

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.8489 of 2017

ORDER:

This Writ Petition is filed challenging the issuance of a second notice under Section 91 Cr.P.C on 07.03.2017 after issuing the earlier notice under the same Section on 24.06.2013. Challenging the notice dated 24.06.2013 the petitioner filed W.P.No.4094 of 2014, and this Court, after considering the rival contentions, by an elaborate order disposed of the said Writ Petition with the following observations:

“10. A reading of Section 91 Cr.P.C., shows that any document or thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is necessary or desirable for the purpose of investigation, inquiry, trial or other proceeding under the Code. If the document/thing is found to be necessary and desirable for the purpose of proceeding further with the investigation, the Police Officer can summon production of the document as may be necessary in any of the circumstances mentioned in the section. Therefore, the preliminary objection taken with regard to the very issue of summons, cannot be accepted for the reason that during the course of investigation, it was found that certain gold ornaments, which were the subject of Cr.No.101 of 2013, are being mortgaged with the petitioner-firm. Therefore, those articles are very much necessary for the purpose of proceeding further with the investigation. Since the same are essential, Police issued notice under Section 91 Cr.P.C., for production of the gold ornaments that were pledged by the accused. Though the gold ornaments are liable to be seized in the crime, but, that, by itself, does not mean that Police can do so under the guise of this notice. A plain reading of the provision under Section 91 Cr.P.C., clearly shows that it is intended only for production of any document or thing, which is necessary for the purpose of any investigation, inquiry, trial or other proceeding at the time and place stated in the summons or order. Therefore, the question of seizure of the gold ornaments may not arise at this stage. But, however, at the same time, it cannot be

said that the Police have no power to seize the gold ornaments under the provisions of the Code, since the same is subject matter of the crime in question. The Police have to adopt a different procedure altogether for effecting seizure of the gold ornaments, if they feel that the same are required.

11. Having regard to the above and in view of the fact that the gold ornaments have already been produced before the Police, the very issuance of notice for production of gold ornaments cannot be found fault with. It is always open to the respondents-Police to continue the investigation and if they feel that custody/seizure of the gold ornaments are essential, they may do so in accordance with the provisions of Cr.P.C.”

Now again when the notice is issued, the present Writ Petition is filed.

Learned Counsel for the petitioner submits that the petitioner has already produced the gold ornaments pursuant to the earlier notice and the said ornaments were identified and an inventory was also made. The petitioner apprehends that by production of the gold ornaments once again pursuant to the notice dated 07.03.2017, the Police may seize the ornaments.

As could be seen from the above observations of this Court, this Court already observed that the Police have to adopt a different procedure for effecting seizure of the gold ornaments, if they feel that the same are required, but they cannot do so by exercising power under Section 91 Cr.P.C. Since the present notice is only the notice under Section 91 Cr.P.C., in view of the observation made by this Court earlier, the apprehension of the petitioner has no basis, and if the third respondent wants to take any further action, he has to take further action only in accordance with law.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

10.03.2017

vs

