***THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

W.P.No.26423 of 2014

% 10-09-2014

Between:

N. Purushotham, S/o N. Parandhamulu,
R/o Plot No.84, Phase-I, IDA Cherlapally,
Ranga Reddy District.

…Petitioner

And

The Government of Telangana rep. by its Principal Secretary (Home),
Secretariat, Hyderabad and others.

…Respondents

! COUNSEL FOR PETITIONER: Mr. D.V. Madhusudhan Rao

^ COUNSEL FOR RESPONDENTS: G.P. for Home

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> Head Note:

? CITATIONS:

1. (2014) 2 SCC 1
2. (1997) 8 SCC 476
3. 2014 (3) CRIMES 40 (SC)

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.26423 of 2014

O R D E R:

This petition is filed seeking a writ of *mandamus* for declaring the Notice dated 23-08-2014 issued by the Station House Officer, Nacharam Police Station,

Habsiguda, Hyderabad, in accordance with and in terms of Section 41A of the Code of Criminal Procedure (henceforth referred to as 'the Code'), as bad in law.

The petitioner also sought for a further declaration that the action of Respondents 2 to 4 in detaining him in the Police Station from 9-30 am to 8-30 pm on 27-08-2014, without any reason or substance with reference to the alleged offences mentioned in the Notice, as arbitrary, illegal, unjust and that it also violates the fundamental rights guaranteed to him under Articles 14 and 21 of the Constitution of India, as per the enunciation of the Supreme Court in its Judgments in LALITA KUMARI v. GOVERNMENT OF UTTAR PRADESH[1], MADHU BALA v. SURESH KUMAR AND OTHER[2] and ARNESH KUMAR v. STATE OF BIHAR AND ANOTHER[3].

The Sub-Inspector of Police, Nacharam Police Station, Cyberabad Commissionerate, has issued a Notice on 23-08-2014 under Section 41A of the Code bringing it out that a case was registered at Nacharam Police Station, in Crime No.210 of 2014 for the offences under Sections 420, 415, 405, 406, 503, 506, 499 and 502 of the Indian Penal Code (for short 'IPC") against the petitioner and that the said case was registered as per the directions issued by the XIII Metropolitan Magistrate, Cyberabad at L.B. Nagar, by an order dated 17-05-2014, upon a complaint lodged by one Dr. D. Sridhar, who has been impleaded as the 5th respondent to this writ petition. The petitioner was, therefore, required by the Police to be present along with all relevant documents within a week upon receipt of the said Notice and accordingly, it appears that, the petitioner did appear before the Police Station on 27-08-2014. It is the case of the petitioner that in spite of his request and that of his Advocate, he has not been allowed to leave the Police Station before 8-30 pm on the said day. Hence, he instituted the above writ petition.

Heard Sri D.V.Madhusudhan Rao, learned counsel for the petitioner for fairly a long time. The learned counsel for the petitioner would submit that the Police are obliged to conduct a preliminary inquiry and without conducting the same and ascertaining as to the correctness, genuineness and truth of the allegations contained in the complaint, they are not justified in registering the F.I.R. or taking up the investigation there into. The learned counsel for the petitioner would submit that the Police are now required to undertake a preliminary investigation in terms of the conclusions recorded in Para 120.6 of the judgment rendered by the Supreme Court in LALITA KUMARI's case, cited (1) supra. It is also the case of the petitioner that Section 41-A of the Code could not have been

invoked without there being a cognizable offence committed by the petitioner and at the behest of the 5th respondent, who has a bad reputation in the society, the Police are trying to harass him. The learned counsel for the petitioner would further submit that there are civil disputes between himself and the 5th respondent and, in fact, a Division Bench of this Court entertained C.M.A.No.568 of 2013, preferred by the petitioner along with a Firm in that regard, which discloses the existence of civil disputes, and the Police are unnecessarily interfering with the civil disputes and that they are creating hassles for free enjoyment of his right to life.

The Notice served by the Police on 23-08-2014 unmistakably discloses the following:

(a) that Crime No.210 of 2014 has been registered by them for the alleged offenced said to have been committed by the petitioner under Sections 420, 415, 405, 406, 503, 506, 499 and 502 IPC;

(b) that the said crime was registered pursuant to a direction issued under Section156 (3) of the Code by the learned XIII Metropolitan Magistrate, on 17-05-2014;

(c) there is an allegation that the petitioner has cheated the complainant and in the process has committed the offences; and

(d) the petitioner was required to be present before the Police with necessary documents.

The question that has got to be examined, at the outset, is whether this Notice is, in any manner, contrary to the Provisions contained under Section 41-A of the Code or not.

Section 41-A, which is a salutary Provision, has come to be introduced by amending Act No.5 of 2009 by the Parliament so as to ensure that the citizens of this country are saved from hassles and hardships, which, they may, normally, face upon being arrested by the Police without even examining, in any manner, the actual necessity of arresting a person against whom a complaint has been lodged. This salutary purpose is sought to be achieved by insisting upon the Police Officer, in all cases where the arrest of a person is not required under Section 41 of the Code, to issue Notice directing the person against whom a reasonable complaint has been made or a reasonable suspicion exists that he has committed a cognizable offence, to appear before the said Police Officer as may be specified in the Notice. Such a course would not only help the Police to

carryon the investigation into the crime, but, at the same time, be beneficial for the person charged to avoid the arrest, by effectively participating in the investigation and establish his innocence. Sub-section (2) of Section 41-A reads as under:

> "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."

This makes it absolutely clear that the person, who has received the Notice issued by any Police Officer, under sub-section (1) of Section 41-A of the Code, has to necessarily comply with the same. There is no choice or discretion left in the hands of the person to whom the Notice under sub-section (1) has been issued. Under sub-section (3) thereof, it has been clearly spelt out that where such person complies with 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. Clearly, sub- section (3) brings out a limitation on the exercise of power of arrest by a Police Officer. It is hedged by conditions. First condition is, so long as the person, who has received Notice under sub-section (1) continues to comply with any such Notice, the Police Officer must necessarily exercise his discretion and refrain himself from affecting the arrest of the person to whom the Notice is issued. In other words, wherever the *bona fides* have been exhibited by the person, who has received the Notice under sub- section (1) of Section 41-A of the Code, and he continues to exhibit his *bona fides*, the Police are required to avoid arresting any such person. Secondly, however, the Police have also been granted the necessary discretion to affect an arrest. The Parliament has chosen not to endow any blanket power and hence, incorporated the necessity for recording the reasons therefor. By introducing the latter clause, the Parliament has cast an obligation upon a Police Officer, who decides to arrest the person to whom the Notice under sub-section (1) of Section 41-A of the Code, has been issued, to necessarily record the reasons for effecting the arrest. Recording of reasons pre-supposes the application of mind on the part of the Police Officer concerned to the relevant factors at the first instance and secondly, such reasons must be germane to the issue of arrest of the person. In other words, the Police Officer must be satisfied that *bona fides* are lacking in the conduct of the person to whom Notice under sub-section (1) of Section 41-A of the Code, is issued, warranting arrest of such a person. Viewed in this context, sub-section (4) brings out clearly that it shall be lawful for the Police Officer to arrest such a person to whom the Notice was issued, if he fails to comply with the terms of the Notice, or subject to such orders as might have been passed in this regard by a competent court. Therefore,

exercise of power of discretion conferred upon the Police Officer under sub-section (3) has also been sought to be regulated by the contents of sub-section (4).

A reading of the above Provisions brings out the anxiety of the Parliament to ensure that all persons, against whom one cognizable offence or the other has been reported, would not be invariably arrested. This is a salutary Provision, which speaks of the efforts made for preserving the right of the individual to lead a life of his own, so long as his conduct does not fall foul of the dividing line between the good and the proscribed conduct. Further, Section 41A is a step-in-aid for compliance by the Police of not only the human rights available to a person, against whom allegations have been made, but also giving effect to and preserving such human rights. From this perspective, when the impugned Notice dated 23-08-2014 is examined critically, I fail to grasp any infirmity contained therein. In fact, Nacharam Police have not acted in breach of the Provisions contained in Section 41A and far therefrom, the Police have faithfully and truthfully complied with the conditions stipulated under Section 41-A of the Code.

Now, to deal with the contention of the learned counsel for the petitioner that a preliminary inquiry was, in fact, called for, and the Police, without undertaking any such exercise, could not have issued the Notice under Section 41-A and that too, without recording any reasons, and hence, the Notice is liable to set at naught and also the reliance placed upon the direction issued by the Supreme Court in Para 120.6 of the judgment in LALITA KUMARI's case cited (1) supra, all I need to note is that the Supreme Court in Para 119 of the same Judgment brought out the philosophy and the rationale behind the conclusions, which are spelt out, in detail, in the following passage, namely Para 120 of the Judgment. It is noted by the Supreme Court in Para 119 as under:

> "Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration

> of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

The contention canvassed by the learned counsel for the petitioner is that the Police are required to ascertain, as a part of undertaking preliminary exercise, whether the contents of the complaint are genuine or not and whether such allegation is credible or not.

I am afraid, this is not the philosophy, which has been propounded by the Supreme Court in LALITA KUMARI's case cited (1) supra.

The offences for which Crime No. 210 of 2014 is registered against the petitioner herein are mentioned in the impugned Notice. It talks of Section 420 IPC, which deals with the offence of cheating and dishonestly inducing delivery of property, Section 415 deals with the element of cheating, Section 405 deals with criminal breach of trust and Section 406 deals with the punishment in respect of criminal breach of trust committed, Section 503 deals with criminal intimidation, while Section 506 deals with punishment for criminal intimidation and Section 499 deals with defamation.

Offences under Sections 406 and 420 IPC have been recognized as cognizable offences by the Code in the First Schedule. Though the other offences alleged against the petitioner are non-cognizable, as per sub-section (4) of Section 115 of the Code, where a case relates to two or more offences, of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. Therefore, in principle, I cannot find any infirmity in the Police registering Crime No.210 of 2014 against the petitioner. Above all, it would be appropriate to notice that the learned XIII Metropolitan Magistrate, exercising the power available to him under sub-section (3) of Section 156, ordered for the investigation into the crime. Therefore, the Police have no choice except to register the crime and take up investigation there into.

It will be appropriate to notice that the Supreme Court in LALITA KUMARI's case, cited (1) supra, in Para 120.6, clearly spelt out as to the type of cases in which a preliminary inquiry is to be conducted depending upon the facts and circumstances of each case. The category of cases are also specified therein as matrimonial disputes / family disputes, commercial offences, Medical negligence cases, corruption cases and cases where there is abnormal delay / laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the

matter without satisfactorily explaining the reasons therefor.

In the instant case, the alleged disputes between the petitioner on the one hand and the 5th respondent on the other, do not fall into any of these categories. Offences under Sections 406 and 420 IPC cannot be characterized as falling under commercial offences. Therefore, I am not able to appreciate the contention canvassed by the learned counsel for the petitioner that the failure on the part of Nacharam Police in conducting a preliminary inquiry is, in any manner, wrongful.

The learned counsel for the petitioner would place reliance upon the Judgment of the Supreme Court in ARNESH KUMAR's case, cited (3) supra. The Supreme Court in the said case has considered the scope and width of the Provisions contained behind Section 41 as well as Section 41-A of the Code. After having noticed the contents of Section 41A, in Para 15 of the Judgment, this is what has been observed:

> "Aforesaid provision makes it clear that 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."
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> (*Emphasis supplied)*

In Para 16, the learned Judges have expressed their opinion that if the Provisions of Section 41-A of the Code 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. This is the rational principle around which Section 41A has been formulated.

In the instant case, the Police have followed Section 41-A, but however, the petitioner challenges it on the ground that the Police have detained him in the Police Station from 9-30 am to
8-30 pm. As to whether the Police have really detained the petitioner between 9-30 am and 8-30 pm, while undertaking interrogation and / or examination of the documents produced by him, is a simple and pure question of fact. Further, the possibility of the Police Officer being required to attend to any other urgent or pressing work during the same time cannot be discounted completely. Resolution

of disputes of this nature requires collection of evidence. Collection of evidence is seldom resorted to in a Proceeding under Article 226 of the Constitution, though the same may not have been completely forbidden in that sense. However, even assuming that the allegation made by the petitioner against the Police that he has been detained from 9-30 am to 8-30 pm in the Police Station continuously for eleven long hours is true and correct, the same would not render the exercise of power under Section 41-A of the Code by the Police arbitrary. At the most, any such conduct and attitude of the Police would amount to violation of the human rights assured to the petitioner. Any complaint of breach of human rights by the Police, first of all, should have been drawn to the attention of the Superior Police Officers, such as, the Assistant Commissioner of Police / Deputy Commissioner of Police / Superintendent of Police, etc. If there was no redressal at their hands, the matter can also be agitated before the State Human Rights Commission. But, that cannot be converted into a ground for quashing the Notice under Section 41A of the Code. I am, therefore, not in a position to appreciate the contention canvassed by the learned counsel for the petitioner in that regard.

The learned counsel for the petitioner has also made an attempt to demonstrate that there are certain civil disputes pending between him on the one hand and the 5th respondent on the other. He has drawn my attention to an interlocutory order passed by this Court on 13-08-2013 in C.M.A.M.P.No.1267 of 2013 in C.M.A.No.568 of 2013. It appears that the petitioner along with another Firm preferred the said Civil Miscellaneous Appeal against an order passed on 02-07-2013 in I.A.No.577 of 2013 in O.S.No.707 of 2013 on the file of the learned VIII Additional District & Sessions Judge, Ranga Reddy District. The respondent to the above miscellaneous petition is M/s. Graupel Pharma (P) Limited, Rep., by its Managing Director Dr. Sridhar, S/o D. Yadagiri. It is, therefore, sought to be contended by the learned counsel for the petitioner that the civil disputes pending between the parties are sought to be converted by the 5th respondent into criminal cases.

I am afraid, even this contention cannot be accepted for, C.M.A.No.568 of 2013 is directed against an interim injunction order passed by the learned VIII Additional District & Sessions Judge, Ranga Reddy District, against the writ petitioner herein and a Firm. That interim injunction order has been suspended by this Court by its order dated 13-08-2013 pending C.M.A.No.568 of 2013. As is too well-known, various factors will have to be considered properly by a civil Court before granting an injunction order and if the civil Court has not properly assessed the balance of convenience lying between the parties before granting any such

interim injunction order, the error committed in that regard is bound to be corrected by an Appellate Court. Therefore, the petitioner can, at best, demonstrate that there are certain civil disputes pending between him and the 5th respondent, but however, the allegation made by the 5th respondent against the petitioner herein, which formed the basis for registration of Crime No.210 of 2014 deals with the allegation of breach of trust and cheating and such a conduct on the part of the offender clearly falls outside the realm of the civil Court.

For all the aforesaid reasons, I do not find any merit in this writ petition and it is accordingly dismissed at the admission stage. For the reckless disregard towards the value of the judicial time, this writ petition is dismissed with costs quantified at Rs.5,000/- to be deposited within fifteen days from the date of receipt of a copy of this order, with the High Court Legal Services Authority. Failure to deposit the costs would enable the Registry to recover the same in accordance with law.

Consequently, the miscellaneous petitions, if any stand dismissed.

NOOTY RAMAMOHANA RAO, J.

Note:
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10.09.2014.

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[1] (2014) 2 SCC 1
[2] (1997) 8 SCC 476
[3] 2014 (3) CRIMES 40 (SC)