

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT APPEAL No.1393 of 2016

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri T. Surya Satish, learned counsel for the appellant, and Sri P. Nagendra Reddy, learned counsel for the respondents-writ petitioners and, with their consent, the writ appeal is disposed of at the stage of admission. This appeal is preferred by the 6th respondent in W.P. No. 39301 of 2016 aggrieved by the order passed by the learned Single Judge dated 15.11.2016, whereby respondents 1 to 3 in the writ petition were directed not to interfere with the affairs of the petitioners, and not to arrest them in the event of registration of a crime against them based on the complaint lodged by the appellant herein.

The grievance of the appellant is that the order under appeal was passed even without giving her an opportunity of being heard though she was arrayed as a respondent in the writ petition.

Sri P. Nagendra Reddy, learned counsel for the respondents-writ petitioners, submits that, while the appellant was not put on notice before the order was passed by the learned Single Judge, the fact remains that the respondent police officials were calling the respondents-writ petitioners to the police station for counselling, which power is not conferred on them under any law in force. He would submit that, unless a complaint is registered under Section 154 Cr.P.C, the police officials are not entitled to commence investigation; and it is only during investigation, can they exercise jurisdiction under Section 41A Cr.P.C. directing appearance of the petitioners, or to arrest them in the exercise of the powers conferred under Section 41 Cr.P.C.

We find considerable force in the submission of Sri P. Nagendra Reddy. When we asked Sri T. Surya Satish, learned counsel, as to how the respondents-writ petitioners could have been summoned to the police

station even without the complaint of the appellant being registered under Section 154 Cr.P.C, learned counsel would fairly state that the power conferred on the police officials, either under Section 41 or Section 41A Cr.P.C, can only be exercised after a complaint is registered under Section 154 Cr.P.C.

We consider it appropriate, in such circumstances, to set aside the order under appeal, and direct the respondent-police officials not to summon the writ petitioners to the police station without registering the complaint of the appellant-6th respondent under Section 154 Cr.P.C. It is only after a complaint is registered, can they exercise the discretion conferred on them to direct appearance of the petitioners strictly in accordance with Section 41A Cr.P.C or, if need be, to effect arrest strictly in accordance with Section 41 Cr.P.C.

The writ appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

16th December, 2016
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