

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.276 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.46545 of 2016 dated 6.1.2017. The appellant herein is the 3rd respondent in the writ petition. She is aggrieved by the order passed in the writ petition mainly on the ground that the said order, allowing the writ petition, was passed without putting her on notice and without giving her an opportunity of being heard.

While we were initially inclined to set aside the order under appeal and restore the writ petition to file, as the order under appeal is in violation of principles of natural justice and was passed without putting the appellant-3rd respondent on notice and without giving her an opportunity of being heard, Smt. Rachna S. Waddepalli, learned counsel for the appellant, learned Government Pleader for Home and Sri J. Venugopal, learned counsel for the respondents-writ petitioners, would agree that, instead, this Court may direct the Investigating Officer to exercise his discretion, whether or not to effect arrest of the accused, strictly in accordance with Section 41 Cr.P.C. and the law declared by the Supreme Court in **Arnesh Kumar vs. State of Bihar and Others**¹.

As Section 41 Cr.P.C. confers a discretion on the Investigating Officer, either to effect, or not to effect, arrest of the accused, and as guidelines for exercise of such discretion is laid down in **Arnesh Kumar**¹, we set aside the order under appeal, and dispose of the writ appeal directing the Investigating Officer to exercise his

¹ 2014 (8) SCC 273

discretion under Section 41 Cr.P.C. strictly in accordance with the guidelines laid down by the Supreme Court in **Arnesh Kumar**¹.

The writ appeal stands 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)

9th March, 2017
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