

HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION Nos.887 AND 888 OF 2021

COMMON ORDER:

Since petitioner in both the criminal petitions is one and the same and subject matter is intertwined, they are being disposed of by this common order.

2. Both the criminal petitions are filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'). Criminal Petition No.887 of 2021 is filed seeking to quash the docket order dated 29.12.2020 in C.C. No.6429 of 2020 and Criminal Petition No.888 of 2021 is filed seeking to quash the docket order dated 29.12.2020 in C.C. No.6427 of 2020, to the extent of issuing non-bailable warrant against the petitioner, passed by the learned V Chief Metropolitan Magistrate - cum - V Additional Junior Civil Judge, Cyberabad, L.B. Nagar,.

3. Heard Sri K. Surender, learned counsel for the petitioner in both the criminal petitions, and learned Public Prosecutor appearing for the State. Perused the record.

4. In the cause title of both the petitions, the petitioner has specifically mentioned that respondent No.1, Government Officials, are proforma parties. Therefore, they are not necessary parties.

5. In both the Calendar Cases, the petitioner herein is accused No.1. The offences alleged against the petitioner are under Sections 447 and 427 of the Indian Penal Code, 1860 and Sections 48, 49 and 50 of Irrigation Act. On the complaint lodged by the Additional Revenue Inspector, Balapur Mandal, Ranga Reddy District, the police, Balapur Police Station, have registered a case in Crime No.108 of 2020 and on the complaint of Additional Mandal Revenue Inspector, Crime No.312 of 2019 was registered against the petitioner and others. After completion of investigation, the police have filed charge sheet in the said crimes and the same were taken on file as C.C. Nos.6429 and 6427 of 2020 respectively.

6. A perusal of the charge sheets would reveal that the investigating officer has filed them under Section 173 of Cr.P.C. by showing the petitioner as absconding. *Prima facie*, there are some allegations against the petitioner herein.

7. By referring to the contents of the charge sheets, learned counsel for the petitioner would submit that though the punishment prescribed for the offences alleged against the petitioner is seven years or below seven years, the police without following the procedure laid down under law, more particularly, without invoking the procedure laid down under Section 41-A of Cr.P.C., filed the charge sheets showing the petitioner as absconding. He would further submit that the investigating officer has not served notice under Section 41-A of Cr.P.C. on the petitioner. In the charge sheets, it is mentioned that a

notice under Section 41-A of Cr.P.C. was served only on accused Nos.2 to 4. He would further submit that in the entire charge sheets, there is no mention about the investigating officer serving notice under Section 41-A of Cr.P.C. on the petitioner. Without following the procedure, simply mentioning that all the efforts were made to trace out accused No.1 but could not find his whereabouts, prayed to issue non-bailable warrant against accused No.1.

8. In view of the said specific contention, this Court directed the learned Public Prosecutor to get specific instructions with regard to service of notice under Section 41-A of Cr.P.C. on the petitioner. Despite granting opportunity, learned Public Prosecutor is unable to get specific instructions with regard to service of such notice on the petitioner in both the crimes.

9. The learned counsel for the petitioner would submit that according to Section 73(1) of Cr.P.C., Chief Judicial Magistrate or Judicial Magistrate of First Class may direct a warrant to any person within his local jurisdiction for arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

10. The learned counsel for the petitioner would further submit that the petitioner herein is neither an escaped convict nor proclaimed offender or of any person who is an accused of a non-bailable offence and is evading arrest. He would further submit that all the offences

alleged against the petitioner are bailable offences. However, the learned Magistrate has issued non-bailable warrant against the petitioner on the first date of hearing itself vide docket order dated 29.12.2020. By placing reliance on the principle laid down by the Hon'ble Apex Court in **Inder Mohan Goswami v. State of Uttaranchal**¹, learned counsel for the petitioner would submit that the issue of non-bailable warrant against the accused at the first instance is illegal and contrary to the procedure laid down under law.

11. On the other hand, learned Public Prosecutor, on instructions, would submit that despite the efforts made by the investigating officer, he could not trace out the petitioner, and therefore, the investigating officer could not serve notice under Section 41-A of Cr.P.C. on him. He would further submit that the offences alleged against the petitioner are bailable offences, and, therefore, he can approach the Court below as well by way of filing an application under Section 70(2) of Cr.P.C. seeking to recall non-bailable warrant issued against him. Instead of doing so, the petitioner has approached this Court by way of filing the present application.

12. The above stated facts would reveal that on the complaint lodged by the Additional Revenue Inspector, Balapur Mandal, Ranga Reddy District and the Additional Mandal Revenue Inspector, the police Balapur registered cases in Crime Nos.108 of 2020 and 312 of 2019 against the petitioner and other accused for the aforesaid

¹ (2008) AIR (SC) 251

offences. It appears from the charge sheets that notice under Section 41-A of Cr.P.C. were served on accused Nos.2 to 4 and the investigating officer has not served notice under Section 41-A of Cr.P.C. on the petitioner in both the crimes. In the charge sheets, it is mentioned that all efforts were made to trace out accused No.1 and the investigating officer unable to trace him out, and, therefore, he has prayed the Court below to issue non-bailable warrant against the petitioner. Except that one sentence, there is no other mention about the efforts made by the investigating officer to trace out the petitioner and to serve the notice under Section 41-A of Cr.P.C. on him.

13. According to Section 73 of Cr.P.C., the Chief Judicial Magistrate or a Magistrate of the First Class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest. As stated above, the petitioner is neither an escaped convict nor a proclaimed offender or a person who is accused of a non-bailable offence or evading arrest. The offences alleged against the petitioner are bailable offences. It is not the case of the prosecution that petitioner is trying to evade arrest. In fact, non-bailable warrant was issued against the petitioner on the first date of hearing i.e. 29.12.2020 based on the endorsement made by the investigating officer in the charge sheets. The Hon'ble Apex Court in **Inder Mohan Goswami's Case** (Supra), categorically held that as far as possible, if the Court is of the opinion that a summon

will suffice in getting appearance of the accused in the Court, the summon or the bailable warrant should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The Court must very carefully examine whether the Criminal Complaint or First Information Report has not been filed with an oblique motive.

14. This Court in the similar circumstances by referring to the principle laid down by the Hon'ble Apex Court in **Inder Mohan Goswami's Case** (Supra), in Criminal Petition No.5120 of 2020 dated 10.11.2020, wherein the offence alleged against the accused therein is under Section 420 of IPC, a non-bailable offence, held that there is no error, much less, manifest error in issuing non-bailable warrant against him since the offence alleged against him is under Section 420 of IPC, a non-bailable offence, and also considering the fact that there are serious allegations against him. However, liberty was granted to him to approach the trial Court to file an application under Section 70(2) of Cr.P.C. seeking to recall non-bailable warrant issued against him and directed the trial Court to consider the same and pass appropriate orders in accordance with law.

15. Whereas in the present case, the offences alleged against the petitioner are bailable offences. As discussed supra, the petitioner

is neither an escaped convict nor proclaimed offender or of any person who is accused of a non- bailable, offence or evading arrest.

16. Both the charge sheets do not reveal the efforts made by the investigating officer to trace out the petitioner - accused No.1 and to serve a notice under Section 41-A of Cr.P.C. on the petitioner except stating that the petitioner is not available to serve notice under Section 41-A of Cr.P.C. Thus, there is no plausible explanation from the investigating officer in not serving the notice under Section 41-A of Cr.P.C. on the petitioner in both the crimes. Further, a perusal of the material would reveal that the learned Magistrate without verifying the above aspects and also without appreciating the fact that the offences alleged against the petitioner are bailable offences and without going through the contents of the charge sheet, issued non-bailable warrants against the petitioner on the first date of hearing. Therefore, the impugned docket orders are contrary to the procedure laid down under Section 73 of Cr.P.C. and also the principle laid down by the Hon'ble Apex Court in **Inder Mohan Goswami's Case** (Supra) and this Court in Criminal Petition No.5120 of 2020.

17. Therefore, these two criminal petitions are allowed and the docket orders dated 29.12.2020 in C.C. No.6429 of 2020 and C.C. No.6427 of 2020 passed by the learned V Chief Metropolitan Magistrate, Cyberabad, L.B.Nagar, are hereby quashed. The petitioner is directed to appear before the trial Court in the above said calendar cases on the next date of hearing treating that he has

knowledge of the date of hearing of the same and participate in the trial Court.

As a sequel thereto, miscellaneous petitions, if any, pending in both the criminal petitions are closed.

K. LAKSHMAN, J

05.03.2021.

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