

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL PETITION No.8104 of 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. seeking quashing of investigation in Crime No.105 of 2017 of Shanthinagar Police Station, Jogulamba District, which was registered for the offences punishable under Section 420 read with Section 34 of IPC and Section 7-A of Essential Commodities Act.

Though various grounds are raised, the learned counsel for the petitioners restricts his prayer seeking a direction to the Investigating agency to follow the judgment of the Apex Court in *Arnesh Kumar v. State of Bihar and another*¹, since the offences alleged are punishable with imprisonment of 7 years or less. The fact that the offences alleged are punishable with less than seven years is not disputed by the learned Additional Public Prosecutor appearing for the respondent-State.

In *Arnesh Kumar v. State of Bihar and another (supra)*, the Apex Court held as under:

- 1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.P.C.
- 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;

¹ 2014 (2) ALT (CrL.) 457 (SC)

- 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 authorize 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 Cr.P.C. 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.
- 8) Authorising detention without recording reasons as aforesaid by the Magistrate concerned shall be liable for departmental action by the appropriate high court.

The Apex Court also held that “ the directions aforesaid shall not only apply to the cases under Section 498-A of the IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

In view of the above and as the offences alleged are punishable with imprisonment of seven years or less, the investigating agency is directed to scrupulously follow the guidelines laid down by the Apex Court in the judgment referred to above, before taking any coercive steps against the petitioner, in case the police officers come to a conclusion that the

arrest of the petitioners is not required under the provisions of Section 41 of Cr.P.C.

With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions pending, if any, shall also stand closed.

C.PRAVEEN KUMAR, J

18.09.2017
vhb

