

(1991) 12 AP CK 0048

In the Andhra Pradesh High Court

Case No : Criminal Petition (SR) No. 8258 of 1991

Y. Panduranga Chary

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 12-12-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Negotiable Instruments Act, 1881 (NI) — Section 138A
Penal Code, 1860 (IPC) — Section 420

Citation : (1992) 1 ALT 305 : (1992) 1 APLJ 449

Hon'ble Judges : Jagannadha Raju, J

Bench : Single Bench

Advocate : B. Veerabhadra Rao, for the Appellant; Addl. Public Prosecutor on behalf of the Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Jagannadha Raju, J.—(Petition u/s 438 of Cr.P.C. praying that in the circumstances stated therein the High Court will be pleased to grant anticipatory bail to the petitioner in the event of his arrest for offence u/s 420 IPC read with 138-A of Negotiable Instruments Act on such terms and conditions as this Hon"ble Court deems fit and proper in the circumstance? of the case.

The petition coming on for hearing, upon perusing the petition filed in support thereof and the office note thereby and upon hearing in arguments of Mr.B. Veerabhadra Rao, Advocate for the petitioner and of the Addl. Public Prosecutor on behalf of the Respondent No.1 and the Respondent No.2 not appearing in person or by Advocate.)

The Court made the following:-

Office Note

For Orders of Court

Crl. Petition SR. No.8258/91.

It is submitted that M/s. B. Veerabhadra Rao and D. Venkaiah, Advocates have filed the above said Criminal Petition for grant of anticipatory bail to the accused without furnishing Crime Number in which the said accused was involved. The office has taken objection as to how the Criminal Petition is maintainable without furnishing Crime Number. The learned counsel represented the said Criminal Petition with the following endorsement:-

"The present petition is maintainable in view of judgment of S.C reported in 1980 SC page 1832."

Submitted for orders as to maintainability of the above SR. The Court made the following:-

Order Dated 21st December, 1991:

1. The matter has come-up before the Court on an objection taken by the office for the maintainability of the petition filed for anticipatory bail u/s 438 Cr.P.C The petitioner filed the petition saying that he is apprehending arrest and that people of the CCS. Vijayawada have come several times to his residence at Ameerpet to arrest him. He claims that he could not find out actually the police station from which they have come and what is the crime number in which they have come to arrest him. But he only learnt that they are coming from the CCS. Mr. Veerabhadra Rao relies upon the observations of the Supreme Court in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, The Supreme Court in paragraph 35 observed that "the filing of a First Information Report is not a condition precedent to the exercise of the power u/s 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed." The various other observations in the judgment clearly indicate that a mere fear is no justification for seeking an order u/s 438(1) and it should be based upon a reasonable belief and a genuine apprehension of arrest. The Court also remarked that after an FIR is issued, a person can approach the Court for anticipatory bail.

2. In the present case, the petitioner does not mention when exactly a report was given to the police by the second respondent and whether an FIR has been issued or not. He does not also mention whether a report was given by the second respondent in any police station in Vijayawada and then the case was referred to the CCS or whether an FIR was directly issued by the CCS.

3. Normally, the local police register the case, issue an FIR and then refer the matter to the CCS for action. In such circumstances, the FIR must have preceded the action taken by the CCS. The present petition appears to be based upon mere fear of arrest without giving the basis for a reasonable apprehension for arrest. The objection taken by the office is perfectly sustainable.

4. The Addl. Public Prosecutor brought to my notice a decision of His Lordship Justice Radhakrishna Rao in Crl. Petition SR. No. 3918/91 dated 12-7-1991- In

that decision, His Lordship was pleased to observe as follows:-

"Non-furnishing of crime number must naturally result in dismissal of an application filed u/s 438 Cr.P.C. The petitioner wants the Public Prosecutor to furnish the crime number. Such practice is bad. Accordingly, the petition is dismissed."

5. It is no doubt true that the decision of the Supreme Court referred to above, was not brought to the notice of the learned Judge. However, on the facts of the present case, as indicated by the petitioners, I feel that the petition is premature and it is not maintainable. It is open to the petitioner to file a fresh application u/s 438 Cr.P.C. after he comes to know that an FIR has been issued and investigation has commenced.

6. Criminal Petition is dismissed as not maintainable.