

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.8216 of 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of the Criminal Procedure (Cr.P.C.), came to be filed seeking quashing of FIR in crime No.72 of 2017 of VI Town Police Station, Nellore, registered for the offences punishable under Section 34a of A.P. Excise Act.

Though the present application is filed seeking to quash the F.I.R., the learned counsel for the petitioner restricts his prayer seeking a direction to be given to the Investigating agency to follow the conditions stipulated in Section 41 of Cr.P.C. and also the judgment of the Hon'ble Apex Court in ***Arnesh Kumar v. State of Bihar and another*¹**, as the offences alleged against the petitioner are punishable for a term of less than seven years.

In ***Arnesh Kumar v. State of Bihar and another***, 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 necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

¹ 2014 (2) ALT (Gr.) 457 (SC)

- 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.”

Since the offences alleged against the petitioner are punishable for a term less than seven years, the investigating agency is directed to scrupulously follow the direction issued by the Apex Court in the judgment referred to above, before taking any coercive steps against the petitioner.

Accordingly, the Criminal Petition is disposed of.

Miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE C. PRAVEEN KUMAR

19.09.2016
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