

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

(Through virtual mode from Srinagar)

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Case: Crl CP No. 2/2022

Iqbal Singh, aged 69 years S/o Late Sh. Kundan Singh R/O 41 B/B, 2nd Extension Gandhi Nagar, Jammu A/P 29 B Chamel Singh Colony Trikuta Nagar Jammu

....**Petitioner(s)**

Through :- Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate

V/s

Pankaj Sharma S/o Late Sh. Durga Dass R/o Ward No.1, Kathua Station House Officer Police Station, Gandhi Nagar Jammu

....**Respondent(s)**

Through :- Mr. P. D. Singh, Dy.AG
Mr. Vishal Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

1. In the present petition, non-compliance of the directions contained in the judgment of the Supreme Court passed in the case of ***Arnesh Kumar vs. State of Bihar and others, 2014 (8) SCC 273***, is alleged.
2. The short grievance projected by the petitioner is that the guidelines laid down by the Supreme Court in ***Arnesh Kumar's*** case (supra) have not been followed in the present case.
3. The petitioner alleges that a false FIR No. 202/2021 dated 17.05.2021 for commission of offences under Section 447/323/354/506/34 IPC was registered with police station Gandhi Nagar, Jammu, by one, *Dr.*

Shveta Mahajan, against the petitioner and three other accused persons, namely, Surinder Nath, Sunil Kumar, and Naveen Chander.

4. It is stated by petitioner that after registration of the aforesaid FIR in July 2021, the petitioner was never called by the police for any questioning or investigation till March 2022, when on 12th March 2022 a police party with respondent herein along with Tehsildar came to his house at about 12 noon asking him to accompany them to police station to meet Deputy Superintendent of Police. The said police party took some files etc. from his house with them. He went with the police personnel to police station Gandhi Nagar, where he was made to sit till late evening without assigning any reason. In the evening, he was told that there was a criminal case registered against him way back on 8th July 2021, by Dr. Shveta and he was being arrested in the said case. He was further informed that the said FIR had been registered on the orders of Chief Judicial Magistrate, Jammu, on 15th July 2021.
5. Mr. P. N. Raina, learned senior counsel assisted by Mr. J. A. Hamal, Advocate, submits that in the order, the only direction given by the learned Magistrate was to verify the facts and report back, yet the FIR was registered against the petitioner. He also urges that the other accused, named in the aforesaid FIR, had never been arrested. No offence as alleged against the petitioner in the FIR carries punishment of imprisonment for more than seven years.
6. On 14th March 2022, it is being also stated, the petitioner applied for bail before the learned Chief Judicial Magistrate, Jammu, and he was

released on interim bail on 15th March 2021, which came to be made absolute by learned Magistrate vide order dated 25.03.2022.

7. Learned senior counsel for the petitioner has also stated that on 13th August 2021, the petitioner received a summon from the court of 2nd Additional Munsiff, Jammu, to appear before it on 26th August 2021, in a Civil Suit for Mandatory Injunction that has been filed by Dr. Shveta Mahajan, on 29th July 2021. On 26th August 2021 the petitioner caused his appearance through his counsel. In the suit it is averred that Dr. Shveta Mahajan, was handed over the possession of the property after executing the sale deed and registration thereof on 31st January 2021. She appointed petitioner as Chowkidar of the property on a monthly salary of Rs.2000. However, in the month of May 2021, when she along with her husband visited the suit property, the petitioner had occupied the whole house by breaking open the locks. She has further stated that petitioner was served a notice and was asked to vacate the house within 15 days.
8. Learned senior learned counsel appearing for the petitioner further contends that despite the punishment for the offences mentioned above falls within the parameters of *Arnesh Kumar's* case (supra), yet the petitioner was arrested by the respondent and kept in illegal detention for three days, thus, violating the directions contained in the *Arnesh Kumar's* case (supra).
9. Objections have been filed by the respondent, stating therein that the FIR was registered by respondent's predecessor on the directions of the Court on 15.07.2021 and that respondent joined the Police Station, Gandhi Nagar afterwards. It is also said by respondent that victim

came to police station in agitated mood and started shouting and crying and saying that petitioner was regularly harassing her even after lodging of FIR and whether he would be arrested after she was raped or molested again. She is an educated lady and a doctor, and respondent is not having any reason to disbelieve her. Her husband who is a doctor also came to Police Station and inquired about the progress in investigation, so respondent felt that arrest of petitioner was necessary to prevent him from committing any further offence and for proper investigation of the offence, petitioner was arrested and when the petitioner was produced before the Magistrate, Investigating Officer apprised the Court of the facts, reasons and conclusions of arrest and it is only after fully satisfying herself that “*condition precedent*” for arrest under section 41 Cr.P.C. had been satisfied, learned JMIC (2nd Addl. Magistrate) granted remand and authorized his detention after perusing the CD file.

10. I have heard the learned counsel for the parties and perused the record of the case.

11. The judgement in the case of *Arnesh Kumar’s* (supra) is a well-known and landmark judgement about the powers of arrest. It lays down the guidelines for police to exercise the arrest powers more judiciously, particularly in cases where the punishment is less than seven years of imprisonment. Those guidelines are: -

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

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;
4. 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;
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;
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;
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.
8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. It is worthwhile to mention here that the Supreme Court has enjoined upon all the State Governments to instruct its police officers not to make automatic arrests unless and until there is necessity for arrest under the parameters laid down above flowing from Section 41 Cr.P.C. It has also been enjoined by the Supreme Court that all the police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii). The police officers 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. 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. When an accused is not arrested,

such decision/ intimation shall 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.

13.It has also been enjoined by the Supreme Court that notice of appearance in terms of Section 41-A CrPC shall 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 as aforesaid shall, apart from rendering the police officers concerned liable for departmental action, also make them liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction. Besides if Judicial Magistrate concerned authorized detention. Such detention should be recorded with reasons and in the event such detention is made by Judicial Magistrate concerned without recording reasons, the Judicial Magistrate shall be liable for departmental action by the appropriate High Court.

14.The Supreme Court has emphasized the need to avoid indiscriminate arrests and to ensure that arrests are made only when necessary. The Supreme Court observed that no arrest would be made in routine manner and the police officer would not arrest any person without reasonable satisfaction after some investigation.

15.Insofar as instant case is concerned, perusal of the record would show that on 15.07.2021 an order along with application in English was received by SHO Police Station, Gandhi Nagar, Jammu, through Dak from the Chief Judicial Magistrate, Jammu, on behalf of complainant,

namely, Dr. Shveta Mahajan, alleging therein that she is the owner of the house situated at H. No.41-B, Block-B, Ward No.20, Gandhi Nagar, Jammu, and that the said property was purchased by her from Sh. Surinder Nath, Sunil Kumar, Naveen Chander all sons of Sh. Joginder Lal Mahajan. In the complaint it was alleged that the complainant had paid the whole amount of sale consideration and both the parties executed a proper sale deed which was duly registered by the Sub-Registrar, Jammu. It was further alleged that after all the payment and documentation of the aforementioned property accused persons did not hand over the possession of the said property to the complainant. The complainant along with her husband, namely, Dr. Rajeev Gupta, had gone there for possession but an unknown person, who is accused No.4 who was chowkidar (Iqbal Singh) of the said property did not allow the complainant to enter into the premises, she requested the Chowkidar-Iqbal Singh to vacate the premises as she has purchased the same and wanted to shift the movable assets but he used abusive language and also threatened the complainant and her husband. It was further alleged in the complaint that complainant again on 08.07.2021 went to the property / house purchased by her and requested the Chowkidar-Iqbal Singh to vacate the house, but again the said Iqbal Singh used filthy language and tried to outrage the modesty of the complainant.

16. The learned Magistrate vide order dated 09.07.2021 directed the SHO Police Station, Gandhi Nagar, Jammu, to verify the allegations depicted in the aforesaid application and submit status report by or before the next date of hearing, so that the matter can be proceeded

thereafter in conformity with law. Copy of the said order was also forwarded to SSP Jammu.

17. Perusal of the record further shows that on the directions of the learned Magistrate, the FIR in question came to be registered and the investigation was entrusted to ASI Abdul Latief. During the course of investigation self-visited the spot, prepared the site plan of place of occurrence and recorded the statements of complainant/witnesses under Section 161 Cr.P.C. Record further shows that petitioner has been arrested on 12.03.2022 in connection with the FIR No. 202/2021 registered on 15.07.2021, i.e., after eight months from the date of registration of the FIR.

18. Section 41 of Cr.P.C. empowers a Police Officer to arrest a person without an order from the Magistrate and without a warrant. Section 41A Cr.P.C. was inserted by the Amendment Act 2008 to the Code of Criminal Procedure with effect from 01.11.2010 that in all cases, where the arrest of a person is not required under the provisions of subsection (1) of Section 41, the Police Officer shall issue a notice as against the person and he shall not be arrested without any reason to be recorded.

19. Discussing the provisions of Section 41 and 41(A) of Cr.P.C. the Supreme Court in the *Arnesh Kumar's* case (supra) has held as follows:

“Law Commissions, Police Commissions and this Court in a large number of judgments emphasized 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 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, the 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 Cr.PC), 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. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b), Cr.PC which is relevant for the purpose reads as follows:

“41. When police may arrest without warrant.-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –

(a) x x x x x

(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) x x x x x

(ii) the police officer is satisfied that such arrest is necessary – to prevent such person from committing any further offence; or for proper investigation of the offence; or to prevent such person 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 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 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.

Xxxxx From a plain reading of the aforesaid provision, it is evident that 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. 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. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, 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.PC.”

20. Shorn off further deliberation, it is made clear here that the Executive, including government/non-government functionaries and the police department is no exception to that, is under legal, constitutional and statutory obligation and duty to comply with all the orders of the Courts inasmuch as judicial orders are binding on the executive to uphold the rule of law.
21. However, in the present case respondent has not done so. Respondent has teeth to say that if the judgment of the Hon’ble court is to be followed in strict sense, then almost all the officers of the State would be held liable under clause 11.5 of the judgment. It is appropriate to reproduce para 06 of the Objections hereunder:

“6) That if the judgment of the Hon’ble court is to be followed in strict sense then almost all the officers of the state would be held liable under clause 11.5 of the judgment.”

22. The above words of respondent do not need rocket science to understand as it shows and reflects that he is least bothered about the Court orders. He should have been ashamed to say such words. If those words are taken as the official stand of the department in which he is working, then it reflects and suggests the approach of the department towards the Courts and the orders of the Courts. When we go through the reply/objections of respondent, it again shows and reflects that respondent has been made to believe that he is not required to comply with the Court orders but to follow his whims and caprices.

23. Instead of initiating proceedings against respondent, the department has permitted him to do whatever he would like to do. The respondent and the department cannot be permitted to interpret the directions of the Courts, the High Courts and the Supreme Court according to their impulses or quirks. All the citizens of India, the government/non-government organizations are no exception thereto, are under strict legal obligation to implement the Court orders word by word and letter by letter. If respondent or his department is not willing to implement and comply the orders of the Courts, the High Court and/or the Supreme Court, then what will be the future of our children need not be elucidated here.

24. It is made clear here that respondent was/is under legal, constitutional and statutory obligation and duty to implement the orders of the

Courts. If he was/is not inclined to respect the Courts orders, then he has to face the consequences, which includes the contempt of the Court, initiation of disciplinary proceedings and payment of compensation to petitioner.

25. For all what has been stated above, respondent is held guilty of non-compliance of the directions contained in *Arnesh Kumar vs. State of Bihar and others, 2014 (8) SCC 273*, and, therefore, has committed the contempt of the Court.

26. Let respondent cause his appearance on next date of hearing, i.e., 14.07.2025, to show cause and explain as to why he should not be punished for contempt of the Court.

27. Apart from this, respondent-department, which it was/is otherwise required to do, shall initiate departmental action against respondent for violation of the Supreme Court directions. Respondent is also liable to pay compensation. The amount of compensation to be paid by respondent to petitioner shall be decided and directed on next date of hearing.

28. Let the matter come up on 14.07.2025, through virtual mode.

29. Registry to serve copy of this judgement upon respondent forthwith.

(VINOD CHATTERJI KOUL)
JUDGE

JAMMU
09.07.2024
Bir

Whether order is reportable: Yes/No