

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No. 2544 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to quash the Order dated 13.3.2017 made in Criminal Revision Petition No.251 of 2016 on the file of Metropolitan Sessions Judge at Hyderabad, as not maintainable.

2. Heard Sri C.V.L. Narasimha Rao, the learned counsel for the petitioner/accused No.1, and the learned Additional Public Prosecutor for the State of Telangana.

3. A few facts which are relevant for the purpose of disposal of the present petition require advertence.

4. The *de facto* complainant - Smt. KotiKavya- is the wife of the petitioner herein, who is arraigned as accused No.1. The petitioner is working as a Software Engineer. Their marriage has taken place on 12.11.2009. A sum of Rs.10,00,000/- was given as dowry besides 30 tulas of Gold and other customary presentations at the time of the marriage as per the *de facto* complainant's story. She was subjected to harassment by her husband and in-laws as she did not meet their demand in bringing additional dowry and that she filed complaint therefor for the offence punishable under Section 498-A of IPC. Further story is that the petitioner herein filed Divorce O.P. No.1250

of 2011 on the file of Additional Family Judge, City Civil Court at Hyderabad.

5. According to the *de facto* complainant, her husband contracted second marriage during pendency of Divorce O.P. with one K. Surekha D/o. Kunapureddy Subba Rao @ Subbaiah and alleged conspiracy, and thus, complained that her husband and second wife and relations cheated her. The said complaint was registered on 7.3.2016 in Crime No.63 of 2016 under Section 494 of IPC. It appears even the offences punishable under Sections 420, 468, 471 & 120-B of IPC were added subsequently, as could be seen from the order under challenge herein.

6. Further facts would show, the Accused Nos. 1 to 12 approached the Sessions Court for grant of pre-arrest bail, but the III-Additional Special Judge for CBI Cases, who was holding Charge of VIII-Additional Metropolitan Sessions Judge, Hyderabad, dismissed the bail petition in Criminal M.P. No.1361/2016, dated 26.5.2016. They moved this Court for anticipatory bail in Criminal Petition No.11482 of 2016, and this Court, while rejecting the request so far as accused No.1, who is the petitioner herein, granted anticipatory bail to Accused Nos.2 to 12, by order dated 18.8.2016. Thereafter, when notice under Section 41-A of the Code was served on the petitioner, to appear before the investigating officer on 15.9.2016 between 9.00 a.m. and 6.00 p.m. in Nallakunta P.S., he sent his explanation stating therein that he has filed Criminal Petition No.13260 of 2016 for

quashment of First Information Report. This Court, of course, disposed of the said Criminal Petition directing the investigating agency to proceed with the investigation by strictly adhering to the parameters and the guidelines laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**¹. Pursuant thereto, yet another notice afresh was issued by the investigating officer on 21.10.2016 under Section 41-A of the Code. The said notice was received by the second wife of the petitioner and copy thereof is affixed to the door of the petitioner directing him to appear before the investigating officer on 24.10.2016. But, admittedly, the petitioner has not complied with the same and approached the XIII-Additional Chief Metropolitan Magistrate, Hyderabad, and filed a petition under Section 437 of the Code seeking clarification that he was already arrested and produced before the Court and he was set at liberty and re-arresting him would not arise, but that plea was dismissed by the said Court.

7. A pertinent feature has been, that originally when the petitioner and accused No.3, who is his second wife's father, were apprehended on 10.5.2016 and produced before the XIII-Additional Chief Metropolitan Magistrate, Hyderabad, the learned Magistrate, on the ground that the guidelines of **Arnesh Kumar**(1 supra) were not followed, did not order for remand and let them off. This particular circumstance has been insisted upon thenceforth by the petitioner,

¹ (2014) 8 SCC 273

strongly claiming that arrest was already effected and since he was set at liberty, it is presumed or deemed that he was released on bail and re-arrest, therefore, does not arise.

8. When the things transpired as mentioned in the above, investigating officer moved the XIII-Additional Chief Metropolitan Magistrate, Hyderabad by filing Criminal M.P. No.6072 of 2016 requesting permission to arrest the petitioner as he failed to present himself before the Station House Officer on 24.10.2016, as asked in the notice issued under Section 41-A of the Code. The learned XIII-Additional Chief Judicial Magistrate, Hyderabad, on the premise that notice was not served on accused No.1, but it was served only on his alleged wife, which, in his opinion, was improper and also on the premise that the petitioner had already submitted a representation to the police after receipt of first notice under Section 41-A of the Code, on 16.6.2016, rejected the request by dismissing the petition. The petitioner sent explanation through Speed Post as well as Courier on 28.10.2016, requesting the investigating officer to consider his earlier explanation that he was already set at liberty by the Court and the investigating officer has not considered it basing on the circumstance that the petitioner had already approached the Sessions Court and this Court along with Accused Nos.2 to 12 seeking anticipatory bail apprehending his arrest, after he was initially let off by the XIII-Additional Chief Metropolitan Magistrate, Hyderabad and, thus, was not satisfied with the said explanation offered by the petitioner.

9. Aggrieved over the aforesaid order rejecting the request of the investigating officer to permit him to arrest the petitioner herein, the aforesaid Criminal Revision Petition No.251 of 2016 is filed before the Metropolitan Sessions Judge.

10. The learned Sessions Judge, having recorded what has been narrated in the above and the averments in the counter mentioned by the petitioner/respondent in the Criminal Revision Petition that this Court has given specific directions to the investigating officer to strictly follow the provisions of Section 41-A of the Code and the guidelines of the Hon'ble Apex Court in **Arnesh Kumar** (1 supra) opined that the learned Magistrate went wrong in dismissing the petition.

11. The learned counsel for the petitioner submits that as per the Hon'ble Apex Court guidelines, Notice under Section 41-A of the Code was to be given within two weeks after registration of the First Information Report and, if not, extension has to be sought from the concerned Deputy Commissioner of Police and in case of failure the concerned Police Officer is liable for Contempt of Court and departmental enquiry, no power was given to the lower Courts either to condone or alter the directions of the Hon'ble Apex Court, as such any interpretation, explanation, observation by the trial Courts, including the High Court, could not come in the way of the directions

of the Hon'ble Supreme Court as they were clear and without any ambiguity.

12. The next point raised by him is when he along with his father (accused No.3) were produced with remand report, instead of releasing them, the learned XIII-Additional Chief Metropolitan Magistrate, Hyderabad ordered their production on the next day, as such she had also gave consent or illegal detention. Certain other averments have been made as to addition of penal provisions of Sections 420, 468, 471 & 120-B of IPC. He would also submit that his second marriage was not a clandestine affair and it was not brought to the notice of this Court voluntarily; Divorce Appeal filed by the *de facto* complainant after the appeal period is over and strongly contended that Notice under Section 41-A of the Code was not served as per the requirements. He would also attribute to the investigating officer that the investigating officer was bent upon to arrest him in spite of the fact that he was set at liberty by the learned XIII-Additional Chief Metropolitan Magistrate, Hyderabad.

13. The learned Metropolitan Sessions Judge, having heard the learned counsel for the petitioner herein and the learned Public Prosecutor for the State, formulated the point for consideration, and, allowed the Criminal Revision Petition No.251 of 2016.

14. The learned Metropolitan Sessions Judge referred to the ruling in **Arnesh Kumar** (1 supra). The petitioners/respondents

approaching the Sessions Court seeking anticipatory bail and becoming unsuccessful and even filing quashment petition in Criminal Petition No.13260 of 2016 and becoming unsuccessful cannot be disputed. The learned Sessions Judge ignored first three notices issued under Section 41-A of the Code on the ground all precede the orders by this Court in Criminal Petition No.13260 of 2016 and taking into consideration the notices issued by the investigating officer on 20.10.2016 and examined whether the said notice was in accordance with the procedure. The learned Sessions Judge, while answering the submission that permission of Deputy Commissioner of Police was to be taken in case the investigating officer fails to issue notice under Section 41-A of the Code within two weeks and incidental allegations, opined that the petitioner ought to have raised all the submissions before this Court when this Court passed order in Criminal Petition No.13260 of 2016, but not at that stage, by observing that the duty of the investigating officer was to comply with the directions of this Court in Criminal Petition No.13260 of 2016, dated 16.10.2016.

15. The learned Sessions Judge has taken note of the petitioner's second wife receiving notice on 21.10.2016 and service by affixture on the door of the petitioner's house and opined as 'sufficient compliance'; that having received the same he ought to have appeared before the investigating officer on 24.10.2016; failure to comply with the terms of notice, would enable the police officer subject to such orders, as may be passed by the competent Court, arrest of petitioner

for the offences mentioned in the notice under Section 41-A (4) of the Code and taking such a view held that the order passed by the learned XIII-Additional Chief Metropolitan Magistrate was against the facts of the case and the directions of this Court in Criminal Petition No.13260 of 2016, and, therefore, illegal, incorrect, improper, and thereby sought to set aside the same.

16. What all has been narrated by the learned Metropolitan Sessions Judge concerning the averments made in the counter filed by the petitioner, have been agitated once again in the grounds in the present Criminal Petition.

17. In seeking indulgence of this Court, the petitioner is obligated with the duty to show that the order under challenge is patently illegal and invariably warrants interference. Therefore, the submissions made by the learned counsel, basing on the grounds agitated in the petition, require advertence.

18. First submission is, since the petitioner was set at liberty by the learned XIII-Additional Chief Metropolitan Magistrate on the ground that the investigating officer has not complied with the procedure inlaid by the provisions of Section 41-A of the Code and the guidelines laid down by the Hon'ble Apex Court in **Arnesh Kumar** (1 supra) is concerned, such submission made and contention raised is farfetched for the reason that there was no order as such passed by the learned XIII-Additional Chief Metropolitan Magistrate, Hyderabad,

directing release of the petitioner under the provisions of Section 437 of the Code by granting bail. The submission of the learned counsel that the stand taken by the petitioner that he was set at liberty and he cannot be rearrested is wholly misconceived. Therefore, the learned Metropolitan Sessions Judge was right in rejecting that submission. The same cannot be faulted with.

19. Concerning the next submission that the notice under Section 41-A of the Code was not issued within fourteen days and the permission of the Deputy Commissioner of Police was not obtained, but, when the petitioner approached this Court in Criminal Petition No.13260 of 2016, he never raised such a plea and in fact his request for quashment of First Information Report was rejected. The learned Metropolitan Sessions Judge is right in rejecting that submission opining that the petitioner ought to have agitated the same before this Court in Criminal Petition No.13260 of 2016, for that, the finding recorded by the learned Metropolitan Sessions Judge cannot be faulted.

20. In clause (f) of the present Criminal Petition, the petitioner avers thus:

“f. Petitioner humbly submits that with the above referred activities of the police, the petitioner herein is in great confusion with regard to several legal points i.e.,

- (a) Can the Police ignore the directions of Supreme Court with regard to the issuance of notice U/s. 41-A of Cr.P.C.
- (b) Can the police **re-arrest** the Petitioners/accused No.1 even after arresting them earlier, remanding them and **setting them at liberty** by the competent court.”

21. The very fact that the petitioner approached this Court seeking anticipatory bail and has become unsuccessful would answer the point in clause (b) mentioned by him. So far as the point raised in clause (a) is concerned, when once this Court in Criminal Petition No.13260 of 2016 directed the investigating officer to follow the procedure inlaid by the provisions of Section 41-A of the Code and the guidelines laid down by the Hon'ble Supreme Court in **Arnesh Kumar** (1 supra) a fresh chapter begins and what had transpired earlier thereto automatically gets erased, and, therefore, the petitioner is not right in posing the question under clause (a) and inviting this Court to answer the same.

22. A cursory glance at the events that transpired, which have been narrated by the learned Metropolitan Sessions Judge sequence-wise, would give an irresistible impression that the petitioner, with a view to evade his arrest, has come up before this Court with untenable grounds. Thus, the conduct of the petitioner would show that only with a view to get over impending arrest has come up with the grounds, which have taken up by him in his counter before the Courts below.

23. Thus, viewed from any angle, there is absolutely no merit in the present Criminal Petition. The order passed by the learned Metropolitan Sessions Judge does not suffer from any patent illegality, warranting interference.

24. Therefore, the Criminal Petition is dismissed affirming the order passed by the learned Metropolitan Sessions Judge in Criminal Revision Petition No.251 of 2016.

As a sequel thereto, miscellaneous petitions if any pending in the Criminal Petition shall stand closed.

A.SHANKAR NARAYANA

Dt. 05.06.2017
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