

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

**WRIT PETITION No.27819 of 2015**

**ORDER:**

This writ petition is filed under Article 226 of the Constitution of India seeking quashment of F.I.R.No.483 of 2015 on the file of the Station House Officer, Ongole Taluka Police Station, Prakasham District registered against the petitioner herein for the alleged offences under Sections 406 and 420 r/w.34 I.P.C., and Section 3 r/w.7 of Essential Commodities Act, 1955.

Heard Sri K. Ramya Krishna, learned counsel for the petitioners and learned Government Pleader for Home for respondents, apart from perusing the material available before this Court.

According to the petitioners, the petitioners herein are falsely implicated in the above said crime and the allegations made in the complaint do not disclose the commission of any offence and they do not make out any case against the petitioners herein. It is further submitted by the learned counsel for the petitioners that even though the allegations in the F.I.R. are taken on their face value and accepted in their entirety, the same do not *prima facie* constitute any offence against the petitioners herein and it is unfair to compel the petitioners to undergo the rigmarole of a criminal trial.

On the contrary, it is submitted by the learned Government Pleader that there are *prima facie* allegations against the petitioners herein, as such, the present case is not a case for quashment of F.I.R. registered by the respondent – police authorities.

It is settled and well-established proposition of law that the jurisdiction this Court under Article 226 of Constitution of India for quashment of F.I.Rs., is required to be exercised very sparingly and unless there is element of abuse of process of law the extraordinary jurisdiction under Article 226 of the Constitution of India is not available.

In the instant case, this Court finds prima facie allegations against the petitioners herein in the F.I.R. and in the considered opinion of this Court the same are required to be enquired into by the Court below at the time of trial. In view of the above reasons, this Court is not inclined to entertain the request of the petitioners herein for quashment of the F.I.R.

It is also submitted by the learned counsel for the petitioners that the police authorities are not adhering to the provisions of Section 41-A of the Cr.P.C. and are actively contemplating to take the petitioners into custody without adhering to the said provisions of law. In this connection, it may be appropriate to refer to the provisions of Section 41-A of the Cr.P.C., which reads as under:

***“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.”*

In this Connection it would be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **Arnesh Kumar v. State of Bihar and another** <sup>[1]</sup> (Crl. Appeal No.1277 of 2014), wherein while dealing with Section 41.A of Cr.P.C. the Hon'ble Apex Court held 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 *Authorizing 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."*

It is obligatory on the part of the police authorities to adhere to the above said mandatory requirements of Section 41-A of Cr.P.C. and principles and parameters laid down in the above-referred Hon'ble Apex Court judgment.

For the aforesaid reasons, this writ petition is disposed of, directing the respondents-police authorities to act in accordance with the provisions of Section 41-A of Cr.P.C. and the principles and parameters laid down in the above-referred Hon'ble Apex Court judgment. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

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**A.V. SETHA SAI, J**

August 31, 2015

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**THE HON'BLE SRI JUSTICE A.V. SETHA SAI**

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[\[1\]](#) (2014) 8 SCC 273