

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.2064 of 2018

Heard learned counsel for the petitioners and the learned Government Pleader for Home (AP).

In the present Writ Petition challenge is to the alleged action on the part of the Station House Officer, Old Guntur Police Station, Guntur, in not following the procedure under Section 41-A Cr.P.C. in respect of Cr.No.335 of 2017 dated 03.12.2017.

The third respondent herein registered the above mentioned Cr.No.335 of 2017 against the petitioners herein for the alleged offences under Sections 420, 506 and 509 r/w 34 IPC and Section 4 of the Chit Fund Act, 1982.

Reiterating the contents of the writ affidavit, it is contented by the learned counsel for the petitioners that, since all the offences alleged against the petitioners herein are punishable with the sentence less than seven years, an obligation is cast on the respondent-police authorities to follow Section 41-A Cr.P.C. as per the judgment of the Honourable Apex Court in **ARNESH KUMAR v. STATE OF BIHAR**¹. It is stated in the accompanying affidavit that the constables from the fourth respondent police station came to the house of the petitioners to effect arrest and,

¹ (2014) 8 SCC 273

at that relevant point of time, the petitioners were not in the house and the same was informed by the neighbours. It is also averred in the writ affidavit that the third respondent launched a manhunt for arresting all the petitioners herein. In this context, it may be appropriate to refer to Section 41-A Cr.P.C. which reads as under:

“Notice of appearance before police officer.-- (1) The police officer shall, in all cases where the 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.”

While dealing with the said provision of law, the Honourable Apex Court, in **Arnesh Kumar** (cited supra) at paragraph Nos.11 and 12, held as under:

“11. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required Under Section 41(1), Code of Criminal Procedure, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged Under Section 41 Code of Criminal Procedure has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

12. We are of the opinion that if the provisions of Section 41, Code of Criminal Procedure which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Code of Criminal Procedure for effecting arrest be discouraged and discontinued”.

In view of the above mentioned provision of law and the law laid down by the Honourable Apex Court and, as the imprisonment for all these alleged offences is less than seven years, it is incumbent on the part of the police authorities to issue notice under Section 41-A Cr.P.C. It is also required to be noted that, as per Section 41-A (2) Cr.P.C., it is incumbent and obligatory on the part of the person who receives the notice

under Section 41-A Cr.P.C. to comply with the terms of the notice. It is also obligatory on the part of the person, who receives such notice, 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, will arrest such person for the offence mentioned in the notice. While referring to the above provisions of law, it is submitted by the learned Government Pleader that the petitioners herein are required to cooperate with the investigation.

For the aforesaid reasons, the Writ Petition is disposed of, directing the respondent-police authorities to adhere to the above legal position while proceeding with the investigation in F.I.R.No.335/2017.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI

01st February, 2018.
Tsy