

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 33305 OF 2017

ORDER:

This Writ Petition is filed alleging that though there is no crime registered against the petitioners, at the instance of the 3rd respondent, the respondent police have been summoning them to the police station and making them sit there for hours together.

The petitioners are stated to have submitted the complaint dated 21.09.2017 to the Inspector of Police, Chilakalguda Police Station stating that the brother of the 3rd respondent attacked and thrown a cylinder on the 1st petitioner and his mother, on account of which, they sustained certain injuries.

Learned counsel for the petitioners submits that since no action has been taken on the complaint dated 21.09.2017, a legal notice was also got issued on behalf of the petitioners to the 3rd respondent, on the same day.

Learned Government Pleader for Home (Telangana), based on the written instructions received from the Sub-Inspector of Police, CCS Women Police Station, Hyderabad, submits that the 3rd respondent has filed a complaint to the effect that the petitioners have been harassing her to meet their demand for additional dowry and the same was registered as FIR No. 520 of 2017 for the offences punishable under Sections 498-A and 323 of the Indian Penal Code on the same day itself i.e. much before the petitioners filed the Writ Petition. It is only in connection therewith, the investigation is being conducted and the allegation of harassing the petitioners is denied.

It is apt here to observe that the Supreme Court in ***Arnesh Kumar v. State of Bihar***¹, in paragraph 13, has specifically held as under:

“ Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate to not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

- 1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;
- 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;
- 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 authorise 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 Code of Criminal Procedure 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;

¹ AIR 2014 SC 2756

- 8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

In view of the written instructions placed before this Court, it is made clear that the 2nd respondent shall conduct the investigation strictly in accordance with the law laid down by the Supreme Court in ***Arnesh Kumar's case***. Otherwise, he would be liable for prosecution under the provisions of the Contempt of Courts Act, 1971.

The Writ Petition is accordingly, disposed of. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

06th October 2017

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CHALLA KODANDA RAM, J

