
(1996) 09 AP CK 0058

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 142 of 1996

S. Venkateswar Rao and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 159, 160, 161

Penal Code, 1860 (IPC) — Section 392, 411, 427

Citation : (1996) 2 ALD(Cri) 945 : (1997) 1 APLJ 254 : (1997) CriLJ 1960

Hon'ble Judges : Y.V. Narayana, J;Y. Bhaskara Rao, J

Bench : Division Bench

Advocate : A. Ramanarayana, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Y. Bhaskar Rao, J.—This criminal petition is filed u/s 482 of the Code of Criminal Procedure to quash the order passed by the VI Metropolitan Magistrate, Guntur dated 17-6-1992 issuing non-bailable warrant against the petitioners.

2. The facts of the case are that the petitioners are alleged as accused in C.C. No. 6/94 on the file of the VI Metropolitan Magistrate, Guntur under Sections 392, 427 and 411, IPC. The petitioners herein obtained bail in the year 1992 and since then they are on bail. While so, the lower Court issued non-bailable warrant to arrest the petitioners and produce them as they have not attended the Court on 17-6-1992 when the case was posted. The case of the petitioner is that though crime is registered, charge-sheet is not filed. When they were released on bail, there is no necessity for appearance in the Court before filing of the charge-sheet. Only after filing the charge-sheet, the petitioners shall attend. Therefore, issuing of non-bailable warrant for non-appearance of petitioners even before the charge-sheet is filed is contrary to law and in violation of Article 21 of the Constitution of India. Therefore, the petitioners contend that the order issued by the Court below requires to be quashed.

3. To appreciate the above contention, it is relevant to refer some of the relevant provisions of the Code of Criminal Procedure. Section 154, Cr.P.C. deals with information to the Police and their powers to investigate. The Station House Officer, immediately after registering the crime shall reduce the same to writing and proceed to investigate the case as provided u/s 156, Cr.P.C. and 157, Cr.P.C. Sections 159 - 162 of the Code of Criminal Procedure (hereinafter referred to as the Code) empower the Police to examine the witnesses during investigation. Section 164, Cr.P.C. contemplates recording of confessional statements. Sections 165 and 166 of the Code contemplate the procedure to be followed regarding search by the Police Officer. Section 167 of the Code deals with the procedure when investigation cannot be completed in twenty four hours. Section 169, Cr.P.C. provides for the release of the accused when the evidence is deficient. Where the evidence is sufficient, the investigating officials shall send the report to the Magistrate. Section 171 of the Code contemplates that the witnesses and the complainant need not accompany the Police Officer and that they are not to be subjected to restraint. Section 172, Cr.P.C. provides for Diary of proceedings in investigation by the Investigating Officer. After completion of investigation, the Investigating Officer shall file the charge-sheet as per Section 173(2) of the Code. During the course of investigation, where the accused persons are arrested, if they are not released, they have to be in Police custody and after expiry of twenty four hours they have to be in judicial custody as per the orders of the Court and they have to be produced before the Court for extension of the remand. Where the accused person is released on anticipatory bail u/s 438, Cr.P.C. or on bail u/s 437 or 439, Cr.P.C., even before the charge-sheet is filed, he will be free to be at large. Section 273 of the Code contemplates that evidence is to be taken in the presence of the accused. Section 205, Cr.P.C. empowers the Magistrate to dispense with the presence of the accused and permit him to appear by his Pleader. But, however, if there is any need for appearance of the accused, the Magistrate can direct the personal attendance of the accused. Section 309 of the Code empowers the Court to adjourn the case during enquiry or trial and further empower the Magistrate to remand the accused to custody for a term not exceeding fifteen days at a time. Section 317, Cr.P.C. provides for holding inquiries and trial in the absence of the accused where the Magistrate has dispensed with the presence of the accused and permitted him to be represented by a Pleader. Thus, these are all the relevant provisions contemplated under the Code of Criminal Procedure.

4. Rule 30 of the Criminal Rules of Practice contemplate that an accused person released on bail during investigation, shall be bound over to appear in the Court after the charge-sheet is filed and the summons are served on him. It further provides that it is not necessary to bind over him to appear before the Court on earlier date or dates. There is no provision in the Criminal Procedure Code providing for the appearance of the accused, released on bail, before the Court even before the charge-sheet is filed.

5. By reading the above provisions, it is clear that there is no obligation on the

part of the accused to appear before the Court even before the charge-sheet is filed. Further Rule 30 of the Criminal Rules of Practice specifically states that it is not necessary for the accused to appear before the Court on any earlier date or dates and directs the accused to appear before the Court only after the charge-sheet is filed and summons are served on him. Thus, the entire scheme of the Code of Criminal Procedure manifests that where an accused person is released pending investigation of the crime, there is no need for the accused to appear before the Court before the filing of the charge-sheet. Therefore, the issuance of warrant of arrest to the accused for non-appearance even before the charge-sheet is filed, will be in contravention of the above-stated provisions. The direction to arrest the accused and produce him before the Court for non-appearance even before the charge-sheet is filed, is in violation of Article 21 of the Constitution of India as it interferes with his liberty. It is relevant to refer to the judgment of the Supreme Court in *Free Legal Aid Committee, Jamshedpur Vs. State of Bihar*, wherein the Supreme Court held that the accused released on bail during investigation, need not be required to appear before the Court until the charge-sheet is filed and the process is issued by the Court. Further, the practice in many Courts requiring the presence of accused before the Court every 14 days even though he is on bail was held to be improper.

6. In the present case, the Magistrate issued non-bailable warrant for arrest of the petitioners as they failed to appear before the Court on 17-6-1992 even before the charge-sheet is filed. Therefore, the order of the learned VI Metropolitan Magistrate, Guntur in C.C. No. 6/94 is quashed and the Criminal Petition is accordingly allowed.

7. Petition allowed.