

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.455 of 2017

Arising Out of PS. Case No.-89 Year-2016 Thana- CHIKSAUR District- Nalanda

1. Pappu Singh @ Shivendra Bahadur, son of Late Upendra Singh
2. Anshu Kumar, son of Late Anil Kumar
Both residents of village - Bajitpur, Police Station - Chiksaura, District - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Home police Department, Old Secretariat, Bailey Road, Patna
2. The Director General of Police, Bihar, Patna.
3. Inspector General of Police, SC and ST Act, Bihar, Patna.
4. Inspector General of Police, Patna Zone, Patna, Bihar.
5. The Deputy Inspector General of Police, Patna Division, Patna.
6. Superintendent of Police, Nalanda at Biharsharif.
7. Sri Parvendra Bharti, Deputy Superintendent of Police, Hilsa, District - Nalanda. BIHAR
8. Shri Rajesh Malakar, Station House Officer, Chiksaura Police Station, District - Nalanda.
9. Investigation Officer, Chikaura Police Station District - Nalanda.
10. Mr. Vishwa Vibhuti Gupta, The Then A.C.J.M Ist Hilsa nnd Now Posted As Additional Dist. And Session Judge Xvi Bhagalpur, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Adv., Ms. Aastha Ananya, Adv.
For the State	:	Mr. Deepak Kumar, AC to GP-4
For respondent no. 10	:	Mr. Y.V. Giri, Senior Adv., Mr. Devashish Giri, Adv.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 12-02-2024



Heard learned Advocate for the petitioners as well as learned APP for the State.

2. The petitioners have filed the instant writ petition for issuance of a writ in the nature of mandamus, directing the respondents to explain, as to why the petitioner no. 1 was arrested in flagrant violation of the mandate of law, enshrined under Section 41 and Section 41(A) of the Cr.P.C. and also for a direction upon the Investigating Officer for flouting the law involved in the subject with brazen proclivity in support of his superior officials with a coordinate prayer directing the respondents to pay compensation for wrongful arrest of the petitioner.

3. It is pertinent to mention here that in the Chiksaura P.S. Case No. 89 of 2016, registered under Sections 341/504/506/354(B) of the I.P.C. and Section 3(i) (iii) (vi) (x) (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 1995. After registration of the said case, Police issued notice upon petitioner no. 1 namely Pappu Singh @ Shivendra Bahadur under Section 41(A) of the Cr.P.C. The petitioner no. 1 duly complied with the said provision attending the local Police Station. The Investigating Officer interrogated him and he was released by the Police. Subsequently, the Investigating



Officer made an application on 07.02.2017, praying for Police remand against the petitioner no. 1 stating, *inter alia*, that the petitioner is the prime accused in connection with Chiksaura P.S. Case No. 89 of 2016; against him ample materials had been collected; he had been fleeing here and there to evade arrest. Subsequently, he was arrested following the prevailing law and he should be remanded to judicial custody.

4. In course of hearing of the instant writ petition, a Coordinate Bench passed an order dated 24th July, 2023 allowing the petitioner to add the concerned Additional Chief Judicial Magistrate-I, Hilsa, namely Vishwa Vibhuti Gupta, respondent no. 10 who passed the order of remand. The respondent no. 10 was directed to file his show cause within one week as to why contempt proceeding be not initiated against him for violating the order passed by the Hon'ble Supreme Court in the case of ***Arnesh Kumar Vrs. State of Bihar***, reported in (2014) 8 SCC 273.

5. Before dealing with the submissions made by the learned Advocate for the petitioners, let me record that Mr. Y.V. Giri, learned Senior Counsel on behalf of respondent no. 10, at the outset submits that the Investigating Officer of this case is facing departmental proceeding as per the order of this Court and no



further order is warranted against the said Police Officer/Investigating Officer.

6. The learned Advocate for the petitioners submits that after registration of Chiksaura P.S. Case No. 89 of 2016 on 17th August, 2016, the petitioner was issued a notice under Section 41(A) of the Cr.P.C. following the direction of **Arnesh Kumar (supra)** to the petitioner no. 1 for his appearance in the Police Station. The petitioner no. 1 duly appeared before the Investigating Officer. He was also interrogated and at that point of time Police Officer did not find any reason or ground to arrest the petitioner. On 28th September, 2016, both petitioner no.1 and petitioner no. 2 submitted an undertaking incorporating the terms and conditions for their appearance and thereafter they were released on bond by the Police Officer. Subsequently, on 7th February, 2017, the petitioner no. 1 was arrested in violation of his previous release on bond, without recalling the release order. As directed by the Hon'ble Supreme Court in **Arnesh Kumar (supra)**, the Police Officer did not submit any report/check list containing specified Sub-clauses under Sections 41 (1) (b) (ii) of the Cr.P.C. Such check list was not placed before the learned Magistrate for his judicial consideration as to whether the materials in support of the check list justified recalling of the release bond with an order of



arrest to be passed by the learned Magistrate. The learned Magistrate without considering the fact that the petitioner duly complied with the notice under Section 41(A) of the Cr.P.C. straightway took the petitioner into custody and remanded him to judicial custody. He was subsequently released after 25 days.

7. It is submitted by the learned Advocate for the petitioners that the arrest of the petitioner is in brazen violation of the law of the land and also Article 21 of the Constitution of India. In support of his contention the learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in the case of ***Dr. Rini Johar And Another Vr. State of M.P. And Others***, reported in ***2016 (11) SCC 703***.

8. The case of ***Dr. Rini Johar (supra)*** is relating to unlawful arrest in violation of the direction made by the Hon'ble Supreme Court in **Arnesh Kumar's Case**.

9. The Hon'ble Supreme Court in paragraph-27 of ***Dr. Rini Johar And Another Vr. State of M.P. And Others***, reported in ***2016 (11) SCC 703*** observed as hereunder:-

“27. In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in D.K. Basu [D.K. Basu v. State of W.B., (1997) 1 SCC 416 : 1997 SCC (Cri) 92] ,



there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in Nilabati Behera [Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 : 1993 SCC (Cri) 527] , Sube Singh v. State of Haryana [Sube Singh v. State of Haryana, (2006) 3 SCC 178 : (2006) 2 SCC (Cri) 54] , Hardeep Singh v. State of M.P. [Hardeep Singh v. State of M.P., (2012) 1 SCC 748 : (2012) 1 SCC (Cri) 684] , comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs 5,00,000 (Rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised.”

10. Learned Advocate for the petitioners at present is not concerned about the Investigating Officer, against whom disciplinary proceeding is going on. It is submitted by him that the learned A.C.J.M., respondent no. 10 herein committed a grave error by taking the petitioner no. 1 into custody in violation of release bond issued by the Investigating Officer under Section 41



(A) of the Cr.P.C. without asking him to produce the check list as required to be filed under Section 41 (1) (b) (ii) of the Cr.P.C. It is submitted by him that respondent no. 10 is liable not only to disciplinary action, but the petitioner should be compensated by the respondent no. 10.

11. The respondent no. 10 has filed a counter affidavit in the nature of show cause on 25th September, 2023. In the said show cause supported by an affidavit the respondent no. 10 has tendered unconditional and unqualified apology to this Court for not being carried out the direction made by the Hon'ble Supreme Court in **Arnesh Kumar (supra)** in its true letter and spirit.

12. It is further submitted by him that in **Arnesh Kumar Vrs. State of Bihar**, reported in (2014) 8 SCC 273, the Hon'ble Supreme Court lays down the following guidelines:-

“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 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 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.”



13. Thus, Clause 11.8 of the said guidelines clearly states:-

“Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

14. It is contended by the learned senior counsel on behalf of respondent no. 10 that the respondent no. 10 enquired from the petitioner no. 1 whether he had any complaint against the Police team, upon which the petitioner no. 1 made no complaint against the Police team and on further enquiry. The petitioner no. 1 disclosed to the respondent no. 10 that his family members had been informed about the arrest. He was also asked as to whether he needed assistance of any Advocate for his representation to which the petitioner no. 1 replied that he would engage an Advocate. Therefore, it is submitted on behalf of the respondent no. 10 that the said respondent applied his judicial mind before passing the order of remand against the petitioner no. 1.

15. Learned senior counsel on behalf of respondent no. 10 further submits that the respondent was misled by the prayer made by the Investigating Officer and passed the order of remand.

16. Section 41 (1) (b) (ii) states:-



"(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognisable 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 :-

(ii) the police officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) 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 officer; or

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

17. None of the ground were stated by the Investigating Officer to the learned Magistrate praying for arrest of petitioner



no. 1 in the check list. On the contrary petitioner was illegally arrested after giving protection of Section 41(A) by the Police authority and thereafter the Police authority arrested him without filing the check list and obtained order from the learned Magistrate. It is submitted by the learned Magistrate that he passed the order of remand in haste or hurry relying on the prayer made by the Investigating Officer.

18. In *Ramesh Chandra Singh Vs. State of Allahabad*, reported in **2007 (4) SCC 247**, the Hon'ble Supreme Court has specifically disapproved the practice of initiation of disciplinary proceeding against the Officers of a Subordinate Judiciary merely because the Judgments/orders passed by them are wrong. The logic behind such verdict is that the appellate and revisional Courts have been established to rectify the mistakes committed by the Judge of the first jurisdiction. For taking disciplinary action based on judicial orders, extra care and caution is required.

19. In *Krishna Prasad Verma through legal representatives Vrs. The State of Bihar & Ors.*, reported in **2019 SCC online SC 1330**, the provisions contained in Article 235 of the Constitution of India has been referred to through which the High Courts control the subordinate court. A High Court therefore, ought not to take action against the Judicial Officer, by way of



disciplinary measure only because a wrong order has been passed. It was observed by the Hon'ble Supreme Court that nobody can claim that he has never ever erred in his life. At the same time, the Hon'ble Supreme Court sounded an order of caution that one has to care against production of Judicial Officer, but cannot be done only without identifying the wrong Judgment/orders passed by the Judges. There is no allegation made by the petitioners that the order of remand passed by the Judicial Officer was made for some extraneous consideration or to obtain illegal gain. The order of remand was passed on 07.02.2017.

20. The High Court of Judicature at Patna issued Circular No. 1 of 2023 on the basis of the decision made by the Hon'ble Supreme Court in *Md. Asfaque Alam Vrs. State of Jharkhand and Another* reiterated the law laid down in *Arnesh Kumar (supra)*. The petitioner has failed to produce any circular issued by this Court immediately after the decision of *Arnesh Kumar (supra)* to the learned Magistrate for strict compliance of the same.

21. At the same time, this Court is of the view that ignorance of law cannot be said to be a defence by even a common man far less a Judicial Officer. However, following the consistent views of the Hon'ble Supreme Court in the matter of initiation of



disciplinary proceeding against a Judicial Officer, only for passing an erroneous Judgment/order, this Court is of the view that disciplinary proceeding cannot be an answer against such erroneous order.

22. The decision of the Division Bench of this Court reported in **2023 (3) BLJ 688, Sangita Rani Vs. The State of Bihar & Ors.** may be relied on in this regard.

23. However, considering the plight of the petitioners and violation of his fundamental right under Article 21 of the Constitution of India, this Court seriously cautioned the concerned Judicial Officer, respondent no. 10 and records that recurrence of any such incident will be seriously viewed.

24. At the same time, this Court is of the view that the Investigating Officer committed a substantial error by arresting the petitioner no.1 after he was released on bail bond without recalling the bond through a Magestrial order. For such wrong, petitioner's valuable fundamental right was violated.

25. For the reasons stated above, the Police authority, State of Bihar, is directed to pay compensation to the petitioner no. 1 amounting to Rs.2,00,000/- (Two Lakhs). Such compensation shall be paid from the exchequer of the State within 60 days from the date of communication of this order to the Director General of



Police, respondent no. 2. After payment, the said money shall be deducted from the salary of the concerned Police Officer, respondent no. 9 in ten monthly installments, if not superannuated. If superannuated, the said money will be deducted from his pensionary benefit in 20 monthly installments.

26. The instant writ petition is thus disposed of.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

