

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.8109 of 2015

ORDER :

1. Heard the learned counsel for the petitioners/A-2 and A-3 in C.C.No.305 of 2015 on the file of Additional Judicial Magistrate of First Class, Tiruvuru and also the 1st respondent-State represented by the Public Prosecutor before admission, before ordering notice to the 2nd respondent/defacto complainant and perused the material on record.
2. The learned Magistrate after police final report while making accusation against A-1 and showing A-2 and A-3 not liable to be charged, from perusal of the material taken cognizance against A-2 and A-3 also under Section 190 Cr.P.C. for the offence punishable under Sections 498-A, 506 IPC r/w.34 IPC along with A-1 charged in allotting C.C.No.305 of 2015 and while taking cognizance issued NBWs against the petitioners/A-2 and A-3, the same is now impugned.
3. Perused the material on record. As the issue is only relating to said docket order, issuing NBW in particular in seeking to quash the docket proceedings. The docket order of the Court reads as follows:

“The defacto complainant filed protest petition from the police final report and present and perused the entire material including the protest memo of the defacto

complainant in deleting the names of A-2 and A-3. However perusal of the record shows there is material to proceed against A-2 and A-3 also. Hence taken case on file along with A-1 against A-2 and A-3 also for the offences supra and that as A-1 is on bail, issue summons to A-1 and A-2 and A-3 not yet arrested in abscondance, issue NBW”.

4. A perusal of the said docket order shows there is application of mind and under Section 190 Cr.P.C. the law is well settled particularly from the expression of Apex Court in Dharampal vs.State of Haryana^[1] of the power of the Magistrate to take cognizance by deferring with the police opinion of the final report, if there is material to proceed with beyond which there is no accusation required on perusal of the material, but for left open the remedy if at all to challenge application to discharge under Section 239 Cr.P.C. if any material to frame charges against them.

5. Accordingly, the Criminal Petition is disposed of while suspending the order of NBWs pending against them by directing the petitioners to surrender before the learned Magistrate and file regular bail. In such an event, after hearing APP learned Magistrate shall grant bail on the same day. Consequently, NBWs seized its force. If no application for bail within ten days after receipt of the order, the NBWs can be executed. Consequently, the miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

21-08-2015

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[\[1\]](#) 2014 (3) SCC 306