

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WEDNESDAY, THE FIFTEENTH DAY OF JULY TWO
THOUSAND AND FIFTEEN

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Present

HON'BLE SRI JUSTICE A.V.SESHA SAI

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WRIT PETITION No.21886 of 2015

Between:

Polinati Prasad,
S/o. Yedukondalu, Aged about 35 years,
Occ: Business, R/o. T. Thimmapuram Village,
Tuni Mandal, East Godavari District & another

.. Petitioners

AND

The State of Andhra Pradesh,
Rep. by Prl. Secretary (Home Department),
Andhra Pradesh Secretariat Buildings,
Hyderabad & 4 others

.. Respondents

The Court made the following:

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“to issue a writ order or direction, more particularly one in the nature of writ of mandamus, declaring the action of the respondents 3 and 4 herein in entertaining a false complaint made by the 5th respondent herein under the provisions of SC & ST (POA) Act without conducting proper enquiry as contemplated under the provisions of SC & ST (POA) Act as well as the verdict passed by the Apex Court in Arnesh Kumar Vs. State of Bihar as well as abuse of power of police and also illegal, arbitrary and violation of principles of natural justice consequentially direct the respondents 3 and 4 herein to conduct proper enquiry on the report made by the 5th respondent without arresting the petitioners herein in FIR No.137 of 2015, dated: 11.07.2015 on the file of the Tuni Rural Police Station, East Godavari District, Andhra Pradesh.”

2. Heard Sri V. Sai Kumar, learned counsel for the petitioners and the learned Government Pleader for Home for respondents 1 to 4.

3. Based on a complaint lodged by the 5th respondent herein, the Station House Officer, Tuni Rural Police Station, East Godavari District, registered FIR No.137 of 2015 on 11.07.2015

against the petitioners herein for alleged offences under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 506 IPC read with 34 IPC. The complaint of the petitioners herein in the present writ petition is that the respondents 3 and 4 herein are entertaining the report made by the 5th respondent under the above said Act without following the procedure contemplated and without adhering to the law laid down by the Hon'ble Apex Court in the case of **Arnesh Kumar Vs. State of Bihar and another**^[1]. Section 41-A of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C"), which came into being with effect from 01.11.2010 by virtue of Act 5 of 2009 reads as under:

"Section 41A - Notice of appearance before police officer

(1) The police officer shall, 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 or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

4. While considering Section 41-A Cr.P.C, the Hon'ble Apex Court in **Arnesh Kumar's Case (supra)** at paragraphs 11 and 12 held as under:

"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise 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 IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

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 filled 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 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;

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 CrPC 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 the 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 directions 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."

5. In the instant case, as evident from the affidavit filed in support of the writ petition, the only grievance of the petitioners herein is that the respondents Police are not adhering to the mandatory requirements of Section 41-A Cr.P.C and the principles and parameters laid down by the Hon'ble Apex Court in the judgment referred to supra. Therefore, without going into the other merits and demerits of the issue, this Court deems it appropriate to dispose of the present writ petition with a direction to the respondents Police to adhere to the provisions of Section 41-A Cr.P.C. and the principles and parameters laid down by the Apex Court in the judgment referred to supra.

6. For the aforesaid reasons, the Writ Petition is disposed of, directing the respondents Police to adhere to the provisions of Section 41-A Cr.P.C and the principles and parameters laid down by the Hon'ble Apex Court in the judgment referred to supra. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

A.V.SESHA SAI , J

Date: 15th July, 2015
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 **HON'BLE SRI JUSTICE A.V.SESHA SAI**

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[\[1\]](#) (2014) 8 Supreme Court Cases 273