

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT APPEAL NO.1227 OF 2016

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent Act, is preferred against the orders passed by the learned Single Judge in WP.No.26853 of 2016 dated 06.09.2016.

The respondent-writ petitioner herein filed WP.No.26853 of 2016 to declare the action of the fourth respondent in arresting the petitioner pending investigation in FIR No.14 of 2015 on the file of the Inavalli Police Station, East Godavari District, under Sections 498-A and 313 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 inspite of the direction of this Court in Criminal Petition No.9378 of 2016 dated 29.06.2016 as arbitrary and illegal.

In the order under appeal, the learned Single Judge held that notice to counsel is notice to the party; no respondent 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; such a contention, if accepted, would have dangerous consequences; even the remand report dated 29.07.2016 filed by the Sub-Inspector of Police, Inavalli Police Station, mentions that, on the date he filed the remand report, he had received the order from this Court; the plea taken in the counter affidavit that, by the date of arrest of the son of the petitioner, the respondents were not aware of the order passed by this Court in Criminal Petition No.9378 of 2016 dated 29.06.2016

could not be countenanced, and must be taken as false plea; it was difficult to believe that a person, who obtained an order from the Court, would not mention it before the respondents; and 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 dated 29.06.2016 in Criminal Petition No.9378 of 2016 having been passed, or after receipt of a copy of the order as admitted by the Sub Inspector of Police in the remand report filed by him on 29.06.2016, did not think it fit to obey that order. The Writ Petition was allowed with costs, and the first respondent was directed to pay Rs.50,000/- as punitive costs to be recovered from the persons responsible for the act, with suitable disciplinary action to be initiated against the persons found guilty of the act.

Accused Nos.2 to 7, in Crime No.14 of 2015 of Inavalli Police Station, had earlier filed Criminal Petition No.2675 of 2015 which was disposed of by order dated 06.04.2015 directing the Station House Officer, Inavalli Police Station, not to arrest the petitioners (A-2 to A-7) in Crime No.14 of 2015 till completion of investigation or filing of the report; the son of the petitioner (first accused) filed Criminal Petition No.9378 of 2016 which was disposed of by order dated 29.06.2016 directing the investigating agency to proceed with the investigation but not to arrest the first accused in the crime till the investigation was completed and the charge sheet was filed. The learned Judge made it clear that the petitioner-first accused should appear before the investigating agency as and when required during the course of investigation.

The remand report of the Sub-Inspector of Police, Inavalli Police Station, dated 29.07.2016 records that he took up

investigation and had perused the CD file; he had received the order of the Hon'ble High Court in CrI.MP.No.14 of 2015; the investigation was completed and, *prima facie*, evidence had been secured against A-2 to A-7; later he made sincere efforts to arrest the first accused, but his whereabouts were not known; on completion of investigation charge sheet was filed, but the Court had returned the report with the remarks that A-1 be arrested and produced before the Amalapuram Court; and, on 29.07.2016, he had arrested A-1 and had brought him to Inavalli Police Station at 1.30 pm.

The proceedings of the High Court, referred to in the remand report, is the order passed in Criminal Petition No.2675 of 2015 dated 06.04.2015 whereby the Station House Officer was directed not to arrest A-2 to A-7. The aforesaid observations in the remand report has no relation to the order passed by this Court, subsequently, in Criminal Petition No.9378 of 2015 dated 29.06.2016 directing the first accused not to be arrested. It is not even the petitioner's case that they had communicated the order of this Court to the appellants at any time before 29.07.2016 when A-1 was arrested. Learned Advocate General would also draw our attention to the proceedings of the Additional Judicial First Class Magistrate, Amalapuram dated 29.07.2016 wherein A-1 is said to have admitted that he was not ill-treated by the police; he was examined by the doctor; and, consequently, the first accused was remanded to judicial custody till 12.08.2016. The aforesaid proceedings show that the first accused did not even inform the Magistrate of the fact that he was directed not to be arrested by the

order of this Court in Criminal Petition No.9378 of 2016 dated 29.06.2016.

In their counter affidavit, the respondents have also asserted that they were unaware of the order passed by this Court. The material placed on record shows that the order of this Court, in Criminal Petition No.9378 of 2016 dated 29.06.2016, was intimated to the respondents by registered post only on 19.08.2016 after the petitioner-first accused was released on bail on 12.08.2016. Unless the order in Crl.Petition No.9378 of 2016 dated 29.06.2016 is shown to have been communicated, and material is placed on record to show that the said order of this Court was brought to the notice of the officials concerned, they cannot be held to have intentionally flouted the order of this Court justifying imposition of exemplary and punitive costs of Rs.50,000/-, or for disciplinary action being taken against them.

The order under appeal is, therefore, set aside, and the appeal is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

14th November 2016
RRB