

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.90 of 2017

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

Heard Sri B. Srinivas Rao, learned counsel for the appellant (3rd respondent in the writ petition), Sri G. Vasantha Rayudu, learned counsel for the respondents-writ petitioners, and the learned Government Pleader for Home and, with their consent, this appeal is disposed of at the stage of admission.

2. The respondents-writ petitioners filed W.P.No.42722 of 2016, under Article 226 of the Constitution of India, to declare the action of respondents, in instituting proceedings against the petitioner under false complaint in Cr.No.264 of 2014 of Madhira Town Police Station, as arbitrary and illegal. In the order under appeal, the learned single Judge noted that the petitioners were bank officials; in the affidavit, filed in support of the petition, it is stated that the 3rd respondent, along with the partners of Pavan Sai Cold Storage, Madhira, had availed loans, had defaulted in repayment, and had cheated the bank by playing fraud; thereupon, the bank had filed a complaint against them vide Cr.No.367 of 2014 under Sections 420 and 409 IPC; the present complaint was lodged by the 3rd respondent against the partner of the Cold Storage and bank officials; and though the names of the petitioners were not shown in the said crime, the 2nd respondent was harassing them at the instance of the 3rd respondent. The learned single Judge held that, considering the facts and circumstances of the

case, and as the petitioners were bank officials, the second respondent should complete investigation in Cr.No.264 of 2014 without arresting the petitioners, and should file a charge sheet. The petitioners were directed to execute personal bonds of Rs.5,000/- each with one surety to the satisfaction of the 2nd respondent as surety for their future appearance for the purpose of investigation.

3. Sri B. Srinivas Rao, learned counsel for the petitioner, would submit, not without justification, that, though the appellant was arrayed as the 3rd respondent in the writ petition, the writ petition was disposed of without even putting them on notice and without their being given an opportunity of being heard. Learned counsel would submit that, in proceedings under Article 226 of the Constitution of India, this Court would ordinarily not grant anticipatory bail; the petitioners' application for grant of anticipatory bail had already been rejected earlier; the respondents-writ petitioners had played fraud on the bank, and they were sought to be proceeded against; and, in the light of the serious offences committed by them, granting them anticipatory bail was without any justification whatsoever. Learned counsel would rely on *The State of Telangana v. Habib Abdullah Jeelani & ors* (judgment of the Supreme Court in Criminal Appeal No.1144 of 2016) dated 06.01.2017) in this regard.

4. While Sri G. Vasantha Reddy, learned counsel for the respondents-writ petitioners, would contend that none of the contentions now urged before this Court, on behalf of the appellant, were raised before the learned single Judge, the fact remains that the appellant was not even put on notice of the writ petition having been filed, and could not, therefore, place these facts before the learned single Judge.

5. We are satisfied that the order under appeal must be set aside on the short ground that the writ petition was disposed of without putting the appellant-3rd respondent on notice, and without giving him an opportunity of being heard. The order under appeal is set aside, and the writ petition is restored to file. The appellant herein shall file his counter-affidavit, in the writ petition, within 10 days from today. It is open to the respondents-writ petitioners to request the learned single Judge to take up the writ petition for admission, and for grant of interim relief, any time after 10 days from today.

6. The Writ Appeal is disposed of accordingly. No order as to costs.

7. As a sequel, miscellaneous petitions if any pending in the writ appeal stand closed.



RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

January 18, 2017
MRR