



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.03.2015
CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

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Cr1.O.P.(MD)No.545 of 2015

Elanjiyam

... Petitioner

Vs.

1.The State rep. by
Inspector of Police,
District crime Branch,
Trichy, Trichy District.

2.M.P.Manickam
3.M.Vijaya Ananth
4.Sivalingam
5.Durairaj
6.Iniko

... Respondents 2 to 5/Accused

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to set aside the order of the learned Judicial Magistrate No.V, Trichirappalli in C.C.No.167 of 2014 dated 11.07.2014 and direct the first respondent to register the FIR on the basis of the petitioner's complaint dated 3.9.2013.

For Petitioner : Mr.C.Shanmugasundaram

For R1 : Mr.K.V.Rajarajan
Govt. Advocate (Cr1.side)

For R2 to R4 : Mr.T.Senthil Kumar

O R D E R

This Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the order of the learned Judicial Magistrate No.V, Trichirappalli, in C.C.No.167 of 2014 dated 11.07.2014 and direct the first respondent to register the FIR on the basis of the petitioner's complaint dated 03.09.2013.

2. Heard the learned counsel for the petitioner, learned counsel for the respondents 2 to 5 and the learned Government Advocate (Cr1.side) appearing for the first respondent.

3. The grievance of the petitioner is that he, by way of complaint made before the learned Judicial Magistrate No.5, Trichirappalli, has sought investigation under Section 156(3) Cr.P.C. However, the Magistrate has proceeded to take cognizance on the complaint and hence the case in C.C.No.167 of 2014 is pending trial for offences under Sections 120(b), 166, 167, 409, 450, 417, 420, 177 and 506(ii) IPC on the file of the learned Judicial Magistrate No.V, Trichirappalli. The same is to be



transferred to the file of Mahila Court (Judicial Magistrate Level) at Trichirappalli. On the same allegations as those in the complaint of the petitioner which has been taken cognizance of a case stands registered in Crime NO.8 of 2015 on the file of the Inspector of Police, District Crime Branch, Trichirappalli.

4. In such circumstances, this petition shall stand dismissed with the observation that Section 210 Cr.P. comes into play and hence, the proceedings in the case wherein cognizance stands taken has to await the report of the investigation in Crime No.8 of 2015.

5. As the case in Crime NO. 8 of 2015 is pending investigation, the concerned respondent police would be required to follow the decision of the Hon'ble Apex Court in *Arnesh Kumar vs. State of Bihar and Another* reported in (2014) 3 MLJ (Crl) (SC). Such decision in paragraph Nos.9, 14 and 15, inform thus:

"9. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.P.C.

14. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police



officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b) (ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing; (7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

•15. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

Sd/-

Assistant Registrar(Per.admn)

\\True copy\\



To

1.The Judicial Magistrate No.V, Trichirappalli

2.The Mahila Court(Judicial Magistrate Level) at Trichirappalli.

3.The Inspector of Police,District crime Branch,
Trichy, Trichy District.

4.The Additional Public Prosecutor,Madurai Bench of Madras High
Court,Madurai.

+1cc TO MR.T.SENTHILKUMAR, ADVOCATE SR.NO.15699

+1cc TO MR.C.SHANMUGASUNDARAM, ADVOCATE SR.NO.15644

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