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IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF

ANDHRA PRADESH

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Writ Petition No.24317 of 2015

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Between:

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Ramesh Jayaraman

...Petitioner

and

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The State of Andhra Pradesh, rep. By its Principal Secretary,

Home Department, Secretariat Buildings, Hyderabad

and others

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...Respondents

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Dated 04-08-2015

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SUBMITTED FOR APPROVAL:

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

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1. Whether Reporters of Local newspapers

may be allowed to see the Judgment? Yes/No

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2. Whether the copies of judgment may be

marked to Law Reporters/Journals ? Yes/No

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3. Whether Their Ladyship/Lordship wish to

see the fair copy of the Judgment? Yes/No

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THE HON'BLE SRI JUSTICE A.V. SESA

SAI

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Writ Petition No.24317 of 2015

ORDER:

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In the present writ petition, the petitioner herein is praying for quashment of Crime in F.I.R.No.293 of 2014 on the file of the Chillakur Police Station, Chillakur, SPSR Nellore District, registered against the petitioner and another for the alleged offences under Section 379 I.P.C., and Section 21(1) of the Mines and Minerals (Development & Regulation), Act, 1957 (for short 'the Act').

Heard Sri Narasimhulu Parise, learned counsel for the petitioner and learned Government Pleader for Home.

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According to the learned counsel for the petitioner, there are absolutely no ingredients of Section 379 IPC, or Section 21(1) of the Mines Act, as alleged by the respondents, and that the petitioner herein is falsely implicated in the case. It is further submitted that the respondents-police authorities brought pressure on the driver-accused No.1, in order to implicate the petitioner herein in the present crime. It is also the submission of the learned counsel for the petitioner that the Police are not adhering to the mandatory requirement of Section 41-A of the Code of Criminal Procedure.

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On the contrary, it is submitted by the learned Government Pleader that in view of the *prima facie* allegations against the

petitioner herein, the present writ petition seeking quashment of FIR is not maintainable and the petitioner herein is not entitled for any relief under Article 226 of the Constitution of India.

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 quashment of the crimes, is required to be exercised very sparingly. In the instant case, in view of the existence of *prima facie* allegations against the petitioner herein in the F.I.R., this Court is not inclined to scuttle the investigation undertaken by the police. It is also the submission of the learned counsel for the petitioner that the respondents are not adhering to the mandatory requirement of Section 41-A of the Code of Criminal Procedure. In this connection, it may be appropriate to extract Section 41-A of the Code of Criminal Procedure, 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.”

The Honourable Supreme Court in the case of **Arnesh Kumar v. State of Bihar and another (Crl.Appeal No.1277 of 2014)**^[1], while dealing with Section 41-A of Code of Criminal Procedure, held at Paragraphs 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 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.”

It is incumbent and obligatory on the part of the respondents-police authorities to adhere to the above mentioned provisions of law, and the law laid down by the Hon'ble Apex Court, which is mentioned supra.

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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 of Code of Criminal Procedure and the law laid down by the Hon'ble Apex Court in the case of **Arnesh Kumar v. State of Bihar and another** (supra).

The miscellaneous petitions, if any, filed in the writ petition,

shall also stand disposed of. There shall be no order as to costs.

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A.V. SESA SAI, J.

Dt.04-08-2015.

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