

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Contempt Case No.1179 of 2019

Order :

This Contempt Case is filed by petitioner against the respondent for arresting the petitioner without issuing any notice under Section 41-A of Criminal Procedure Code, 1973 (**for short, 'the Code'**) in relation to Crime No.486 of 2019 dt.25.06.2019 registered under Sections 420, 354 and 509 of Indian Penal Code, 1860, thereby violating the judgment of the Supreme Court in **Arnesh Kumar vs. State of Bihar**¹.

2. The petitioner is accused in Crime No.486 of 2019 on the file of P.S. Sanjeeva Reddy Nagar, Hyderabad registered on 25.06.2019 under Sections 420, 354 and 509 of Indian Penal Code, 1860.

3. The said crime was registered against the petitioner on a complaint made by one K. Padma who alleged that petitioner came to her home and stated to her that there are hidden treasures in her home, and asked her to give Rs.10,000/- to him and that he would then bring out the hidden treasures. The complainant also alleged that she and her mother believed the words of petitioner and arranged the money and gave it to the accused and he started digging in their house and after a few days he went missing. She alleged that she searched for him, and after a few days met him and asked him to return the money to her, but he avoided the complainant on one pretext or the other.

¹ 2014 (8) S.C.C. 273

She also alleged that on 22.06.2019, the petitioner asked the complainant to come to his home at Borabonda and she went there, but she was abused by the brother-in-law of the petitioner who also allegedly dragged her saree and petitioner's wife also abused her.

4. The petitioner contended that none of the offences alleged against the petitioner are punishable up to seven years and his arrest was therefore not necessary as per the above decision and Section 41-A of Cr.P.C. was also not followed by the respondent who arrested him. He stated that he was remanded to judicial custody on 27.06.2019 at 11:00 hrs. by the III Additional Chief Metropolitan Magistrate, Hyderabad and when questioned by the said Magistrate he informed the Magistrate that Section 41-A was not followed by the respondent. He alleged that the remand case diary was returned by the said Magistrate on 27.06.2019 and thereafter the respondent anti-dated a notice and pasted it on petitioner's house on 27.06.2019. He alleged that his family members approached the higher authorities to take action against the respondent on 28.06.2019, but no action was taken. He also alleged that the remand report says that crime was registered on 25.06.2019 that petitioner was arrested on 26.06.2019 and this was done without following due procedure as contemplated under Section 41 and 41-A of the Code, and that this is an abuse of law and violation of Article 21 of the Constitution of India. He alleged that the respondent made the petitioner to sit in the Police Station for full day from 25.06.2019 to 27.06.2019 without providing

any facility and he was not even allowed to call any friend or family member and the respondent also behaved rudely with him and abused him. He further alleged that it was incumbent on the part of the respondent to record reasons for making his arrest and the several directions given in **Arnesh Kumar** (1 supra) were violated. He alleged that he was innocent of the charges levelled against him and that he is a small businessman running a Stationery Shop at Borabanda, Hyderabad, and because of the said criminal case his entire family came on the road. The counsel for the petitioner reiterated these contentions.

5. Counter-affidavit was filed by the respondent alleging that petitioner was in the habit of deceiving people and that he was inducing people to part with money stating that there is hidden treasure in their house and he would trace it out and was thus cheating the public. He stated that petitioner's arrest was 'imminent', and so, Section 41-A notice was not issued to him so as to prevent him from cheating others. It is also stated that during investigation, based on the statement of the complainant, Section 323 of I.P.C. was also added and the wife of petitioner was added as an accused. It is alleged that during the course of the investigation, it came to light that the accused has also cheated similarly other persons in similar manner and their statements were also recorded. The respondent denied he violated any provision of the Criminal Procedure Code, 1973 or floated the order of the Supreme Court. The learned Public Prosecutor appearing for

the respondent reiterated these contentions and sought for dismissal of the Contempt case.

6. From the above facts, it is clear that the petitioner was accused by the complainant in F.I.R. No.486 of 2019 of having committed offences under Sections 420, 354 and 509 of Indian Penal Code, 1860. The offences alleged against the petitioner are not punishable by imprisonment beyond seven years.

7. It is not in dispute that the petitioner was arrested by the respondent and was remanded to judicial custody.

8. It is also not in dispute that notice under Section 41-A of Cr.P.C. was not issued to petitioner before his arrest was effected.

9. Section 41-A of Criminal Procedure Code, 1973 states as follows :

“41-A. 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 persons 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.”

10. Section 41(1)(b) states that a police officer may, without an order from a Magistrate and without a warrant, arrest any 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 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, if the following conditions are satisfied, namely :

- (a) that the police officer is satisfied that such arrest is necessary to prevent such person from committing any further offence;
- (b) or for proper investigation of the offence;
- (c) or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner;
- (d) or 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 office; and

(e) or as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police office shall record while making such arrest, his reasons in writing.

11. The provision also requires recording of reasons by the police before making arrest.

12. These provisions were interpreted by the Supreme Court in **Arnesh Kumar** (1 supra). The Supreme Court held that in all cases where the arrest of a person is not required under Section 41(1) Cr.P.C. the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

13. The Supreme Court further observed that this would ensure that police officers do not arrest unnecessarily and the Magistrate does not authorize detention casually and mechanically.

14. It further gave the following directions, viz.,

“All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

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;

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;

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.

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;

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.

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

We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. 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."

15. Having regard to the direction of the Supreme Court in the above case that if the directions in the said judgment are not complied it would render them liable for departmental action and also liable for punishment for contempt of court which can be instituted before the High Court having territorial jurisdiction, the present Contempt Case was entertained.

16. The FIR does not mention the date when the petitioner is supposed to have met the complainant and made the promise to find

hidden treasure in the house of the complainant, nor the date when the amount of Rs.10,000/- was allegedly paid to him by the complainant. Prima facie the complaint itself is very vague.

17. The counter-affidavit filed by the respondent does not give details of any other criminal case registered against the petitioner if really the petitioner is alleged to have cheated other people also like he cheated allegedly the complainant in Crime No.486 of 2019. So there is no material before the respondent before he arrested the petitioner that his arrest is necessary to prevent him from committing any further offence.

18. The respondent procured a statement from one Reshma Begum on 25.6.2019 on exactly the same lines as that of the complainant K.Padma alleging that Rs.10,00,000/- was paid to the petitioner for promising to find hidden treasure. This also does not give the date of the alleged promise or the date of the alleged payment. This also a very vague allegation.

19. The respondent merely states that since the petitioner was in the habit of deceiving people by making them part with their money promising to find hidden treasure in their house, his arrest was 'imminent', and so Section 41-A of Cr.P.C. notice was not issued to him in order to prevent him from committing other similar offences.

20. In my opinion, this reason assigned in the counter-affidavit cannot be accepted as a valid one for not issuing notice under Section

41-A of Cr.P.C. to the petitioner because admittedly under Section 41(1)(b) he was not liable to be arrested since the offences alleged against him would not be punishable with imprisonment for a term more than seven (7) years and no material.

21. Sub-section (1) of Section 41-A mandates that a police officer shall not arrest any person in all cases where such arrest is not required under provisions of sub-Section (1) of Section 41 and he shall first issue a notice to him. By arresting the petitioner on 25.06.2019 without following procedure under Section 41 and 41-A of Cr.P.C., the respondent violated the above decision of the Supreme Court.

22. The petitioner had to file a bail application and secure bail on 26.06.2019 in Criminal M.P.No.1442 of 2019.

23. Thus, there has been a deprivation of personal liberty by the respondent without following due process of law.

24. Accordingly, I hold that the respondent has wilfully disobeyed the judgment of the Supreme Court and is therefore liable to be punished for Contempt of Court.

25. The Contempt Case is allowed, and the respondent is sentenced to imprisonment for a period of four (04) weeks, and shall also pay fine of Rs.2,000/- in four (04) weeks.

26. Subsistence allowance at the rate of Rs.200/- per day shall be deposited by petitioner within four (04) weeks. The sentence of

imprisonment imposed on the respondent is suspended for a period of six (06) weeks.

27. The Commissioner of Police, Hyderabad City and the State of Telangana, represented by its Principal Secretary (Home) Department, shall initiate disciplinary action against the respondent for violation of the decision in **Arnesh Kumar** (1 supra).

28. Accordingly, the Contempt Case is allowed as above.

29. Miscellaneous petitions pending if any in this Contempt Case shall stand closed.

M.S.RAMACHANDRA RAO, J

Date: 24-01-2020

Ndr

N.B: Registry is directed to communicate this order to (i) Commissioner of Police, Hyderabad City and (ii) the Principal Secretary (Home) Department, State of Telangana, BRKR Bhavan, Tank Bund, Hyderabad.