

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.41108 OF 2017

ORDER:

Heard Mr.V.Raghunath for petitioner and the learned Assistant Government Pleader for respondents 1 and 2.

The petitioner prays for mandamus declaring the action of respondent No.2 in insisting or demanding the respondent No.3 herein to deposit Rs.40 lakhs admittedly belonging to petitioner's husband as illegal, arbitrary and violative of Articles 14, 21, and 300-A of the Constitution of India.

The petitioner alleges that her husband is accused in N D P S case presently lodged in prison. According to petitioner, a transaction between respondent No.3 and her father-in-law late Jayanna whereunder the 3rd respondent is liable to pay Rs.40 lakhs to petitioner's father-in-law. The 3rd respondent subsequent to the demise of petitioner's father-in-law, proposed to repay the loan amount in full discharge of his liability. The petitioner further alleges that her husband has accepted the offer of 3rd respondent. While matters stood thus, respondent No.2 implicated petitioner's husband in an offence under Section 22 etc. under the NDPS Act, 1985 read with Section 464 of Indian Penal Code. The 2nd respondent by tapping the conversation of 3rd respondent and petitioner's husband orally demanded money of Rs.40 lakhs likely to be received by the said Jayanna. The 3rd respondent has gone to the office of 2nd respondent and offered to deposit the amount with them. Respondent No.3, however, has reportedly not made any offer to deposit the amount voluntarily, but in deference to the

deadline stipulated by 2nd respondent agreed to deposit the amount.

The petitioner further alleges that the 2nd respondent does not have jurisdiction to demand payment of amount. The petitioner admits that the 2nd respondent has not communicated in writing or given a letter as stated in the affidavit, but orally demanding the amount from 3rd respondent. The 2nd respondent obtained an agreement from 3rd respondent that he would deposit Rs.40 lakhs into the account.

The demand of 2nd respondent to 3rd respondent to deposit amount is illegal arbitrary, and unconstitutional. Hence the present writ petition.

Mr.V.Raghunath appearing for petitioner vehemently contends that the action of 2nd respondent in demanding 3rd respondent to deposit amount is illegal and reflects the approach of 2nd respondent in harassing people in the name of investigation. The deposit of amount by 3rd respondent is at the behest of 2nd respondent, and the 3rd respondent should be refrained from honoring his commitment to 2nd respondent.

The Assistant Government Pleader contends that the prayer in the case on hand is without cause of action and not available to the petitioner. According to respondents, the compliance by 3rd respondent cannot and could not be treated as compliance under an arrangement between the husband of petitioner and the 3rd respondent. The 3rd respondent, if has obligated himself to the

husband of petitioner, the obligation stands apart from any steps the 3rd respondent takes as per the directions of 2nd respondent. The allegations, if are entertained by this Court, the same amounts to exercising the jurisdiction and enquiry into allegations on mere asking by a party. According to Assistant Government Pleader, if at all there is pressure from 2nd respondent, the cause of action is available to 3rd respondent but not to petitioner.

I have heard the counsel for parties and the short point for consideration in the present writ petition is whether the petitioner can maintain the present writ petition and whether case is made out to issue directions to 2nd respondent in the crime registered under the NDPS Act.

The case of petitioner is that at the instance of 2nd respondent, the 3rd respondent is proposing to deposit amount payable to the husband of petitioner.

The case as pleaded clearly shows that the petitioner does not have *locus standi* to file the present writ petition. This Court is of the further view that the 3rd respondent, if has obligated himself to pay any sum to the husband of petitioner, the same is independent and could not be appreciated as having any bearing on the steps the 3rd respondent takes pursuant to the direction of 2nd respondent.

Admittedly the petitioner has nothing to do with the alleged arrangement between the husband of petitioner and the 3rd respondent. The *ipse dixit* averments are not convincing this Court

to exercise its jurisdiction. The present writ petition prima facie is misconceived. This Court has difficulty in appreciating that the petitioner could complain grievance against any of the averments made in the petition. For the above reasons, the writ petition fails and is accordingly dismissed. No order as to costs

Miscellaneous petitions pending, if any, shall stand closed.

Date: 19.01.2018

Note:

C.C. forthwith.

B/o.

Sp

S.V. BHATT, J

