

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.20632 of 2017

ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader for Home for the State of Andhra Pradesh. With their consent, the present writ petition is disposed of at the admission stage itself.

2. The present Writ Petition, under Article 226 of the Constitution of India, came to be filed seeking issuance of writ of *mandamus* declaring the action of the 2nd respondent in high-handedly proceeding with FIR in Crime No.56 of 2017 without following due process of law, as illegal and arbitrary and consequently, direct the 2nd respondent to follow the procedure under Section 41-A Cr.P.C.

3. Though the learned counsel for the petitioners sought for a direction against the 2nd respondent for proceeding with the FIR in Crime No.56 of 2017, restricts his prayer seeking a direction to the respondents to follow Section 41-A Cr.P.C., and also the judgment of the Hon'ble Apex Court in *Arnesh Kumar v. State of Bihar and another*¹, if the offences alleged against the petitioners are punishable for a term of less than seven years.

4. In *Arnesh Kumar v. State of Bihar and another*, the Apex Court held as under:

¹ 2014 (2) ALT (Cri.) 457 (SC)

- 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.”

In view of the above, the investigating agency is directed to scrupulously follow the conditions stipulated under Section 41.A of Cr.P.C. and also the direction issued by the Apex Court in the judgment referred to above.

5. With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions pending, if any, shall also stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date: 27.06.2017
INL