

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6622 OF 2018

ORDER:

The petitioners are accused Nos.9, 11 to 15 in crime No.124 of 2016 of Nellore IV Town Police Station, SPSR Nellore District, registered for the offence punishable under Section 420 IPC r/w 34 IPC from the report dated 09.05.2016 of the defacto complainant one DCS Reddy proprietor of Sree Aquatics.

Undisputedly there is a civil suit filed by the defacto complainant as plaintiff against 9 defendants including the petitioners in O.S.No.218 of 2015 for recovery of the amount and with selfsame allegations the present report is given in registration of the crime for the offence of cheating supra.

The petitioners earlier sought for quashing of the proceedings and there this Court directed to follow Section 41-A Cr.P.C. vide order dated 10.07.2017 passed in CrI.P.No.5407 of 2017. Later they moved for anticipatory bail application in CrI.M.P.No.1207 of 2018 that was ended in dismissal on the file of learned V Additional Sessions Judge, Nellore. There is no basis to the contention of the learned counsel for the petitioners that they were not served with Section 41-A Cr.P.C. notice once the notice sent to the same address and it was received by Ashish Kailas Biyani on 09.05.2018 and it is not the say how he was in the premises of the petitioners when not connected with, leave about Section 41-A Cr.P.C. no way describes mandatorily personal service but for the address where it is to be responded.

The petitioners did not choose to respond so far. However the learned Public Prosecutor submits they have no intention to arrest if they complies with Section 41-A Cr.P.C. for which already another bench of this Court in dismissing the quash petition directed.

Having regard to the above, this Criminal Petition is disposed of directing the petitioners to appear pursuant to the Section 41-A Cr.P.C. served in May 2018 or so within one week from the date of receipt of this order and once they appeared, the police shall not arrest without following the procedure under Section 41-A Cr.P.C. if at all required and as per the guidelines of **Arnesh Kumar v. State of Bihar**¹.

Miscellaneous petitions, if any, shall stand closed.

Date: 18.07.2018
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Dr. B. SIVA SANKARA RAO, J

¹ (2014 (2) ALT (GrI.) 457 SC)