

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.16586 of 2017

ORDER:

This Writ Petition under Article 226 of the Constitution of India is filed seeking to quash FIR No.25 of 2017 of Makkuva Police Station registered for the offences punishable under Sections 451, 365, 324 and 323 r/w.34 of India Penal Code.

The averments made in the First Information Report would show that on 19.03.20017 at 11.00 a.m., a report came to be lodged by the 3rd respondent herein stating that he loved one Kondangi Sridevi of Pachipenta Village and married her, as both of them are majors, in the presence of his elders, by eloping to Visakhapatnam. Thereafter, both of them came down to Makkuva Village, stayed in a rented house and started leading a conjugal life. While things stood thus, on 19.03.2017, all the accused, who are the relatives of his wife, came to Makkuva, criminally trespassed into house with preparation to commit offence, beat him with stick and also beat his wife with hands and abducted his wife with an intention to wrongfully confine her. Basing on these allegations, a case in crime No.25 of 2017 came to be registered.

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

Petitioners seek quashing of FIR on the ground that prior to registration of the present report, 2nd petitioner herein lodged a report, which came to be registered as a case in crime No.20 of

2017 of Pachipenta Police Station on 14.03.2017, and as a counter blast to said report, the present report is lodged.

The issue as to whether the petitioners or the unofficial respondent herein are responsible for the alleged abduction, is a matter, which requires investigation. The allegations in the report *prima facie* disclose commission of offence as alleged. Hence, this Court is of the view that the request for quashing of the FIR cannot be considered.

At this stage, learned counsel for the petitioners submits that since all the offences alleged against the petitioners are punishable for a term less than seven years, the respondent-Police may be directed 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 necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

¹ 2014 (2) ALT (Cri.) 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.”

Having regard to the above, while rejecting the request of the petitioners for quashing of FIR, this Writ Petition is disposed of directing the investigating agency to scrupulously follow the conditions stipulated under Section 41 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.

C. PRAVEEN KUMAR, J

01.06.2017

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