

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

WRIT PETITION No.26601 of 2015

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ORDER:
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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 by declare the proceedings in FIR No. 126/2015 dated 07-07-2015 on the file of P.S. Ramachandrapuram, East Godavari District as illegal, arbitrary and contrary to the provisions of Cr.P.C. and consequentially set aside/quash the same.”

2. Heard Smt J. Sumathi, learned counsel for the petitioners and the learned Government Pleader for the respondents 1 to 3 apart from perusing the material available before the Court.

3. The grievance of the petitioners is that they are social workers in the locality and hail from the surrounding villages of Ramachandrapuram. The Station House Officer, Ramachandrapuram/third respondent herein on a complaint lodged by the fourth respondent herein, registered a crime in FIR.No.126/2015 on 07.07.2015, for the offences alleged under Sections 143, 341 r/w 149 I.P.C. According to the learned counsel for the petitioners, the said complaint which culminated in registration of FIR.126/2015 is a patent abuse of process of law and the complaint given by the fourth respondent is a false one and intended only for the purpose of threatening the petitioners herein. It is also the submission of the learned counsel for the petitioners that the respondent authorities are not adhering to the provisions of Section 41-A of the Code of Criminal Procedure. It is the further submission of the learned counsel for the petitioners that without conducting any investigation, the third respondent herein registered the present crime and it is further submitted that there is no *prima facie* case made out against the

petitioners, as such, the continuation of the proceedings against the petitioners herein amounts to abuse of process of law.

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 crime in the instant case cannot be quashed and the allegations made against the petitioners herein in the complaint need to be investigated into.

5. A perusal of the first information report shows that there are *prima facie* allegations against the petitioners herein. It is a settled and well established proposition of law that the jurisdiction of this Court under Article 226 of the constitution of India for quashing the crimes is required to be exercised very sparingly. Unless there is an element of abuse of process of law and absence of the *prima facie* allegations, the first information report cannot be quashed. In view of the said settled proposition of law, this Court is not inclined to entertain the prayer of the petitioners herein for quashing of the FIR.

6. Another aspect which is canvassed by the learned counsel for the petitioners is that the respondent authorities are not adhering to the provisions of Section 41A of the Code of Criminal Procedure. In this connection, it may be appropriate to refer to the provisions of Section 41A of the Code of Criminal Procedure, which read 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.”

7. In this context, it may be appropriate to refer to the judgment of the Hon’ble Apex Court in the case of **ARNESH KUMAR V. STATE OF BIHAR**^[1] wherein the Hon’ble Apex Court at paras 11 and 12, held as under:

“11. Our endeavour in this judgment is to ensure that police officers do not arrest 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 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 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 41A 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 directions aforesaid shall not only apply to the cases under Section 498 A of the I.P.C. 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.”

8. It is incumbent and obligatory on the part of the police authorities to adhere to the provisions of Section 41A of the Code of Criminal Procedure and the principles and parameters laid down by the Hon’ble Apex Court in the above referred judgment.

9. For the aforesaid reasons, writ petition is disposed of, directing the respondent authorities to proceed in accordance with the provisions of Section 41A of the Code of Criminal Procedure and in the light of the principles and parameters laid down by the Hon’ble Apex Court in **ARNESH KUMAR V. STATE OF BIHAR** (supra). As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:21 -08-2015
grk

WRIT PETITION No.26601 of 2015

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Dated 21st August, 2015
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**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR
THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

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

WRIT PETITION No.26601 of 2015

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Between:

Settibathula Rajababu, s/o S.Yohan,
Aged 50 years, Occ: Advocate, H.No.30-2-31,
Vadapalli Street, Ramachandrapuram,
Ramachandrapuram Mandal, East Godavari District,
A.P and others.

... Petitioner

and

The State of Andhra Pradesh represented by its
Principal Secretary, Home Department, Secretariat
Buildings, Hyderabad and three others.

... Respondents

JUDGMENT PRONOUNCED ON: 21st August, 2015

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

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| 1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Lordship wish to see the
Fair copy of the judgment? | Yes/No |

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