

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.26853 OF 2016

ORDER:

This Writ Petition is filed by the petitioner questioning the action of the 4th respondent in arresting his son, who is A.1, in Crime No.14 of 2015 on the file of 4th respondent police station, registered for the offences punishable under Sections 498-A and 313 read with 34 IPC and Sections 3 and 4 of Dowry Prohibition Act, pending investigation and in spite of direction of this Court in CrI.P.No.9378 of 2016, dt.29.06.2016, to the 3rd respondent not to arrest A.1 till investigation is completed and charge sheet is filed.

2. It is alleged in the Writ Petition that against registering of aforesaid crime, son of the petitioner filed CrI.P.No.9378 of 2016 before this Court to quash the same. On 29.06.2016, this Court, while disposing the Criminal Petition directed the 3rd respondent to proceed with the investigation without arresting A.1, the son of the petitioner till investigation is completed and charge sheet is filed and also directed A.1 to appear before the 3rd respondent as and when required during the course of investigation. It was further alleged that A.1 also filed an application before the Judge, Family, Court, Amalapuram, seeking divorce against the complainant in the above crime which is pending, for appearance. It was further alleged that the case in Family Court was posted to 29.07.2016 for appearance of A.1 and on that day, the petitioner along with A.1 went to the Family Court and after appearing before the Family Judge, at about 13:00 hours, the 4th respondent came to the petitioner and A.1 and apprehended A.1, for which the petitioner

protested and showed copy of order, dt.29.06.2016, passed by this Court in CrI.P.No.9378 of 2016 and requested the 4th respondent to set A.1 free. But, the 4th respondent did not obey the orders of this Court and took the petitioner and A.1 to police station after snatching the petitioner's mobile phone. Petitioner claimed that he informed his counsel at Hyderabad about the incident. Petitioner alleged that the 4th respondent took A.1 to the Magistrate at about 17:45 hours and mechanically the Magistrate remanded him to judicial custody. Although the petitioner requested the Magistrate on 30.07.2016 and filed a Memo informing about the orders of this Court, the Magistrate posted the matter to 08.08.2016 and subsequently, on 11.08.2016, A.1 was released on bail.

3. In the counter-affidavit filed by the 3rd respondent, it is contended that the son of the petitioner, who is A.1 in the above Crime, was absconding and absconding charge sheet was filed on 21.05.2016 before the Additional Judicial Magistrate of First Class, Amalapuram vide S.R.No.4459 of 2015 and that on 16.10.2015, the said charge sheet was returned with an objection that A.1 should be arrested and then only charge sheet should be filed. It is stated that on 10.05.2016, the Magistrate has issued Non-bailable warrant against A.1 vide S.R.No.3337 of 2015. It was denied that the 4th respondent had apprehended A.1 at the Family Court, Amalapuram. It was also denied that the petitioner was made to come along with A.1 to police station and petitioner's phone was snatched. It is stated that the 3rd respondent obtained reliable information about the presence of A.1 at Amalapuram near Black Bridge and arrested him at about 1:00 PM on 29.07.2016. It was stated that as the son of the petitioner admitted his guilt, he was

kept in lockup at about 1:45 pm and later, he was remanded to judicial custody on the same day. It is stated that by an order dated 11.08.2016 in CrI.M.P.No.1022 of 2016 on the file of II Additional Sessions Judge, Kakinada, the petitioner's son was released on bail. It is stated that the petitioner did not disclose about the order passed by this Court in CrI.P.No.9378 of 2016, dt.29.06.2016 and the 3rd respondent was not aware of the said order. It was further stated that the 3rd respondent also did not receive copy of the order passed by the Court in CrI.P.No.9378 of 2016.

4. Counsel for the petitioner and Government Pleader for Home reiterated the submissions made in the respective pleadings by the petitioner and the 3rd respondent. In addition, learned Government Pleader for Home contended that this Court ought not to have entertained the writ petition for the alleged violation of the order passed by this Court under Section 482 Cr.P.C. She further contended that in the absence of knowledge of the order passed by this Court in CrI.P.No.9378 of 2016, dt.29.06.2016, the arrest of son of the petitioner was affected under the circumstances mentioned in the counter.

5. I have noted the submissions of both sides.

6. The order dt.29.06.2016 in CrI.P.No.9378 of 2016 was passed in the presence of Additional Public Prosecutor, representing State of Andhra Pradesh, and a reading of the said order shows that there was no mention about investigation having been completed. This Court directed the Investigating Officer to proceed with the investigation without arresting son of the

petitioner till investigation is completed and charge sheet is filed. Since the order was passed after hearing the counsel for the petitioner therein and Additional Public Prosecutor, representing the State of Andhra Pradesh, the plea of respondents that none of the respondents were aware of the order passed by this Court, cannot be countenanced.

7. It is settled law that notice to counsel is notice to party in view of decisions in **East India Hotels Ltd. vs. Agra Development Authority**¹ and **New Hope Granites vs Shri Lokanath (Karnataka) (DB)**². No party can state that an order passed by a Court, which is known to the Additional Public Prosecutor is not known to him, and can therefore violate the same. If such contention is countenanced, it would have a dangerous consequence and enable gross violation and contempt of orders passed by the Courts.

8. Even the remand report dt.29.07.2016 filed by the 4th respondent mentions that on the date he filed such report, he received the order from this Court. Therefore, the plea taken in the counter-affidavit that by the date of arrest of the son of petitioner, the respondents were not aware of the order passed by this Court in CrI.P.No.9378 of 2016, dt.29.06.2016, cannot be countenanced and has to be taken a false plea.

9. It is also difficult to believe that a person, who obtained an order from the Court, would not mention it before the respondents

¹ (2001) 4 SCC 175

² 1995 CrI. L.J 1545

of that fact, since it is against the normal course of human conduct. Therefore, the said plea also cannot be countenanced.

10. Thus the respondents, who were aware of the order passed by this Court, either on account of such knowledge imputed to them because of the order dt.29.06.2016 in CrI.P.No.9378 of 2016 having been passed in the presence of the Additional Public Prosecutor, representing State of Andhra Pradesh or after receiving the copy of the order (as admitted by the 4th respondent in the remand report filed by him on 29.07.2016) have not thought it fit to obey the order.

11. Though the son of petitioner has been released on 11.08.2016, the very detention of the son of petitioner for the period 29.07.2016 till 11.08.2016 is clearly illegal.

12. Therefore, the Writ Petition is allowed with costs and the action of respondents 1 to 4 in detaining the son of petitioner for the period from 29.07.2016 to 11.08.2016 is declared as illegal, arbitrary and contempt of orders passed by this Court in CrI.P.No.9378 of 2016 on 29.06.2016, and the 1st respondent is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) to petitioner as punitive costs, which shall be recovered from the persons responsible for this act, and suitable disciplinary action should be initiated against the persons found guilty of this act.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.S.RAMACHANDRA RAO, J

SEPTEMBER 06, 2016

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THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO



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Dt: 06.09.2016

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