the facts and circumstances of the case, the learned Magistrate concerned has issued the N.B.W., there is no illegality in issuing the N.B.W. against the applicants, therefore, the prayer for quashing the impugned order dated

7.4.2008 may be refused.

8. Considering the facts, circumstances of the case, submissions made by learned Counsel for the applicants, learned Counsel for the C.B.I., learned Counsel for the opposite party and from the perusal of the record it appears that in the present case the C.B.I., has investigated the case only against the applicants and co-accused for requiring their attendance, the notices were sent to them u/s 160, Cr. P.C. According to the Section 160, Cr. P.C.,

Any police officer making an investigation under this Chapter, 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.

In the present case, the applicants did not appear before the Investigating Officer even after the notice u/s 160, Cr. P.C. and they have denied for Polygraphy test, the applicants were not cooperating with the investigation, the impugned order dated 7.4.2008 has been passed by learned Magistrate concerned after perusing the case diary which discloses that the applicants were evading their attendance before Investigating Officer concerned, it indicates that the applicants were not cooperating with the investigation. In such circumstances the Investigating Officer has moved an application for issuing the N.B.W. against the applicants. The learned Magistrate concerned has not committed any error in passing the impugned order because the provisions of Section 73, Cr. P.C. empowered the learned Magistrate concerned to issue the N.B.W. The impugned order dated 7.4.2008 is not suffering from any illegality or irregularities. Therefore, the prayer for quashing the impugned order dated 7.4.2008 is refused.

9. However, it is directed that in case applicants appear before the Court concerned within 25 days from today, till then the N.B.W. issued against them shall be kept in abeyance. It is further directed that in case, they apply for bail, the same shall be heard and disposed of expeditiously by the courts below under the provisions of law.

With the above direction, this application is finally disposed of.