

**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.21559 of 2015

Between:

Sogar Bee and 3 others.

.. Petitioners

and

The State of Telangana, rep.by its Principal Secretary, Home Department, Secretariat, Hyderabad and 2 others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 5.8.2015

SUBMITTED FOR APPROVAL:

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

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| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 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.SESHA SAI

WRIT PETITION No.21559 of 2015

ORDER:

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

“to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records in Crime No.370 of 2014 on the file of Falaknuma Police Station, Falaknuma, Hyderabad for the offences under Sections 447, 232 and 506 r/w 34 I.P.C and quash the same”

2. Heard Sri V.R.Reddy Kovvuri, learned counsel for the petitioners, and the learned Government Pleader for Home (Telangana State) appearing for respondent Nos.1 and 2, apart from perusing the material available before this Court.

3. On the complaint lodged by respondent No.3 herein, the Station House Officer, Falaknuma Police Station, Falaknuma, Hyderabad registered a case in Crime No.370 of 2014 against the petitioners herein for the alleged offences punishable under Sections 447, 232 and 506 read with 34 I.P.C. Seeking quashment of the said crime, the present writ petition has been filed.

4. According to the learned counsel for the petitioners, there are absolutely no ingredients of the provisions of law as mentioned in the First Information Report (F.I.R.). It is also the submission of the learned counsel for the petitioners that the complaint, which culminated in the registration of the present F.I.R. is a patent abuse of process of law. It is also the submission of the learned counsel for the petitioners that the present complaint is obviously an offshoot of civil dispute.

5. On the contrary, it is vehemently contended by the learned Government Pleader that there are *prima facie* allegations against the petitioners herein in the complaint lodged by respondent No.2, as

such, the present writ petition seeking quashment of the F.I.R. is not maintainable and the petitioners are not entitled to any relief under Article 226 of the Constitution of India.

6. It is a well settled 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. It is further submitted by the learned Government Pleader that in view of the existence of *prima facie* allegations against the petitioners, the present writ petition cannot be entertained.

7. During the course of hearing, learned Government Pleader has placed on record the written instructions, dated 22.7.2015, furnished by the Sub-Inspector of Police, Falaknuma Police Station, Hyderabad City, which read as under:

“One Smt.Zuleka Begum w/o.Huyssan Khan, aged 50 years, resident of Falaknuma, Hyderabad had approached the police of Falaknuma Police Station, Hyderabad City and lodged a complaint on 13.12.2014 stating that on 11.12.2014 at about 2000 hrs Sogra Bee and her family members came to Rehana Begum house but she did not open her gate, then they criminally trespassed into the gate and Sogar Bee, Jousar Begum, Shameem beat her with their hands and Jahangir Pasha threatened her to see her end. Hence, she requested the police to take necessary action as per law.

Basing on the contents of the above complaint, a case in Cr.No.370/2014 U/secs.447, 323, 506 r/w.34 IPC was registered on the file of Falaknuma Police Station, Hyderabad on 13.12.2014 and taken up the investigation.

All the writ petitioners herein are shown as accused in the FIR.

During the course of investigation, the investigation officer examined the complainant and some other witnesses and recorded their detailed statements including the eye witnesses to the incident (L.Ws.2 and 3). On the statement of L.W.4 Rehana Begum, the investigation officer also altered sections from Secs.447, 323, 506 r/w.34 IPC to Secs.147, 354(A), 447, 323, 506 r/w.34 IPC and to that effect, alteration memo was also filed before the concerned Hon'ble Court.

While the investigation was in progress, the accused persons A1 to A5 voluntarily came to the police station and surrendered before the investigating officer. Then the investigation officer

interrogated the accused persons thoroughly. On interrogation, all the accused persons who are the petitioners herein voluntarily confessed that they have committed this offence and admitted their guilt. As such, the investigating officer served the notice U/sec.41(a) Cr.P.C. to the accused persons and released on 16-01-2015.

Investigation is completed. The investigation clearly so far done established that L.W.1 (complainant) is residing at Falaknuma, Hyderabad along with his family members. L.Ws.2 to 5 are the eye witnesses to the incident. On 11.12.2014 at about 2000 hrs, the accused persons came to L.W.4's house but she did not open her gate. Then they criminally trespassed from L.W.1's gate and beaten L.W.1 with their hands and threatened her with dire consequences. In the meantime, L.W.1 came to outside, then the accused caught her hand and beaten her with their hands. Thus, the accused persons have committed an offence punishable U/secs.147, 354 (A), 447, 323, 506 r/w.34 IPC."

8. In view of the existence of *prima facie* allegations in the F.I.R. registered by the respondent police authorities and in the absence of any element of abuse of process of law, this Court is not inclined to quash the F.I.R.

9. Another submission made by the learned counsel for the petitioners is that the respondent police authorities 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 Cr.P.C., which reads as under:

"41-A. 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.”

10. In this connection, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in **Arnesh Kumar v. State of Bihar and another** ^[1] (Crl. Appeal No.1277 of 2014), wherein while dealing with Section 41.A of Cr.P.C., the Hon'ble Apex Court held at Para Nos.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.

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 *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."

11. It is obligatory on the part of the police authorities 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's judgment.

12. For the aforesaid reasons, this writ petition is disposed of, directing the respondent police authorities to act in accordance with the provisions of Section 41-A of Cr.P.C. and the principles and parameters laid down in the above referred Hon'ble Apex Court's judgment. There shall be no order as to costs.

13. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date: 5.8.2015
AMD

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

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