

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL PETITION No.3323 of 2015

ORDER

The petitioners filed the present application under Section 438 Cr.P.C. apprehending arrest in an un-registered crime to be registered basing on the report seems to have lodged by one Shaik Shahera Begum for the offence punishable under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act.

2. Learned Additional Public Prosecutor, on instructions, submits that till date, no crime is registered against the petitioners.

3. In ***Arnesh Kumar v. State of Bihar and another***^[1], the Apex Court held as under:

- 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) Authorising detention without recording reasons as aforesaid by the Magistrate concerned shall be liable for departmental action by the appropriate high court.

The Apex Court also held that “ the directions aforesaid shall not only apply to the cases under Section 498-A of the 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.”

4. From the above it is clear that the police officer, before arresting any person, has to be satisfied that such an arrest is necessary in terms of clauses (a) to (e) of Section 41(1)(b)(ii) Cr.P.C. and he has to record reasons while making such arrest. For the aforesaid reasons, it is ordered that the investigating officer while exercising discretion, whether or not to arrest the petitioner herein, under Section 41 Cr.P.C. shall scrupulously follow the conditions stipulated therein and also the judgment of the Apex Court, before

taking any coercive steps against the petitioner.

5. With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions pending, if any in this criminal petition, shall also stand closed.

C.PRAVEEN KUMAR,J

16th April, 2014

sj

[\[1\]](#) 2014(2) ALT (CrI.) 457(SC)