

A.F.R.

Court No. - 49

Case :- CRIMINAL MISC. WRIT PETITION No. - 17732 of 2020

Petitioner :- Vimal Kumar And 3 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ajay Vikram Yadav

Counsel for Respondent :- G.A.

Hon'ble Dr. Kaushal Jayendra Thaker, J.

Hon'ble Gautam Chowdhary, J.

Per - Hon'ble Gautam Chowdhary, J.

Heard learned counsel for the petitioners and learned A.G.A. for the State.

This writ petition has been filed by the petitioners with the following prayers:

(I) issue a writ order or direction in the nature of certiorari quashing the impugned First Information Report dated 28.11.2020 lodged by respondent No. 4 in case crime No. 824 of 2020, under sections 498-A IPC and section 3 Dowry Prohibition Act, Police Station Kotwali Nagar, District Etah.

(II) issue a writ order or direction in the nature of mandamus commanding the respondents not to arrest the petitioners in case crime No. 824 of 2020, under sections 498-A IPC and section 3 Dowry Prohibition Act, Police Station Kotwali Nagar, District Etah.

(III) issue any other writ order or direction in the like nature which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(IV) award the costs of the writ petition to the petitioners.

The brief facts of this case are that the marriage of daughter of respondent no. 4 namely Priyanka was fixed with the petitioner No. 1 by which on 7.6.2020 the Ring ceremony was held and during this period about 6.5 lacs rupees was given by the respondent no. 4 to the petitioners. It is further alleged that on 25.11.2020 all the petitioners demanded a Creta Car and stated if said demand could not be fulfilled then they would not solemnize the marriage.

It is submitted by learned counsel for the petitioners that the marriage of daughter of respondent no. 4 was fixed with the petitioner no. 1 and after Ring ceremony respondent no. 4 with the ulterior motive, demanded money from the petitioners for solemnizing the marriage with her daughter with petitioner no. 1 and stated that if the same was not fulfilled then petitioners would be falsely dragged in a criminal case, present malicious prosecution has been launched by the respondent no. 4.

It is next submitted by learned counsel for the petitioner that all the offences are punishable with incarceration below 7 years but the police of concerned police station is regularly visiting the house of petitioners under the influence of respondents No. 4. It is further submitted that under the provisions of Sections 204, S41(1)(b), S.41(1)(b)(ii)(e), S.41(a) of the Cr.P.C. police cannot arrest the petitioners without giving notice and without and without collecting any credible evidence against the petitioners the police can not arrest the accused.

Learned counsel for the petitioners has invited our attention to the provisions embodied in sections 204, S41(1)(b), S.41(1)(b)(ii)(e), S.41(a) of the Cr.P.C. the judgment of this Court in **2011 0 Supreme (All) 2785** (Shaukin Vs. State Of U.P. and Others) has been relied and has placed reliance on **Social Action Forum for Manav Adhikar and another Vs. Union of India, Ministry of law and Justice and others passed in Writ Petition (Civil) No. 73 of 2015.**

We proceed to explain the import and meaning of the amended provisions 41(1)(b) and 41 A Cr.P.C., and to give some illustrations where accused could be arrested straightaway on the lodging of the FIR, and other illustrations where immediate arrests may not be

needed, because we think that in many cases the police is still routinely proceeding to arrest accused persons even if they are involved in offences punishable with up to 7 years imprisonment, in contravention of the express terms of Section 41(I)(b) or 41 A Cr.P.C. 7. It would be useful to extract the material provisions, Section 41(I)(b) or 41 A, which have been introduced by Act No. 5 of 2009, with effect from 1.11.2010 and also section 170(I) of the Code of Criminal Procedure, here:

41. When police may arrest without warrant.--(I) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-----

(a)-----

(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 cognizable 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:

(I) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(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 reasons in writing.

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section record the reasons in writing for not making the arrest.

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 a 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 the 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.

Moreover, reliance on the judgements dated 04.09.2018 passed by Apex Court in the case of **Social Action Forum for Manav Adhikar Vs. Union of India, Ministry of Law and Justice and others in Writ Petition (Civil) No. 73 of 2015 with Criminal Appeal No. 1265 of 2017 Writ Petition (Criminal) No. 156 of 2017.**

In which Hon'ble Supreme Court has also issued directions:

20. We, therefore, direct the Magistrates/ Police authorities that when accused alleged with offence punishable up to 7 years imprisonment are produced before them remands may be granted to accused only after the Magistrate satisfies himself that the application for remand

by the police officer has been made in a bona fide manner and the reasons for seeking remand mentioned in the case diary are in accordance with the requirements of Section 41(I) (b) and 41 A Cr.P.C., and there is concrete material in existence to substantiate the ground mentioned for seeking remand. Even where the accused himself surrenders or where investigation has been completed and the Magistrate needs to take the accused in judicial custody as provided under Section 170(I) and Section 41(I)(b)(ii)(e) Cr.P.C. prolonged imprisonment at this initial stage, where the accused has not been adjudged guilty may not be called for, and the Magistrate and Sessions Courts are to consider the bails expeditiously and not to mechanically refuse the same, especially in short sentence cases punishable with upto 7 years imprisonment unless the allegations are grave and there is any legal impediment in allowing the bail, as laid down in **Lal Kamendra Prap Singh Vs. State of U.P. (2009) 4 SCC 437**, and **Sheoraj Singh @ Chuttan Vs. State of U.P. and others, 2009(65) ACC 781**. The facility of releasing the accused on interim bail pending consideration of their regular bails may also be accorded by the Magistrates and Sessions Judges to appropriate cases.

21. The Magistrate may also furnish information to the Registrar of the High Court through the District Judge, in case he is satisfied that a particular police officer has been persistently arresting accused in cases punishable with upto 7 year terms, in a mechanical or mala fide and dishonest manner, in contravention of the requirements of sections 41(1)(b) and 41 A, and thereafter the matter may be placed by the Registrar in this case, so that appropriate directions may be issued to the DGP to take action against such errant police officer for his persistent default or this Court may initiate contempt proceedings against the defaulting police officer.

22. The Sessions District Judges should also be directed to impress upon the remand Magistrates not to routinely grant remand of accused to police officers seeking remand for accused if the pre-conditions for granting the remands mentioned in [sections 41\(1\)\(b\)](#) and [41 A Cr.P.C.](#) are not disclosed in cases punishable with 7 year terms, or where the police officer appears to be seeking remand for an accused in a mala fide manner in the absence of concrete material. The issue of compliance with [sections 41\(1\)\(b\)](#) and [41 A Cr.P.C.](#) and the directions of this Court in this regard may also be discussed in the monthly meetings of the District Judges with the administration and the superior police officials.

23. We are also of the view that the Registrar General may issue a circular within a period of one month with directions to the Sessions Courts and Magistrates to monitor and oversee the applications for remand sought by the arresting police officers and to comply with the other directions mentioned herein above.

25. As already indicated above we are of the view that by routinely mentioning in the case diary that a particular condition referred to in [sections 41\(1\)\(b\)](#) or [41 A Cr.P.C.](#) has been met for seeking police remand, would not provide adequate reason for effecting the arrest. The DGP is also directed to circulate the present order to all subordinate police officers.

We have been pained to note that regularly petitions are filed where the offence committed would be for a lesser period than seven years or maximum punishment would be seven years and they routinely bring by way of writ petition scrap of being arrested. The provision of Section 41-A were incorporated of this purpose only that concerned who is not charged with heinous crime does not require and whose custody is not required may not face arrest. But we are pained that this provision has not met his avoid purpose.

27. Let a copy of this order be sent to the DGP, U.P., Member Secretary, U.P. SLSA and District Judges in all districts of U.P. for compliance and communication to all the concerned judicial magistrates before whom the accused are produced for remand by the police officers within ten days.

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

11.1. 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-A of Cr.P.C. 1973.

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;

11.6. 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;

While parting we appreciated the efforts made by learned counsel for the petitioners namely Sri Ajay Vikram Yadav who has seriously urged to us that as scribe are not facing what said to case under the dowry prohibition Act as there is still no marriage, but apprehend to arrest. That the police authorities would convey our guidelines not only in this matter but in all the investigations which are to be taken.

A copy be circulated by learned Registrar General to the Law Secretary who shall impress upon all the police stations officers about the same.

We would like to draw the attention of the police authorities of the State to our order dated 18.01.2021 and the provisions of section 41-A of the Cr.P.C. Despite there being warning from the Apex Court in the matter reported in **Writ Petition (Civil) No. 73 of 2015 Social Action Forum for Manav Adhikar and another Vs. Union of India, Ministry of law and Justice and others (Supra)** and in the matter of **Anand Tiwari Vs. State of U.P. and others** passed in **CrI. Misc. Writ Petition No. 17641 of 2020** and **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273** has directed the police authorities to try the balance between individual liberty and social order.

As the matter is still at the investigating stage and the section alleges 498-A IPC and section 34 D.P. Act which is levelled against all the family members, our recent approach passed in **CrI. Misc. Writ Petition No. 64 of 2021 in Mr. Usha Anuragi and others Vs. State of U.P. and others** will also be looked into by the court below if the accused applies for bail/ anticipatory bail for such matters if they have imminent danger from the police who may not be adhering to section 41-A Cr.P.C.

Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273 (Supra) is a land mark judgment which has to be followed by police authorities along with the order passed in **Writ Petition (Civil) No. 73 of 2015 Social Action Forum for Manav Adhikar and another Vs. Union of India, Ministry of law and Justice and others (Supra)**

In that view of the matter, this writ petition is partly allowed.

Dated-28.01.2021.

RPD/