

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 8545 of 2021

O R D E R:

This Criminal Petition under Sections 437 and 439 Cr.P.C. is filed by petitioner – Accused in Crime No. 700 of 2021 on the file of Raidurgam Police Station registered for the offences punishable under Sections 406, 420, 427, 448 and 506 read with Section 34 IPC., seeking bail.

2. According to prosecution, on 12.11.2021, at 19.00 hours, a complaint was received from the *de facto* - complainant, who claims to be the designated partner of M/s Rowa & Company Associates LLP, wherein it is stated that the LLP purchased two office units 918 and 919 (Block-I) on 9th floor with super built up area of 1,185 square feet including 40% common area along with two car parking lots in Sandhya Techno-I situated at Survey Nos. 86, 97(P), 88(P), 88/1 of Raidurgam Panmaktha Village, Serilingampally Mandal, Ranga Reddy District along with proportionate undivided share of land and the said units were registered in the name of M/s Rowa & Company Associates LLP by the developers on 07.01.2021. While so, on 08.01.2021, when the complainant visited, after giving prior notice, the office units to take physical possession of the property for undertaking internal works, they noticed that the work is still in progress and the units are not fit for occupancy or setting up office, hence, they brought the said fact to the notice of petitioner and Sri P. Srujan Sen, but they showed their illicit attitude. In April 2021, when the complainant went to the office of petitioner, he

threatened them with dire consequences. On 15.09.2021, the complainant again visited Sandhya Techno -I to check the construction work status and came to know that M/s Sandhya Constructions & Estates Private Limited and M/s Incredible India Projects Private Limited encroached into his property and demolished the common walls, pulled down the common facilities on 9th floor, thus cheated them with criminal conspiracy.

3. At the threshold, learned Public Prosecutor questions the very maintainability of the Criminal Petition as the petitioner, without approaching the Court below, has straight away invoked the jurisdiction of this Court. To support his contentions, the learned Public Prosecutor relied on the judgments of the Apex Court in **Sundeeep Kumar Bafna v. State of Maharashtra**¹ and also **Gurucharan Singh v. State (Delhi Administration)**² and submits that this Court has jurisdiction only with respect to Section 439 Cr.P.C.

4. Sri M.S. Prasad, learned Senior Counsel appearing on behalf of learned counsel for petitioner Ms. A. Satya Sri, relies on the very same judgment in **Sundeeep Kumar Bafna's case** (cited supra) as well as the other judgment in **Kalidindi Sanyasi Raju v. State of Andhra Pradesh**³, wherein this Court, having taken into consideration the judgment of the Apex Court in **Gurucharan Singh's** case, observed that the Court has entertained the matter on merits of the bail Petition. The learned Senior Counsel also relies on

¹ (2014) 16 Supreme Court Cases 623

² (1978) 1 Supreme Court Cases 118

³ 2019(1) ALT (Cri) 51

the judgment of the Top Court in ***Arnab Manoranjan Goswami v. State of Maharashtra***⁴ and ***Niranjan Singh v. Prabhakar Rajaram Kharote***⁵ which deals with the issue 'what is custody as per Section 439 Cr.P.C.' and also the judgment of the Supreme Court in ***Arnesh Kumar v. State of Bihar***⁶ .

5. On merits of the matter, the learned Senior Counsel submits that in the entire complaint, the allegations levelled against the petitioner are purely 'civil in nature' and initially, the complainant approached the Consumer Forum on 14.08.2021 and subsequently, filed the present complaint on 12.11.2021. According to the learned Senior Counsel, when the petitioner was on his way from Bangalore to Hyderabad, he was arrested by the police on 17.11.2021 and was produced before the II Additional Chief Metropolitan Magistrate at Hyderabad. It is submitted that even as per the remand report, it is stated that the petitioner was issued notice under Section 41-A Cr.P.C. and as the petitioner refused to take the same, he was arrested and remanded to judicial custody. Learned Senior Counsel submits that having chosen to issue notice under Section 41-A Cr.P.C., police ought not to have arrested the petitioner without obtaining permission from the Magistrate. It is also submitted that giving a go-bye to all the channels, petitioner has been arrested. It is submitted that earlier, when a complaint was lodged, the very same Investigating Officer registered Crime No. 689 of 2021 on 10.11.2021 and in the said crime also, on the same day

⁴ (2021) 2 SCC 427

⁵ (1980) 2 SCC 559

⁶ (2014) 8 SCC 273

between 10.00 a.m. and 4.45 p.m., notice under Section 41-A Cr.P.C. was issued, petitioner was arrested and produced before the Magistrate. The learned Magistrate *vide* docket order dated 10.11.2021 observed that the contents of the remand case diary do not show that accused failed to comply with the provisions in Section 41-A Cr.P.C. and that he was not given sufficient time to comply with notice. Hence, the same was rejected and the accused was directed to be released forthwith on executing personal bond for Rs.10,000/- and an undertaking that he would appear before the Court as and when directed and cooperate with the Investigating Officer and the police were also directed to serve copies of all the documents to the accused. It is submitted that they have also moved Habeas Corpus Petition before this Court. The learned Senior Counsel submits that in the remand report, the Investigating Officer stated 18 reasons for arrest of the accused and he submits that all these reasons are invented for the purpose of implicating the petitioner in this crime.

5. On the other hand, learned Public Prosecutor submits that the petitioner, being a builder, cheated several innocent people and about 17 complaints were filed against him and taking into consideration the criminal antecedents, the Investigating Officer has chosen to arrest the accused. He submits that when he refused to receive the notice under Section 41-A Cr.P.C., police have no other alternative but to arrest him. Hence, the learned Public Prosecutor submits, the police have followed the procedure contemplated under

the provisions of the Criminal Procedure Code and the guidelines issued by the Supreme Court in ***Arnesh Kumar's case***.

6. Perused the material on record.

7. The remand report clearly reveals that police tried to serve the notice under Section 41-A Cr.P.C. and as the petitioner refused to receive the same, they arrested him. This Court is not in a position to appreciate such a contention because once the police have chosen to issue notice under Section 41-A Cr.P.C, and if the accused refuses to receive the same, there is a specific procedure contemplated for service of such notice. The said notice also contains the date on which accused is required to appear before the police. If the petitioner refuses to receive the same, by alternative modes available under law, the police ought to have served the notice and once they have chosen to issue notice under Section 41-A, without obtaining permission from the Magistrate, they ought not to have arrested the petitioner. Even in earlier case also, ie. Crime No. 689 of 2021, the Investigating Officer issued notice under Section 41-A Cr.P.C. on the same day and produced the accused before the Magistrate on the same day, however, the Magistrate refused to remand. This conduct of the officer clearly depicts that he is not in the know of either the procedure contemplated under Cr.P.C. or the guidelines issued by the Apex Court in ***Arnesh Kumar's case***. Further, it is to be seen, already the petitioner approached the Consumer Forum for redressal of his grievance, however, with the

similar allegations, lodged this criminal complaint. This Court therefore, deems it appropriate to grant bail to the petitioner.

6. The petitioner - Accused shall be enlarged on bail in connection with Crime No. 700 of 2021, P.S. Raidurgam on his executing a personal bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of Station House Officer, Raidurgam Police Station.

7. The Investigation Officer shall file a counter before this court with regard to the compliance of the provisions of the Cr.P.C. and the guidelines issued by the Supreme Court in ***Arnesh Kumar's case***.

8. Post on 03.12.2021.

LALITHA KANNEGANTI, J

18th November 2021

Issue CC today.
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