

IN THE HIGH COURT OF JUDICATURE; AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No. 22390 of 2015

BETWEEN

Dandi Janaradhan Reddy

...Petitioner

And

The State of Telangana, rep. by
The Principal Secretary (Home), Secretariat,
Hyderabad and ors.

...Respondents.

DATE OF JUDGMENT PRONOUNCED: 20.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. V. SESA SAI

1. Whether reports of Local newspapers
May be allowed to see the judgments?
YES/NO
2. Whether the copies of judgments may be
Marked to Law Reporters/Journals.
YES/NO

3. Whether Their Ladyship/Lordship wish to
See the fair copy of the Judgment ?
YES/NO.

HONOURABLE SRI JUSTICE A. V.SESHA SAI

WRIT PETITION No. 22390 of 2015

ORDER:

Heard learned Counsel for the petitioner and learned
Government Pleader for the respondents.

This Writ Petition under Article 226 of the Constitution of
India is filed for the following relief:

“....pleased to issue any appropriate Writ, Order or
direction more in the nature of Writ of Mandamus
directing the respondents 1 to 3 herein to take appropriate
legal action against the 4th and 5th respondents involved
in trying to create the law and order problem etc. and
order for proper inquiry so as to safe guard the life and
property of the petitioner and pass necessary orders in
the ends of justice”

The only apprehension of the petitioner is that the
respondents-Police authorities may not adhere to the mandatory
requirements of Section 41.A of the Code of Criminal
Procedure. Section 41.A of the Cr.P.C. reads as follows:

“41.A. 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. “

The Honourable Supreme Court in the case of ***Arnesh Kumar v. State of Bihar and another (Crl.Appeal No.1277 of 2014)*** while interpreting Section 41.A of Cr.P.C. held at Paras 11 & 12 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.”

In view of the aforesaid decision of the Apex Court in ***Arnesh Kumar v. State of Bihar and another*** (supra) , this Writ Petition is disposed of directing the respondents-Police authorities to adhere the provisions of Section 41.A of Cr.P.C. and the guidelines stipulated in the aforesaid decision of the Apex Court in the case of ***Arnesh Kumar v. State of Bihar and another***

(Crl.Appeal No.1277 of 2014).

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE A. V.SESHA SAI

DATED 20TH JULY, 2015.

Msnr_x