

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

Writ Petition No. 25029 of 2015

Between:

K. Rajesh Kumar.

.. Petitioner

And

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

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 10.08.2015

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SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the Judgments?

2. Whether the copies of judgment may be
Yes/No
marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to

Yes/No

see the fair copy of the Judgment?

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.25029 of 2015

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ORDER

This writ petition is filed under Article 226 of the Constitution of India for the following relief;

“to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of respondents 3 and 4 in implicating the petitioner in false criminal cases so as to spoil the professional carrier of the petitioner as well as his business due to business rivalry, as arbitrary and illegal and consequently issue a direction to respondent No.3 not to prosecute the petitioner in false criminal case in Cr.No.458 of 2015”.

2. Heard Sri T. Koteshwara Prasad, learned counsel for the petitioner and learned Government Pleader for Home for respondents 1 to 3.

3. According to the petitioner, he is the Proprietor of a Firm, by name, Vintage Consultancy and through which he is providing guidance to unemployed youth and also developing their professional skills. The petitioner's Firm is situated at Vivek Nagar, Kukatpally, within the jurisdiction of the third respondent Police Station. On the complaint, the third respondent-police registered a case in Cr.No.458 of 2015 on 28.06.2015 against the petitioner herein for the alleged offence under Section 420 IPC. According to the petitioner, he is falsely implicated in the said

crime and he is innocent and there are no ingredients of Section 420 IPC in the case of the prosecution.

4. It is the submission of the learned counsel for the petitioner that the prosecution launched against the petitioner herein is a patent abuse of process of law. Another submission made by the learned counsel for the petitioner is that the third respondent-police are not adhering to Section 41-A of the Code of Criminal Procedure, 1973 (for short 'the Code').

5. On the contrary, it is submitted by the learned Government Pleader for Home that in view of the existence of prima facie allegations against the petitioner herein in the FIR, the same cannot be quashed under Article 226 of the Constitution of India.

6. It is a settled and well established proposition of law that the jurisdiction of this Court under Article 226 of the Constitution of India is required to be exercised very sparingly. The said jurisdiction cannot be exercised in the absence of element of any abuse of process of law. In the instant case, there are prima facie allegations against the petitioner herein in the First Information Report recorded by the third respondent-police under Section 420 IPC. The said allegations are required to be gone into after full-fledged trial by a competent Court. The said allegations can neither be verified nor examined under Article 226 of the Constitution of India and the same are beyond the jurisdiction of this Court under Article 226 of the Constitution of India. In these circumstances, this Court is not inclined to scuttle the investigation undertaken by the police by registering Cr.No.458 of 2015.

7. Another submission of the learned counsel for the petitioner is that the police are not adhering to Section 41-A of the Code. In this connection, it would be appropriate to refer to the provisions of Section 41-A of the Code, which read 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 a competent Court in this behalf, arrest him for the offence mentioned in the notice”.

It is also relevant to note that the Honourable Apex Court in **Arnesh Kumar v. State of Bihar and another**^[1], it was held as under;

“11. Another provision i.e., Section 41A Cr.P.C. aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalized. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), which is relevant in the context reads as follows:

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 a competent Court in this behalf, arrest him for the offence mentioned in the notice”.

Aforesaid provision makes it clear that in all cases where the arrest of a person is not required Under Section 41(1), Code of Criminal Procedure, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged Under Section 41 Code of Criminal Procedure has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

12. We are of the opinion that if the provisions of Section 41, Code of Criminal Procedure which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Code of Criminal Procedure for effecting arrest be discouraged and discontinued.

In view of the above legal position, it is incumbent on the part of the police to adhere to the mandatory requirements of Section 41-A of the Code and the principles and parameters laid down by the Honourable Apex Court in the above referred judgment.

8. For the aforesaid reasons, the Writ Petition is disposed of,

directing the third respondent police to adhere to the provisions of Section 41-A of the Code and the principles and parameters laid down by the Honourable Apex Court in the above referred judgment. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

A.V.SESHA SAI

10th August, 2015

sj

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[\[1\]](#) 2014(2) ALT (CrI.) 457(SC)