

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.9896 of 2016

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ORDER:
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The petitioners who are A2 and A3, filed the present application under Section 438 of the Code of the Criminal Procedure (Cr.P.C.), seeking release in the event of their arrest in an unregistered crime to be registered basing on the report given by one Boddepalli Nagalaxmi, against the petitioners for matrimonial offences.

Learned Public Prosecutor, on instructions, submits that they received the report but have not registered any crime till date.

If the Police are registering the crime for the offences punishable for a period of seven years or less, they shall scrupulously follow Section 41 of Cr.P.C. and also the directions issued by the Apex Court in ***Arnesh Kumar v. State of Bihar and another***^[1], which read as under:

- 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 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.

The Apex Court also held that “ the directions aforesaid shall not only apply to the cases under Section 498-A of the 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.”

With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE C. PRAVEEN KUMAR

18.07.2016
vhb

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