

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.150 OF 2017

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

Heard Sri K.Chidambaram, learned counsel appearing on behalf of the appellant, learned Government Pleader for Home and Sri N.Siva Reddy, learned counsel for the respondents-writ petitioners.

The submission of the learned counsel for the appellant is that, though the appellant herein was arrayed as the fifth respondent, WP.No.147 of 2017 was disposed of at the admission stage without putting him on notice and without giving him an opportunity of being heard.

By the order under appeal, the learned Single Judge, while expressing his disinclination to interfere with the proceedings initiated against the writ petitioners, however held that investigation could be completed without arresting the petitioners. The police officials were directed to complete the investigation without arresting the petitioners, and file a final report in accordance with law. The petitioners were further directed to execute a personal bond for a sum of Rs.5,000/- each with one surety for a like sum to the satisfaction of the Station House Officer concerned.

The power to arrest the accused is conferred on the police officials under Sections 41 and 41-A of the Code of Criminal Procedure (Cr.P.C). The decision, whether to arrest the accused or not, is required to be taken by the Investigating Officer and this

Court would not, ordinarily, in proceedings under Article 226 of the Constitution of India, don the robes of the Investigating Officer or undertake an examination as to whether or not, on the facts and circumstances of the case, the arrest of the accused is warranted. The scope of exercise of discretion by the Investigating Officer has been laid down by the Supreme Court in **Arnesh Kumar v. State of Bihar**¹. While we were initially inclined to set aside the order under appeal and restore the Writ Petition to file, counsel on either side are in agreement that, instead, the Writ Appeal could be disposed of directing the Investigating Officer to exercise his discretion under Sections 41 and 41-A Cr.P.C. in accordance with law, and the law laid down by the Supreme Court in **Arnesh Kumar**¹.

The order under appeal is set aside. The respondent-investigating officer shall exercise his discretion, whether or not to effect arrest of the writ petitioner, strictly in terms of Sections 41 and 41-A Cr.P.C following the law declared by the Supreme Court in **Arnesh Kumar**¹.

The Writ Appeal is 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)

6th February 2017
RRB

¹ (2014) 8 SCC 273