

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

WRIT PETITION No.23838 of 2015

ORDER:

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

“to issue Writ of Mandamus to declare the action of the 3rd respondent trying to implicate petitioner in Crime No.164/2015 as accused, illegal, against law and quash the same.”

Heard Sri K. Srinivasa Rao, learned counsel for the petitioner and learned Government Pleader for Home, apart from perusing the material available before this Court.

According to the petitioner, he is falsely implicated in Crime No.164 of 2015 registered for the alleged offence under Section 420 of I.P.C. It is also stated that in order to destroy the reputation of the petitioner's educational academy, the petitioner was falsely dragged into the case by the accused in Crime No.164 of 2015. It is also stated that the petitioner herein is running an educational academy for the last 8 years without there being any complaint and the petitioner has nothing to do with the crime.

In the considered opinion of this Court the said factual aspects cannot be gone into by this Court at this stage under Article 226 of the Constitution of India. Therefore, this Court is not inclined to scuttle the investigation by the police.

It is also submitted by the learned counsel for the petitioner that police 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 the Cr.P.C., 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.”

In this Connection it would be appropriate to refer to the judgment of the Hon’ble Apex Court in the case of **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 Paras 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."

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 judgment.

For the aforesaid reasons, this writ petition is disposed of, directing the respondents-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 judgment. There shall be no order as to costs.

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

A.V. SESA SAI, J

July 31, 2015

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

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