

HON'BLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.7399 of 2019

ORDER :

This Criminal Petition is filed under Section 482 Cr.P.C. being aggrieved by the docket order, dated 01.10.2019 in PRC No.25 of 2019 on the file of the I Addl. Judl. Magistrate of I Class, Mancherial.

2. On 01.10.2019, the learned Magistrate, Mancherial, passed the following order:

“Perused record i.e., FIR, Statement of witnesses and other documents which reveal sufficient material against A1 to A6 for proceeding further. Hence, taken cognizance for the offences U/Sec. 498 (A), 307 of IPC and Sec. 3 and 4 of DP Act against A1 to A6. As police have not arrested A2 to A6 and U/Sec. 307 of IPC is exclusively triable by Court of Sessions. Hence, issue summons to A1. NBWS to A2 to A6. Call on 18.10.2019.”

3. Being aggrieved by the above order, this petition is filed with a prayer to quash the docket order, dated 01.10.2019 and to grant stay of all further proceedings in PRC No.25 of 2019.

4. The grounds taken in the said petition are that during the course of investigation on 02.08.2019, the S.I. of Police, served notice under Section 41-A Cr.P.C. with a direction to appear before them and subsequently on 24.08.2019 the petitioners appeared before the Investigating Officer and furnished sufficient sureties and let them off by informing to attend the Court after receipt of summons. After completion of investigation, the S.I. of Police filed charge sheet under the aforesaid sections before

the I Addl. Judl. Magistrate of I Class, Mancherial, who took cognizance and issued N.B.Ws against the petitioners on 01.10.2019 stating that police have not arrested these petitioners and Section 307 IPC is exclusively triable by Court of Sessions.

5. The petitioners have filed a petition under Section 70 (2) Cr.P.C. praying to recall N.B.W. but the same was dismissed.

6. The learned Magistrate ought not to have issued NBWs though the petitioners were served with notices under Section 41-A Cr.P.C. The Court below ought to have seen that the intention behind arrest of a person during course of investigation is only to enable the police to conclude investigation and to restrain the accused from tampering the evidence in the case. The court below ought to have seen that without arrest of the petitioners, the petitioners concluded investigation by taking necessary bond from them and there is no need of further arrest of the petitioners as the police filed charge sheet. The court below misconstrued the provisions of Cr.P.C. and simply issued impugned order without applying judicious mind and hence, the impugned order is liable to be set aside.

7. As seen from the contents of the charge sheet, there are specific allegations against the petitioners and on the basis of allegations only, the Investigating Officer has

submitted charge sheet against all the petitioners for the offences punishable under Sections 498-A and 307 IPC and 3 and 4 of D.P. Act. The order passed by the learned Magistrate is perfectly within the legal frame work. There is nothing to interfere with the order passed by the trial Court. Thus, the petition filed by the petitioners is liable to be dismissed.

8. Accordingly, the Criminal Petition is dismissed. However, if the petitioners appear and surrender before the concerned Court within 30 days from today and file bail application, the same may be considered in accordance with law. Miscellaneous petitions, if any pending shall stand closed.

DATED: 19.11.2019.
Hsd

JUSTICE G.SRI DEVI

