

THE HONOURABLE DR.JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.237 of 2024

ORDER:

This Criminal Revision Case is filed by the petitioner – accused No.2 aggrieved by the order dated 02.02.2024 in Crime No.309 of 2023 on the file of XII Additional Chief Metropolitan Magistrate, Nampally, remanding the petitioner – A2 without following the due procedure contemplated under Section 41-A of Code of Criminal Procedure (for short “Cr.P.C.”).

2. The case of the prosecution in brief was that A1 and A2 were running a Company under the name and style M/s.Go Rural India Private Limited and were acting as directors of the Company. The Telangana State Road Transport Corporation (for short “TSRTC”) had published a notification in Daily Newspaper dated 10.07.2015 inviting tenders for appointment of region wise advertising contracts for display of advertisements on Metro Express (including Jnnurm & Hire) and Metro Deluxe Buses (including Jnnurm & Hire) in Hyderabad region for a period of five years and M/s.Go Rural India Private Limited represented by A1 was the successful bidder in the tender commercial bids opened on 03.08.2015. A1 accepted the offer and agreed to pay Rs.3,276/- per bus per month for the first year and Rs.3,861/- for second year and Rs.3,861/- for third, fourth and fifth years to the Corporation towards contract

amount. The TSRTC accepted their offer and communicated its acceptance vide letter dated 13.08.2015. The TSRTC and M/s.Go Rural India Private Limited entered into an agreement dated 24.03.2016. After agreeing for the terms and conditions therein, A1 accepted the same and signed the agreement. The operative agreement period was from 12.09.2015 to 11.09.2020. A1 on behalf of M/s.Go Rural India Private Limited had deposited security deposit of Rs.1,28,33,964/- and also issued bank guarantee of Rs.1,00,00,000/- in favor of TSRTC. M/s.Go Rural India Private Limited as per the agreement was displaying the advertisements on buses and TSRTC had been raising the bills towards payment for the usage of space for advertisement on the buses.

3. While the matter stood thus, on 06.11.2023 at 18:50 hours, the Personal Officer of TSRTC, Hyderabad region, Mahatma Gandhi Bus Station, Hyderabad lodged a report before Afzalgunj Police contending that M/s.Go Rural India Private Limited was due an amount of Rs.10,74,89,006/- (License fee of Rs.7,81,70,885/-, penalty of Rs.2,51,59,209/- and GST due of Rs.41,58,912/-) to the Corporation towards the usage of the space of the advertisements. The TSRTC was requesting M/s.Go Rural India to make the payment towards the due amounts. After persistent demands, the husband of the proprietor of M/s.Go Rural India i.e. petitioner / A2 issued five (05) cheques for Rs.10,00,000/- each towards part payment promising to repay the balance amount at the earliest. The TSRTC deposited the cheques. But one cheque was

returned dishonored with an endorsement "signature differs" and other cheques were returned with an endorsement "stopped by the drawer". The TSRTC immediately tried to contact the petitioner. But, the petitioners evaded and were avoiding them.

4. Basing on the said report, Afzalgunj Police registered the Crime No.429 of 2023 under Sections 420 and 406 of IPC.

5. Subsequently, the case file was transferred to PS C.C.S., D.D., Hyderabad and the same was re-registered as Crime No.309 of 2023 under Sections 406 and 420 of IPC. On 02.02.2024, A2 was arrested. The Assistant Commissioner of Police (EOW), Team-V, PS C.C.S., D.D., Hyderabad in the remand report of A2 contended that he followed the provisions laid under Section 41(1)(b)(ii) of Cr.P.C. and that the arrest of the petitioner was necessary for the following reasons:

- i. To elicit the details of bank accounts operated by A1 and A2.
- ii. To elicit the details of diversion funds collected during the period in the business with LW.1 by A1 and A2.
- iii. To elicit the details of properties if any purchased by the accused A1 and A2 during the alleged period.
- iv. The accused A1 is already involved in Crime No.221 of 2023 under Sections 420 and 406 of IPC of Marredpally PS and if he is not arrested, there is every chance of committing similar offence in future.

v. To prevent accused from tampering the evidence and influencing the witnesses.

vi. To prevent accused 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.

vii. As unless such person is arrested, his presence in the Court whenever required cannot be ensured as he is required in several cases.

6. A1 was shown as absconding and A2 was produced before the learned XII Additional Chief Metropolitan Magistrate, Hyderabad. The learned XII Additional Chief Metropolitan Magistrate vide order dated 02.02.2024 accepted the remand of the accused and sent him to judicial custody noting that:

“The accused No.2 is produced before me at my residence at 08:40 PM on 02.02.2024 through HC 3198, PC 8686 of PS CCS, DD, Hyderabad.

On inquiry, the accused reported that Police did not ill-treat him and Police have complied with provisions under Sections 50, 50-A and 54 of Cr.P.C. including Covid-19 negative report. The accused further stated that he has received copies.

Accused further stated that he has means to engage an advocate. Sri S.Pandu Ranga Reddy, Advocate - filed MOA for the accused.

On perusal of RCD, FIR and other relevant documents, which prima facie made a well accusation against the accused for the offences under Sections 406 and 420 of IPC which are non-bailable in nature.

On perusal of the record, the Police / Investigating Agency did not give notice under Section 41-A of Cr.P.C. to the accused persons.

On perusal of the record for non-compliance of Section 41-A of Cr.P.C notices in this case the Investigating Officer filed a separate check list for not complying the Section 41 - A of Cr.P.C. Perusal of record shows that this is case of cheating by evading payment of bills to the TSRTC and another crime was registered against the accused vide Crime No.221 of 2023 under Sections 406 and 420 of IPC of PS Marredpally and A1 absconding.

In view of the same and as there is every possibility of tampering / deleting of evidence and absconding from the jurisdiction, so far as this accused is concerned, if he is not arrested.

Therefore, the reasons for arrest shown by the Investigating Officer in the check list are satisfactory for accepting the remand. Accordingly, the remand accepted and accused No.2 remanded to judicial custody till 16.02.2024.”

7. Challenging the said remand order, the petitioners preferred this revision contending that the learned Magistrate grossly erred in remanding the petitioner to judicial custody contrary to Section 41-A of Cr.P.C. and the judgment of the Hon'ble Apex Court in **Arnesh Kumar v. State of Bihar and Another**¹. The learned Magistrate ought to have seen that the offences alleged against the petitioners were under Sections 420 and 406 of IPC, for which the maximum punishment was below seven years. As such, the Police were required to follow the procedure contemplated under Section 41-A of Cr.P.C. The learned Magistrate having observed that 41-A of Cr.P.C. was not followed, erroneously sent the petitioner / A2 to judicial custody. The learned Magistrate ought to

¹ (2014) 8 SCC 273

have seen that the allegations in the FIR were in relation to commercial transaction arising out of an agreement dated 24.03.2016, which had got a separate remedial mechanism under clauses 44 and 45. The learned Magistrate ought to have seen that the de-facto complainant had issued a show cause notice dated 28.09.2021 calling upon M/s.Go Rural India, why a civil case should not be filed against A1, for which A1 had submitted a reply dated 25.01.2021. However, the de-facto complainant had not taken any steps to pass adjudicatory order contemplated under clause 44. The learned Magistrate ought to have seen that the grievance, which was sought in the present complaint, was for recovery of money. The learned Magistrate ought to have seen that the Criminal Courts should ensure that criminal proceedings were not misused for settling scores or pressurizing parties to settle civil disputes and relied upon the judgments of the Hon'ble Apex Court in **Arnesh Kumar v. State of Bihar and Another** (cited supra), **Mohammed Ibrahim and Others v. State of Bihar and Another**² and **Jay Shri & Another v. State of Rajasthan**³ dated 19.01.2024.

8. The learned Additional Public Prosecutor contended that the petitioner ought to have applied for regular bail as he was remanded to judicial custody on 02.02.2024 and he was in custody since then. He further submitted that the

² (2009) 8 SCC 751

³ Criminal Appeal of 2024 arising out of SLP (Criminal) No.14423 of 2023, dated 19.01.2024.

learned Magistrate in the order recorded the reasons for accepting the remand and the same would hold good and prayed to dismiss the petition.

9. Perused the record.

10. The facts of the case would disclose that the matter was arising out of an agreement entered between the petitioner and the de-facto complainant i.e. TSRTC to display advertisements on the RTC buses as per the rates agreed between the parties. It was also agreed in clause 41 of the agreement that in case of violation of the conditions of the contract, the Corporation reserves the right to terminate the contract besides forfeiture of security deposit / bank guarantee and in clause 45 of the agreement that if any dispute arises between the advertisement contractor and the Corporation, the Courts at Hyderabad and Secunderabad shall have jurisdiction. The matter primarily is arising out of the breach of the contract or the terms of the agreement. The respondent - complainant lodged a police report alleging the offences of cheating and criminal breach of trust.

11. The Hon'ble Apex Court in **Mohammed Ibrahim and Others v. State of Bihar and Another** (cited supra), held that:

“8.This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity

towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: **G. Sagar Suri v. State of U.P.** [2000 (2) SCC 636] and **Indian Oil Corporation vs. NEPC India Ltd.** [2006 (6) SCC 736].”

12. As such, the responsibility lies on the Criminal Courts to ensure that criminal proceedings are not misused for settling scores or pressurizing parties to settle civil disputes and to prevent abuse of process of law.

13. The Hon'ble Apex Court also in its latest judgment in **Jay Shri and Another v. State of Rajasthan** (cited supra), held that:

“Mere breach of contract would not attract the offences under Sections 420 or 406 of the Indian Penal Code, 1860, unless fraudulent or dishonest intention is shown right at the beginning of the transaction and the Court had time and again cautioned about converting civil disputes into criminal cases. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

14. The offences under Sections 420 and 406 of IPC for which the FIR was registered were punishable with imprisonment extending up to seven years only.

15. The Hon'ble Apex Court in **Arnesh Kumar v. State of Bihar and Another** (cited supra) gave guidelines to the Police Officers not to affect arrest in a casual and mechanical manner and held that:

“Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence; it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.

A person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the

police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.P.C.

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 office 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. If the provisions of Section 41, Cr.P.C which authorizes 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 emphasize that the practice of

mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.P.C for effecting arrest be discouraged and discontinued.”

and issued the following directions:

- (i). All the State Governments to instruct its Police Officers not to automatically arrest when a case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, 1961, 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, is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 of Cr.P.C.;
- (ii). All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii) Cr.P.C.;
- (iii). 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;
- (iv). 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;
- (v). 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;
- (vi). Notice of appearance in terms of Section 41-A 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.

16. Further in **Satender Kumar Antil v. Central Bureau of Investigation and Another**⁴, the Hon'ble Apex Court held that:

“27.Despite the dictum of this Court in **Arnesh Kumar Case** (supra), no concrete step has been taken to comply with the mandate of Section 41A of the Code. This Court has clearly interpreted Section 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of ‘reason to believe’ and ‘satisfaction qua an arrest’ are mandated and accordingly are to be recorded by the police officer.”

17. In spite of the guidelines of the Hon'ble Apex Court, the Police Officers are affecting the arrest of the accused in a routine manner and the Magistrates are also authorizing detention under Section 167 of Cr.P.C. without observing whether the arrest is required or not.

18. The Hon'ble Apex Court in **Hridaya Ranjan Prasad Verma and Others v. State of Bihar and Another**⁵, held that:

“There was a distinction between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent

⁴ (2021) 10 SCC 773

⁵ 2000 (4) SCC 168

conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence.”

19. It was not the case of the complainant that the accused was not making payments for the usage of space for advertisements on the buses since beginning, but their case was only that accused No.1 was due of certain amount and after persistent demands, the present petitioner, the husband of accused No.1 had issued cheques which were dishonored for various reasons. It was clear that the grievance raised in the complaint was for recovery of money. As the averments would show that transaction was purely a commercial transaction arising out of an agreement dated 24.03.2016, the very registration of the FIR appears to be bad in law. Further, the Police without issuing notice under Section 41-A, arresting the accused not following the guidelines of the Hon'ble Apex Court in **Arnesh Kumar Case** (cited supra) by showing some flimsy reasons is against the spirit of the above judgment.

20. The learned Magistrate accepting the remand of the petitioner / Accused No.2 also shows the lack of sensitivity on the part of the Magistrate with regard to the liberties and freedom of the persons.

21. As Section 397 of Cr.P.C. also states that while calling for and examining the records, all the proceedings before the inferior Criminal Courts, the High

Courts can direct the accused person to be released on bail on his bond pending examination of the record and as it is considered that the order of remand passed by the learned Magistrate is not in accordance with the law laid down under Section 41-A Cr.P.C. and against the guidelines issued by the Hon'ble Apex Court in **Arnesh Kumar Case** (cited supra), it is considered fit to set aside the order of remand passed by the learned Magistrate and direct the petitioner to be released on bail on his executing a personal bond for Rs.15,000/- with two sureties for the like sum each to the satisfaction of the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. The petitioner - accused shall appear before the Court as and when his presence is required by the trial court.

22. In the result, the Criminal Revision Case is allowed setting aside the remand order passed by the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad in Crime No.309 of 2023 and the petitioner is directed to be released on bail on his executing a personal bond for Rs.15,000/- with two sureties for the like sum each to the satisfaction of the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. The petitioner - accused shall appear before the Court as and when his presence is required by the trial court.

As a sequel, miscellaneous applications pending in this revision case, if any shall stand closed.

Dr. G.RADHA RANI, J

Date: 21st February, 2024
Nsk.