

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

WRIT PETITION No.21696 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking, quashment of crime in F.I.R.No.98 of 2015 on the file of the Woman Police Station, Warangal registered for the alleged offences under Sections 498-A, 323 and 506 of IPC and Sections 3 and 4 of Dowry Prohibition Act.

Heard Sri J.U.M.V. Prasad, learned counsel for the petitioners and learned Government Pleader for Home for respondents.

Petitioners herein are A3 and A4 in the said F.I.R.No.98 of 2015. The 1st petitioner herein is the sister-in-law of the de-facto complainant and the 2nd petitioner herein is the husband of the 1st petitioner. According to the learned counsel for the petitioners, there are no specific allegations against the petitioners herein in the complaint lodged by the de-facto complainant, as such, the registration of the crime against the petitioners herein is patent abuse of process of law. It is further submitted that to the extent of the petitioners herein there are no ingredients of Sections 498-A, 323 and 506 of IPC mentioned in the First Information Report. It is also stated that the petitioners herein have been staying at Hyderabad and the de-facto complainant is at Warangal and petitioners herein have nothing to do with the disputes.

On the contrary, it is vehemently argued by the learned Government Pleader that since there are *prima facie* allegations against the petitioners herein, the crime registered by the Police cannot be asked to be quashed under Article 226 of the Constitution of India. It is also submitted by the learned Government Pleader that in absence of element of any abuse of process of law there cannot be any interference by this Court under Article 226 of the Constitution of India.

A perusal of the complaint, which is placed on record by the learned counsel for the petitioners, shows *prima facie* allegations against the petitioners herein. At this stage, the contents of the complaint alone can be seen and no roving enquiry is permissible.

In view of the said *prima facie* allegations against the petitioners herein, this Court is not inclined to quash the F.I.R.No.98 of 2015. Another apprehension expressed by the learned counsel for the petitioners is that the respondent authorities may not follow the provisions of Sections 60-A and 41-A of the Cr.P.C. In this Connection it would be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **Arnesh Kumar v. State of Bihar and another**^[1] (Crl. Appeal No.1277 of 2014), wherein while dealing with Section 41.A of Cr.P.C. the Hon'ble Apex Court held at Paras 11 & 12 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 Authorizing 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."

It is incumbent on the part of the Investigating Agency to adhere to the above said provisions of law and principles and parameters laid down in the above-referred Hon'ble Apex Court judgment.

With the above observations, this writ petition stands disposed of. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESA SAI, J

July 23, 2015

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