

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.4470 of 2020

ORDER:

This writ petition is filed seeking the following relief:

“...to issue ‘Writ, Order or Direction, more particularly, one in the nature of Writ of Certiorari directing the respondents No.3 & 4 not to arrest, harass, frequently calling the petitioner herein under the guise of answering certain questions relating to the case RC. 3(A)/2019-CBI/Hyd, registered against Sri C.Mallikarjuna Rao & others and pass such other order or orders may deem fit and proper in the circumstances of the case.”

Heard the counsel for the parties.

It has been contended by the petitioner that he is an Advocate and he has given some opinion in respect of certain documents. At the instance of the Bank, the CBI had initiated criminal proceedings against one C.Mallikarjuna Rao, in whose favour the Bank has given loan. It is also stated that the petitioner was called upon as a witness under Section 160 Cr.P.C and he has appeared before the investigating authority. During the course of investigation, the Inspector of Police had threatened the petitioner that he would be arrested. Apprehending the arrest of the petitioner, the present writ petition is filed.

Counsel for the petitioner contended that the petitioner was called upon as a witness and the witness can never be arrested according to law. In support of his case, the counsel has relied upon a judgment rendered by the Honourable Supreme Court in **Central Bureau of**

Investigation, Hyderabad v. K. Narayana Rao¹, wherein, at paragraphs 21 and 22, it was held as under:

“In the earlier part of our order, first we have noted that the respondent was not named in the FIR and then we extracted the relevant portions from the charge-sheet about his alleged role. Though statements of several witnesses have been enclosed along with the charge-sheet, they speak volumes about others. However, there is no specific reference to the role of the present respondent along with the main conspirators.

The High Court while quashing the criminal proceedings in respect of the respondent herein has gone into the allegations in the charge sheet and the materials placed for his scrutiny and arrived at a conclusion that the same does not disclose any criminal offence committed by him. It also concluded that there is no material to show that the respondent herein joined hands with A-1 to A-3 for giving false opinion. In the absence of direct material, he cannot be implicated as one of the conspirators of the offence punishable under Section 420 read with Section 109 of IPC. The High Court has also opined that even after critically examining the entire material, it does not disclose any criminal offence committed by him. Though as pointed out earlier, a roving enquiry is not needed, however, it is the duty of the Court to find out whether any prima facie material available against the person who has charged with an offence under Section 420 read with Section 109 of IPC. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills.”

Therefore, counsel for the petitioner contended that appropriate orders be passed in the writ petition directing the 4th respondent not to arrest the petitioner and the petitioner is willing to co-operate with the investigating agency as and when required.

¹ (2012) 9 SCC 512

Standing Counsel appearing for the 4th respondent, on instructions, submitted that the petitioner would not be arrested, however, if any incriminating material is found against the petitioner, appropriate proceedings would be initiated against him. Therefore, the apprehension of the petitioner that he would be arrested is baseless and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of learned counsel for respective parties, is of the considered view that this writ petition can be disposed of directing the 4th respondent not to arrest the petitioner when the petitioner is called upon as a witness. However, if any incriminating material is found against the petitioner, it is always open to the 4th respondent to act in accordance with law.

With the above directions, the writ petition is disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

