

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10136 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings passed by the Judicial First Class Magistrate, Peddapuram in P.R.C.No.16 of 2017 dated 28.08.2017, taking cognizance against the petitioners for the offences punishable under Sections 498(A), 313, 506 r/w 34 IPC and Sections 3 & 4 of Dowry Prohibition Act, 1961 and issued NBWs instead of issuing summons.

The order passed by the Judicial First Class Magistrate, Peddapuram, is as follows:

“After transfer of LW-13, LW-14 took up further course of investigation, obtained marriage certificate and marriage photographs from LW-1 and caused enquiries about A-1 to A-4 but they did not trace. In this case ample evidence has been secured A-1 to A-4.

As there is no chance to trace A-1 to A-4 near in future, LW-14 has prepared charge sheet against A-1 to A-4 as they absconding since the commission of the offence and there is no possibility to trace them in Mega Hyderabad City as they voluntarily changing their residential address from time to time in Hyderabad City.

Therefore, the A-1 to A-4 noted in the margin are liable for punishment 498(A), 313, 506 r/w 34 IPC and Sections 3 & 4 of Dowry Prohibition Act, 1961 in the manner stated above.

Hence, the charge.”

The main challenge to the order is that, when cognizance is taken against the accused for various offences referred supra, the Court below has to issue summons. But, instead of issuing summons, the Court below issued NBWs, which is contrary to the law laid down by the Supreme Court in **Inder Mohan Goswami v.**

State of Uttaranchal¹, wherein, the Apex Court held that issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. Learned counsel for the petitioner also relied on unreported judgments of this Court in **Nyalakanti Veeramallu & Others v. State of Andhra Pradesh²** **And Kanuboyina Laxmi Venkata Ratnam v. State of Andhra Pradesh³**.

Learned Public Prosecutor for the State of Andhra Pradesh requested this Court to pass appropriate orders, basing on the law declared by the Apex Court and this Courts in the judgments mentioned supra.

Undisputedly, the Judicial First Class Magistrate, Peddapuram, took cognizance of the offences mentioned supra and issued NBWs instead of issuing summons.

In **Inder Mohan Goswami¹** case, the Supreme Court considered the discretionary power of the Court to issue either summons or NBWs and held in paragraph 56 as follows:

“The power being discretionary must be exercised judiciously with extreme care and caution. The Court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non- bailable warrants should be avoided.”

Therefore, following the procedure laid down by the Supreme Court and this Court, the order passed by the Judicial First Class

¹ (2007) 12 SCC 1

² CrI.P No.8447 of 2012 dated 29.11.2012

³ CrI.P.No.7995 of 2013 dated 16.08.2013

Magistrate, Peddapuram in P.R.C.No.16 of 2017 dated 28.08.2017 issuing NBWs against the petitioners is not proper exercise of discretion that vested on him and the same is hereby set-aside, treating the same as summons. The petitioners are directed to appear before the Court below, on the date fixed by the Court below.

With the above direction, the criminal petition is disposed of.

Consequently, miscellaneous petitions pending if any, shall also stand closed.

Date:07.11.2017

SP

JUSTICE M. SATYANARAYANA MURTHY

