

Reserved on 16.02.2022

Delivered on 18.02.2022

Court No. - 47

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Case :- CRIMINAL MISC. WRIT PETITION No. - 1174 of 2022

Petitioner :- Rahul Pandey And 2 Others

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Ajay Kumar Pathak

Counsel for Respondent :- G.A

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Deepak Verma,J.

Heard Sri R.K. Ojha, learned Senior Advocate for the petitioners and learned A.G.A.

The instant writ petition seeks quashing of the first information report dated 04.11.2021 giving rise to Case Crime No.689 of 2021, under Sections 8/20/25/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 P.S. Shikohabad, District Firozabad, in respect of the petitioners only.

The second prayer made in the writ petition is for quashing the notice/summon dated 01.01.2022 issued to the petitioners under Sections 67 of N.D.P.S. Act. This notice is in connection with Case Crime No.689 of 2021 which is subject matter of the first prayer.

The consequential and the third relief is that no coercive decision shall be taken in pursuance of the notice/summon dated 01.01.2022.

It appears that the police on receipt of information apprehended a truck and upon its search recovered four quintals forty one kilograms of *ganja* from a concealed space in the driver's cabin. Two persons in the truck, were arrested and the recovery memo was prepared. The date of the afore noted recovery is 04.11.2021 and thereafter, the F.I.R. was registered.

It appears that subsequently, notices under Section 67 of the N.D.P.S. Act have been issued to the petitioners on 01.01.2022. It also appears on the record that subsequent to the receipt of the notice/summon, the petitioners have sent letters expressing their inability to appear in response to the notice/summon, along with a prayer that the statements be recorded in District Hathras. The notice required the petitioners to appear in the Narcotics Control Bureau Office at Lucknow on 05.01.2022 at 3 pm. The replies annexed along with the writ petition are dated 03.01.2022.

The contention of Sri Ojha, learned Senior Advocate is that prior to the issuance of notice, some personnel claiming to be of the Narcotics Control

Bureau had come to the residence of the petitioners and had tried to apprehend them. This was opposed by the petitioners and their family members. As a consequence, the personnel of the Narcotics Control Bureau were aggrieved and, therefore, the notice has been issued to the petitioners.

It is also submitted that the petitioners apprehend that once they appear in consequence of the notice issued to them, the Investigating Officer after recording their statements under Section 161 Cr.P.C. in all likelihood, will arrest them. Of the three petitioners, one is a practising lawyer and the other two are the father and the brother of the practising lawyer. Since they have no concern with Case Crime No.689 of 2021, they are entitled to the protection claimed in the writ petition.

In so far as the first relief claimed in the writ petition is concerned, the petitioners are not named in the F.I.R. They therefore, cannot be aggrieved by it, in any manner. For the reason, they cannot challenge the same. Although confronted with the situation, Sri Ojha submitted that he is not pressing relief no. 1.

In so far as the challenge to the summon/notice dated 01.01.2022 is concerned, in our considered opinion challenge to a notice is not tenable even if the person, who, is required to respond to it is a practising lawyer or his relative. The investigating agency and the investigating officer have unfettered power of investigation. It is also not open for the person, who is to be interrogated or questioned to decide the venue of such interrogation. Moreover, if as claimed, the petitioners have no nexus with Case Crime No. 689 of 2021. This Court fails to understand as to what prevents them from appearing before the officer concerned in pursuance of the notice issued to them.

We are also of the considered opinion that the writ petition has been filed on mere apprehension. However, since the High Court in exercise of power under Article 226 of the Constitution of India, has no power to interfere with the investigation, the relief prayed for in the writ petition for protection is not liable to be granted and that too on mere apprehension.

Accordingly, we do not find it a fit case for interference.

The writ petition is dismissed.

Order Date :- 18.02.2022

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