

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1143 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 403 of the Code of Criminal Procedure, 1973, by the petitioner/ *de facto* complainant is directed against the order, dated 18.04.2017, of the learned XIII Additional Chief Metropolitan Magistrate, Mahila Court, Hyderabad, whereby, the learned Magistrate refused to remand the 2nd respondent/ A1 to judicial custody notwithstanding the request of the Assistant Commissioner of Police, Banjara Hills, Hyderabad, in his remand report, dated 18.04.2017, submitted to the said learned Magistrate.

2. I have heard the submissions of *Ms. S Vani*, learned counsel appearing for the petitioner/ *de facto* complainant, and of *Sri B.Venkateswara Rao*, learned counsel for the 2nd respondent/ A1. I have perused the material record.

3. The facts of the case leading to the filing of this revision, which lie in a narrow compass, are as follows:

The *de facto* complainant/ informant, who is the legally wedded wife of the 2nd respondent/ A1 (hereinafter, 'A1') lodged a report, dated 14.04.2017, at 1700 hours, with the Jubilee Hills Police Station making several allegations against her husband, parents-in-law and other relatives of the husband. On her said report, the aforesaid case in Crime No.246 of 2017 was registered by the Police of Jubilee Hills Police Station, Hyderabad, for the offences punishable under Sections 498-A, 420, 406, 354, 506(ii), 323 and 109 read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act. The Investigating Officer during the course of investigation into the crime examined LWs 1 to 10 and recorded their statements. According to the investigation, counseling sessions were held and despite such counseling sessions, A1 did not mend his ways and refused to live with his wife, the informant. Therefore, the

Investigating Officer, in the circumstances stated in the remand report, took A1 into his custody, on 17.04.2017, at his residence and interrogated him and arrested the accused at 20.00 hours, on 17.04.2017, and produced him before the learned XIII Additional Chief Metropolitan Magistrate, Mahila Court, Hyderabad, along with his aforesaid remand report with a request to remand A1 to judicial custody for a period of fifteen days pending completion of investigation and filing of final report. On the same day, the learned Magistrate while not accepting the request of the police to remand the accused to judicial custody *inter alia* observed in the impugned order to the following effect: 'A perusal of the record discloses that police served 41-A notice on A1, on 15.04.2017, and advised him to attend family counseling at Jubilee Hills PS. A1 attended the counseling, on 15.04.2017, as well as on 17.04.2017. But, as per the record, notice, dated 14.04.2017, under 41-A Cr.P.C., was not served on A1 and the said notice does not contain his signature. A1 also informed the Court that he attended the counseling from 15.04.2017 to 17.04.2017. However, the reports related to the counseling sessions are not produced. The remand report also discloses that after the counseling and after refusal of the A1 to live with his wife, he was arrested at his residence at Bharosa, CCS, DD, Hyderabad. The said facts are not mentioned in the check list filed by the Assistant Commissioner of Police, West Zone, Hyderabad, and also in the requisition filed before the Deputy Commissioner of Police, West Zone, Hyderabad. Hence, it is disclosed that the Investigating Officer did not follow the guidelines in Arnesh Kumar v State of Bihar¹.' Thus, for the above stated and other reasons assigned in the impugned order, the learned Magistrate was of the opinion that there are no grounds to remand A1 to judicial custody. It is also to be noted that while refusing the request of the police to remand A1 to judicial custody, the learned Magistrate, enlarged A1 on bail on his executing personal bond for a sum of Rs.5,000/- with two sureties each for a like sum.

¹ 2014 (2) ALT (CrI) 457 (SC)

Aggrieved thereof, the present revision case is filed by the petitioner/ informant/ wife (hereinafter, 'petitioner').

4. Learned counsel for the petitioner would submit as follows: 'The offences alleged against A1 are grave in nature. Only a Court of Session ought to try A1 on filing of the final report showing his complicity for the said offences. The learned Magistrate is only having jurisdiction to accept the remand report and remand A1 to judicial custody. The remand of accused to judicial custody and his presence in custody is a *sine qua non* for granting bail. Until the arrested accused is produced, within the time prescribed under law, before a competent Magistrate along with the remand report, no orders of remand to judicial custody and no orders granting bail could be passed. Further investigation is required to be done before filing of the charge sheet and such investigation is not possible, in the facts and circumstances of the case, unless the accused is remanded to judicial custody. The learned Magistrate without application of mind rejected the request made by the police officer concerned for remand of the accused to judicial custody. The guidelines in Arnesh Kumar's case (1 *supra*) are not applicable to the case on hand as some of the alleged offences are punishable under Sections 354, 420 and 506 (ii) IPC. In any view of the matter, the bail orders granted by the learned Magistrate are unsustainable and even if the learned Magistrate is not inclined to accept the remand report and remand the accused to judicial custody, the learned Magistrate ought not to have enlarged A1 on bail. Hence, the impugned order is liable to be set aside.'

5. Learned counsel for the accused would submit as follows: 'As rightly observed in the orders of the Court below, the notice, dated 14.04.2017, said to have been issued to the accused under Section 41-A of the Code does not bare the signature of A1. Further, the said notice under Section 41-A of the Code said to have been served on the accused contains manipulations in the

date mentioned on it. The date originally mentioned as '18.04.2017' is corrected as '17.04.2017'. The remand report served on the accused, which is placed on record bears the date 18.04.2017. The remand report produced by the petitioner along with the material papers filed with the revision and the remand report served on A1, when examined in juxtaposition, it appears that in the remand report actually filled before the learned Magistrate, there are certain interpolations besides an additional sentence. The same are conspicuously absent in the copy of the remand report served on A1. In the unnumbered 2nd paragraph at page number (6) of the remand report, which is filed before the learned Magistrate, the following sentence is conspicuously present. "On 14.04.2017, LW9, 41(A) Cr.P.C., notice has been served to the accused (A1), but he refused to acknowledge to the notice." (Reproduced verbatim). The said sentence is noticeably absent in the copy of the remand report served on A1. Further, the remand report shows that the accused attended counselling sessions at Bharosa on 15.04.2017 and on 17.4.2017. Thus, the manipulated remand report filed before the Court of the learned Magistrate would only indicate that the aforesaid sentence to the effect that the accused refused to receive the notice dated 14.04.2017, is an afterthought and is a clear manipulation. Hence, the learned Magistrate is justified in refusing to remand the accused to judicial custody.'

6. Learned counsel for the accused bring to the notice of the Court that under Section 498-A IPC the offence is punishable with imprisonment for a term which may extend to three years and also fine and that under Section 420 IPC the offence is punishable with imprisonment of either description for a term, which may extend to seven years and also fine and that under Section 406 IPC the offence is punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both and that the said offence is triable by Magistrate, and that under Section 354 IPC the offence is punishable with imprisonment of either description for a term which shall not

be less than one year but which may extend to five years, and also fine; and that the under Section 506 IPC the offence is punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both and that the said offence is also triable by the learned Magistrate and that under Section 506 IPC if the offence contains ingredients like threat to cause death or grievous hurt etcetera, then, the said offence is punishable with death or life or imprisonment for a term that may extend to seven years. Thus, according to his submissions, all the alleged offences are triable by a learned Magistrate even if a final report is to be ultimately filed after completion of the investigation for the said alleged offences.'

7. I have given earnest consideration to the facts and submissions. Now, it is necessary to refer to the directions given by the Supreme Court in Arnesh Kumar case (supra), which are 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;
- (4) The Magistrate while authorising 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 authorise 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 Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

8. It is also apt to refer to Section 41-A of the Code, which reads as under:

“41-A: Notice of appearance before police officer.—(1) The police officer shall, in all cases where arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice.

In the case on hand, the notice as required under Section 41-A was said to have been served on A1 by the police on 15.04.2017. However, the said notice does not contain the signature of A1. In the copy of the remand report served on A1 there is no mention that he refused to receive the said notice when sought to be served. But, in the remand report filed before the Court of the learned Magistrate, as already noted in the submissions of the learned counsel for A1, there is conspicuous presence of the following sentence: "On 14.04.2017, LW9, 41-A Cr.P.C., notice has been served to the accused (A1), but he refused to acknowledge to the notice." (Reproduced verbatim). Further, the accused attended counselling sessions on 15th and 17th of April, 2017 is not in dispute. Further, as observed by the learned Magistrate, the police officer while forwarding the accused to the learned Magistrate along with the remand report failed to submit duly filled in check list and further failed to furnish reasons and materials, which necessitated the arrest of A1. For all the reasons, this Court finds that the learned Magistrate is justified in observing that the notice under Section 41-A Cr.P.C., is not served on A1 on 15.04.2017 as alleged and also in finding fault with the police officer for not filing the check list and not furnishing reasons and materials, which necessitated the arrest of A1 and in eventually refusing to remand A1 to judicial custody.

9. Now, it is necessary to deal with the alternate contention of the learned counsel for petitioner. She would submit that even assuming that the learned Magistrate is justified in not remanding A1 to judicial custody, the learned Magistrate was in error in enlarging A1 on bail and that the learned Magistrate ought not to have enlarged A1 on bail when A1 was not in custody pursuant to the rejection of the request of the police officer to remand A1 to judicial custody. In this regard, what is to be noted is that A1 was forwarded to the learned Magistrate along with a remand report requesting to remand the accused to judicial custody pending further investigation. However, the learned Magistrate, having come to the conclusion that it is not a fit case to

remand A1 to judicial custody, refused to remand A1 to judicial custody. In that view of the matter, the learned Magistrate was of the view that A1, who was brought under arrest shall be set at liberty and therefore, enlarged A1 on bail to ensure his attendance in the matter before the Court as and when required. Therefore, if the said order enlarging A1 on bail is viewed and considered as an order setting A1 at liberty after obtaining bond from him and the sureties for ensuring his attendance in future in the matter before the Court, then, the learned Magistrate need not be faulted in the facts and circumstances of the case. Therefore, no interference is called for if the order of the Magistrate is considered as an order setting A1 at liberty on the refusal of the learned Magistrate to remand A1 to judicial custody.

10. On the above analysis, this Court finds that there is no merit in the revision and the revision is liable to be dismissed.

11. Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

07th August, 2017

Note: - Issue CC by 30.08.2017
(B/o)
RAR

M. SEETHARAMA MURTI, J