

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

WRIT PETITION No.23448 of 2015

ORDER:

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

“to issue Writ of Mandamus to declare the action of the 3rd respondent in registering F.I.R.No.370 of 2015 of Medipally Police Station, Cyberabad District as illegal, arbitrary and violation of Articles 14 and 21 of the Constitution of India and set-aside the same.”

Heard Sri Thota Gopinath, learned counsel for the petitioners and learned Government Pleader for Home, apart from perusing the material available before this Court.

According to the petitioners, they have been residing in a house bearing No.8-46/25, North Balaji Hills, Boduppal, Ghatkesar mandal, Ranga Reddy district, as tenants and they have no disputes with their owners. It is further stated that the Police Constables of the 3rd respondent Police Station came to their house and called petitioner No.5 and her sons to the Police Station on 22-03-2015 and accordingly they went to Police Station and the Sub-Inspector of Police directed to vacate the house where the petitioners have been residing. It is also stated that the petitioners herein stated before Police that they have no disputes with their neighbours and the police without hearing to their explanation warned the petitioners to vacate the house. It is also stated that since the petitioners have not vacated the house, the police personnel have been regularly visiting their house and asking them to vacate the premises. It is also averred in the writ affidavit that on 16-06-2015 police again called the petitioners to the Police Station and made them to sit in the Police Station and abused them in filthy language on the ground that the petitioners did not vacate the house though three months have been lapsed after their direction. It is further submitted that vexed with the attitude of the police they filed W.P.No.18062 of 2015 before this Court.

It is further stated that the Station House Officer, Medipally Police Station, Ranga Reddy district – 3rd respondent herein, on the complaint of the 4th respondent herein, registered F.I.R.No.370 of 2015 on 14-06-2015. According to the petitioners, the allegations made in the complaint made by the 4th respondent herein are concoctions and the complaint is a patent abuse of process of law. It is also submitted by the learned counsel for the petitioners herein that the police are not adhering to the mandatory requirements of Section 41-A of Cr.P.C. and trying to take the petitioners into custody.

Unless there is a patent abuse of process of law, investigation by the police cannot be scuttled by this Court in exercise of powers conferred under Article 226 of the Constitution of India. Since there are *prima facie* allegations against the petitioners herein and as the same cannot be enquired into by this Court under Article 226 of the Constitution of India and in absence of any element of abuse of process of law, this Court is not inclined to entertain the present writ petition by way of judicial review under Article 226 of Constitution of India.

It is also submitted by the learned counsel for the petitioners that police are not adhering to the provisions of Section 41-A of Cr.P.C. In this connection, it would 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 (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 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.

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.*
2. *All police officers be provided with a check list containing specified sub-clauses under Section 41 (1) (b) (ii);*
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;*
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;*
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;*
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;*
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.*
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 incumbent on the part of the police 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.

With the above observations, this writ petition stands disposed of. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESA SAI, J

July 29, 2015

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