



Cont.P.No.2666 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

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THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

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P.Mylsamy

... Petitioner

Vs.

Jawahar Kumar,
The Inspector of Police,
Kinathukadavu Police Station,
Kinathukadavu Taluk,
Coimbatore District.

... Respondent

Prayer: Petition filed under Article 215 of Constitution of India, to punish the respondent for the act of contempt committed by him for not complying with the provisions of under Section 41(A) of the Cr.P.C.

For Petitioner : Mr.V.V.Sairam

For Respondent : Mr.N.S.Suganthan
Government Advocate (Crl.Side)

ORDER

The present Contempt Petition has been filed by one P.Mylsamy, the complainant to punish the respondent-Police for the act of contempt alleged to have been committed by him by not complying with the provisions of under Section 41(A) of the Cr.P.C



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in respect of the complaint given by the petitioner against one Ponnusamy and others in Crime No.1399/2020.

2. From the narration of the facts in the Affidavit filed in support of the Contempt Petition, copy of the documents filed alongwith the petition and the submissions of Mr.V.V.Sairam, learned counsel appearing for the petitioner, the following factual aspects could be elicited:-

i) The petitioner had lodged a complaint against one Ponnusamy and others for offences punishable under Section 447 read with Section 427 IPC and the same was registered in Crime No.1399/2020 by the respondent police on 21.09.2020.

ii) On 4.8.2022, the petitioner had sought for some information by issuing notice to the respondent through RTI, among which, one is whether the respondent had issued notice to the accused under Section 41A Cr.P.C. and received a negative reply on 20.8.2022.

iii) Upon receipt of such a reply, the petitioner has come up before this court by way of present Contempt Petition seeking to punish the respondent Police alleging that he had committed contempt of court by not complying with the provisions of Section 41A Cr.P.C. as contemplated by the Apex Court in **Arnesh Kumar vs. State of Bihar** (2014) 8 SCC 273.



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3. When the matter is taken up for hearing, it is submitted by the learned Government Advocate (Criminal Side) appearing for the respondent that this Contempt Petition is not at all maintainable.

4. It is the case of the petitioner that by not issuing notice to the accused under Section 41A Cr.P.C. within two weeks from the date of receipt of the complaint given by the petitioner, the respondent has committed contempt of court as directed in the decision in **Arnesh Kumar vs. State of Bihar** (2014) 8 SCC 273.

5. It is true that Section 41A Cr.P.C. insists for issuance of notice to the accused by the Police in all cases where the arrest of a person is not required. But, the scope of such provision is only to avoid unnecessary and mechanical arrest or threat of arrest and the consequent humiliation and scar being caused to the person accused of. In the case of **Arnesh Kumar** cited supra, the Apex Court has also dealt with Section 41A Cr.P.C. in that perspective alone and made it clear that failure to comply with the directions would attract not only departmental action against the police officer, but, also contempt proceedings. A careful reading of the decision would affirm the same. The relevant portion of the decision clarifying the legal provision is extracted hereunder for ready reference:-



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"9. Another provision i.e. *Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised.* Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads 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 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, 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*



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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."

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, 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



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that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. *We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.*

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and



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mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

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

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising 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 authorise



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detention;

11.5. *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;*

11.6. *Notice of appearance in terms of Section 41-A CrPC 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;*

11.7. 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 the High Court having territorial jurisdiction.

11.8. *Authorising detention without recording*



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reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. *We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A 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."*

6. The observation of the Apex Court in the above decision with regard to initiation of contempt proceedings apart from departmental action, in case of failure on the part of the Police Officer to comply with the provision under Section 41A Cr.P.C., is only to prevent unnecessary harassment by way of arrest or threat to arrest being caused to the person accused. In the case on hand, the petitioner, by misconstruing the scope of the legal provision as well as the observation of the Apex Court, has filed the Contempt Petition, which is not maintainable. Accordingly, it is dismissed.



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