

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

WRIT PETITION NO. 23047 OF 2015

Between:

Koraboina Anjaiah & Anr. ... Petitioners

V/s.

The State of Telangana
Rep. by its Prl. Secretary
Home Department,
Secretariat, Hyderabad & Ors. ... Respondents

DATE OF JUDGMENT PRONOUNCED : 24/07/2015

SUBMITTED FOR APPROVAL

HONOURABLE SRI JUSTICE A.V. SETHA SAI

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| 1. Whether Reports of Local Newspapers
May be allowed to see the judgment ? | Yes/No |
| 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals | Yes/No |
| 3. Whether his Lordship wish to see the fair
Copy of the judgment ? | Yes/No |

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

FRIDAY THE TWENTYFOURTH DAY OF JULY
TWO THOUSAND AND FIFTEEN

PRESENT
HONOURABLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION NO. 23047 OF 2015

Between:

Koraboina Anjaiah & Anr. ... Petitioners

V/s.

The State of Telangana
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Counsel for the Petitioner: Sri M. Vijayakanth

Counsel for the Respondents: GP for Home [TG]

The Court made the following: [order follows]

HONOURABLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION NO. 23047 OF 2015

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ORDER:

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

To declare the action of respondents 2 to 4 in threatening the petitioners to arrest them without following due process of law as contemplated under section 41-A of Cr.P.C., as illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India and consequently to direct the respondents not to arrest the petitioners in connection with Crime No. 115 of 2014 of Women's Police Station, Saroornagar, Hyderabad and to pass such other suitable orders as this court may deem fit and proper in the circumstances of the case.

2. The petitioners herein are the parents-in-law of the fifth respondent herein. The fifth respondent herein lodged a complaint with the Station House Officer, Women's Police Station, Saroornagar, Ranga Reddy district, and the same is registered as Crime No.115 of 2015 for the alleged offences under section 498-A, 354 [d] of IPC and section 3 of Dowry Prohibition Act.

3. According to the learned counsel for the petitioners, the only grievance of the petitioners herein is that the respondents-police authorities are threatening the petitioners with arrest without following the procedure as contemplated under section 41-A of Cr.P.C. The sum and substance of the case of the petitioners is that the respondents-police authorities without adhering to the

principles laid down by the Hon'ble Apex Court in **ARNESH**

KUMAR V/s. STATE OF BIHAR AND ANR ^[1] are trying to arrest

the petitioners herein.

Section 41-A of the Code of Criminal

Procedure reads as under: 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. While dealing with the provisions of Section 41-A Cr.P.C.

the Hon'ble Apex Court in the above referred decision held at para

Nos. 11 and 12 as under:

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise 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 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 and check list duly filled 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 41-A 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 the 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 IPC or section 4 of 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. The apprehension of the petitioners in the present writ petition is that the respondents-police authorities may not adhere to the mandatory provisions of section 41-A Cr.P.C. and the principles laid down by the Hon'ble Apex Court in the above referred judgment.

6. It is obligatory on the part of the respondents-police authorities to adhere to the mandatory provisions of section 60-A and 41-A of Cr.P.C. and the principles and parameters laid down in the above referred judgment of the Hon'ble Apex Court.

7. For the aforesaid reasons, the writ petition is disposed of, directing the respondents-police authorities to proceed in accordance with the provisions of Section 41-A and 60-A of Cr.P.C. and in terms of the principles laid down by the Hon'ble Apex Court in the judgment referred supra.

8. With the above observation, the writ petition is disposed of at the stage of admission. No costs.

9. As a sequel, Miscellaneous Petitions if any, pending in this writ petition shall stand closed.

JUSTICE A.V.SESHASAI

24/07/2015
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HONOURABLE SRI JUSTICE A.V. SESHASAI

WRIT PETITION NO. 23047 OF 2015

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Date: 24/07/2015
Circulation No. 74
Court Master: I s L

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