

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.192 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.40125 of 2016 dated 21.11.2016.

The appellant herein is the 3rd respondent in the writ petition and the complainant in Crime No.268 of 2016. Respondents 3 to 6 herein filed W.P.No.40125 of 2016 to quash the complaint in Crime No.268 of 2016. The said writ petition was disposed of, at the stage of admission, without even putting the appellant-3rd respondent on notice, and without giving her an opportunity of being heard.

In the order under appeal, the Learned Single Judge observed that the Court was not inclined to interfere with the investigation; and the Crime can be investigated into, without arresting the writ petitioners. The 2nd respondent was directed to complete investigation and file a final report in the crime, in accordance with law, without arresting the writ petitioners. The writ petitioners were also directed to appear before the Investigating Officer, and execute a personal bond for a sum of Rs.5,000/- with one surety for the like sum each for their appearance before the Investigating Officer as and when required.

Smt. D.Sherly Hepsiba, learned counsel for the appellant (3rd respondent in the writ petition), would submit that any order which this Court may pass should ensure that the respondent-writ petitioner is available whenever called for by the investigating officer,

and that he should not be permitted to go back to the United Kingdom.

On the other hand Sri G.U.R.C. Prasad, Learned Counsel for the respondent-writ petitioner would submit that the 3rd respondent-writ petitioner had earlier gone to the United Kingdom on work; he has now come back permanently to India; and he intends to take up a job in India, and take care of his ailing mother who is suffering from Cancer.

While we are satisfied that the writ petition could not have been allowed at the stage of admission, even without putting the appellant-3rd respondent on notice and without giving her an opportunity of being heard, the short question which arises for consideration is whether this Court can direct the police officials not to effect arrest pending investigation into the crime.

Whether or not the accused should be arrested are matters in the discretion of the Investigating Officer under Sections 41 and 41-A Cr.P.C. The Supreme Court, in ***Arnesh Kumar vs. State of Bihar***¹, has issued guidelines regarding the circumstances, and the manner, in which the power under Sections 41 and 41-A Cr.P.C. should be exercised.

Instead of remanding the matter to the Learned Single Judge for the writ petition to be heard afresh, we consider it appropriate to set aside the order under appeal, and dispose of the Writ Appeal granting liberty to the Investigating Officer to decide whether or not to arrest the accused observing the conditions stipulated in Sections

¹ (2014) 8 SCC 273

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

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

17th February, 2017
JSU



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