

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.9715 & 13383 OF 2018

COMMON ORDER:

Since the issue involved in both these Writ Petitions is one and the same, they are being heard together and disposed of by way of this Common Order.

W.P.No.9715 OF 2018

Aggrieved by the action of the respondents in not producing the husband of the petitioner by name G.Ramanatha Reddy @ Vinjamuru Ramanatha Reddy, who is shown as accused in various crimes before the Jurisdictional Magistrate by obtaining necessary Prisoner in Transit (P.T) Warrants for his production, this Writ Petition is filed.

2. Brief facts which are necessary for disposal of the Writ Petition are as follows:

It is the case of the petitioner that her husband by name G.Ramanatha Reddy @ Vinjamuru Ramanatha Reddy had surrendered before the Judicial First Class Magistrate (JFCM), Badvel on 02.11.2017 in Cr.Nos.61/2017 of B.Kodur P.S., 66 of 2017 of B.Mattam P.S, 123/2017 of Kalasapadu P.S, 168/2017 of Porumamilla P.S and 96/2017 of B.Koduru P.S and was sent for judicial remand and was lodged at Sub-Jail, Badvel, Y.S.R.Kadapa District; that on 29.12.2017, the Collector and District Magistrate, Y.S.R.Kadapa District

passed Preventive Detention orders under Art 1/86 vide Ref.C1/667/M/2017 basing on subjective satisfaction of registration of 21 crimes against him and the same was executed against him on 30.12.2017 and since then he lodged at Central Prison, Kadapa, without there being execution of P.T warrants in 16 crimes out of 21 crimes and that apart out of 16 crimes, 10 more crimes were registered against him basing on his own confession, while he is in judicial custody; that he was granted police custody on 10.11.2017 to 12.11.2017 in Cr.No.61/2017 of B.Kodur PS and that there are as many as in 26 crimes, execution of P.T warrants are pending. Though the husband of the petitioner granted bail in Cr.Nos.61/2017 of B.Kodur Police Station., Cr.No.66/2017 of B.Mattam P.S., 123/2017 of Kalasapadu P.S., 168/2017 of Porumamilla P.S., and 96 of 2017 of B.Koduru P.S, he was not enlarged on bail and continued to be in detention under preventive detention order; that the petitioner made representation dated 22.02.2018 to the respondents 2 and 3 stating that the respondents 4 to 17 are not executing PT warrants against her husband; that she also made representation to the respondents 4 to 17. The petitioner also made representation before the Chairman, District Legal Services Authority, Kadapa, A.P, but no action is initiated by the said authority; that previously petitioner filed W.P.No.36650 of 2016, which was disposed of on

04.11.2016 directing the respondents to produce the husband of the petitioner therein on P.T warrant if any crimes are pending against him, and complete the investigation as expeditiously as possible, but the respondents herein are continuing their high handed action by not filing P.T warrants in spite of having knowledge that her husband is in jail; that the Police of Y.S.R. District, Kadapa with a malafide intention, have registered false cases against her husband while in judicial custody and are not filing P.T warrants. Aggrieved by the action of the respondents, present Writ Petition is filed.

3. Counter affidavit is filed on behalf of the respondents denying the averments in the affidavit filed in support of the Writ Petition stating that there are 26 crimes as mentioned in the affidavit are registered against the husband of the petitioner; that W.P.No.36650 of 2016 is filed by one Shaik Meera, W/o.Shaik Darbar Basha, but not by the petitioner as stated in the affidavit; that the husband of the petitioner by name G.Ramanadha Reddy @ Vinjamuru Ramanadha Reddy surrendered before the JFCM Court, Badvel on 02.11.2017 in connection with four crimes registered against him and he was sent to judicial remand on 02.11.2017; that he was taken into custody on 10.11.2017 in Cr.No.61/2017 of B.Kodur Police Station; that during interrogation he confessed about his mutual involvement in the red sanders

smuggling cases along with his associates, 07 Red Sanders logs along with Maruthi Swift Car bearing Reg.No.AP 30P 3669 were seized on 12.11.2017 and later he was sent to judicial custody. By invoking the provisions of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act of 1986') the District Collector, Kadapa, issued orders vide C1/148/M/2015, dated 06.04.2015 against the husband of the petitioner. Aggrieved by the same, petitioner filed W.P.No.14680 of 2015 and ultimately, the husband of the petitioner was released from the jail on 17.10.2015. After release from the jail, the husband of the petitioner involved in number of criminal offences and looted rare, endemic and endangered precious national wealth i.e., Red Sanders for his wrongful gain; that the husband of the petitioner is responsible for destruction of valuable government property i.e., Red Sanders Wood; that the smuggled Red sanders wood are being illegally transported to other States like Tamilnadu, Delhi, Karnataka and from there to the foreign countries like Dubai, China etc., which is an anti national activity, against the interest of the nation and that he is key aide to the International Red Sanders Smuggler Sahul Bhai of Dubai, U.A.E; that on the proposals of Superintendent of Police, Y.S.R Kadapa District, the District Collector, YSR Kadapa

invoked the provisions of the Act of 1986 and issued proceedings No.C1/667/M/2017, dated 30.12.2017 against the husband of the petitioner and since then he is in Central Prison, Kadapa on the proposal of the Superintendent of Police, YSR Kadapa District (sponsoring authority) and the District Collector, YSR Kadapa District, (detailing authority), taking into consideration of registration of 26 crimes against him after his release of earlier detention order, again detained him under the Act of 1986; that since the husband of the petitioner involved in as many as 57 cases in total of Kadapa, Chittoor, Kurnool and Nellore District, PT warrants under Section 267 Cr.P.C were not executed; that as and when investigation is completed in respective cases and the presence of accused is required, police are producing the petitioner's husband in the respective courts through PT warrant and recently P.T warrant was executed against the detenu in Cr.No.51/2017 of Chakrayapet P.S on 26.03.2018; that the petitioner has not made out any specific case that the police has failed to file a petition under Section 267 Cr.P.C seeking the presence of the husband of the petitioner before the concerned jurisdictional Court and sought for dismissal of the Writ Petition.

4. W.P.No.13383 of 2018:

It is the case of the petitioner that her husband namely Guduru Chinnakan Sunil @ Guduru Abdul Rasool @

Bhai @ Arcot Bhai @ Sunil, was arrested on 31.10.2017 in connection with Cr.No.414/2017 of Railway Kodur P.S., and was produced before JFCM, Railway Kodur and was sent to judicial remand. Subsequently, on 27.12.2017, the SI of Police Chitvel P.S produced her husband through P.T Warrant in connection with Cr.No.148/2017 of Chitvel P.S before the Magistrate. After his remand in the aforesaid case, the Police of Railway Kodur once again produced her husband through PT warrant before JFCM, Railway Kodur on 01.02.2018 in connection Crime No.378/2017, of Railway Kodur P.S; that as many as 19 crimes are registered against her husband and his arrest and remand through PT warrant are shown only in three crimes, till date; that the Collector and District Magistrate, YSR Kadapa District passed Preventive Detention Orders under Act 1/1986 vide Ref.No.C1/74/M/2018, dated 21.02.2018 and same was executed against him and since then he is now lodged at Central Prison, Kadapa; that the 19 crimes which are registered against her husband are all false cases and that he was not involved in the said crimes; that the husband of the petitioner was not enlarged on bail and he continued to be in jail/detention and the respondent authorities failed to file requisitions for execution of PT warrants in connection with the crimes registered against the husband of the petitioner.

Aggrieved by the action of the respondents, present Writ Petition is filed.

5. Heard learned counsel for the petitioners in both the Writ Petitions and learned Government Pleader for Home appearing for respondents-Police.

6. Learned counsel for the petitioners submit that since the respondents 4 to 17-police in WP No.9715 of 2018 and respondents 4 to 13-police in WP No.13383 of 2018 knew that several criminal cases are registered against the husbands of the petitioner, they are duty bound to obtain PT warrants in respect of cases registered against them as envisaged under Section 267 Cr.P.C and instead of doing so, they are obtaining PT warrants, as and when petitioners' husbands are being released on bail in one offence one after the other in order to deny them bail and also to deny the benefit of set off against sentence of imprisonment in case if they ended in conviction, as envisaged under Section 428 of Cr.P.C. In support of her contention, she relied on the order of this Court dated 04.11.2016 in WP No.36650 of 2016 and judgment reported in the case of **P.Navaneetha Krishnan v. The Commissioner of Police, Greater Chennai, Egmore, Chennai & others**¹.

7. On the other hand, learned Government Pleader for Home, while reiterating the averments in the counter

¹ 2008 (1) MWN (Cr.) 165 (DB).

affidavit, submits that the police may exercise the power under Section 267 Cr.P.C for production of accused, who were confined or detained whenever required for producing them before the Court and that the said provision does not provide any right to husbands of the petitioners to seeking their production before the Magistrate. She submits that as and when investigation is completed in respect of cases registered against them and the presence of accused is required, they are producing them in the respective Courts through PT warrant. She further submits that Section 267 of Cr.P.C cannot be pressed into service during the course of investigation of cases, which are registered against the husbands of the petitioners. She also submits that the order in WP No.36650 of 2016 relied on by the learned counsel for the petitioner is general in nature and that no principle of law is laid down in the said judgment, as such, the same is judgment in *personam* but not judgment in *rem* and same is not binding on this Court, as precedent. She further submits that the respondents have taken steps for filing appeal against the said order. In support of her contentions, she relied on the judgments reported in **Smt.Bharti Sachdeva v. State and others**², **Mukesh and others v. State of U.P and others**³ and in **Harshad S.Mehta v. Central Bureau of Investigation**⁴.

² 1996 CriLJ 2102

³ 1998 (3) AWC 1960AII

⁴ 1992 (24) DRJ 392

8. In this case, the only grievance of the petitioners is that the respondents 4 to 17 in WP No.9715 of 2018 and W.P.No.13383 of 2018, have high handedly implicated her husband in several false criminal cases while he is judicial custody and even though they have knowledge about registering of cases against them, in which they are shown as an accused, they are not producing them by obtaining necessary P.T Warrants for their production before the Judicial Magistrate as envisaged in Section 267 of Cr.P.C. Before considering the said contention, it is relevant to extract Section 267 Cr.PC for better understanding, which reads as follows:

“267. Power to require attendance of prisoners.

- (1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court,-
 - (a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or
 - (b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.
- (2) Where an order under sub- section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.
- (3) Every order submitted for countersigning under sub- section (2) shall be accompanied by a statement of the facts which, in the opinion of Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

A plain reading of the aforesaid provision makes it clear that a Criminal Court in the course of an inquiry, trial or another proceeding, can direct the production of an accused confined or detained in another prison for the purpose of answering to a charge of an offence, or for the purpose of any proceedings against him. He can also be called to appear as a witness for the purpose of giving evidence.

Learned Government Pleader for Home vehemently argued that Section 267 of Cr.P.C has no application to the facts and circumstances of this case and that an accused cannot seek for his production by obtaining PT warrant, as a matter of right. In support of her contention, she relied on the judgment reported in **Smt.Bharti Sachdeva v. State and others (supra)**, wherein the High Court of Rajasthan (Jaipur Bench) held as follows:

“6. We may now refer to the provisions of Section 267 of the Code. On a plain reading, this provision is applicable to all cases where the accused is detained in prison and his attendance is required before the Court. The attendance may be required in the course of any inquiry, trial or other proceedings, for purposes of answering the charge of an offence or for purposes of any proceedings against him or for the ends of justice to examine such a prisoner or witness. It is under this provision that the accused is directed to be produced before, the Court on all dates of hearing. If the accused is facing inquiry or trial in more than one case then he may be directed to be produced before the Court by both the Courts before which inquiry, trial or proceeding is pending. Section 267 of the Code allows to produce a prisoner from prison by any Court in the course of inquiry or trial or other proceedings under the Code or for answering a charge or for examining as a witness. Hence the purpose for which person confined or detained in jail could be ordered to be produced before the Court is limited. Investigation of the offence by the police and interrogation cannot fall under the purposes which are included in Section 267 of the Code. We are in agreement with the Delhi High Court view that investigation by

police cannot be included in any other proceedings as they are not proceedings before the Court.

It is pertinent to mention here that the High Court of Rajasthan also relied on the judgment of Delhi High Court in **Harshad S.Mehta v. Central Bureau of Investigation (supra)** for coming to such conclusion. Even the High Court of Allahabad also relied on the judgments referred to above by the High Court of Rajasthan and High Court of Delhi in **Smt.Bharti Sachdeva's case and Harshad S.Mehta's case** and came to the same conclusion in the case of **Mukesh vs. State of U.P (supra)**. However, it is pertinent to note that the Full Bench of High Court of Rajasthan, has disagreed with the view taken by the, Division Bench of Rajasthan High Court, High Court of Delhi and High Court of Allahabad in the judgment reported in **State of Rajasthan v. Santosh Yadav⁵**, wherein the Hon'ble Full Bench held as follows:

"27. Their Lordships of the Supreme Court in CBI v. Anupam, J. Kulkarni (supra), on a rule of construction propounded as under-

"The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which further the ends of justice should be preferred."

28. A bare reading of Sec. 2(h) Cr.P.C would show that "all the proceedings" conducted by a police officer for collecting evidence come under the definition of "investigation". The words "all the proceedings" referred in Sec.2(h) in our considered opinion would also include the expression used in the words "other proceeding under this Code" (Sec.267(1), "for the purpose of any proceedings against him" (Sec.267 (1)(a) and "for the purpose of such proceeding" (last portion of Sec.267 (1)). In order to further the ends of justice wider meaning is required to be given to the word "proceeding" used in Sec.267 Cr.P.C. Had the Legislature intended to give restrictive meaning to the words "other proceeding under the Code" (Sec.267(1), they would not have

⁵ 2005 SCC Online Raj 317

used the expression “for the purpose of any proceedings against him” in Sec.267 (1)(a).

29. The Apex Court in *CBI v. Anupam, J. Kulkarni (supra)*, without quoting Sec.267 Cr.P.C., clarified that if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case, they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such situation he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody.

30. Thus, we are inclined to hold that the words “other proceeding under this Code” occurring in Sec.267(1) and the words “or for the purpose of any proceeding” used in Sec.267(1)(a) are compendious and include proceedings of an investigation. With great respect we disagree with the judgments rendered by learned Single Judge of Delhi High Court in *Harshad S.Mehta (supra)*, and two learned Judges of the Rajasthan High Court in *Bharti Sachdeva (supra)*. We are of the view that in these two judgments the general words “other proceeding” occurring in Sec.267 Cr.P.C have not been analysed in right perspective.”

It is unfortunate that the learned Government Pleader for Home has cited Judgments of High Courts of Rajasthan and Delhi, which were against prosecution, which were overruled by the Full Bench of Rajasthan High Court in the year 2005 itself, when similar issue was referred to Full Bench, at the instance of State. The only plea taken in the counter affidavit and argued by learned Government Pleader is that after completion of investigation in one crime and as and when there is need, the accused will be produced on obtaining P.T warrant as envisaged under Sec.267 of Cr.P.C.

In **Ranjeet Singh v. State of U.P⁶**, the High Court of Allahabad held as follows:

“10. There is yet another aspect of the matter. The mere fact that committal proceedings are pending in respect of

⁶ 1994 SCC Online AII 797

the applicant at Faizabad does not take away the jurisdiction of the Magistrate at Lucknow to pass an order under Section 267 of the Code and for this reason, too, the order passed by the learned Chief Judicial Magistrate, Lucknow does not suffer from any infirmity.

In **Bineesh v. State of Kerala**⁷, wherein the High Court of Kerala held as follows:

“We adopt the reasonings of Full Bench decision of the Rajasthan High Court in *Santhosh Yadav’s case (supra)* which reiterated the binding observation of the Apex Court. In the above circumstances, the decision in *Bineesh’s case (2006 (1) KLT 505)* is overruled. We hold that even if a person is under remand by the order of a Magistrate in a criminal case, if another case is registered against him in another Magistrate’s Court, that Magistrate is justified in issuing production warrant for the purpose of investigation in that case under Section 267 Cr.P.C.

In **State of Maharashtra v. Yadav Natthuji Kohachade**⁸, it is held as follows:

“(c) **Criminal Procedure Code (2 of 1974) S.267(1)-**“Proceedings” meaning of – “Proceedings” would mean and include an action or prosecution and sometimes as meaning a step in an action and, therefore, it includes all steps taken in furtherance of prosecution, i.e., arrest, remand, interrogation and investigation-The Legislature has used the words “other proceedings and any proceedings under the Code” in section 267 of the Criminal Procedure Code and not judicial proceedings and, therefore, seeking production of the accused for remand under Section 267 of the Criminal Procedure Code cannot be faulted.

This Court, after considering similar contentions in W.P.No.36650 of 2016, by order dated 04.11.2016 held as follows:

“this Court is of the view that whenever a person is detained in prison in connection with a particular crime and if the fact of pendency of other crimes is known to the officers concerned, it is the bounden duty of the said officers to produce the said person on P.T warrant and detail him in prison after remand by the competent Court. In the name of investigation and pendency of various crimes, the officers should not drag on the matter with intent to detain him in prison for some more period. Hence, respondent Nos.2 to 17 are hereby directed to produce the

⁷ 2006 SCC OnLine Kerala 197

⁸ 1999 (3) Mh.L.J 562

husband of the petitioner on P.T warrant, if any crimes are pending against him, and complete the investigation as expeditiously as possible.”

In the said case, the respondents-police, were directed to produce the husband of the petitioner therein on P.T warrant, if any crimes are pending against him and also directed to complete the investigation as expeditiously as possible. Though learned Government Pleader for Home submits that appeal is being filed against the aforesaid order, but admittedly, no appeal number or any order is produced before this Court granting stay against order in the said Writ Petition. Moreover, learned counsel for the petitioners contends that the order in the aforesaid writ petition was also implemented. Learned Government Pleader for Home, except stating that the order passed by this Court in earlier Writ Petition is general in nature, pertaining to an individual and not laid any principle of law, she is unable to persuade this Court to take a different view.

In view of above facts and circumstances and law laid down by the Hon’ble Full Bench of Rajasthan High Court, especially law laid down by Apex court in **CBI v. Anupam, J. Kulkarni**⁹, respondent Nos.4 to 17 in W.P.No.9715 of 2018 and respondents 4 to 13 in WP No.13383 of 2018 are hereby directed to produce the husbands of the petitioners on P.T

⁹ (1992) 3 SCC 141

warrant, if any crimes are pending against him, and complete the investigation as expeditiously as possible.

With the above direction, these Writ Petitions are disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition are closed.

A.RAJASHEKER REDDY,J

Date: 14.08.2018.
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.9715 & 13383 OF 2018



Date: 14 .08.2018

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