

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Contempt Case No.1440 of 2018

ORDER:

The petitioner seeks to punish the respondent herein under Sections 10 and 12 of Contempt of Courts Act, 1971 (for short “the Act”) for violation and wilful contempt of the orders passed by this Court dated 01.05.2018 in Criminal Petition No.4400 of 2018.

2) It is to be noted that Crime No.57/2018 was registered against the petitioner by the police of Inaguduru PS for the offences under Section 420 IPC and Section 7 of Essential Commodities Act (for short “E.C.Act”) and the petitioner filed CrI.P.No.4400/2018 under Section 482 Cr.P.C to quash the aforesaid proceedings, wherein this Court passed the following order:

*“Para 3: Having regard to the nature of the accusation and investigation is under way, it is not a fit case to quash the proceedings. However, the Investigating Officer during the course of investigation shall strictly follow the guidelines rendered by Hon’ble Apex Court in the decision reported in **Arnesh Kumar v. State of Bihar**¹ and also the procedure contemplated under Section 41-A Cr.P.C towards the petitioner. In turn, the petitioner shall cooperate with the investigating agency for smooth completion of investigation.*

Para 4: Accordingly, this Criminal Petition is disposed of.”

3) Now the submission of petitioner is that pursuant to the order of this Court, he obtained a copy of the order on 03.05.2018 and submitted

¹ AIR 2014 SC 2756

the same to the Inspector of Police on 04.05.2018 at 11:00AM, for which, he was asked to wait till the arrival of Sub-Inspector of Police and when the S.I of Police came to PS at 2:00PM, the respondent directed the S.I of Police to arrest him even after producing the copy of the order. Accordingly, he was produced before the II Additional Judicial Magistrate of First Class, Machilipatnam along with remand report and the learned Magistrate without considering that the offence under Section 7 of E.C.Act, is a bailable offence, remanded him to judicial custody. Thus the respondent wilfully disobeyed the orders of this Court and hence liable to be punished under Sections 10 and 12 of the Act.

4) Pursuant to the notice, respondent/C.I of Police filed counter denying the petition averments and contended that during the course of investigation, it was found that apart from the present case, the petitioner was involved in six(6) more cases, out of which four cases were registered under E.C.Act and two cases were registered under IPC and all those cases belong to different police stations in Machilipatnam town. Sofaras Inaguduru PS is concerned, the petitioner was involved in four cases including the present one, out of which, some cases were pending for investigation and some were pending for trial. It is further contended that in view of involvement of the petitioner in number of crimes, the Investigating Officer arrested the petitioner to prevent him from committing further offences and for conducting proper investigation and

prevent the petitioner from concealing evidence and inducing the witnesses.

5) Respondent filed additional counter contending that on 04.05.2018, he along with his staff explained the facts of the case to the accused and tried to serve notice on him as contemplated under Section 41A Cr.P.C but he refused to take notice and hence an endorsement was made on the notice to that effect and also mentioned in CD Part-I dt.04.05.2018. Thereafter, for the reasons mentioned in the remand report, the accused was arrested on the same day and produced before the Magistrate along with remand report and the check list and other enclosed material. Thus the respondent prayed to dismiss the contempt case.

6) The petitioner filed reply affidavit stating that he entered the PS on 04.05.2018 before 11:00AM and came out from the PS along with constables in the evening, which can be found from the footage of CC cameras fixed in the PS. Police have not served him notice under Section 41A Cr.P.C but they had wrongly shown as if they have served notice and he refused and they arrested him. He further stated that place of arrest as mentioned in the remand report is wrong as he was arrested in the PS and produced before the Magistrate.

7) Heard arguments of Sri V.H.V.R.R. Swamy, learned counsel for petitioner and Sri Posani Venkateswarlu, learned counsel for respondent.

8 a) The main plank of argument of learned counsel for petitioner is that on 04.05.2018 at 11:00AM, the petitioner went to the Inaguduru PS and produced copy of the order before the respondent, who is the Circle Inspector of Police and having received the same, he directed the petitioner to wait for arrival of the Sub-Inspector of Police and after the S.I arrived at the Police Station at 2:00PM, the respondent at once directed the S.I of Police to arrest the petitioner inspite of verifying the order produced by the petitioner and also confirming the same through internet and therefore, the respondent wilfully and intentionally disobeyed the order of this Court dated 01.05.2018.

b) The next argument of learned counsel for petitioner is that in the remand report it is falsely mentioned as if the SI of Police tried to serve Section 41A Cr.P.C notice on him at Chinta Chettu Center, Inagudurupeta and he refused to take notice and did not cooperate with the investigating agency and therefore, he was arrested. Learned counsel would vehemently argue that the contents in remand report are false to the core and invented to buttress the arrest. No notice under Section 41A Cr.P.C was served upon him and thereby the question of his refusing the same does not arise. Learned counsel would submit that the footage dated 04.05.2018 of CC cameras attached to Inaguduru PS would clearly show the presence of petitioner in the Police Station and the police taking him to Court for judicial remand from the said Police Station.

9) Per contra, learned counsel for respondent would argue that the respondent has never committed any contempt by violating the orders of

this Court dated 01.05.2018 in CrI.P.No.4400 of 2018. Learned counsel would further submit that the petitioner is an accused in a number of cases, some are of offences under IPC and some are under Essential Commodities Act and thus he is a habitual offender. Having regard to his criminal background, in order to prevent him from committing further offences and also because the petitioner did not receive notice served by the I.O under Section 41A Cr.P.C, the S.I of Police was constrained to arrest him on 04.05.2018. Learned counsel by producing the copy of remand report dated 04.05.2018 and remand order dated 05.05.2018 of learned II Additional Judicial Magistrate of First Class, Machilipatnam, would submit that if really the police did not serve notice under Section 41A Cr.P.C on petitioner at Chinta Chettu Center and fabricated the notice and produced him for remand, nothing prevented him from divulging that fact before the Magistrate but the remand order would clearly show that the petitioner did not complain any ill-treatment in the hands of police and the learned Magistrate on satisfying that the police have followed the guidelines of Hon'ble Apex Court in **Arnesh Kumar**'s case (1 supra) and further satisfying with the reasons mentioned in the remand report for the arrest of accused, remanded him to judicial custody. Learned counsel thus argued that the allegation of contempt is baseless and prayed to dismiss the contempt case.

10) The point for determination is:

“Whether there are merits in this contempt case to allow?”

11) **POINT**: Upon perusal of the record and on hearing both sides, I am of the considered view that the petitioner failed to establish the contempt said to be committed by the respondent. It must be made clear that this Court in its order dated 01.05.2018 in CrI.P.No.4400/2018 has not given any direction to the Investigating Officer not to arrest the petitioner during the course of investigation. It only directed that during the course of investigation, the I.O shall strictly follow the guidelines rendered by the Hon'ble Apex Court in **Arnesh Kumar**'s case (1 supra) and also the procedure contemplated under Section 41A Cr.P.C towards the petitioner. The guidelines in **Arnesh Kumar**'s case (1 supra) given by the Apex Court are thus:

“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 CrPC;

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 the 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 CrPC 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 the 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.”

A careful study of the above guidelines would depict that all the police officers shall be provided with a check list containing sub-clauses under Section 41(1)(b)(ii) Cr.P.C. The guidelines would further show that the police officer shall forward the checklist duly filled and furnish the reasons and materials which necessitated the arrest while forwarding/producing the accused before the Magistrate for further detention and the Magistrate while authorising the detention of the accused shall, peruse the report furnished by the police officer and only after recording its satisfaction, the Magistrate will authorise detention. So the substance of the guidelines is that the Investigating Officer shall be vigilant in respect of various grounds envisaged in Section 41(1)(b)(ii) Cr.P.C and must

specify those grounds for arresting the accused in a cognizable offence, punishable with imprisonment for a term which may be less than seven years or extend upto seven years. Further, while forwarding the accused for judicial remand, the I.O shall forward the checklist duly filled and furnish the reasons and materials which necessitated the arrest. The grounds mentioned in Section 41(1)(b)(ii) Cr.P.C are thus:

(ii) the police officer is satisfied that such arrest is necessary--

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured;

and the police officer shall record while making such arrest, his reasons in writing.”

12) Therefore, a conjunctive study of Section 41(1)(b)(ii) Cr.P.C and the guidelines of Hon’ble Apex Court would show that the police officer, if able to satisfy any of the above grounds, can arrest the accused involved in a cognizable offence punishable with an offence either less than seven years or upto seven years. Then the role of the Magistrate comes into play. He, while authorising the detention of the accused, shall peruse the report furnished by the police officer in terms

of the checklist and only after recording his satisfaction, shall remand the accused to judicial custody under Section 167 Cr.P.C.

13) So in essence, the order of this Court only says that the Investigating Officer in the instant case shall follow the above procedure but the tone and tenor of this order would not mean that the I.O shall not arrest the petitioner/accused in spite of the presence of any of the grounds mentioned in Section 41(1)(b)(ii) Cr.P.C. With this clarification, it has now to be seen whether the respondent has committed any wilful disobedience of the order of this Court so as to be liable for contempt.

14) The first contention of petitioner is that in spite of seeing the order of this Court shown by petitioner, the respondent/C.I directed S.I to arrest the accused. The respondent is not disputing the factum of arrest in spite of this Court's order. However, his explanation is that the petitioner was involved in a number of cases and he is a habitual offender. In the counter he mentioned the particulars of the crimes as follows:

- i) *Cr.No.132/2014 of Inaguduru Police Station for the offences U/s.420 IPC & Sec.7(a) of E.C.Act.*
- ii) *Cr.No.98/2015 of Inaguduru Police Station for the offences U/s.420 IPC & Sec.7 of E.C.Act.*
- iii) *Cr.No.124/2015 of Inaguduru Police Station U/s.420 IPC & Sec.7 of E.C.Act.*

- iv) *Cr.No.113/2017 of Robertstonpet Police Station U/s.420 IPC & Sec.7 of E.C.Act.*
- v) *Cr.No.22/2018 of Robertstonpet Police Station U/s.195-A, 353 IPC.*
- vi) *Cr.No.222/2013 of Chilakalapudi Police Station for the offences U/s.420, 409, 467, 468, 477, 120-B IPC.”*

Thus according to respondent, he directed S.I to arrest the petitioner to prevent him from committing further offences and to ensure proper investigation. In remand report also, he narrated the particulars of above crimes and stated that arrest of the petitioner in this case is necessary to prevent him from committing further offences and also to ensure his presence for further investigation, to prevent accused from concealing the evidence and offering inducement, threat or promise to the persons who are acquainted with the facts of the case. This explanation, it must be said, is in consonance with the grounds mentioned in Section 41(1)(b)(ii) Cr.P.C. Therefore, the arrest of the accused, inspite of the order of this Court, cannot be regarded as violation of the same. The contra argument of learned counsel for petitioner cannot be appreciated.

15) Then the second argument of the counsel for petitioner is concerned, if really no notice under Section 41A Cr.P.C was served on the petitioner and such a notice was fabricated with an endorsement as if the petitioner refused the notice and further, the petitioner was arrested at the police station itself but not at Chinta Chettu Center, nothing prevented the petitioner to divulge such facts before the Magistrate at the time of remanding him to judicial custody. On the other hand, the

petitioner when enquired by learned Magistrate, did not complain any ill-treatment in the hands of police and submitted that his arrest was informed to his relatives. Learned Magistrate on being thoroughly satisfied that the I.O has followed the guidelines of Apex Court in *Arnesh Kumar*'s case (1 supra) and on being further satisfied with the reasons for arrest in the remand report, remanded him to judicial custody. Therefore, this argument of the petitioner does not hold any conviction.

16) So on a conspectus of the facts and material on record, I hold that the respondent has not violated the order of this Court and therefore, he is not liable for contempt.

17) Accordingly, this Contempt Case is dismissed.

As a sequel, miscellaneous application pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 29.10.2018
scs