

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.40216 OF 2017

ORDER:

The petitioner prays for Mandamus declaring the action of the 3<sup>rd</sup> respondent in harassing the petitioner and threatening to arrest the petitioner in relation to F.I.R. Nos.49 of 2017, 50 of 2017 and 51 of 2017 pending before the 3<sup>rd</sup> respondent under the guise of inquiry without following any procedure established by law and also not following the guidelines as framed by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar<sup>1</sup>, as arbitrary illegal and in violation of Articles 14, 19 and 21 of the Constitution of India. The petitioner prays for a consequential direction to 3<sup>rd</sup> respondent to follow guidelines framed by Supreme Court in Arnesh Kumar v. State of Bihar.

The case of petitioner is that the petitioner is a resident of Hyderabad and doing business of manufacturing blades and other allied products. During and in the course of petitioner's business, the petitioner employed one employee by name C.Vijay Kumar. Except the relationship of employer and employee, it is stated the petitioner does not have any other relationship with Mr.C.Vijay Kumar. While so, the Inspector of Police and Constables of 3<sup>rd</sup> respondent police station started coming to the residence and factory of the petitioner and further stated that the petitioner is accused in F.I.R. Nos. 49 of 2017, 50 of 2017 and 51 of 2017. The enquiries made by petitioner revealed that the petitioner's residence and factory are visited basing on the confession of the said Vijay Kumar. Now the complaint of petitioner is that Section 41-

---

<sup>1</sup> (2014) 8 SCC page 273

A of Criminal Procedure Code provides for issuing notice to petitioner and thereafter follow the procedure stipulated in Arnesh Kumar v. State of Bihar. Without following the binding precedent of the Apex Court, the Sub-Inspector and Constables are visiting the residence and factory of petitioner. Hence the writ petition.

The learned Assistant Government Pleader on instructions submits that the first information reports referred to above are registered on the complaints filed by one Niyaz Ahmed and as part of investigation the officers have visited the residence and factory of the petitioner. The present petition is filed on mere apprehension and the respondents, if circumstances warrant, issue notice to the petitioner and they will follow the procedure under Section 41-A of Criminal Procedure Code.

I have perused the affidavit and taken note of the submissions of the learned counsel appearing for parties. This Court is of the view that the writ petition has been filed on apprehension and this Court has no reason to doubt that keeping in view the allegations in the first information report referred to above and the presence of petitioner if is required, the respondents are under legal obligation to follow the procedure prescribed by Hon. Supreme Court in Arnesh Kumar case. The writ petition fails and is dismissed with above observations. No order as to costs.

Miscellaneous petitions pending, if any, stand closed.

S.V. BHATT, J

Date: 28.11.2017

Sp

