

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.28473 OF 2015

ORDER:

This writ petition is filed under Article 226 of Constitution of India challenging the registration of FIR No.90 of 2015 dated 25.08.2015 on the file of the Station House Officer, Pithapuram Rural P.S., East Godavari District- 3rd respondent herein, against the petitioner for the alleged offences punishable under Sections 420 and 34 IPC.

2. Heard Sri K. B. Ramanna Dora, learned counsel for the petitioner as well as learned Government Pleader for Home (A.P).

3. I have perused the material papers available on record. According to the learned counsel for the petitioner, the petitioner herein is falsely implicated in the present crime and he is innocent and did not commit any irregularities as alleged.

4. On the contrary, it is submitted by the learned Government Pleader that in view of existence of *prima facie* allegations against the petitioner herein, the jurisdiction of this Court under Article 226 of Constitution of India for quashment of F.I.R. is not available to the petitioner in the absence of element of abuse of process of law.

5. It is a well settled and well established proposition of law that the jurisdiction of this Court under Article 226 of Constitution of India for quashment of First Information Report is required to be exercised with great amount of care, caution and circumspection. Unless there is an element of abuse of process of law apparent on the face of record, the said jurisdiction is not available. In view of the existence of *prima facie* allegations against the petitioner herein, this Court is not inclined to quash the F.I.R. It is also the submission of the learned counsel for the petitioner herein that the respondent-police authorities are not adhering to the provisions of Section 41-A of Code of Criminal Procedure. In this connection, it may be appropriate

to refer to the provisions of Section 41-A of the Code of Criminal Procedure, which reads as under:

Section 41A – Notice of appearance before police officer: (1) The police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section(1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

- (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.
- (3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.
- (4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent court.

6. It may also be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Arnesh Kumar v. State of Bihar and another (Crl.Appeal No.1277 of 2014)*** and in the said judgment the Hon'ble Supreme Court while interpreting Section 41-A of Cr.P.C., at Paras 11 & 12 held as follows:

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

- 11.1 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.P.C.
- 11.2 All police officers be provided with a check list containing specified sub-clauses under Section 41 (1) (b) (ii);
- 11.3 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;

11.4 The Magistrate while authorizing 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 authorize detention;

11.5 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;

11.6 Notice of appearance in terms of Section 41 A of Cr.P.C. 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;

11.7 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.

11.8 Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate high court.

12. We hasten to add that the direction aforesaid shall not only apply to the cases under Section 498-A IPC 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.”

7. It is incumbent and obligatory on the respondent-police authorities to adhere to the provisions of Section 41-A and principles and parameters laid down by the Hon’ble Supreme Court in the judgment referred supra.

8. For the aforesaid reasons, the writ petition is disposed of directing the respondent-police authorities to act strictly in accordance with the provisions of Section 41-A of the Code of Criminal Procedure and the law

laid down by the Hon'ble Apex Court in the judgments referred supra. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

A.V.SESHA SAI, J

Date: 03.09.2015

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