

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

Crl.P.No.1966 of 2019

ORDER:

The petitioners/accused Nos.1 to 7 filed this Criminal Petition under Section 482 Cr.P.C. seeking to quash the proceedings in Cr.No.19 of 2019 on the file of the Station House Officer, Burgampahad Police Station, Bhadradi, Kothagudem District.

Learned counsel appearing for the petitioners has contended that before effecting arrest, the respondents shall follow the law laid down in *Arnesh Kumar v. State of Bihar and Another*<sup>1</sup>, wherein the Apex Court held as under:

- 1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the 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.
- 2) All police officers be provided with a check list containing specified sub-clauses under Section 41 (1) (b) (ii);
- 3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
- 4) The Magistrate while authorizing 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 authorize detention;
- 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;

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<sup>1</sup> AIR 2014 (8) SCC 273

- 6) Notice of appearance in terms of Section 41 A of 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;
- 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 High Court having territorial jurisdiction.
- 8) Authorising detention without recording reasons as aforesaid by the Magistrate concerned shall be liable for departmental action by the appropriate high court.

The Apex Court also held that “ the directions aforesaid shall not only apply to the cases under Section 498-A of the 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.”

Learned Public Prosecutor has not disputed the aforesaid proposition of law.

This Court, having considered the rival submissions, is of the considered view that this Criminal Petition can be disposed of directing the respondents to strictly follow Section 41 Cr.P.C. and also the guidelines laid down in the aforesaid judgment of the Apex Court before taking any steps against the petitioners.

With the above observations, the Criminal Petition is disposed of.

Pending miscellaneous petitions, if any, shall stand closed.

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JUSTICE ABHINAND KUMAR SHAVILI

Date : 12-04-2019  
Prv

