

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.48108 OF 2018

Date: 01.05.2019

Between:

Dr Eunice Lalnunmawii Chawngthu,
d/o. Mr. C.Dothanga, Aged about 30 years,
C/o. O/o Satish Kumar, H.No.3-1-212,
Nimboli Adda, Kachiguda, Hyderabad.

.....Petitioner

and

The State of Telangana, rep.by its
Prl.Secretary Home, TS Secretariat,
Hyderabad and another.

.....Respondents



The Court made the following:

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ORDER:

Heard party-in-person, and the learned Government Pleader for Home.

2. This Writ Petition is filed praying to issue direction, directing the respondents to execute Non-Bailable Warrant (NBW) dated 16.10.2018 in CrI.M.P.No.1249 of 2018 in DVC No.35/2017, apprehend the accused therein, give their report within two days of the pronouncement of the order, and to award costs.

3. The averments in the affidavit filed in support of the Writ Petition disclose that petitioner filed DVC No.35 of 2017 pending in the Court of IV Metropolitan Magistrate, Nampally Criminal Courts, Hyderabad, against her husband and his family members. In CrI.M.P.No.562 of 2017 in DVC No.35 of 2018, interim maintenance of 10,000/- was granted. As the husband failed to pay the maintenance amount, she filed CrI.M.P.No.811 of 2017 in CrI.M.P.No.562 of 2017 in DVC No.35 of 2018 to attach his salary. As employer failed to deduct the amounts, she also filed petition against employer of her husband. According to the averments, DVC was disposed on 27.12.2017 awarding compensation of 20.00 lakhs, with direction to husband to pay in four instalments and 30,000/- every month for alternative rental accommodation, etc. Not satisfied with the order passed by the learned Magistrate, petitioner preferred Criminal Appeal No.91/2018 under Section 29 of the Prevention of Women from Domestic Violence Act. The respondent husband also filed Criminal Appeal No.223/2018. As the respondent-husband failed

to pay the amount ordered in DVC No.35 of 2017, petitioner filed salary attachment petition in CrI.M.P.No.68 of 2018. The salary attachment warrant was issued against the employer of husband of petitioner directing him to deposit the amounts into the petitioner's Savings Bank account mentioned in the writ petition. Petitioner alleges that in spite of directions issued by the Court, respondent husband did not deposit the amount. Having regard to the failure of husband in depositing the amount and failure to appear before the Court, NBW was issued on 14.08.2018 directing 2nd respondent in the Writ Petition to arrest and produce him before the Court. As NBW was not executed by the 2nd respondent, on 15.10.2018, petitioner filed application before the III Metropolitan Magistrate. Learned Magistrate issued NBW directing the 2nd respondent to arrest and produce him before the Court. Petitioner alleges that these NBWs are not complied though husband is working as Deputy C.P.O. – Coordination, in South Western Railways at Rail Nilayam, Secunderabad and is very much available in the city. In the said circumstances this Writ Petition is filed.

4. Party-in-person highlighted the facts in her affidavit filed in support of the writ petition and contended that action of Police in not executing the warrant and NBW is *ex facie* illegal and that Police are illegally helping the offender. On account of their illegal action, petitioner is deprived of the amounts she is entitled to, as ordered by the learned Magistrate in DVC.

5. The Inspector of Police, Nampally Police Station, who is 2nd respondent in the Writ Petition, filed counter-affidavit, deposed on 16.03.2019. He acknowledges that two NBWs were issued. In the NBW issued in November, 2018, he was directed to produce the husband of petitioner on or before 31.12.2018. The averments disclose that aggrieved by issuance of NBW, husband of petitioner filed Criminal Petition No.11630 of 2018 in this Court. On 02.11.2018 this Court stayed execution of NBW and directed the matter to be listed on 12.11.2018. Vide his letter dated 03.12.2018, III Metropolitan Magistrate informed the 2nd respondent about the stay granted by this Court. According to the deponent, on 04.12.2018, Criminal Petition No.11630 of 2018 was allowed setting aside the docket order dated 14.08.2018 issuing NBW and dismissing the application for recall and issued directions to the learned Magistrate to obtain bond for future due appearance or if any application is filed under Section 205 Cr.P.C., or 126 Cr.P.C. to dispense with personal presence so long as represented through Advocate. It is further averred that pursuant to the orders of this Court, III Metropolitan Magistrate, Nampally addressed letter to the 2nd respondent on 26.12.2018 directing the deponent to return the NBW issued on 16.08.2018. Accordingly, both NBWs were returned on 03.01.2019.

6. Party-in-person sought to contend that what was challenged before this Court was the NBW issued on 14.08.2018, but NBW issued on 16.10.2018 is not recalled and, therefore, even after order of this Court in Criminal Petition No.11630 of 2019, Police are required to execute other NBW.

7. It is seen from the final order passed by this Court in Criminal Petition No.11630 of 2018, this Court sets aside the NBW issued and dismissed the application to recall.

8. On a careful reading of the order of this Court in Criminal Petition No.11630 of 2018, the contention of petitioner cannot be countenanced. This Court observed that having regard to the nature of DVC proceedings, the Court could not have issued NBW and ought to have issued Bailable Warrant as the proceedings in DVC do not amount to grave offence but are quasi criminal domestic violence proceedings only. Having made such observation, NBW issued on 14.08.2018 was set aside. This Court issued further direction to proceed from the presence of the respondent in DVC No.35 of 2017 by obtaining bond for future due appearance and if any application is filed to dispense with personal appearance so long as represented by an Advocate. This being comprehensive order, it cannot be said that Police are negligent in executing the NBW, arresting the husband of petitioner, and producing him before the learned III Metropolitan Magistrate at Nampally and such action is deliberate.

9. In this context, it is also appropriate to note that in CrI.M.P.No.1249 of 2018, memo filed by the petitioner was considered by III Metropolitan Magistrate on 02.01.2019 and having regard to the order of the High Court dated 04.12.2018, the prayer to extend time for execution of NBW was not agreed. The docket proceedings dated 17.01.2019 would disclose that petitioner was heard in-part and matter was adjourned for further

steps. Having regard to these facts, the relief sought by the petitioner cannot be granted. Writ Petition is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 01.05.2019
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