

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal Nos.231 and 232 of 2017

COMMON JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

W.A.Nos.231 and 232 of 2017 are filed by the 3rd respondent in W.P.Nos.44395 and 41802 of 2016 aggrieved by the order passed by the Learned Single Judge granting stay of arrest of the 1st respondent in both the appeals. Heard Sri Vinod Kumar Deshpande, learned Senior Counsel appearing on behalf of the appellant, Sri C.V.Mohan Reddy, learned Senior Counsel appearing on behalf of the 1st respondent in W.A.No.231 of 2017, and Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the 1st respondent in W.A.No.232 of 2017.

It is convenient to refer to the events which led to the filing of W.A.No.232 of 2017, in as much as the order passed in W.P.No.41802 of 2016, which is subject matter of challenge in this appeal, was the first of the two orders passed by the Learned Single Judge. The appellant-3rd respondent filed a complaint before the Nagarampalem Police Station, Guntur Urban, which was registered as F.I.R.No.281 of 2016 dated 11.09.2016. The complaint refers to an incident which is said to have taken place five days prior thereto on 06.09.2016 between 11:00 to 11:30 pm. Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the 1st respondent, has read out the complaint in its entirety, and has relied on the judgment of the Supreme Court in ***Indian Oil CORPN. vs. NEPC India LTD¹***, to contend that a civil dispute between the parties was given the colour of a criminal complaint, only to recover the amounts which the

¹ (2006) 6 SCC 736

complainant claims to be due to him from the 1st respondent-writ petitioners. It is unnecessary for us to refer to the contents of the complaint in this order, as it would be wholly inappropriate for us to express any opinion in this regard, as the writ petitions, filed by the 1st respondents in both these appeals, are pending admission before the Learned Single Judge.

Though the complaint was registered on 11.09.2016, no action appears to have been taken by the concerned police officials against the 1st respondent-writ petitioners, and it is only two months thereafter that both of them moved an application before this Court seeking anticipatory bail. The application seeking anticipatory bail, in Criminal Petition No.16123 of 2016, was dismissed by this Court, by its order dated 25.11.2016, holding that having regard to the nature of allegations, and to unearth the true facts, custodial interrogation was required; and he was not inclined to grant anticipatory bail to the 1st respondent-writ petitioners. The Learned Single Judge, however, observed that, since cash transactions of Rs.14.00 crores had taken place between the 1st respondent-writ petitioners and the appellant-complainant, a copy of the order should be sent to the Income Tax Department to look into whether the transactions between them were legal or not. While Criminal Petition No.16123 of 2016 was filed on behalf of both the 1st respondents in these two appeals, it is the 1st respondent in W.A.No.232 of 2017 who first filed W.P. No.41802 of 2016 before this Court.

Sri Vinod Kumar Deshpande, learned Senior Counsel appearing on behalf of the appellant, would submit that a caveat was filed on behalf of the appellant on 28.11.2016; the caveator-appellant's name was reflected in the cause list on 01.12.2016; he had appeared before the Learned Single Judge on behalf of Sri G.R.Sudhakar, learned

counsel for the caveator-appellant; he had put forth elaborate submissions including that the affidavit, filed in support of W.P.No.41802 of 2016, did not disclose the 1st respondent-writ petitioner having filed Criminal Petition No.16123 of 2016 seeking grant of anticipatory bail or of its dismissal on 25.11.2016, despite which the matter was posted after two weeks and the Inspector of Police was directed not to arrest the 1st respondent-writ petitioner till then; as these facts were suppressed, the writ petition ought to have been dismissed at the threshold; the Learned Single Judge was not justified in entertaining the writ petition; and, since W.P. No.44395 of 2016 was directed to be tagged along with W.P. No.41802 of 2016, the appellant had to also question the said order of the Learned Single Judge in proceedings under Clause 15 of the Letters Patent. Learned Senior Counsel would rely on ***The State of Telangana v. Habib Abdullah Jeelani***²; ***K.D.Sharma v. SAIL***³ and ***A.Shanmugam v. Ariya Kshatriay Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam***⁴.

On the other hand Sri Vedula Venkata Ramamna, Learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner, would contend that it is only suppression of material facts which would justify refusal by this Court to entertain the writ petition; W.P. No.411802 of 2016 was filed to quash F.I.R.No.281 of 2016; this Writ Petition is independent of the petition seeking anticipatory bail; failure to refer to the dismissal of Criminal Petition, in the Writ affidavit, is of no consequence; neither would it necessitate dismissal of the writ petition at the threshold nor can the 1st respondent-writ petitioner be said to have suppressed material facts from this Court; proceedings, either

² Judgment in Criminal Appeal No.1144 of 2016

³ (2008)12 SCC 481

⁴ (2012)6 SCC 430

under Article 226 of the Constitution of India or under Section 482 Cr.P.C, can be invoked to quash a criminal complaint whereunder a purely civil proceeding has been given the colour of a criminal offence only to extract money from the 1st respondent-writ petitioners; and the Supreme Court has repeatedly cautioned against such frivolous criminal complaints being entertained. Learned Senior Counsel would rely on **S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar**⁵; and **Indian Oil CORPN.**¹ in this regard.

Sri C.V.Mohan Reddy, learned Senior Counsel appearing on behalf of the 1st respondent (writ petitioner) in W.A.No.231 of 2017 would draw our attention to the affidavit filed in support of W.P.No.44395 of 2016, wherein the petitioner has asserted that, apprehending arrest, he had moved an anticipatory bail application before the High Court and the same was dismissed. Learned Senior Counsel would submit that the 1st respondent-writ petitioner had not suppressed the fact of his having filed a petition seeking anticipatory bail and the same was dismissed; unlike in W.P.No.41802 of 2016, the appellant has neither filed his counter affidavit in W.P.No.44395 of 2016, nor a petition seeking vacation of the interim order; there was no justification, therefore, for him to invoke the jurisdiction of this Court under Clause 15 of the Letters Patent; except, under extraordinary circumstances, an appeal under Clause 15 of the Letters Patent is not maintainable against an interlocutory order; and at the stage of admission of the writ petition, while passing an *ex-parte ad* interim order, a superior Court, unlike a Court of limited jurisdiction, is not required to assign any reasons.

On the preliminary objection to the maintainability of an appeal, under Clause 15 of the Letters Patent, against an interlocutory order, a

⁵ (2004)7 SCC 166

Division Bench of this Court, in W.A.No.1080 of 2016 and W.P.No.27840 of 2016 dated 27.10.2016, following the judgments of the Supreme Court in **Shah Babulal Khimji v. Jayaben D.Kania**⁶, and **Midnapore Peoples Co-op. Bank Limited v. Chunilal Nanda**⁷, the judgment of a Division Bench of the Madras High Court in **Union of India v. Government of Tamilnadu**⁸, and the judgment of the Division bench of the Jharkhand High Court in **Bharat Cooking Coal Limited vs. Dev PL(JV), Dhanbad**⁹, held that interlocutory orders, which cause gross injustice to a party and deprive him of a valuable right, should be treated as a judgment within the meaning of Clause 15 of the Letters Patent; even if an order does not finally decide an issue, but materially and directly affects the appellant, it can be regarded as a judgment under Clause 15 of the Letters Patent; and a decision on matters of moment, which affect vital and valuable rights of the parties and which work serious injustice to the party concerned, can always be questioned in proceedings under Clause 15 of the Letters Patent. We see no reason, therefore, to non-suit the appellant on this ground

There is no reference in the affidavit, filed in support of W.P. No.41802 of 2016, either to the petitioner having sought anticipatory bail by way of Criminal Petition No.16123 of 2016 or of its dismissal on 25.11.2016. It is also not in dispute that, even when W.P.No.44395 of 2016 came up for admission, a set of papers was served on Sri G.R.Sudhakar, learned counsel for the appellant-3rd respondent; and Sri Vinod Kumar Deshpande, learned Senior Counsel, had appeared on his behalf, and had put forth his submissions. In the order under appeal the Learned Single Judge, while directing that the matter

⁶ AIR 1981 SC 1786

⁷ (2006)5 SCC 399

⁸ 2013 Indlaw MAD 832

⁹ 2014 Indlaw JHKD 294

(W.P.No.44395 of 2016) be listed along with W.P.No.41802 of 2016 on 04.01.2017, directed that, till then, the police concerned should not arrest the petitioner.

In W.P.No.41802 of 2016 the appellant was on caveat. It is not in dispute that a Senior Counsel had appeared on his behalf, and had put forth submissions including on suppression of the material fact of the anticipatory bail application filed by the petitioner having been dismissed less than a week prior thereto on 25.11.2016. None of the contentions, urged by the learned Senior Counsel, are even referred to, much less dealt with, in the order under appeal. While we may not be understood to have held that in every case, where an *ex parte ad interim* order is passed, this Court should record reasons, we are satisfied that, in cases such as the present where a party is on caveat and the Counsel appearing on his behalf has put forth elaborate submissions including on suppression of material facts, the order should contain reasons atleast to disclose the satisfaction of the Learned Judge that an interim order should, notwithstanding such submissions, be passed.

The order under appeal is a mere direction to the police officials not to arrest the 1st respondent-writ petitioners. While we find considerable force in the submission of Sri Vinod Kumar Deshpande, learned Senior Counsel appearing on behalf of the appellant, that the discretion conferred on the Investigating Officer under Section 41 Cr.P.C cannot be negated, that too by an *ex parte ad interim* order passed in the exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of India except in exceptional circumstances where a clear case necessitating interference is made out, we do not wish to express any opinion on any of the contentions, urged by learned Senior Counsel on either side in the present appeals, as these are all

matters which the Learned Single Judge is required to consider in deciding whether or not an interim order should be passed at the stage of admission of the writ petitions. We have, therefore, refrained from expressing any opinion on the rival submissions on merits, including on the question whether the writ petitions should be summarily dismissed for suppression of relevant facts. Suffice it to hold that matters such as these, where a party is on caveat, he is represented by counsel even at the stage of admission, and elaborate submissions are made including on the question whether the Writ Petitions should be summarily dismissed for suppression of material facts, this Court should indicate, *albeit* in brief, the reasons which weighed with it in granting the interim relief sought for.

On the short ground that the orders under appeal, directing the police officials not to arrest the 1st respondent-writ petitioners, do not reflect the reasons which weighed with the Learned Single Judge in granting such interim relief, the orders under appeal are set aside. As the writ petitions have not as yet been admitted, the Learned Single Judge shall consider the 1st respondent-writ petitioners' request for grant of interim orders in accordance with law, after affording all the parties to the proceedings a reasonable opportunity of being heard.

Both the Writ Appeals are disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

01st March, 2017
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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER**



Writ Appeal Nos.231 and 232 of 2017

Date: 01.03.2017