

13.06.2022
Sl. No.39
srn

W.P.A. No. 18456 of 2021

Smt. Khuku Sen & Anr.

Versus

The State of West Bengal & Ors.

Mr. Chittapriya Ghosh,
Ms. Priyanka Saha,
Ms. Komol Singh

...for the Petitioners.

Mr. Amitesh Banerjee,
Ms. Ipsita Mukherjee

...for the State-respondents.

This writ petition has been filed challenging non-compliance of the provisions of paragraph 11 of the decision of the Hon'ble Apex Court in the matter of Arnesh Kumar vs. State of Bihar & Anr. reported in (2014) 8 SCC 273. According to the petitioners, the offence complained of are under Sections 498A and 325 of the Indian Penal Code and as such, as both the offences are punishable for less than 7 years, the police authorities ought to have given the petitioners a notice under Section 41A of the Code of Criminal Procedure.

On the last occasion, my predecessor Judge, directed that as there were allegations against the police authorities, the case records be produced before the Court.

Today, Mr. Banerjee, learned Senior Standing Counsel, appearing on behalf of the State-respondents, has produced the

report and the case diary with regard to the investigation by the Narendrapur Police Station. From the report, it appears that on August 28, 2021 at 20:55 hours one Laxmi Mondal lodged a complaint. She stated that sometime in 2020, her daughter, married the petitioner No.2. The daughter was subjected to physical torture by her husband and in-laws. On a complaint by the daughter and wife of the petitioner No.2 dated July 14, 2021 Narendrapur PS Case No.872 of 2021 under Sections 498A/406 of the Indian Penal Code had been registered by the concerned police station. The petitioners and other accused persons were also issued notices under Section 41A of the Code of Criminal Procedure.

Records reveal that investigation was completed in respect of the first FIR and the same culminated in the filing of a charge sheet being Narendrapur PS Charge Sheet No.774 of 2021 dated July 31, 2021. The case diary, which has been produced before the Court, indicates that all the accused persons pertaining to the first investigation being Narendrapur PS Case No.872 of 2021, were issued notices under Section 41A of the Code of Criminal Procedure. The said matter is pending trial before the appropriate criminal court. On the second complaint by the mother of the victim, Narendrapur P.S. Case No.1058 of 2021 dated August 28, 2021 under Sections 498A/325 of the Indian Penal Code was registered.

It appears that the said offence was a repeat offence of torturing the wife physically. Investigation is complete and a charge sheet has already been filed being Narendrapur PS Charge Sheet No.1044 of 2021 dated September 30, 2021 under Sections 498A/325 of the Code of Criminal Procedure.

The police authorities registered the case upon receipt of the complaint from the mother and proceeded with the investigation. Witnesses were interrogated under Section 161 of the Code of Criminal Procedure and their statements were recorded. Rough sketch map of the place of occurrence was prepared. Notice under Section 91 of the Code of Criminal Procedure was issued upon the *de facto* complainant for production of evidence and supporting documents. Statement of the victim was recorded under Section 164 of the Code of Criminal Procedure before the learned Magistrate.

It is the specific contention of the police authorities that a notice under Section 41A was attempted to be served upon the petitioners at their residences, but the same were refused. However, the case diary does not record such issue.

From the forwarding report dated August 29, 2021, when the accused persons were produced before the learned Magistrate after arrest, the reasons for arrest have been recorded.

It appears that the complainant's daughter could not tolerate the brutal torture, which was inflicted by the petitioners.

The victim attempted to commit suicide by hanging. She was taken to the nearest hospital. That the accused tortured the victim repeatedly. That Narendrapur PS Case No.872 of 2021, had culminated into filing of a charge sheet under Sections 498A and 406. It has also recorded in the forwarding report, that day by day the petitioners became more and more furious and the police authorities anticipated that a heinous incident may occur at any point of time. Hence, finding no other alternative, the police authorities arrested the petitioners. All formalities as per the NHRC guidelines were followed. It also appears that there were some confessions. However, trial is pending and the culpability of the petitioners shall be decided by the appropriate forum.

A check list, as per the direction of the Hon'ble Apex Court in the matter of Arnesh Kumar (supra) was filed before the learned Magistrate indicating that the parameters laid down by the Hon'ble Apex Court had been complied with by the investigating agency. It further appears from the order dated August 29, 2021 passed by the learned Magistrate while remanding the petitioners to the judicial custody, that a check list, medical report and other documents have been filed and the learned Magistrate had recorded the same. The inspection memo, check list and medical papers were produced and the accused persons were remanded to judicial custody. It appears from the

order that the learned Magistrate refused bail on the ground that after taking note of the nature of allegations, as reflected in the FIR, forwarding report and other materials available in the case diary, the learned Magistrate was not inclined to grant bail. The petitioners were later released on bail.

Under such circumstances, this Court finds that as repeated cognizable offence was committed by the petitioners within a few days after the charge sheet was filed in the first investigation and the victim attempted to commit suicide, the arrest was made to prevent a heinous crime. A check list was produced before the learned Magistrate. The forwarding report indicated the reasons why the investigating agency apprehended the accused persons. It is for the investigating agency to take steps under such circumstance and such investigation is best left to the wisdom and competence of the agency. The arrest according to the police was made to prevent a further crime and to protect the victim from the wrath of the accused persons who were furious owing to the initiation of the criminal case by the victim. Paragraph 7 of the decision in *Arnesh Kumar* (supra) permits the police authorities to arrest for such reasons, which exist in this case.

This writ petition is disposed of without any order.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)