

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.11791 of 2017

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the docket order dated 08.03.2016 ordering NBW against A2 and A3, the petitioners herein without issuing any summons to secure their appearance before the Court passed in C.C.No.620 of 2015 by the IV Metropolitan Magistrate, Irahimpatnam, Ranga Reddy District.

It is the case of the petitioners that they are staying at outside the country i.e. in America, and the same is referred in the charge sheet at 4th para of 3rd page and thereby notice under Section 41 and 41-A of Cr.P.C. were also not served. Having failed to serve notice under Section 41 or 41-A Cr.P.C., they filed charge sheet before the Magistrate showing that they are non residents of India. In such a case, normally, if it is a warrant case procedure under Section 204(1)(b) Cr.P.C. is to be followed and if it is summons case, summons under Section 204(1)(a) Cr.P.C. has to be issued exercising discretion by the Magistrate.

When cognizance is taken against the accused for various offences referred supra, the Court below has to issue summons. But, instead of issuing summons, the Court below issued NBWs, which is contrary to the law laid down by the Supreme Court in **Inder Mohan Goswami v State of Uttaranchal**¹ wherein, the Apex Court held that issuance of non-bailable warrant in the first instance without issuing the other tools of summons and bailable warrant to

¹ (2007) 12 SCC 1

secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution.

Learned counsel for the petitioners also undertakes to produce the petitioners before the Magistrate within one month from today.

Therefore, following the procedure laid down by the Apex Court referred supra, the order 08.03.2017 passed by the IV Metropolitan Magistrate, Ibrahimpatnam, Ranga Reddy District, issuing NBWs against the petitioners is not proper exercise of discretion that vested on it and the same is hereby set aside, treating the same as summons. The petitioners are directed to appear before the Court below, treating this petition itself as summons on any date of adjournment in person within one month from today.

With the above observation, the criminal petition is disposed of.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

30th November, 2017
 Note: issue c.c. by Monday
 b/o
 kvrm