

HONOURABLE SRI JUSTICE A. RAJASHEKAR REDDY.

WRIT PETITION No. 18849 OF 2018.

ORDER :

This writ petition is filed seeking mandamus to declare the action of the second respondent in calling the petitioners on everyday to the Alwal Police Station at the instance of third respondent, without registering a case, as illegal, void, violative of provisions laid down under Criminal Procedure Code and also violation of Articles 14, 19 and 21 of the Constitution of India and to pass such other suitable orders as this Court may deem fit and proper in the facts and circumstances of the case.

2. Heard the learned counsel for the petitioners and the learned Assistant Government Pleader for Home [AP] appearing for the respondents.

3. The learned Assistant Government Pleader for Home submitted written instructions filed by the Sub-Inspector of Police,

Alwal Police Station stating that basing on the complaint of third respondent Miss Ch.Indu @ Eshwaramma, a case in Crime No.264 of 2018 of Alwal Police Station has been registered for the offences punishable under section 376, 313 of IPC and section 3 [1] [r] [s], 3 [2], [va] of Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 2015 against the petitioners, for humiliating, harassing and abusing the defacto complainant in the name of caste and hurling life threat to leave Hyderabad and took up investigation.

4. In view of the above facts and circumstances and it goes without saying that the respondents are bound to follow the decision of the Hon'ble Supreme Court in **ARNESH KUMAR V/s. STATE OF BIHAR**¹.

5. In this connection it may be appropriate to extract section 41-A of Cr.P.C., which reads as under :

¹) [2014] 8 - SUPREME COURT CASES - 273

Section 41-A of the Code of Criminal Procedure 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.*
6. While dealing with the provisions of Section 41-A Cr.P.C.

the Hon'ble Apex Court in the above referred decision held at para Nos. 11 and 12 as under:

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1 *All the State Governments to instruct its police Officers not to automatically arrest when a case*

under section 498-A 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.

11.2 All police officers be provided with a check list containing specified sub-clauses under section 41 (1) (b) (ii).

11.3 The police officer shall forward and check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention.

11.4 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.

11.5 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;

11.6 Notice of appearance in terms of section 41-A 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.

11.7 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 the High Court having territorial jurisdiction.

11.8 Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under section 498-A IPC or section 4 of Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

7. Accordingly, the writ petition is disposed of at the admission stage. No costs.

8. As a sequel, miscellaneous petitions if any, pending in this writ petition shall stand disposed of. No costs.

JUSTICE A. RAJASHEKAR REDDY



14/06/2018
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