

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.114 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Smt.S.Nanda, learned counsel for the appellant, learned Government Pleader for Home and Sri B.Vijaysen Reddy, learned counsel for the respondent-writ petitioner and, with their consent, this Writ Appeal is disposed of at the stage of admission.

This appeal is preferred against the order passed by the learned Single Judge in WP.No.43474 of 2016 dated 05.01.2017. The first respondent herein invoked the jurisdiction of this Court seeking a mandamus to quash FIR dated 30.11.2016 in Crime No.256 of 2016 on the file of the Central Crime Station, Hyderabad. The complainant was arrayed as the third respondent in the Writ Petition.

Smt.S.Nanda, learned counsel for the appellant, would submit that, while initially an interlocutory order was passed for a period of two weeks and the appellant-third respondent filed a petition to vacate the interim order of stay, she was not given the opportunity of being heard before the Writ Petition was disposed of; the learned Single Judge has not assigned any reasons for passing an order directing stay of arrest; and this Court, in proceedings under Article 226 of the Constitution of India, would, ordinarily, not substitute its discretion for that of the

investigating officer to decide whether or not the accused should be arrested.

On the other hand Sri B.Vijaysen Reddy, learned counsel for the respondent-writ petitioner, would contend that, since the writ petitioner has been called by the investigating officer around ten times, it is evident that the investigating officer does not intend to effect arrest of the petitioner; and, in any event, the law declared by the Supreme Court in **Arnesh Kumar v. State of Bihar**¹ requires the investigating officer to comply with the conditions stipulated in Section 41-A of the Code of Criminal Procedure (Cr.P.C.), and to recording reasons why it is necessary to effect arrest of the accused, before actually doing so.

Learned Government Pleader for Home would submit that invariably, in all cases where the punishment prescribed for the alleged offence is below seven years, the investigation officers strictly comply with the law declared by the Supreme Court in **Arnesh Kumar**¹; and the respondent-writ petitioners' apprehension is, therefore, unfounded.

All counsel are in agreement that, instead of remanding the matter to the learned Single Judge, the Writ Appeal could be disposed of leaving it open to the investigation officer to exercise the discretion vested in him under Sections 41 and 41-A Cr.P.C. in accordance with the law declared by the Supreme Court in **Arnesh Kumar**¹. As all counsel are in agreement in this regard, the order under appeal is set aside leaving it open to the investigating officer to exercise the discretion vested in him

¹ (2014)8 SCC 273

under Sections 41 and 41-A Cr.P.C, and in terms of the law declared by the Supreme Court in **Arnesh Kumar**¹.

The Writ Appeal stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

25th January 2017
RRB

