

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION No.22077 of 2018

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

In this Writ Petition, the validity of Section 41 (1) (b) of Cr.P.C. is questioned on the ground that it is arbitrary and illegal.

Section 41 (1) (b) of Cr.P.C., enables any police officer, without an order from a Magistrate and without a warrant, to arrest any person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the conditions in clause (i) and (ii) thereunder are satisfied. The said provision requires a police officer to record, while making such arrest, his reasons in writing. Under the proviso thereto, a police officer shall, in all cases where the arrest of a person is not required under the provisions of Section 41 (1) (b) of Cr.P.C., record reasons in writing for not making the arrest.

As noted hereinabove, Section 41 (1) (b) of the Cr.P.C. applies only to cases where a cognizable offence is committed and which is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine. The petitioner's contention is that, instead, Section 41 (1) (b) of Cr.P.C. should be so amended as to make it applicable even to cognizable offence punishable with imprisonment for a term which may be less than three years with

or without fine. Whether or not a cognizable offence, punishable with imprisonment for a term of three years should be stipulated as the requirement for a police officer to arrest any person without an order from a Magistrate and without a warrant; or whether it should be for a lesser or a higher period, are all matters for the competent Legislature to decide. In the exercise of its extraordinary jurisdiction, under Article 226 of the Constitution of India, this Court would neither exercise the power of making laws nor would it issue a Mandamus to the Legislature to make any such law.

The Writ Petition as filed is wholly misconceived, and is accordingly dismissed. Miscellaneous applications pending, if any, shall also stand closed. There shall be no order as to costs.

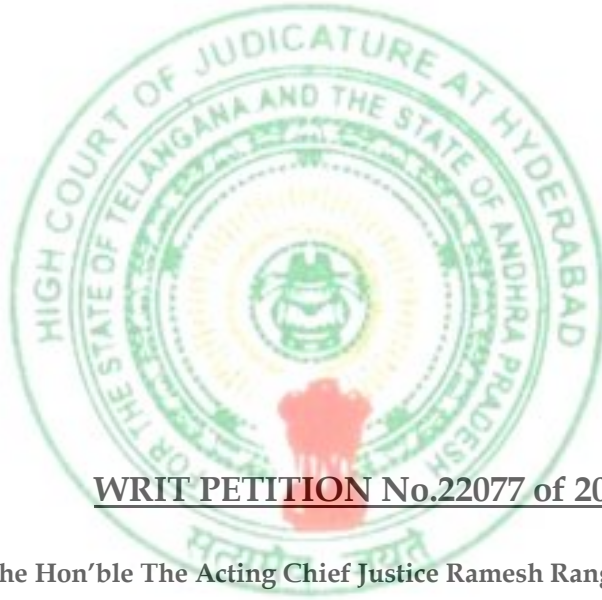


(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

02.07.2018
Gsn/Kr.

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