

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.21268 of 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking to declare the action of the third respondent in not following Section 41-A of the Code of Criminal Procedure while investigating crime No.215 of 2017 registered for the offences punishable under Sections 420, 481, 482, 464 and 506 of Indian Penal Code and Sections 78 & 79 of Trade Merchandise and Marks Act, 1958, as illegal and arbitrary.

Heard the learned counsel for the petitioners as well as the learned Assistant Government Pleader for Home.

Though various grounds are raised in the Writ Petition, the learned counsel for the petitioners restricts his prayer seeking a direction to respondent-Police to follow the judgment of the Hon'ble Apex Court in ***Arnesh Kumar v. State of Bihar and another***¹.

In ***Arnesh Kumar*** (supra), the Apex Court held 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

¹ 2014 (2) ALT (Gr.) 457 (SC)

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.”

Having regard to the above and since the offences alleged against the petitioners are punishable with imprisonment less than seven years, this Writ Petition is disposed of directing the investigating agency to scrupulously follow the conditions stipulated under Section 41-A of Cr.P.C. and also the directions issued by the Apex Court in the judgment referred to above, before taking any coercive steps against the petitioners.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed. No costs.

29.06.2017

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C. PRAVEEN KUMAR, J