

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

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WRIT PETITION No. 28508 OF 2015
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ORDER:

According to the affidavit filed in support of the writ petition, the sum and substance of the case of the petitioner herein is that the respondent police authorities are trying to apprehend the petitioner herein without following the provisions contemplated under Section 41-A of the Code of Criminal Procedure and the law laid down by the Hon'ble Supreme Court in the case of Arnesh Kumar v. State of Bihar and another.

2. The 3rd respondent – Station House Officer, Thondangi Police Station, East Godavari District, Andhra Pradesh, on the complaint lodged by one Mr. Kattumuri Yesubabu, registered FIR No.165/2015, on 31.08.2015, for the offences alleged under Sections 420, 506 r/w. 34 IPC and 3(i)(x) of SC-STs Prevention of Atrocities Act. It is the submission of the learned counsel for the petitioner that the respondent police authorities are not adhering to the provisions of Section 41-A of the Code of Criminal Procedure.

3. In this context, it may be appropriate to refer to the provisions of Section 41-A of 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.”

4. It is also contextual 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, it is obligatory and incumbent on the part of the police authorities to adhere to the mandatory requirements of Section 41-A of the Cr.P.C. and the principles and parameters laid down by the Hon’ble Apex Court in the judgment referred supra.

6. For the aforesaid reasons, the writ petition is disposed of, directing the respondent police authorities to act in accordance with 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.

7. 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

04th September, 2015
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[\[1\]](#) (2014) 8 SCC 273