

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

: PRESENT:

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 10518 OF 2022

Between:

Sri.B L Santhosh, S/o. Lakshmijanardhan Bhat, Occ. National General Secretary (ORG),
Bharathiya Janatha Party, BJP Central Office, 6-A Deendayal Upadhyaya Marg, New Delhi -
110 002.

Petitioner/Accused

AND

1. The State of Telangana, Through its Public Prosecutor, High Court Building, High Court, Hyderabad.
2. Special Investigation Team (SIT), Represented by it's Chairman, Mr.C V Anand, IPS, Commissioner of Police, Hyderabad City, Basheerbagh, Hyderabad.

Respondents

Petition under Section 482 of Cr.P.C, praying that in the circumstances stated in the grounds filed in support of the Criminal Petition, the High Court may be pleased to quash the impugned Notice No. 30/SIT-TS-HYD/2022 dated 23.11.2022 (Impugned Notice) U/s 41(A) of Cr.P.C and pursuant proceedings thereto issued to the Petitioner by the SIT constituted to investigate the Crime No. 455 of 2022 dated. 26-10-2022 registered under sections 120-B, 171-B R/w 171-E, 506 R/w 34 IPC and section 8 of Prevention of Corruption Act, 1988, by Police Moinabad, Cyberabad in the interest of justice;

IA NO: 2 OF 2022

Petition under Section 482 of Cr.P.C., praying that in the circumstances stated in the grounds filed in support of the criminal petition, the High Court may be pleased to stay the impugned Notice No. 30/SIT-TS-HYD/2022 dated 23.11.2022 issued to the Petitioner and pursuant proceedings thereto in the interest of justice, pending disposal of CRLP 10518 of 2022, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the grounds filed in support thereof and upon hearing the arguments of Sri B. Prakash Reddy, learned Senior Counsel representing Smt B Rachna Reddy, Advocate for the Petitioner and of Advocate General for the respondent State, the Court made the following.

ORDER:

“A crime was registered by Police Station Moinabad as FIR No.455 of 2022 dated 26.10.2022 for offence under sections 120-B, 171-B Read with 171-E, 506 Read with 34 IPC and section 8 of Prevention of Corruption Act, 1998. The facts leading to the registration of the crime briefly are that the accused mentioned in the FIR made an attempt to induce and bribe a person of the political party. A trap was laid by the

police wherein the accused and the complainant were present and they have discussed regarding the deal of joining in BJP party by resigning from TRS party by offering huge amounts as bribe. The police having taken steps, entrapped the accused mentioned therein while trying to induce MLA of TRS party.

During the Course of the investigation the accused were remanded to judicial custody which was refused by the Court. The refusal of the accused remand was questioned before this Court. After passing orders by this Court the same was questioned before the Hon'ble Supreme Court. However, the same may not be germane to the present case.

BJP party filed a Writ Petition seeking direction from this Court to hand over the investigation to CBI. For the adjudication of the proceedings several applications were filed by both the parties to the writ petition which were argued and orders were also passed.

The present application is filed by the petitioner questioning the issuance of Section 41 A Cr.P.C notice to assist investigation.

The senior counsel Sri Prakash Reddy appearing for the petitioner would submit that the requirements under Section 41 A Cr.P.C are not reflected in the impugned notice for which reason, the notice is bad in law. He argued that a notice may only be issued to a person against whom there is a reasonable complaint, secondly, when there is credible information which has been received and thirdly when a reasonable suspicion exists that he has committed a cognizable offence. None of these three requirements are met, for which reason, the impugned order should be quashed. He relied upon the judgment of the Karnataka High Court in the case of Manish Maheshwari Vs. State of Uttar Pradesh [2021 SCC OnLine Kar 14594].

On the other hand the learned Advocate General appearing on behalf of the respondent-State would submit that the petitioner has been avoiding assisting investigation and his desperate attempt in moving both the writ Court and also this Court would raise an amount

of suspicion. For the reason of his avoiding the notices dated 16.11.2022 and 23.11.2022, no relief can be granted to the petitioner and further the notices are in accordance with Section 41-A Cr.P.C. He had relied upon the Judgment of Karnataka High Court in Tippayya Swami and another Vs. State of Karnataka [W.P.No.202501/2021, dated 23.02.2022], Shaukin Vs State of Uttar Pradesh and others [W.P.No.17410 of 2011, dated 11.10.2011], Hon'ble Supreme Court judgment in Satendar Kumar Antil Vs. Central Bureau of Investigation and Ors [AIR 2022 SC 3386], Judgment of Delhi High Court in W.P.No. 7608 of 2017, dated 07.02.2018.

Learned Advocate General further submits that once notice is issued, the petitioner is bound to appear to assist investigation. For the reason of failure to appear before the investigation as directed by this Court in W.P.No.39767 of 2022 in I.A.No.6 of 2022, no relief can be granted.

“Section 41A. Notice of appearance before police officer.—

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

It is apparent that a notice under Section 41- A Cr.P.C can be issued to a person when the police officer is satisfied in a case where the arrest of a person is not required shall issue a notice directing the person against whom (i) a reasonable complaint has been made, or (ii) credible information has been received, or (iii) a reasonable suspicion exists that he has committed a cognizable offence, to appear before

him. The provision also takes care of any violation consequent to issuance of Section 41-A Cr.P.C notice and also when a person could be arrested to whom Section 41A Cr.P.C notice is issued.

Reading of Section 41-A Cr.P.C makes it clear that the intention of the legislature is to inform the person to whom notice under Section 41-A Cr.P.C is issued about the reasonable complaint which has been made or credible information which has been received or reasonable suspicion that exists that he has committed cognizable offence. The mandate is that the person to whom the notice is issued should be aware of the reasons for which he is being summoned so that he could answer the questions and assist the investigation by producing whatever evidence he has with him. As seen from the notices dated 16.11.2022 the investigating officer stated that "*there are reasonable grounds to question you to ascertain the facts and circumstances from you in relation to the present investigation*". The second notice was issued dated 23.11.2022 stating that "*during the course of investigation based on evidence available*". Whether the requirements in 41 A are complied when the investigation agency states in its petition that "there are reasonable grounds" or that "there is suspicion" would suffice to say that any one of the three requirements of Section 41 A Cr.P.C are met, has to be decided. *Prima facie* this Court finds that not one of the requirements mentioned in Section 41 A Cr.P.C to summon the petitioner are mentioned. The notice does not give any details of any one of the requirements mentioned in the provision. Any act of the investigating agency, in my opinion, would be arbitrary, if the law mandates fulfilling of certain conditions or criteria and the same are not fulfilled, would be violative of the rights of the person to whom the notice is issued.

This Court deems it appropriate to stay the impugned notice dated 23.11.2022 under Section 41 A of Cr.P.C issued to the petitioner till the next date of hearing i.e., on 05.12.2022, for the reason of not fulfilling any one of the three requirements. The counsel shall assist the Court to ascertain whether the wording in Section 41 A Cr.P.C

notice stating that “there is evidence” and “reasonable grounds exist” would fulfill the requirements under Section 41 A Cr.P.C.

Accordingly, post on 05.12.2022.”

SD/- L. SHIVA PARVATHI
ASSISTANT REGISTRAR

//TRUE COPY//

L. Shiva Parvathi
SECTION OFFICER

To,

1. The First Additional Special Judge for SPE and ACB Cases at Hyderabad
2. The Station House Officer, Moinabad Police Station, Cyberabad District
3. The Mr.C V Anand, IPS, Commissioner of Police, Chairman, Special Investigation Team (SIT), Hyderabad City, Basheerbagh, Hyderabad. (by RPAD)
4. One CC to Smt B. Rachana Reddy, Advocate [OPUC]
5. Two CC to Public Prosecutor, High Court, Hyderabad (OUT)
6. One spare copy

HIGH COURT

KSJ

DATED:25/11/2022

NOTE: POST ON 05.12.2022

ORDER

CRLP.No.10518 of 2022

INTERIM STAY

