

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.2350 of 2017

ORDER:

This revision case is filed under Sections 397 and 401 of Cr.P.C questioning the propriety, legality and regularity of the order, dated 18.08.2017 in C.C.No.142 of 2016 passed by the Principal Junior Civil Judge, Kovvur.

The order passed by the Court below is as under:

“Dated 10.08.2017: Complainant and A1, A4 are present. A1, A3, A5, A6 absent. Petition filed. Allowed. Await summons on A2, A7. The complainant filed memo by stating that A2, A7 are intentionally avoiding to receive summons by managing. Perused the memo, Heard the complainant. Hence, issue NBW against A2, A7 on payment of process. Call on 24.08.2017.”

Now the contention in this revision is that the summons ordered to the petitioners were not served, but basing on the memo filed by the complainant that these petitioners are evading to receive summons, the Court below issued NBWs against A2 and A7 on payment of process and posted the matter to 24.08.2017. It is the contention of the petitioners that the complaint was filed before the Court below for the offence punishable under Section 500 of IPC for defamation and it is to be tried under summary procedure. In such a case, the Court below cannot issue NBWs against the petitioners directly.

The 2nd respondent admittedly filed a private complaint under Section 200 of Cr.P.C for the offence punishable under Section 500 of IPC. for defamation and issued process exercising power under Section 204 of Cr.P.C. initially. But the summons were not served on the petitioners/A2 and A7 in the said complaint. However, the complainant filed a memo informing the Court below that the petitioners/A2 and A7 are evading to receive summons. Thereafter, the Court below after satisfying itself and on perusing the memo satisfied that the petitioners are evading summons, issued NBWs.

On perusal of Section 204 Cr.P.C., it is evident that summons shall be issued for attendance of the accused and in warrant cases, he may, issue warrant or if he thinks fit, a summons, for causing the accused to be brought or to appear at certain time before the Magistrate having jurisdiction. But no summons or warrant shall be issued against the accused, until list of prosecution witnesses have been filed.

In the present case, the complaint was triable only under summons procedure as it is an offence punishable under Section 500 of IPC. Therefore, issuing NBWs straight away is contravention of Section 204 Cr.P.C. But when the Court below satisfied that the petitioners are evading to receive summons, the Court may exercise its power to compel them to appear before the Court on the day fixed by it. However, the remedy is left open to the petitioners to file petition before the Court below to recall NBWs issued against them. But, the petitioners without approaching the Court below straight away approached this Court under Section 397 and 401 of Cr.P.C. Therefore, in view of the satisfaction recorded by the Court below, I find no ground to interfere with the order passed by it. However, liberty is given to the petitioners to file appropriate application under Section 70(2) of Cr.P.C. to recall NBWs directed against them before the Court below. In any event, on filing such application, on their appearance, the Court below is directed to dispose of the said application on the same day, in accordance with law.

With the above direction, the criminal revision case is disposed of.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 23.08.2017

Note: Issue c.c. tomorrow

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