

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.41357 of 2016

ORDER:

This writ petition is filed seeking Writ of Mandamus calling for the records relating to and in connection with Crime No.312 of 2015 of Police Station, Chandrayangutta, Hyderabad, and consequently set aside the same, as the same is violative of Articles 14, 19 and 21 of the Constitution of India.

2. Writ of Mandamus is not maintainable in the instant case. However, considering the fact that the petitioner has also prayed for any other writ, in the facts and circumstances of the case, the writ petition can be disposed of.

3. The petitioner has been arrayed as Accused No.2 in Crime No.312 of 2015 filed by respondent No.6, who had alleged that by utilizing cash cheques of respondent No.6, an amount of Rs.1,15,000/- was drawn from her account. After investigation, the respondent police authorities found three accused A.1 to A.3. So far as A.1 and A.3 are concerned, they were taken into custody and produced before the Court concerned. In the remand Case Diary, the petitioner – A.2 was shown as absconding. It is the case of the petitioner that he has nothing to do with the offences alleged in the aforesaid crime and he is ready to cooperate with the investigation. The petitioner apprehends arrest by the police in connection with the above crime. Hence, the present writ petition.

4. In the light of the law laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar and another**¹, the respondent police authorities shall follow the conditions mentioned in para-13 of the said judgment, which are as follows:

- 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.
- 2) All police officers be provided with a check list containing specified sub-clauses under Section 41 (1) (b) (ii);
- 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;
- 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;
- 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

¹ 2014 (2) ALT (Cri.) 457 SC

Superintendent of police of the district for the reasons to be recorded in writing;

- 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;
- 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.
- 8) Authorising detention without recording reasons as aforesaid by the Magistrate concerned shall be liable for departmental action by the appropriate high court.

5. With the above directions, the writ petition is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE CHALLA KODANDA RAM

29.11.2016

NOTE: Issue C.C. in three days.
(B/O)
Msr

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