

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

THURSDAY THE TWENTYSEVENTH DAY OF AUGUST
TWO THOUSAND AND FIFTEEN

PRESENT
HONOURABLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION NO. 27425 OF 2015

Between:

R. Sudheer & Anr. ... Petitioners

V/s.

The State of Telangana
Represented by its Prl. Secretary,
Home Department,
Secretariat, Hyderabad & Ors. ... Respondents

Counsel for the Petitioners: Sri P.V. Sai Krishna

Counsel for the Respondents: GP for Home [TG]

The Court made the following: [order follows]

HONOURABLE SRI JUSTICE A.V. SETHA SAI

WRIT PETITION NO. 27425 OF 2015

-

-

ORDER:

-

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

“To declare the action of Respondent No.2 in implicating the petitioner as ‘accused’ in relation to Crime No. 26 of 2015 of Chikkadpalli Police Station registered for offences under section 420, 468 and 471 of IPC on the false complaint lodged by the third respondent as being illegal, arbitrary and unjust and consequently to set aside the same and to grant such other suitable relief as this court may deem fit and proper in the circumstances of the case.”

2. Heard Sri P.V. Sai Krishna, learned counsel for the petitioners and learned Government Pleader for Home [TG] for respondents 1 and 2.

3. According to the learned counsel for the petitioners, the complaint lodged by third respondent which culminated in registration of FIR No. 26 of 2015 is a patent abuse of process of law and there are absolutely no ingredients of the provisions of sections 420, 468 and 471 of IPC as alleged in the FIR.

4. On the contrary, it is submitted by the learned Government Pleader that in view of existence of prima facie

allegations against the petitioners herein, the jurisdiction of this Court under Article 226 of the Constitution of India cannot be permitted to be invoked.

5. It is a settled and well-established proposition of law that unless an element of abuse of process of law is involved the jurisdiction of this Court under Article 226 of the Constitution of India cannot be pressed into service for quashment of the crime. In the instant case, in view of existence of prima facie allegations against the petitioners herein in the FIR, this Court is not inclined to grant the relief for quashment of the FIR No. 26 of 2015 on the file of Chikkadpalli Police Station.

6. Another submission made by the learned counsel for the petitioners is that the respondents-police authorities without adhering to the principles laid down by the Hon'ble Apex Court in **ARNESH KUMAR V/s. STATE OF BIHAR AND ANR** ^[1] are trying to arrest the petitioners herein.

7. In this connection it may be appropriate to extract section 41-A of Cr.P.C., which reads as under :

Section 41-A of the Code of Criminal Procedure reads as under: 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.*

8. While dealing with the provisions of Section 41-A Cr.P.C.

the Hon'ble Apex Court in the above referred decision held at para

Nos. 11 and 12 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 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 and 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 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 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 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.

9. The apprehension of the petitioners in the present writ petition is that the respondents-police authorities may not adhere to the mandatory provisions of section 41-A Cr.P.C. and the principles laid down by the Apex Court in the above referred judgment.

10. For the aforesaid reasons, the writ petition is disposed of, directing the respondents-police authorities to proceed in accordance with the provisions of Section 41-A and 60-A of Cr.P.C. and in terms of the principles laid down by the Apex Court in the judgment referred supra.

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

JUSTICE A.V.SESHA SAI

27/08/2015

ISL

HONOURABLE SRI JUSTICE A.V. SETHA SAI

—

[1]) [2014] 8 Supreme Court Cases 273