

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.806 AND 837 OF 2017

COMMON ORDER:

Accused Nos.1 and 2 in Crime No.348 of 2011 of Kurnool II Town Police Station are petitioners herein, who laid the instant petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the order, dated 31.10.2016, in Criminal Revision Petition No.25 of 2014, on the file of the IV Additional District and Sessions Judge, Kurnool.

2. Both the petitioners alleged to have committed the offences punishable under Sections 420, 419, 467 and 468 IPC in the aforesaid crime.

3. At the crime stage, the State represented by the Inspector of Police, Kurnool II Town Police Station, Kurnool - Investigating Officer filed Criminal M.P. No.2228 of 2013 in Crime No.348 of 2011 under Section 311-A of the Code before the learned Judicial Magistrate of First Class, Kurnool, requesting to issue summons to the petitioners herein to take their specimen sample signatures and of the *de facto* complainant also before the said Court and to send the same for the opinion of the hand-writing expert, Hyderabad, so as to enable him to verify with the signatures available on original document in order to proceed with further investigation, and the learned Magistrate dismissed the same, by orders, dated 27.03.2014.

4. Aggrieved over the same, the State preferred Criminal Revision No.25 of 2014 before the IV Additional District and Sessions Judge, Kurnool, and the learned Sessions Judge allowed the same on 31.10.2016 reversing the order passed by the learned Magistrate.

5. Challenging the said order passed by the learned Sessions Judge, both the petitioners filed the present petitions.

6. Heard Sri H. Prahalada Reddy, learned counsel for the petitioner in Crl.P. No.806 of 2016; Sri Virupaksha Dattatreya Gouda, learned counsel for the petitioner in Crl.P. No.837 of 2017, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

7. The submission of the learned counsel, Sri H. Prahalada Reddy, is that the petitioners since obtained anticipatory bail, the question of their arrest did not arise and, therefore, the mandatory requirement of proviso to Section 311-A of the Code is not satisfied, and the order of the revisional Court acceding to the request of the Investigating Officer is, therefore, liable to be set aside. Whereas, the submission of the learned counsel, Sri Virupaksha Dattatreya Gouda, is, that the very exercise of power by the revisional Court under Section 397 of the Code is illegal as a bar is inlaid to exercise such power, where an interlocutory order is passed to challenge it. The other submission has been that since there was no arrest as such, the

proviso to Section 311-A of the Code remains unsatisfied, and, therefore, the revisional Court committed an illegality and sought to set aside the order questioned herein.

8. The learned Additional Public Prosecutor places reliance in **Vijay Munjal v. State of Haryana and another**¹. In an alike situation, a Single Judge of High Court of Punjab and Haryana at Chandigarh expressed that surrendering before the learned Magistrate in a non-bailable offence and then releasing on bail by the Court, amounts to be arrested in connection with proceedings. In the present case also, the order passed by the learned Sessions Judge cannot be faulted. It is no doubt true, the petitioners have obtained anticipatory bail, but the expression 'in the event of their arrest' is sufficient enough to arrive at the conclusion that it satisfies the invariable ingredient of Section 311-A of the Code. The learned Sessions Judge has elaborated it.

9. Concerning the second submission, the submission of the learned counsel in the latter petition is that there has been illegal exercise of power by the learned revisional court; the revisional Court has discussed the same in paragraph No.4. Even otherwise, the order passed by the learned Magistrate in rejecting the request of the State suffers from patent illegality as the learned Magistrate has not properly construed and comprehended the provisions of Section 311-

¹. 2016 SCC Online P&H 4539

A of the Code, more particularly, the proviso annexed thereto. Since this Court is exercising power under Section 482 of the Code and it is well-settled that power under Section 482 of the Code can be exercised in meeting the ends of justice, there is no merit in the present petitions.

Accordingly, both the Criminal Petitions are dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petitions, stand closed.

A. SHANKAR NARAYANA, J

March 28, 2017.
Mgr

