

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NOs.249, 250, 251 AND 253 OF 2017

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

In all these Writ Appeals, the appellants were arrayed as respondents in the Writ Petitions, and it is on their complaints that FIRs were registered against the respondents-writ petitioners.

The orders under appeals were passed at the stage of admission without notices being issued to the appellants herein and without giving them an opportunity of being heard. The Learned Single Judge has, while directing investigation to proceed in accordance with law, directed that the respondent-writ petitioners should not be arrested in the meanwhile. As the said orders were passed without putting the appellants on notice, and without giving them an opportunity of being heard, we were initially inclined to set aside the orders under appeals, and to restore the Writ Petitions to file. However, both Sri P.Prabhakar Reddy, learned counsel for the appellants and Sri P.Prabhakar Rao, learned counsel for the respondents-writ petitioners, would agree that, since the discretion whether or not to effect arrest is conferred under Section 41 of the Code of Criminal Procedure (Cr.P.C.) on the Investigating Officer and as the Supreme Court in **Arnesh Kumar v. State of Bihar**¹ has stipulated parameters for exercise of such power, it would suffice instead to dispose of these appeals directing the Investigating Officer to exercise his discretion

¹ (2014) 8 SCC 273

under Section 41 Cr.P.C. in accordance with law laid down by the Supreme Court in **Arnesh Kumar**.

The orders under appeals are set aside. The Investigating Officer shall exercise his discretion, whether or not to effect arrest of the accused, strictly in accordance with Section 41 Cr.P.C., and in the light of the law laid down by the Supreme Court in **Arnesh Kumar**.

All the Writ Appeals are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.


(**RAMESH RANGANATHAN, ACJ**)

(**DR. SHAMEEM AKTHER, J**)

6th March 2017
RRB