

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

WRIT PETITION No. 23276 OF 2015

ORDER:

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

“to issue Writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring action of the 3rd Respondent registering Crime No.440/2015 against the petitioner and his brother illegal, against law and quash the same and pass such other orders or orders as the Hon'ble Court may deem fit and proper in the interest of justice and circumstances of the case.”

2. On the complaint made by the 4th respondent herein, the Station House Officer, Kukatpally Police Station, Kukatpally, Rangareddy District, registered crime vide FIR.No.440/2015 for the alleged offences under sections 417, 420 of Indian Penal Code and Section 3(1)(x) of Schedules Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. According to the learned counsel for the petitioner, the registration of said crime against the petitioner herein is a patent abuse of process of law and allegations are contentious and fictitious.

4. A reading of the material available before the court discloses that there are *prima facie* allegations against the petitioner herein and the same cannot be enquired into under Article 226 of the Constitution of India at this stage. It is further submitted by the learned counsel for the petitioner that the respondents/police authorities are attempting to take the petitioner into custody without adhering to the mandatory requirements of Section 41-A of Criminal Procedure Code. In this connection, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in ***Arnesh Kumar v. State of Bihar and another*** (Crl.Appeal No.1277 of 2014)^[1], wherein the Hon'ble Apex Court 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 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 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.”

5. In view of the above, this Writ Petition is dismissed. However, the police authorities shall adhere to the provisions of Section 41-A of the Criminal Procedure Code and the principles and parameters laid down by the Hon'ble Apex Court in the judgment referred supra.

6. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

28th July, 2015
ss

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