

[3240]

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WEDNESDAY, THE TWENTY EIGHTH DAY OF OCTOBER,
 TWO THOUSAND AND TWENTY
 :PRESENT:
 THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI



IA No. 2 OF 2020

IN

CRLP NO: 4854 OF 2020

Between:

Jangala Sambasiva Rao, S/o Venkateshwari, aged 50 Years, R/o 3578/AA, Undavalli
 Rural, Undavalli Mandal, Guntur District, Andhra Pradesh.

...Petitioner/Accused No.1
 (Petitioner in CRLP 4854 OF 2020
 on the file of High Court)

AND

1. The State of Andhra Pradesh, Represented by its Public Prosecutor High Court of Andhra Pradesh, High Court Buildings at Nelapadu, Amaravathi, Guntur District, Andhra Pradesh.
2. Meka Venkata Rami Reddy, S/o Prakash Reddy, aged 45 Years, R/o D No. 12-311, NTR Colony, Tadepall, Guntur District, Andhra Pradesh.

...Respondents
 (Respondents In-do-)

Petition under Section 482 of Cr.PC., praying that in the circumstances stated in the memo of grounds filed herein, the High Court may be pleased to stay of all further proceedings in relation to Crime No. 695 of 2020 Dated 21.10.2020 registered under sections 120-B, 153-A, 505(2) of IPC on the file of the SHO PS Mangalgiri Town, Guntur Urban, Andhra Pradesh, pending disposal of CRLP No. 4854 of 2020, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and memo of grounds filed in Cr.P., and upon hearing the arguments of Sri V Sai Kumar, Advocate for the Petitioner, and of Public Prosecutor for Respondent No.1, the Court made the following

ORDER:

This criminal petition is filed to quash FIR No.695 of 2020 of Mangalgiri Town Police Station, Guntur Urban, wherein the petitioner herein who is arrayed as accused No.1 is alleged to have committed the offences punishable under 120-B, 153-A, 505(2) of IPC.

A complaint was lodged by the 2nd respondent herein who is the Social Media Coordinator of MLA of Mangalgiri Constituency alleging that the petitioner who belongs to Telugu Desam Party and Admin of Neti Andhra.com posted certain material on website by promoting enmity, hatred and ill-will between different groups on the ground of political propaganda with a conspiracy by using the name of Alla Ramakrishna Reddy, MLA of Mangalgiri Assembly Constituency and Advisor to Government Ajay Kallam and he requested to take action against the petitioner. Basing on the said complaint, the present crime is registered.

Learned counsel for the petitioner would submit that the investigation is politically motivated and has been conducted with pre-determined and pre-meditated objective to arm-twist, harass and humiliate the petitioner by depriving of his right to free speech and expression. He submits that the crime was registered on 21.10.2020 and without issuing any notice under Section 41-A of Cr.P.C., since all the offences are punishable below 7 years, arrested the petitioner on 22.10.2020 and remanded to judicial custody. He submits that the act of the police in arresting the accused is in clear violation of the guidelines issued by the Hon'ble Apex Court in **Arnesh Kumar v. State of Bihar** [(2014) 8 SCC 273]. He further submits that even a bare reading of the complaint and all the allegations are taken on its face value, they do not constitute the offences punishable under Section 120-B, 153-A, 505(2) of IPC.

Learned counsel for the petitioner further submits that the complaint is given on 21.10.2020 and without conducting any preliminary enquiry and without any basis, the petitioner was arrested. He submits that the registering the complaint against the petitioner is a pure abuse of process of law.

Learned counsel has vehemently contended that Sections 153-A and 505(2) of IPC are not attracted in this case. This Court and the Hon'ble Apex Court in catena of cases held that in order to constitute the ingredients of Section 153-A of IPC, it is necessary that atleast two such groups or communities should be involved. Merely enticing the feelings of one community or group without any reference to any other group cannot attract the offence under Section 153-A of IPC.

In the instant case, on the Facebook a message was posted referring to a MLA and the Government Advisor it is stated that in the name of Advisor, the persons belonging to MLA group are collecting money from jobless people. Hence, there are no two groups involved as per Section 153-A of IPC. The Advisor to the Government and the MLA group cannot be construed as two groups.

Learned counsel for the petitioner has drawn the attention of this Court to Section 505(2) of IPC, which reads thus:

(2) **Statements creating or promoting enmity, hatred or ill-will between classes.**— Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Exception to Section 505 of IPC reads thus:

It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it [in good faith and] without any such intent as aforesaid.

Learned counsel submits that in order to attract the offence under Section 505 (2) of IPC, there must be a publication, statement or circulation of such statements based on religion, race, place of birth, language, caste or community. In the absence of these, the offence is not attracted.

In the light of the law laid down by the Hon'ble Apex Court in **State of Haryana Vs. Ch.Bhajan Lal** (AIR 1992 SC 604), the allegations in the complaint *prima facie* do not constitute the offences punishable under Section 505 (2), 153A and 120B of IPC.

The next contention of the learned counsel for the petitioner is non-compliance of the directions of the Hon'ble Apex Court in **Arnesh Kumar's** case (suprà). The remand report discloses that basing on the complaint given by the social media coordinator on 21.10.2020, the crime was registered on the same day at 2.30 p.m. According to the complaint, the petitioner has posted the content on Facebook at 7.02 p.m. on 20.10.2020. During the course of investigation, the investigating officer has examined LWS-1 to 5 and recorded their statements and arrested the accused at 2.30 p.m. on 22.10.2020. In the remand report, he has specified the reasons for remanding the accused, they are –

S. No.	Clause	Yes / No	Reasons for believing so
1	Sec.41(1) (b) (ii) (a) Is the arrestee necessary to prevent from committing further offences?	Yes	If the accused will be enlarged on bail, he will not cooperate for investigation.
2	Sec.41(1) (b) (ii) (a) Is the arrestee necessary for proper investigation of the offence?	Yes	If the accused will be sent for judicial custody it will be easier to complete the investigation as an early date.
3	Sec.41(1) (b) (ii) (a) Is the arrestee necessary to prevent from causing the evidence of the offence to disappear or tamper with evidence in any manner?	Yes	If the accused will be enlarged on bail, he will commit another cognizable offence.
4	Sec.41(1) (b) (ii) (a) Is the arrestee necessary to prevent 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?	Yes	If the accused will not be arrested he will compulsorily commit another offence which will become difficult to get him convicted.
5	Sec.41(1) (b) (ii) (a) Is it possible to ensure that the presence of this arrestee in the court whenever required without making his arrest?	Yes	It is strongly suspected that the accused will not appear before the Hon'ble Court whenever required without making them arrested.

It is submitted that all the reasons that are stated by the police in the remand report are stereotypic and no specific reasons are assigned in consonance with the order of the Hon'ble Apex Court.

Learned Public Prosecutor has submitted that the police have remanded the accused for the reasons stated in the remand report, in strict compliance with the directions of the Hon'ble Apex Court in **Arnesh Kumar's** case.

The Hon'ble Apex Court in **Joginder Kumar Vs. State of U.P.** (AIR 1994 SC 1349) observed that "*The National Police Commission in its third report referring to the quality of arrests by the police in India mentioned power of arrest as one of the chief sources of corruption in the police*".

Taking into consideration all these aspects, amendments were carried out to Cr.P.C. Section 41-A of Cr.P.C was inserted by Act 5 of 2009. Section 41 deals with when police may arrest without warrant. Section 41-A of Cr.P.C reads thus:

41A. 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 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 Hon'ble Apex Court in Arnesh Kumar's case has observed that arrest brings humiliation, curtails freedom and cast scars forever. Law makers as well as the police must know about this. The need for caution in exercising the drastic power of arrest has been emphasized time and again. The Hon'ble Apex Court has further observed that the attitude to arrest first and then proceed with the rest is despicable. The Hon'ble Apex Court has laid down certain guidelines, which are –

"In all cases where the arrest of a person is not required under Section 41(1), Cr.PC, 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 that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

We are of the opinion that if the provisions of Section 41, Cr.PC 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 Cr.PC for effecting arrest be discouraged and discontinued.

Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

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

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

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;

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;

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;

Notice of appearance in terms of Section 41A of Cr.PC 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;

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 High Court having territorial jurisdiction.

Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. 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."

In the light of the law laid down in Arnesh Kumar's case, even though the punishment for the offence is below seven years, the discretion is with the police officer either to arrest the accused or to issue notice contemplated under Section 41-A. If the police officer is dispensing with the notice under Section 41-A and resorting to arrest the accused he shall forward a check list duly filed and shall furnish the reasons along with material which necessitate the arrest while producing the accused before the police. Thereafter while authorizing the detention the Magistrate shall record reasons and failure to comply with the directions shall apart from rendering the police officer concerned for departmental action, he shall also be liable for contempt of Court to be instituted before the High Court. Even the Magistrate is also liable for departmental action by the High Court.

In spite of the clear guidelines by the Hon'ble Apex Court, some of the police officials are continuing to make indiscriminate arrests, immediately after registering the complaint without proper investigation. Hon'ble Justice Krishna Ayyar once said, "*who will police the police*" when the police are giving go-by to all guidelines while arresting the accused and producing for remand, the Magistrate shall not mechanically authorize the remand, but shall satisfy

that there are sufficient grounds supported by material on which the accused need to be remanded. The Magistrate must understand the power to authorize detention is a solemn function because it affects the liberty and freedom of the citizen. This duty has to be discharged with utmost care and caution, but not in a routine manner.

In the instant case, *prima facie* this Court is of the view that the reasons stated in the remand report are not in consonance with the guidelines issued by the Hon'ble Apex Court in Arnesh Kumar's case. Therefore, this Court would like to invite a report along with the record from the Magistrate on what basis Section 41A of Cr.P.C was dispensed with and the accused was remanded.

In these circumstances, the Sub Inspector of Police, Mangalagiri Town Police Station, Guntur Urban is directed to file a detailed affidavit on what are the steps taken by him in complying with the guidelines / directions issued by the Hon'ble Apex Court in Arnesh Kumar's case while arresting the accused along with the record within two weeks from the date of receipt of a copy of this order.

The Additional Junior Civil Judge, Mangalagiri, Guntur District, who authorized the remand shall submit a report to this Court with regard to the compliance of the guidelines / directions issued by the Hon'ble Apex Court in this case along with record within two weeks from the date of receipt of a copy of this order.

Registry is directed to communicate the copy of this order to the Sub Inspector of Police, Mangalagiri Town Police Station, Guntur Urban and Additional Junior Civil Judge, Mangalagiri, Guntur District forthwith.

In the light of the above discussion, there shall be stay of all further proceedings in FIR No.695 of 2020 of Mangalagiri Town Police Station, Guntur Urban until further orders.

Post on 26.11.2020.

SD/- K.VENKAIAH
ASSISTANT REGISTRAR

APR
//TRUE COPY//

For ASSISTANT REGISTRAR

To,

1. The Addl. Junior Civil Judge, Mangalagiri, Guntur District
2. The Station House Officer, Mangalagiri Town Police Station, Guntur Urban, Andhra Pradesh,
3. Two CCs to Public Prosecutor, High Court of A.P., at Amaravati (OUT)
4. Meka Venkata Rami Reddy, S/o Prakash Reddy, aged 45 Years, R/o D No. 12-311, NTR Colony, Tadepalli, Guntur District, Andhra Pradesh.
5. One CC to Sri. V Sai Kumar Advocate [OPUC]
6. One spare copy

Skm

HIGH COURT

LK,J

DATED:28/10/2020

ORDER

IA. No. 2 of 2020
IN
CRLP.No.4854 of 2020

DIRECTION

