

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

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WRIT PETITION No. 25488 OF 2015
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ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking quashment of Crime in FIR.No.235/2014 on the file of Station House Officer, Gadwal Town Police Station, Mahaboobnagar District – 3rd respondent herein, registered for the alleged offences under Section 379, 420 of IPC and Section 27 and 35 of A.P.WALTA Act.

2. According to the petitioner, he is a permanent resident of Pedhapalli Village, Malthakal Mandal, Mahaboobnagar District and he is innocent and law abiding citizen and never involved in any criminal case nor he has any criminal antecedents. On the complaint lodged by the 4th respondent, who is working as Mandal Revenue Inspector, Gadwal, the police registered the present crime.

3. It is the case of the petitioner herein that the petitioner herein has nothing to do with the case and he is neither the owner of the vehicle nor concerned with the sand. It is the further case of the petitioner that on enquiry, he came to the know that the owner of the said tipper is one Mr. Kuruva Eeranna and the 3rd respondent herein, without holding any enquiry and without ascertaining as to who is the real owner of the said vehicle, in a mechanical manner included the name of the petitioner herein in FIR. It is submitted by the learned counsel for the petitioner that petitioner herein is unnecessarily implicated in the present crime and the same is a patent abuse of process of law.

4. It is submitted by the learned Government Pleader for the respondents herein that in view of the existence of *prima-facie* allegations against the petitioner herein in the FIR, it is not a case for quashment of crime. A perusal of the FIR shows that there are *prima-facie* allegations against the petitioner herein. It is a settled and well

established proposition of law that the jurisdiction of this court under Article 226 of the Constitution of India for quashment of the crimes is required to be exercised very sparingly. In view of the existence of *prima-facie* allegations against the petitioner herein, this court is not inclined to entertain the prayer of the petitioner herein for quashment of the FIR. The said allegations cannot be a subject matter of enquiry under Article 226 of the Constitution of India.

5. Another submission made by the learned counsel for the petitioner is that the police are not adhering to the mandatory provisions of Section 41-A of the Criminal Procedure Code and trying to take the petitioner into custody without adherence to the mandatory requirements of the said provisions. In this connection, it may be appropriate to refer to the provisions of 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 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.”

6. In this context, it may be appropriate 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.”

7. In view of the above, it is 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 laid down by the Hon'ble Apex Court in the judgment referred supra.

8. In view of the aforesaid reasons, the writ petition stands disposed of, directing the respondents/police authorities to adhere to 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.

9. 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

13th August, 2015

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