

THE HON'BLE THE ACTING CHIEF JUSTICE C. PRAVEEN KUMAR  
AND  
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CONTEMPT APPEAL No.45 of 2018

JUDGMENT: {Per Hon'ble The Acting Chief Justice C. Praveen Kumar}

1. The present contempt appeal came to be filed assailing the order dated 20.11.2018 passed in C.C.No.1907 of 2016 by the learned single Judge, High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

2. For the sake of convenience, the status of the parties will hereinafter be referred to as arrayed in the contempt case.

3. The facts in issue are that the 1<sup>st</sup> petitioner in the contempt case is said to have married one Razia Sultana, who is alleged to have lodged a report on 4.8.2016 before the Station House Officer, Akiveedu, alleging that the 1<sup>st</sup> petitioner had harassed her for dowry and committed the offence under Section 498-A IPC. The petitioners made a representation to the respondents stating that they have a life threat at Akiveedu since Razia Sultana and her parents are local people. Inaction of the police led to filing of writ petition viz., W.P.No.27778 of 2016 seeking a direction to the respondents not to arrest the petitioners without giving due notice. The petitioners further sought a direction to the respondents-authorities to follow the procedure contemplated under Section 41-A Cr.P.C and extend necessary protection to them in the event of their appearance before the police station at Akiveedu. Along with the writ petition, the petitioners also filed an interlocutory application in WPMP No.34412 of 2016 seeking an interim direction to the respondents not to arrest them and to follow the procedure contemplated

under Section 41-A Cr.P.C. On 19.8.2016, after issuing notice to the respondents and to the wife of the 1<sup>st</sup> petitioner, the learned single Judge directed the respondents to strictly follow the guidelines laid down by the Hon'ble Supreme Court in **Arnesh Kumar Vs. State of Bihar and another**<sup>1</sup> in particular paragraph No.11 thereof.

4. Complaining that the respondents disobeyed the orders of the Court, the petitioners filed the contempt case. It was alleged that after passing the order dated 19.8.2016 in WPMP No.34412 of 2016, on 29.8.2016 at 10.30 p.m., the respondents herein along with six others including the brother-in-law of the 1<sup>st</sup> petitioner barged into the house of the petitioners and took away the 1<sup>st</sup> petitioner from their residence to the police station and pressurized him to yield to the ransom amount, as demanded by the wife of the 1<sup>st</sup> petitioner, in spite of showing interim orders of this High Court.

5. The Sub-Inspector of Police, Akividu, filed counter-affidavit stating that the complaint against the 1<sup>st</sup> petitioner came to be filed on 4.8.2016, which was entered into G.D. Diary, pursuant to which preliminary enquiry was taken up by calling the 1<sup>st</sup> petitioner over phone to attend enquiry and counselling at the 2<sup>nd</sup> respondent's police station. It is stated that on 24.8.2016, the wife of the 1<sup>st</sup> petitioner withdrew her complaint dated 4.8.2016 and as such, no further action was taken by the 2<sup>nd</sup> respondent against the 1<sup>st</sup> petitioner or any of the family members, and therefore, the allegations made in the contempt case are false.

6. Having regard to the facts in issue, the learned single Judge passed the following order:

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<sup>1</sup> (2014) 8 SCC 273

“Accordingly, the Contempt Case is allowed. The 2<sup>nd</sup> respondent is sentenced to suffer three months imprisonment with a fine of Rs.2,000/- under Section 12 of the Contempt of Courts Act, 1971 for wilful disobedience of the order dated 19.8.2016 passed in WPMP No.34412 of 2016 in W.P.No.27778 of 2016; the sentence of imprisonment is suspended for a period of six weeks; the petitioners shall deposit subsistence allowance at the rate of Rs.300/- per day within six weeks.

Disciplinary action shall also be initiated by the State of A.P., rep., by its Principal Secretary, Home Department, Secretariat, Velagapudi against the 2<sup>nd</sup> respondent in regard to the wrongful detention of the 1<sup>st</sup> petitioner on 30.8.2016 and 31.8.2016 in violation of the above order passed by this Court.”

Aggrieved by the above order, the present appeal came to be filed by the 2<sup>nd</sup> respondent in the C.C.

7. The learned Government Pleader for Home would contend that the appellant herein has not registered any crime against the writ petitioners on the complaint of the wife of the 1<sup>st</sup> petitioner and therefore, the question of arrest and non-compliance of the judgment of the Apex Court in **Arnesh Kumar Vs. State of Bihar and another** would not arise.

8. The learned Counsel for the writ petitioners would contend that the complaint given by the wife of the 1<sup>st</sup> petitioner was entered into GD. Diary and subsequent to the order passed by this Court in the above WPMP, the respondents-authorities have taken away the 1<sup>st</sup> petitioner from his house without following due process of law in spite of the orders of this Court dated 19.8.2016.

9. It is to be noted that in **Arnesh Kumar Vs. State of Bihar and another**, the Apex Court held that the Police Officials should not arrest the accused in a case under Section 498-A IPC registered against them unnecessarily, but they

must satisfy themselves about the necessity for arrest as per the parameters laid down in Section 41 Cr.P.C., and notice of appearance in terms of Section 41-A Cr.P.C. has to be served on the accused within two weeks from the date of institution of the case, and failure to comply with the direction given in the judgment would render the police officer concerned liable for departmental action apart from making them liable for punishment under Contempt of Court.

10. Admittedly, in the instant case, no crime is registered till date. The learned Counsel for the writ petitioners is not in a position to tell us as to whether any crime was registered in the police station, while the learned Government Pleader would submit that pursuant to the report lodged by the wife of the 1<sup>st</sup> petitioner, the appellant called the petitioners to the police station over phone for counselling and thereafter, the matter was settled.

11. Be that as it may, now the issue is whether the appellant wilfully disobeyed the orders of this Court dated 19.8.2016 in WPMP No.34412 of 2016 in W.P.No.27778 of 2016 and the judgment of the Apex Court in **Arnesh Kumar Vs. State of Bihar and another**. The learned Counsel for the writ petitioners would contend that the appellant has forcibly taken away the 1<sup>st</sup> petitioner and detained him illegally in the police station. The said contention was denied by the appellant. As stated by us earlier, the above judgment of the Apex Court would come into operation only when the crime was registered. But in the instant case, no crime was registered till date. When there is no crime, the question of arresting the writ petitioners would not arise.

12. The issue of the alleged illegal detention of the 1<sup>st</sup> petitioner cannot be adjudicated in the contempt case as the remedy lies elsewhere.

13. Having regard to the above, the Contempt Case is allowed setting aside the order impugned. Fine amount, if any deposited, be returned to the appellant. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

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C. PRAVEEN KUMAR, ACJ

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M. SATYANARAYANA MURTHY, J

Dated: 18.07.2019  
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THE HON'BLE THE ACTING CHIEF JUSTICE C. PRAVEEN KUMAR  
AND  
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

**CONTEMPT APPEAL No.45 of 2018**

(Judgment delivered by the Hon'ble The Acting Chief Justice C. Praveen Kumar)

18.7.2019

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