IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE Mr. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE Mr. JUSTICE A.V. SESHA SAI

WRIT PETITION (PIL) No.132 of 2021

Bollineni Rajagopal Naidu, Occupation: Business,
Age: 70, Address: 8-2-293/82/A, Plot No.1343,
Road No.67, Jubilee Hills, Hyderabad-500033 … Petitioner

Versus

The State of Andhra Pradesh, rep. by its Chief
Secretary to Government, 1st Block, 1st Floor,
Interim Government Complex, A.P. Secretariat
Office, Velagapudi, Guntur District, A.P., and others … Respondents

Counsel for the petitioner : Mr. Umesh Chandra P.V.G.

Counsel for respondents : The Advocate General

O R D E R

Dt.08.03.2022

(Prashant Kumar Mishra, CJ)

The petitioner is connected with mainstream electronic media news channel, namely, TV5 Telugu news. This writ petition (public interest litigation) has been preferred seeking direction to the respondents not to foist cases on media personnel or social media users in a cavalier manner or sans concrete evidence corroborating the prima facie involvement of the alleged perpetrators in the crime; to direct the respondents to forthwith upload a copy of the First Information Report within 24 hours from the lodging of a report and further to direct them to strictly follow the guidelines laid down by the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar***, reported in ***(2014) 8 SCC 273***, in all cases registered by them henceforth without fail.

2. It is highlighted that Freedom of Press is an Implied Right inherent in the Right to Freedom of Speech and Expression under Article 19(1)(a) of the Constitution of India as held by the Hon'ble Supreme Court in ***Sakal Papers v. Union of India,*** reported in ***AIR 1962 SC 305*** and the Press seeks to advance public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. It is, thus, agitated that Freedom of Press is for the benefit of the general community; therefore, foisting of false cases or harassing the media personnel is opposed to the Constitutional Doctrine of Right to Freedom of Speech and Expression. Referring to two cases registered against the petitioner's T.V. channel involving offences attracting imprisonment of less than seven years, it is stated in the writ petition that arrest in such cases is not permissible in view of the judgment rendered by the Hon'ble Supreme Court in ***Arnesh Kumar*** (supra).

3. The petitioner is not praying for quashing of the criminal cases registered against the T.V. channel. The prayer is only for a direction to the respondents not to foist cases in a cavalier manner without concrete evidence and to direct the Police to follow the guidelines laid down in ***Arnesh Kumar*** (supra).

4. There can be no general direction to the respondents not to foist false cases, because ordinarily investigating agency is presumed to perform its duties in accordance with law and each case is to be considered on the basis of its own facts. However, at the same time, it is the duty of the Court to see that citizens are not harassed by arresting them in petty offences carrying

punishment less than 7 years. In ***Arnesh Kumar*** (supra), the Hon'ble Supreme Court at paragraphs 5 and 6, held as follows:

> *"5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. 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 emphasised time and again by the 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.*
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> *6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasised the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that 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 the 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. Despite this legal position, the legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short "CrPC"), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest."

5. The Hon'ble Supreme Court, thereafter, referred to the provisions contained in Section 41(1)(b) Cr.P.C., to hold that law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest and the law further requires the police officers to record the reasons in writing for not making the arrest. Thus, reason to believe has been made the necessary ingredient of the follow-up action whether to arrest or not to arrest a person. Going further, the Hon'ble Supreme Court referred to the provisions contained in Section 167 Cr.P.C., which enjoins the Magistrate to authorize detention of an accused who is sought to be detained beyond a period of 24 hours. Highlighting the duty of a Magistrate under Section 167 Cr.P.C., it has been held thus in paragraphs 8.2, 8.3 and 8.4:

"8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional

rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny."

6. Thereafter, the Hon'ble Supreme Court issued the following directions in paragraph 11:

> *"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 mechanically. In order to ensure what we have observed above, we give the following directions:*
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> *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;*
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> ***"11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);***
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> ***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;***
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> ***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;***
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> *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."

7. Since the law declared by the Hon'ble Supreme Court is already operative in the field, we reiterate the same and observe that the same shall be followed scrupulously in all sincerity by the police officers.

8. We direct all the Judicial Magistrates to record their satisfaction before authorizing detention, in exercise of powers under Section 167 Cr.P.C. While doing so, the Judicial Magistrates are expected to apply their mind objectively in the obtaining facts of the case and pass a reasoned order. Any negligence in this regard shall be viewed seriously and the Judicial Magistrate concerned shall be liable for departmental action by the High Court as and when such defective detention authorization orders are brought to the notice of the High Court by or on behalf of the accused.

9. With the above observations and directions, the writ petition (public interest litigation) is disposed of. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

Copy of this order be circulated to all the Judicial Officers in the State.

Sd/- ***Sd/-***

PRASHANT KUMAR MISHRA, CJ **A.V. SESHA SAI, J**

MRR