

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.8836 of 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

“.. to issue an appropriate Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents 4 and 5 herein at the instance of the respondent No.2 herein threatening the petitioner to handover 10 Kgs. of silver to them without there being any lawful reason and further threatening to implicate in a false case as being illegal, arbitrary, discriminatory and violation of Article 21 of the Constitution of India and it is also further prayed that, this Hon'ble Court may be pleased to direct the respondent No.3 herein to register the criminal case against the respondent Nos. 4 and 5 herein for the illegal threats and intimidation to the petitioner herein on 11.03.2018 and 12.03.2018 for demanding to handover the 10 kgs of silver without lawful and due process of law and conduct disciplinary proceedings against the respondent Nos. 2, 4 and 5 herein for indulging any illegal acts and consequently it is also further prayed that this Hon'ble Court may be pleased to direct the respondent Nos.2, 4 and 5 herein not to indulge in illegal acts by threatening the petitioner to handover the 10 Kgs of silver without there being lawful reasons and due process of law and pass such other order or orders may deem fit and proper in the circumstances of the case.”

I have heard the submissions of the learned counsel for the petitioner and of the learned Government Pleader for Home (T.S.) appearing for respondents 1 to 3. I have perused material record.

Having narrated the submissions in the affidavit filed in support of the writ petition, learned counsel for the petitioner submitted as follows:

‘Respondents 1 to 3 are threatening the petitioner to deposit 10 Kgs. of silver, without following due process of law. They are further threatening to implicate the petitioner in

false cases, if the said quantity of silver is not deposited with them. Though respondents 1 to 3 are alleging that respondents 4 and 5 stated before them that they have handed over some silver to this petitioner, no such silver was ever handed over to him by respondents 4 and 5. Respondents 1 to 3 are acting in illegal and arbitrary manner and in violation of Article 21 of the Constitution of India. They are calling the petitioner to the Police Station regularly and harassing him. On 12.03.2018 at about 2.30 p.m., respondents 4 and 5 came along with one Jagadish to the shop of the petitioner; and, at that time, the said Jagadish, who was put under handcuffs, was subjected to torture. The moment the said Jagadish stepped into his shop, the respondent police coerced him to say something on their prompting against the petitioner. The police are continuing to demand the petitioner to arrange 10 Kgs. of silver by threatening that he would be implicated in criminal cases. Even though the petitioner approached the second respondent-the Station House Officer, Banjara Hills, Hyderabad, the second respondent, without hearing the version of the petitioner, abused him in filthy language and reiterated the threat earlier given. The petitioner is an ordinary businessman and he has nothing to do with the alleged receipt of the alleged property from the said Jagadish. He came to know that the said Jagadish, who was illegally detained in the police station for about 10 days, was

subjected to physical and mental torture and that he was forced to show some shops to create a drama for making false allegations of selling some gold or silver to the shop keepers like the petitioner, and thereupon threaten them.'

Learned Government Pleader for Home, on instructions, would submit that a case in Crime No.44 of 2018 for the offences punishable under Sections 420, 406 and 379 I.P.C. was registered on the file of the Banjara Hills Police Station, Hyderabad, against the respondents 4 and 5, on 14.01.2018, and that investigation was taken up into that case; that during the course of investigation, the Investigating Officer examined the complainant and some other witnesses and recorded their detailed statements; that following the investigation done till such time, the accused involved in the said crime were arrested, on 15.03.2018, and were produced before the learned Metropolitan Magistrate concerned and remand orders were obtained; that during the course of interrogation, accused Nos.1 to 3 in the said crime confessed the offences committed by them including the offence of theft of silver materials from the complainant and stated that they have sold the same at low prices to several businessmen dealing with silver at General Bazar of Secunderabad and Dilsukhnagar, Bidar of Karnataka State, and other places and utilised the money for their lavish use; that at the instance of the said arrested accused, the police concerned have recovered silver ornaments of 250 Kgs., from certain

individual receivers of General Bazar, Secunderabad, and others by following the due procedure established by law; that the said accused confessed to have sold 10 Kgs. of silver ornaments to the petitioner herein, who is running Bhagya Laxmi Jewellers at Dilsukhnagar; that the police seized a receipt from the petitioner's shop indicating purchase of silver ornaments by him from the said accused; that in view of the investigation done into the case so far, a notice, dated 20.03.2018, under Section 41 of the Code of Criminal Procedure, 1973 (for short 'the Code'), was issued to the petitioner and that the said notice was received by him on the same day; that the allegations made against the police officers are false; that only on coming to know of the involvement of the petitioner in the said crime, the police called him to the police station for interrogation; and, that this writ petition is filed with a *malafide* intention to prevent the police from taking action against the petitioner in accordance with law.

In reply, the learned counsel for the petitioner, while refuting the submissions of the learned Government Pleader for Home, would submit that the petitioner was and is being illegally called to the police station, without following the due process of law and due observance of the provision of Section 90 of the Code; that only after the writ petition is filed, a notice, dated 20.03.2018, was issued to the petitioner; that when threats are given and attempts of extortion of silver were made by the police officer concerned, a report, dated

13.03.2018, was lodged by the petitioner with the third respondent – the Commissioner of Police, Hyderabad; that though the said report discloses cognizable offences, no crime is registered against the persons mentioned in the said report; and, that in view of the threats to the life and liberty of the petitioner, appropriate orders may be passed in this writ petition.

I have given earnest consideration to the facts and submissions.

It is not in dispute that insofar as the case in Crime No.44 of 2018 on the file of the Banjara Hills Station, Hyderabad, as of now, a notice dated 20.03.2018 was issued to the petitioner under Section 41(A) of the Code. In view of the same, the police are required to follow the guidelines of the Supreme Court in **Arnesh Kumar v. State of Bihar**¹ and also the mandate of law. Therefore, insofar as the future course of action that may be taken by the police, in accordance with the procedure established by law, against the petitioner in connection with the above registered crime, it can be observed that the interests of the petitioner will be safeguarded by the guidelines of the Supreme Court in the said decision as well as the legal provisions. It appears *prima facie* that the petitioner was called to the police station for interrogation even prior to issuance of the notice, dated 20.03.2018, without following the due procedure under law.

¹ 2014(2) ALT (CrL.) 457 (SC)

Insofar as the submission of the learned counsel for the petitioner that though the petitioner had lodged the report, dated 13.03.2018, with the third respondent, no action has been taken thereon, learned Government Pleader for Home stated that there is no acknowledgment for the said report.

Having regard to the facts and submissions, the writ petition is disposed of directing the Investigating Officer, who is investigating into the aforestated crime, not to deviate from the guidelines of the Supreme Court in ***Arnesh Kumar's case (supra)*** as well as the mandate of law while dealing with the petitioner in connection with the aforestated crime. Further, liberty is reserved to the petitioner to furnish a copy of the report, dated 13.03.2018, to the third respondent once again or in the alternative, give a fresh complaint with all necessary details, within a week from the date of receipt of a copy of this order. On receipt of such report from the petitioner, the third respondent shall deal with the same in strict accordance with the procedure established by law, within a week thereafter.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

M.SEETHARAMA MURTI, J

Date: 22.03.2018
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