



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

WP No. 30532 of 2024

*(M/S. PRARAM INFRA THROUGH ITS PARTNER SHRI PRAYANK JAIN Vs THE STATE OF MADHYA PRADESH
AND OTHERS)*

Dated: 27/03/2025

Shri Divyakant Lahoti along with Shri Rakesh Maheshwari and Shri Rahul Maheshwari, learned counsel for the petitioner.

Shri Anirudh Malpani, learned G.A. on behalf of Advocate General.

Shri Satish L. Maneshinde, learned senior counsel with Shri Priyank Upadhyay, Shri Anupam Shukla, Ms. Shivali Sharma and Shri Anadi Kumar Taylor, learned counsel for the intervenor.

1] Heard on I.A. No.2313/2025, which is an application filed by Shri Rahul Maheshwari, Advocate seeking directions in the light of subsequent facts and quashment of the notice dated 11/03/2025, issued to him by the Deputy Commissioner of Police, Zone-3, Indore, purportedly u/s.91/160 of Cr.P.C.

2] This writ petition has already been disposed of by this Court vide its final order dated 19/11/2024, which had arisen out of Crime No.1197/2023 under Section 420, 409 and 406 of IPC registered at Police Station, Banganga, District Indore (M.P.). In the petition, the grievance was made in respect of improper investigation with a prayer that the investigation be conducted in a fair and unbiased manner.

3] In the aforesaid petition, Shri Rahul Maheshwari, Advocate had appeared for the petitioner, who has filed the present I.A. No.2313/2025 in his personal capacity challenging the notice dated 11/03/2025, issued to



him by the Deputy Commissioner of Police, Zone-3, Indore asking him to appear and give samples of his signatures, which he had appended on the notice issued by him on behalf of the petitioner to the accused, who has allegedly defrauded the complainant with huge amount running into crores of rupees.

4] On the last date of hearing, i.e. 13/03/2025, when the matter came up for hearing before this Court for consideration of the aforesaid I.A. for the first time after its disposal, this Court passed an interim order staying the operation of the notice dated 11/03/2025, and it was also directed that the concerned DCP Shri Hansraj Singh shall not investigate the matter till further orders, and he was also directed to file an affidavit in response to the said I.A.

5] Pursuant to the aforesaid order, an affidavit has also been filed by the said DCP informing that he has withdrawn the notice as the presence of shri Maheshwari advocate is not required for now.

6] An application for intervention, I.A. No.2577/2025 has also been filed on behalf of the accused Diven Ghanshaym Dembla.

7] Heard.

8] Shri Divyakant Lahoti, learned counsel for the petitioner has vehemently argued before this Court and it is submitted that the DCP exceeded his jurisdiction in issuing the aforesaid notice and even if it is withdrawn by him, it needs to be quashed as otherwise it would given wrong signal to the police personnel and would also affect the also the legal fraternity in general. It is also submitted that the matter may be directed to be transferred/investigated by some other officer to conduct a fair and unbiased investigation. Counsel has also submitted that in the



present case, the application filed by the accused for anticipatory bail has already been dismissed by the trial Court, which has also been affirmed by this Court in M.Cr.C. No.51194/2023 vide order dated 08/02/2024, and the Supreme Court, in SLP(Crl.) No.4698/2024 dated 08/07/2024 has also affirmed the order passed by this court, although the accused was given liberty to file fresh application for anticipatory bail before the trial court but the same has also been rejected by the trial Court. In such circumstances, it is submitted that when the accused has still not been arrested, and the notice has been issued to the counsel for the complainant, the same is liable to be quashed.

9] The prayer has been opposed by Shri Satish L. Maneshinde, learned senior counsel appearing for the intervener/accused with equal vehemence, and it is submitted that the notice has been rightly issued by the concerned officer for verification of the signatures of the Advocate. In support of his submissions, learned senior counsel appearing for the intervener has also relied upon the decision in the case of ***A.V. Pavithran Advocate vs. Central Bureau of Investigation Anti-Corruption Branch and another*** rendered by the High Court of Bombay in Criminal Writ Petition No.36 of 2024 dated 24/04/2024 to submit that the police undoubtedly has the power to summon any person including a practicing Advocate, if situation so requires.

10] Heard learned counsel for the parties and perused the documents filed on record.

11] So far as the notice dated 11/03/2025 is concerned, although it has already been withdrawn by the concerned officer, but it is also mentioned in the affidavit that, *‘presently the statement of noticee Mr.Rahul*



Maheshwari is not required', in such circumstances, this Court is of the considered opinion that when the notice itself, purported to be issued u/s.160 of Cr.P.C., ought not to have been issued in the first place, as the same cannot be countenanced in the eyes of law, there was no reason for the DCP to state that *presently* Mr. Maheshwari's statement is not required. At this juncture it would also be apt to refer to Section 126 of the Indian Evidence Act, 1872 (Section 132 of Bhartiya Sakshya Adhiniyam, 2023), which reads as under:-

“126. Professional communications.

No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure -

(1) any such communication made in furtherance of any [illegal] purpose ;(2) any fact observed by barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, [pleader] [Inserted by Act 18 of 1872, Section 10.], attorney or vakil was or was not directed to such fact by or on behalf of his client. Explanation. - The obligation stated in this section continues after the employment has ceased.

Illustrations

(a) A, a client, says to B, an attorney - "I have committed forgery and I wish you to defend me". As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney - "I wish to obtain possession of property by the use of a forged deed on which I request you to sue." This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.



(c)A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.”

12] It is nobody's case that the Advocate concerned, Mr. Maheshwari, had made the communication in furtherance of any illegal purpose, in-fact he was representing the complainant only and not the accused, and that too after the transactions had already taken place between the parties, thus, he was not a witness in the case, and could not have been summoned u/s.160 of Cr.P.C. Thus, the contention of shri Maneshinde, learned Sr. Counsel for the intervener, that the notice has been rightly issued, is hereby rejected. This court is also of the considered opinion that the intervener has been wrongly advised to jump into this *lis* between the applicant advocate and the police, which was on a different trajectory. So far as the decision relied upon by the learned counsel for the intervener in the case of **A.V. Pavithran, Advocate** (supra) is concerned, it is found that in that case also, the notice issued to the said Advocate was quashed by the Bombay High Court, and is of no avail to the intervener when no such situation exists which may require an Advocate to be summoned.

13] In such circumstances, the aforesaid notice dated 11/03/2025, though withdrawn, is hereby quashed.

14] So far as the grievance of the counsel that the matter may be handed over to some other police officer is concerned, this Court does not find it fit to allow the said prayer when no such application has been filed by the



writ petitioner himself, however, this Court leaves it to the Commissioner of Police, Indore to take the final call in this regard.

15] Accordingly, *I.A. No.2313/2025 stands allowed, and I.A. No.2577/2025 stands rejected with a cost of Rs.10,000/- (Rupees Ten Thousand)*, to be paid by the intervener in the account of President and Secretary H.C. Employees Union H.C. (Account No.63006406008, Branch Code No. 30528, IFSC No. SBIN0030528, CIF No. 73003108919) within a period of 15 days from today, and the acknowledgement of the same shall be filed before the Registry of this Court.

(SUBODH ABHYANKAR)
JUDGE

Krjoshi