

**THE HONOURABLE SRI JUSTICE C.V.BHASKAR REDDY**

**WRIT PETITION No. 20805 of 2023**

**ORDER:**

The writ petition is filed seeking following relief:

*“...to issue an order or direction more particularly one in the nature of Writ of MANDAMUS By declaring the action of respondent no.4 issued the notice C.No.58/H7/CHNB/2023, dt.27/07/2023 issued under section 91 of Criminal Procedure Code, in which stated that, directed the petitioner to appear before the 4<sup>th</sup> respondent police station without registering the FIR is illegal, without jurisdiction and contrary to the provisions of the criminal procedure code as well as guidelines issued by the Hon'ble Apex Court in Lalitha Kumari Case and set aside the same and consequently suspend the notice C.No.58/H7/CHNB/2023,dt. 27/07/2023 issued under section 91 of Criminal Procedure Code issued by the 4<sup>th</sup> respondent”.*

2. The case of the petitioner is that she acquired the ancestral property i.e., agriculture land to an extent of Acs.2-15 guntas in Sy.No.473, situated at Koppunoor Village, Chinnambavi Mandal, Wanaparthy District from her father-in-law. There are disputes between the petitioner and the 5<sup>th</sup> respondent with regard to the right and entitlement of the subject land. When the 5<sup>th</sup> respondent has committed an offence, the petitioner has lodged a complaint to the respondents-Police. However, as the 4<sup>th</sup> respondent has not acted upon the said complaint, the

petitioner was constrained to lodge a private complaint under Section 200 of Cr.P.C. and the same was referred under Section 156(3) of Cr.P.C. Based on the referral complaint, a case in Crime No.59 of 2023 under Sections 354-A, 354-D, 323, 447, 427, 341, 504, 509, 120-B, 109 r/w.34 of I.P.C. and Section 156(3) of Cr.P.C. was registered on 01.08.2023. The grievance of the petitioner is that, respondent Nos.3 and 4, instead of conducting an enquiry in accordance with the provisions of Criminal Procedure Code (for short 'Cr.P.C'), have issued notice under Section 91 of Cr.P.C. directing the petitioner to appear before the respondents for the purpose of recording the statement and also for producing the documents.

3. Section 91 of Cr.P.C. specifically reads as follows;

*(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.*

Admittedly, the offence registered against the petitioner is under Sections 354-A, 354-D, 323, 447, 427, 341, 504, 509, 120-B, 109 r/w.34 of I.P.C. and Section 156(3) of Cr.P.C.

4. Proviso (a) to Section 154(1) specifically states as follows;

*“In the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section1 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person’s choice, in the presence of an interpreter or a special educator, as the case may be.”*

5. Admittedly, the petitioner is a house wife and agriculturist and she is not aware about any of the proceedings and her statement has to be recorded in presence of interpreter or a special educator, as the case may be, by following the procedure as contemplated under Section 154 (1) proviso (a) of Cr.P.C. The grievance of the petitioner is that contrary to the said provisions, the respondents have issued notice under Section 91 of Cr.P.C. and directed the petitioner to appear before the investigating

officer for recording the statement and also for production of documents.

6. In the counter affidavit filed by respondent No.3, at paragraph No.12 it is stated that, the notice was prepared as regular notice due to oversight directing the petitioner to appear before the 4<sup>th</sup> respondent, to produce the witnesses and also produce related documents but the 4<sup>th</sup> respondent never violated any of the provisions laid under Section 154 of Cr.P.C. It is also stated that the 4<sup>th</sup> respondent herein along with Woman Police Constable visited the residence of the petitioner on 03.08.2023 and got examined and recorded the detailed statement of the petitioner through above Woman Police Constable by strictly following the procedure as contemplated under Section 154 of Cr.P.C.

7. In view of the above averments made in the counter affidavit that respondent Police are not insisting the petitioner to give evidence as per the notice issued under Section 91 of Cr.P.C. and in fact they have recorded the statement of the

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petitioner/victim in the residence of the petitioner by following the procedure contemplated under Section 154 of Cr.P.C.

8. The Writ Petition is allowed by setting aside the impugned notice issued under Section 91 of Cr.P.C., dated 27.07.2023. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, shall stand closed.

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**C.V.BHASKAR REDDY,J**

Dated:06.02.2024  
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