

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

W.P.No.26808 of 2015

O R D E R:

In the present writ petition challenge is to the action of the 2nd respondent-Station House Officer, Medipalli Police Station, Karimnagar District in registering crime No.94/2015 dated 27.7.2015 basing on a complaint given by the 3rd respondent herein. The police registered the said crime vide FIR No.94/2015 for the alleged offence under Section 420 & 506 IPC.

According to the petitioners, the very complaint made by the 3rd respondent which culminated in registration of FIR is abuse of process of law and absolutely there are no ingredients of Section 420 & 506 IPC. It is further submitted by the learned counsel for the petitioners that the allegations in the complaint are very vague and there are no ingredients of offence alleged in the FIR and the said complaint was made with malafide intention to extract the amount from the petitioners. It is also further submitted by the learned counsel that police authorities are not adhering to the provisions of Section 41-A of Cr.P.C and the

parameters laid down by the Hon'ble the Supreme Court in **ARNESH KUMAR v. STATE OF BIHAR AND ANOTHER** [\[1\]](#).

A reading of the complaint lodged by the 3rd respondent herein shows prima facie allegations against the petitioners herein. It is settled and well established principle of law that jurisdiction of this Court under Article 226 of the Constitution of India is required to be exercised very sparingly. Unless there is element of abuse of process of law, invocation of jurisdiction of this Court under Article 226 of the Constitution of India is impermissible. In view of the same, this Court is not inclined to quash the FIR.

Another submission of the learned counsel for the petitioners is that police authorities are not adhering to the mandatory requirement of Section 41-A of Cr.P.C. In this connection it is appropriate to refer to Section 41-A of 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 it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.”

In this context, it may also be appropriate to refer to the judgment of the Supreme Court reported in **ARNESH KUMAR**’s case (1 supra), wherein the Hon’ble Supreme Court at paras 11 and 12 held as under :

“11. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

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.PC](#);

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 authorising 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 authorise 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 41A](#) of Cr.PC 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 directions aforesaid shall not only apply to the cases under [Section 498-A](#) of the I.P.C. 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 police authorities to adhere to the above mentioned mandatory provisions of Section 41-A Cr.P.C. and the parameters laid down by the Hon'ble Supreme

Court in **ARNESH KUMAR**'s case (1 supra).

For the aforesaid reason, the writ petition is disposed of directing the respondent police authorities to adhere to the provisions of Section 41-A Cr.P.C. and the law laid down by the Hon'ble Supreme Court in **ARNESH KUMAR**'s case (1 supra). Miscellaneous applications, if any pending in the writ petition, shall stand closed. No costs.

A.V.SESHA

SAI, J
Kk/Date:25.8.2015

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