

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2338 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the docket order, dated 31.08.2016, in P.R.C. No.36 of 2016, on the file of the Special Judge, SC/ST Court, Kurnool, Andhra Pradesh, to the extent of "issue NBW against the accused 1 to 6" is concerned.

2. The petitioners are arraigned as accused Nos.1 to 6 in the aforesaid case. They alleged to have committed the offences punishable under Sections 427 and 506 read with 34 of Indian Penal Code, 1860 (for short 'IPC') and Section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Heard Sri P. Nagendra Reddy, learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel's main submission is that without issuing summons in the first instance, the learned Sessions Judge ought not to have issued Non-bailable Warrants, and in support thereof, he places reliance in **Inder Mohan Goswami and another v. State of Uttaranchal and others**¹, rendered by the Hon'ble Supreme

¹. (2007) 12 SCC 1

Court and **U. Lakshumaiah v. State of Andhra Pradesh and another**², rendered by a learned Hon'ble Single Judge of this Court.

5. The learned Additional Public Prosecutor would strongly resist the request.

6. In **U. Lakshumaiah** (Supra 2), the fact-situation is altogether different from the one occurring in the instant case. In the said case, when a final report requesting to close the crime was filed by the Investigating Officer, a protest petition was filed which having been entertained, the Committal Court instead of issuing either summons or bailable warrants, issued Non-bailable Warrants. In the present case, it is not so. When the charge sheet is filed, the Investigating Officer has specifically mentioned in the penultimate paragraph that, though, sincere efforts were made to trace out the petitioners herein, the petitioners were still absconding since the date of offences and, therefore, requested the learned Sessions Judge to issue Non-bailable Warrants against the petitioners, as all efforts made by him for apprehension of the petitioners went in vain.

7. In **Inder Mohan Goswami** (Supra 1), the Hon'ble Supreme Court, in the context of exercise of powers under Section 482 of the Code, held that the powers are wide and the very plenitude of the power requires great caution in its exercise, and the Court must be careful to see that its decision in exercise of the said power is based on

². Crl.P. No.7560 of 2014, dated 15.07.2014

sound principles. The learned counsel relies on the observations of the Hon'ble Supreme Court contained in paragraph No.55, wherein it was held that the Court should direct serving of the summons along with the copy of the complaint, in complaint cases, at the first instance; and if the accused seem to be avoiding the summons, the Court, in the second instance, should issue bailable warrant; and in the third instance, when the Court is fully satisfied that the accused is avoiding the Court's proceeding intentionally, the process of issuance of the Non-bailable Warrant should be resorted to, as personal liberty is paramount, and thereby cautioned the Courts at the first and second instance to refrain from issuing Non-bailable warrants.

8. In the present case, it is not as though that the petitioners having obtained a regular bail or anticipatory bail and were directed by the learned Court below to appear on receipt of a summons after the charge sheet was filed. Right from the beginning, the petitioners appear to have avoided arrest and only when the charge sheet was filed and when Non-bailable Warrants were issued and when the Police have been making efforts to arrest them, they appear to have rushed to this Court challenging a portion of the order. There is absolutely no illegality or error in the order passed by the learned Sessions Judge in issuing Non-bailable Warrants, when kept in view, the fact-situation occurring herein. Therefore, there is no merit in the present petition.

The present Criminal Petition is, accordingly, dismissed. However, the petitioners are directed to approach the learned Sessions Judge and avail the remedies in accordance with law. As a sequel thereto, miscellaneous petitions, if any, pending in the petition stand closed.

A. SHANKAR NARAYANA, J

April 12, 2017.
Mgr

