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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1892/2016
TOTA RAM Petitioner
Through Mr Ajay Kumar, Advocate

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through Mr Arun Kumar Sharma, APP for the
State along with Sub Inspector Amrish
Giri, PS IP Estate, Delhi

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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18.05.2016

1. This is a petition under Article 227 of the Constitution of India r/w Section 482 Cr.P.C. moved by the petitioner seeking quashing of the order dated 4th May, 2016 vide which the petitioner was summoned by the learned Additional and Sessions Judge in case FIR No. 427/97 for some clarification.

2. The petition has been filed on the ground that he is neither the accused nor a prosecution witness nor a defence witness and, therefore, his summoning is violative of his fundamental right enshrined under Article 21 of the Constitution of India.

3. Learned Additional Public Prosecutor for the State has placed on record the copy of the order sheet dated 14th May, 2016 which clearly reflects as to why the petitioner was ordered to be summoned. The same is reproduced as under:-

"CA No. 63/15
State Vs. Chhotey Lal

14.05.2016

Present : Sh. Alok Saxena, Id. Addl. PP for the State.
Respondent in person alongwith counsel.

Tota Ram against whom bailable warrant was issued has not appeared though his bailable warrants have been received executed. Rather than, one counsel has appeared on behalf of Tota Ram. He has moved an exemption application on behalf of the applicant Tota Ram stating that Tota Ram is unable to appear due to illness. Alongwith the application, a medical certificate has been attached whereby he was provided two days rest. He argued that Tota Ram had filed the petition in the High Court against his calling in the court.

Record perused. Tota Ram had given the surety of respondent Chhotey Lal. He was asked to appear in the court in order to clarify about his caste as well as caste of respondent. Both Tota Ram and respondent are real cousin brother. He is not summoned as accused, rather than he has been asked to appear in order to make clarification. Instead of appearing, Tota Ram had evaded the services of the summons. Bailable warrants issued on the last date of hearing received unexecuted. Today Bailable warrants have been received executed but he has avoided to appear. His counsel was explained on the last date of hearing about the purpose of appearance of Tota Ram in the court. His counsel has taken the plea that he has moved a petition before the Hon'ble High Court of Delhi against the order passed by this court. However, no adverse order has been passed against Tota Ram by this court. Hence, evading of the summons and warrants issued against him manifest that he is not willing to appear in the court and clarify his position regarding his caste as well as caste of the respondent. The offence for which the respondent was charged before the trial court is that he had obtained the employment in Delhi Police by using the Scheduled Tribe certificate. In these circumstances, bail bond furnished by Tota Ram is forfeited. Bail bond issued by his wife for giving surety is also forfeited.

Issue NBW against Tota Ram which is to be executed by the SHO for 16.5.2016. Warrants of attachment be also issued against Tota Ram and his wife Gaytri.

(Atul Kumar Garg)
ASJ03/(Central)/14.05.2016"

4. Despite the fact that non-bailable warrants were issued against the petitioner for his appearance on 16th May, 2016, the same remained un-executed and now again the same has been ordered to be issued for 20th May, 2016 and direction has also been issued to the concerned department where the petitioner is working to bring his personal file.

5. A bare perusal of the order sheet dated 14th May, 2016 goes to show that the petitioner was asked to appear in the Court only for the purpose of seeking clarification about his caste as well as caste of the respondent. He as well as the respondent are real cousin brothers. Instead of assisting the Court by putting appearance, the petitioner has avoided appearance pursuant to the summons. Even the bailable warrants though executed, he failed to appear, therefore, there was no option left with the Trial Court but to issue non-bailable warrants against him which also he is avoiding. If for the purpose of seeking any clarification, the Court is seeking his appearance, it cannot be said that the same is violative of his fundamental rights enshrined under Article 21 of the Constitution of India. The petition is absolutely bereft of merits and is accordingly dismissed.

6. Counsel for the petitioner undertakes that the petitioner will appear before the Court concerned on 20th May, 2016, the date already fixed.

SUNITA GUPTA, J

MAY 18, 2016/rs