

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.10259 of 2018

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“..to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent police interfering into the personal liberty of the petitioner by harassing him one way or another even without showing his name as an accused in FIR No.11/2018, dated 09.03.2018 by disturbing his peaceful and smoothfull functioning of his coal business by taken away the coal material as well as a JCB for him shop all are illegal, in violation of the law and procedure including violation of Art. 14, 21 of Constitution of India, consequently to direct the 3rd respondent police not to harass the petitioner as well as the petitioner's business activities in connection with FIR No.11/2018, dated 09/03/2018, including arrest without following the procedure as required under the law including apex court ruling and to pass such other order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case.”

2. I have heard the submissions of the learned counsel for the petitioner and of the learned Government Pleader for Home (A.P.) appearing for respondents 1 to 4. I have perused the material record.

3. Learned counsel for the petitioner would submit that at the earliest point of time, the petitioner was not arraigned as an accused in the crime and that despite the said fact certain coal was seized from his business premises; that since the

crime was registered only for the offences punishable under Sections 407 and 420 of the Indian Penal Code and as Section 120 B of the Indian Penal Code was not included in the penal provisions, the police are not entitled to rope in the petitioner as the seventh accused; and, that in any view of the matter, the respondent-police are required to follow the guidelines of the Supreme Court in ***Arnesh Kumar v. State of Bihar***¹.

4. The learned Government Pleader for Home, on written instructions, a copy of which is placed on record, would submit that a case in Crime No.11 of 2018 was registered, on 09.03.2018, by the third respondent for the offences punishable under Sections 407 and 420 of the Indian Penal Code against certain accused; that during the course of investigation into the said crime, the accused therein made certain confessional statements; that as it was revealed that the petitioner herein is also involved in the crime, he was arraigned as the seventh accused; that insofar as some of the accused, who are arrested, remand orders were obtained from the Court of the Judicial Magistrate of First Class, Yemmiganur; and, that investigation is in progress. He would further submit that in this writ petition, since the petitioner did not seek any relief with regard to following of the guidelines of the Hon'ble Supreme Court in ***Arnesh Kumar's case***, no relief need be granted to him.

¹ 2014(2) ALT (CrI.) 457 (SC)

5. Having regard to the facts and submissions, the Writ Petition is disposed of directing the third respondent to follow the guidelines of the Supreme Court in **Arnesh Kumar's case** and also the mandate of law in Section 41(A) of the Code of Criminal Procedure, 1973, while investigating into the aforestated crime. It is made clear that the petitioner shall extend necessary cooperation to the Investigating Officer during the course of investigation. It is needless to state that liberty is reserved to the petitioner to seek any remedies, which the law permits. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

Date: 06.04.2018

**Note: Furnish CC today
B/o**

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M. SEETHARAMA MURTI, J

