

THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.33009 OF 2017

ORDER :

Heard learned counsel for the petitioners/A.1 to A.6 of Crime No.186 of 2017 dated 02.09.2017 of Station House Officer, Atmakur Police Station, Kurnool District, registered for the offences punishable under Sections 420, 498-A, 323, 506 and 468 r/w.Section 34 of Indian Penal Code, and under Section 3 and 4 of Dowry Prohibition Act, and also learned Government Pleader for Home, representing respondent Nos.1 to 4, before ordering notice to the unofficial respondent Nos.5 to 8 including the defacto complainant wife of A.1/Respondent No.5 and perused the prayer in the writ petition with supporting affidavit and contents of the FIR.

2. The prayer in the writ petition reads as follows :

“..... to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of respondents 3 and 4 at the instance of respondents of 5 to 8 in contemplating to arrest the petitioners in Cr.No.186/2017, dt.02.09.2017, without issuing notice under Section 41-A of Criminal Procedure Code, 1973 and contrary to the law laid down by the Hon'ble Supreme Court of India in Arnesh Kumar Vs State of Bihar reported in (2014) 8 SCC 273 and further insisting the petitioners to yield and settle the claims of the respondent 5 to 8, as illegal, irregular, irrational and violative of provisions of the Code of Criminal Procedure, 1973 and offence Article 14 and 21 of Constitution of India and consequently direct the respondents 3 and 4 to conduct investigation without arresting the petitioners ion the said crime and pass such other orders, or order as this Hon'ble Court may deem fit and proper in the circumstances of this case.”

3. Once there is a *prima-facie* accusation apart from no grounds to quash the FIR, even coming to the prayer of not to arrest pending investigation concerned, but for to give concession

so far as Accused Nos.3 to 6. From the main allegations against A.1 and A.2 there is nothing of such a direction not to arrest but for to follow Section 41-A of Code of Criminal Procedure and for the offence punishable not more than seven years including the guidelines of the Apex Court in ***Arnish Kumar Vs State of Bihar***¹.

4. Accordingly, the Writ Petition is disposed of directing the 4th respondent to follow Section 41-A of Code of Criminal Procedure so far as A.1 and A.2 are concerned pending investigation. So far as A.3 to A.6 concerned not to arrest pending investigation, however, it will not prevent to secure their presence for the purpose of investigation as and when required by the police. It is needless to say all defences of accused are left open. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

27th September 2017
Rds/mar

DR.B.SIVA SANKARA RAO,J

¹ (2014) 8 SCC 273