

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**Crl.P.No.6782 of 2018**

**ORDER**

This petition is filed under Section 482 Cr.P.C., by the petitioner/de-facto complainant to quash the docket order dated 08.06.2018 passed by the Judicial Magistrate of First Class, Shadnagar, in connection with Cr.No.396 of 2017 of Kothur Police Station, Cyberabad, registered for the offences punishable under Sections 120(b), 468, 471 and 420 IPC.

2. The second respondent/A2 and another approached this Court and obtained an order dated 28.12.2017 in I.A.No.1 of 2017 in Crl.P.No.24640 of 2017, whereby this Court directed the police to follow the guidelines issued by the Apex Court in **Arnesh Kumar v. State of Bihar and another**<sup>1</sup> and the procedure contemplated under Section 41-A of Cr.P.C. In obedience of the said direction, the police issued notice under Section 41-A of Cr.P.C. Though the said notice was served on the second respondent, he did not appear before the Investigating Officer. Subsequently, the police filed a petition before the Magistrate under Section 41-A(4) of Cr.P.C., seeking leave of the Court to effect arrest of the second respondent herein. But the Magistrate dismissed the petition on the ground that since the order was passed by the High Court, the High Court alone is competent to pass any order subsequently.

3. During hearing, learned counsel for the petitioner contended that the order impugned is erroneous on the face of the record and contrary to Section 41-A(4) of Cr.P.C., as the Magistrate alone is

---

<sup>1</sup> (2014) (2) ALT (Crl) 457

competent to exercise power under Section 41-A(4) of Cr.P.C., but the Magistrate, on erroneous assumption, dismissed the petition.

4. Learned Public Prosecutor supported the order passed by the Magistrate.

5. Section 41-A Cr.P.C., contemplates notice of appearance before the police officer and Clause (4) of Section 41-A was introduced w.e.f 02.11.2010. Section 41-A(4) Cr.P.C., reads as under:

“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. When the second respondent failed to appear before the police in response to the notice issued under Section 41-A of Cr.P.C., the only course open to the police is to file an application under Section 41-A(4) of Cr.P.C. seeking leave of the Court to effect arrest of the second respondent. The Magistrate has conveniently avoided to pass order in accordance with law while holding that the power is conferred on the High Court since the High Court is directed the investigating agency to follow the procedure contemplated under Section 41-A of Cr.P.C., and the guidelines issued by the Apex Court in **Arnesh Kumar's** case, referred supra, in Cr.P.No.24640 of 2017, that means, the powers conferred on the Magistrate are not taken away. The Magistrate is competent to entertain the subsequent petitions under Section 41-A Cr.P.C., and for each and every petition, the investigating agency need not approach the High Court for any relief. Hence, the order passed by

the Magistrate is erroneous on the face of the record and consequently, the same is liable to be set aside.

7. Accordingly, the Criminal Petition is allowed setting aside the order impugned while directing the Magistrate to pass appropriate order in accordance with law strictly adhering to Section 41-(A)(4) of Cr.P.C., within a week from the date of receipt of a copy of the order. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

2<sup>nd</sup> July, 2018

Note:  
Issue CC in one week.  
(Bo)  
sj

---

**M. SATYANARAYANA MURTHY, J**

