

In Re: Devaiah

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SooperKanoon Citation : sooperkanoon.com/426500

Court : Andhra Pradesh

Decided On : Jul-24-1968

Reported in : AIR1969AP444; 1969CriLJ1477

Judge : Chinnappa Reddy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 561-A; Hyderabad City Police Act, 1348 - Sections 26(1)

Appeal No. : Criminal Misc Petn. No. 1098 of 1968

Appellant : In Re: Devaiah

Advocate for Pet/Ap. : A. Lakshminarayana, Adv.

Judgement :

ORDER

1. This application under Section 561A Criminal Procedure Code is entirely misconceived. In this application the petitioner seeks to have quashed an order of the Commissioner of Police under Section 26 (1) of the Hyderabad City Police act of 1348 Fasli directing the petitioner to remove himself form the area of Kachiguda and shift himself to the area within the limits of Trimulgherry Police Circle and not leave that are for a period of one year.

2 Section 561-A of the Criminal Procedure Code preserves the inherent power of the High Court to make suitable orders

(1) to give effect to any order under the Code

(2) to present abuse of the process of the court or

(3) to secure the ends of justice, to make appropriate orders to secure the ends of justice does not empower the High Court with any omnipotent power. The order to be made by High Court under Section 561-A to secure the ends of justice must be in relation to a proceedings in the High Court or in any subordinate Criminal Court and that proceedings too must have judicial character and must not be a proceedings of an executive or administrative character. The Commissioner of Police acting under Section 26 of the Hyderabad City Police Act cannot be called subordinate Criminal Court, nor can be said to exercise any judicial functions. Mr. Lakshminarayana points out that the Commissioner of Police is First Class Magistrate for certain purposes mentioned in Section 47 of the Hyderabad City Police act namely Section 86, 87, 90 and 91 of the Hyderabad Code of Criminal Procedure. the Commissioner functions as 1st Class Magistrate only for those limited purposes and not when he makes an order under Section 26 of the Act. It is also further urged that there is a provision in Section 26

(7) for hearing the person against whom an order under Section 26

(1) is proposed to be made and therefore, the order must be considered to be of judicial character. It is difficult to agree with this contention. Merely because a statute contains a provision for hearing a person against whom orders are proposed to be made the order does not occurs in the Chapter relating to Police Regulations and Rules for Preservation of order. An order under Section 26

(1) is clearly of an executive character. I therefore, hold that the application under Section 561-A is not maintainable. It is, therefore dismissed.

Application dismissed.
