

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF SEPTEMBER 2014

BEFORE

THE HON'BLE MRS.JUSTICE RATHNAKALA

CRIMINAL PETITION NO.6237 OF 2014

BETWEEN:

Smt. Padma Basu
W/o Late Asit Kumar Basu
Aged 62 Years
R/at No.18/2,
Motilal Ray Lane,
Bhadrakali,
Hooghly Dist.,
West Bengal – 712 232. ...Petitioner

(By Sri Manjunath B.R., Adv.)

AND:

1. State of Karnataka by
Mahadevapura Police
Bangalore City
Represented by
State Public Prosecutor,
High Court of Karnataka
Bangalore – 560 001.
2. Smt. Shamashree Basu
D/o Anup Kumar Ghosh
Aged 35 Years,
R/at No.3-E, S.N.Residency-4,
Belleghatta Main Road,
Kolkata – 700 085. ...Respondents

(By Sri K.R.Keshava Murthy, Addl. SPP)

This Criminal Petition is filed under Section 482 of Cr.P.C. praying to quash the order dated:22.09.2014 passed by the X Addl.C.M.M., Bangalore in C.C.No.23205/2009.

This Criminal Petition coming on for Admission this day, the Court made the following:

ORDER

This petition is filed under Section 482 of the Code of Criminal Procedure to quash the order dated 22.9.2014 passed by 10th Additional Chief Metropolitan Magistrate, Mayohall, Bangalore, in C.C.No.23205/2009.

2. Sri.B.R.Manjunath, learned Counsel for the petitioner submits that, initially the respondent – Investigating Officer had charge sheeted first accused only, who is none other than the son of the petitioner herein. Subsequently, on an application moved by the complainant, this petitioner is arrayed as co-accused. The allegations alleged are punishable under Section 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

3. It is further submitted that, the learned Magistrate without firstly issuing summons in accordance with the

procedure contemplated under Section 65 of the Code of Criminal Procedure has issued warrant against the petitioner and the local Police, who have received communication of the warrant, are at arresting the petitioner.

4. Heard the learned State Public Prosecutor for the State. Perused the certified copy of the order sheet of the lower court.

5. The order sheet of 5.2.2014 and 22.9.2014 read as under:

<u>"5/2/14</u>	<i>Accused Pt. I.O submitted</i>
<i>State – APP</i>	<i>addl.charge sheet wherein one</i>
<i>Accd on Bail</i>	<i>more accused is impleaded by</i>
<i>For Charge</i>	<i>I.O. issue S/S to A-2 by</i>
<i>Adv.t.Accd-</i>	<i>04/06/2014</i>
<i>NVR</i>	

Sd/- 5/2

<u>22/9/14</u>	<i>A1 Pt. Issue NBW to A2 through</i>
<i>State by Sr.</i>	<i>S.P. of concerned district by</i>
<i>APP</i>	<i>12/01/2015</i>
<i>A1&2-bail</i>	
<i>SS-A2</i>	<i>Sd/- 22/9</i>
<i>Charge</i>	
<i>Adv.A1-BRM</i>	
<i>Adv.A2-NVR"</i>	

6. A certified copy of the submission made by the Investigating Officer is also produced, which reads as under:

“ಮೇಲ್ಕಂಡ ಸಿಸಿ ನಂಬರಿನ ಕೇಸಿನಲ್ಲಿ ಕಂಡ ಎ-2 ರವರು ಹೊರ ರಾಜ್ಯದವರಾಗಿದ್ದು ಇವರಿಗೆ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರಾಗುವಂತೆ ದೂರವಾಣಿ ಮುಖಾಂತರ ಮನವರಿಕೆ ಮಾಡಿ ತಿಳಿಸಿರುತ್ತೆ”.

ಸಹಿ-):

ಪಿಸಿ 5924”

7. In the light of the above, it is clear that the learned Magistrate without service of process of the court in the mode known to law has exceeded his jurisdiction by issuing warrant against the petitioner, which is illegal. However, it is the trite that this Court will not invoke the jurisdiction under Section 482 of Cr.P.C. when a remedy is very much available under the Code of Criminal Procedure. The petitioner instead of moving this Court under Section 482 of Cr.P.C. can very well move the jurisdictional Magistrate for recalling the warrant. It is the submission at the Bar that the petitioner is granted anticipatory bail, which is in force.

8. In view of the above, this petition is disposed of. However, the learned Magistrate shall consider the

application of the petitioner herein, if moved under Section 70(2) of Cr.P.C., on the very same day.

In view of disposal of the petition, I.A.No.1/2014 filed for stay also stands disposed of.

**Sd/-
JUDGE**

KNM/-