

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.7554 OF 2019

ORDER :

This writ petition is filed seeking writ of *mandamus* for the following relief:

“ declaring

a) The arrest of the petitioner affected (*Sic. effected*) on 06-03-2019 in Crime No.243 of 2019 on the file of PS LB Nagar is (*Sic. as*) illegal, arbitrary and against all canons of law in violation of Article 14, 19(d) and 21 of the Constitution of India

b) grant adequate compensation to the petitioner for the agony, loss of reputation, for creating a permanent scar in his life for illegal arrest and detention of the petitioner.

c) punish the respondent No.1 to 5 for contempt of court.

E) to order departmental action against the respondents No.6 and 7

F) and pass such other order in the interest of justice.”

2.1. The grievance of the petitioner is that official respondent Nos.4 and 5 (who are respondent Nos.6 and 7 in their individual capacity) - the Sub Inspector of Police, L.B. Nagar Police Station (Law and Order), Rachakonda and the Sub Inspector of Police, L.B. Nagar Police Station, Rachakonda, respectively, have acted in illegal, high handed, arbitrary, whimsical manner and indulged in barbaric act depriving his life and personal liberty by effecting his arrest in Crime No.243 of 2019 on the file of the Station House Officer, L.B. Nagar Police Station, Hyderabad, against the mandate of law and the guidelines framed by the Hon'ble Apex Court.

2.2 A report dated 02.03.2019 was lodged by respondent No.8 - Mr. Kalimela Sriramulu, who is father of respondent No.9 - Mrs. Sana Tarja Priyanka. On such report, respondent No.5 - the Sub Inspector of Police, L.B. Nagar Police Station, Rachakonda, registered a case in Crime No.243 of 2019 for the offences punishable under Sections 498-A, 448, 323 and 506 of the Indian Penal Code, 1860 (for short 'IPC') against the petitioner.

2.3. Marriage of the petitioner with respondent No.9 was performed on 18.05.2017 at KBR Function Hall at L.B. Nagar, Ranga Reddy District. The petitioner and respondent No.9 are highly qualified and respondent No.9 pursued her higher education in London. At the initial stages of their marriage life, there were certain issues which were a matter of concern and caused disturbance in the family. There were differences between respondent No.9 and the parents of the petitioner. Since October 2018, respondent No.9 had been living with her parents. O.P. No.150 of 2019 was filed by the petitioner for dissolution of marriage. On 09.02.2019, notice was ordered by the Family Court, Medchal Malkajgiri, to respondent No.9. On 02.03.2019 at 8.00 a.m., the petitioner accompanied the Process Server to the house of respondent Nos.8 and 9 for the purpose of identifying respondent No.9 for effecting service of notice on her. On reaching the house, respondent No.8 was present there. Respondent No.8 informed that respondent No.9 was not present and he refused to receive notice. Hence, the Process Server affixed notice on the door of the house in the presence of respondent No.8

and after making necessary note, left the place. As a counter blast to the petition for dissolution of marriage filed by the petitioner, respondent No.8, father of respondent No.9, lodged a report with the police and the same was registered as Crime No.243 of 2019 and sent a copy of the same to the learned II Metropolitan Magistrate, L.B. Nagar, Rachakonda, Ranga Reddy District under Section 157 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2.4. Respondent No.4 came to the office of the petitioner to take him into custody. The petitioner demanded him to serve notice and the reason for taking him into custody. Respondent Nos.4 and 5 refused to serve notice. Immediately, petitioner called his father to inform about the manner in which the police are treating him. Respondent Nos.4 and 5 took the petitioner into custody without issuing any notice and dealt with him in a barbaric manner unmindful of the fact that the offence of which he was charged was in connection with matrimonial disputes. It is alleged that respondent Nos.4 and 5 have torn the clothes of the petitioner and ill treated him. The entire incident was captured in the C.C.

T.V. in his office. The father of the petitioner came to the police station along with his colleague Mr. Sandeep within 15 minutes. The petitioner was picked up from his office at 3.00 p.m. But, the time of arrest is shown as 18.00 hours. The petitioner was made to sign several papers without affixing dates. Along with the notice of intimation of arrest under Section 50 of Cr.P.C., respondent Nos.4 and 5 had obtained his signature on a notice purported to be under Section 41(A)(1) of Cr.P.C. The petitioner was produced before the learned II Additional Metropolitan Magistrate, L.B. Nagar on 07.03.2019 and the learned Magistrate remanded him to judicial custody. The petitioner applied for bail and he was enlarged on bail on 08.03.2019, however, as the release order reached the Jail authorities after 5.00 p.m., he was set free only on the morning of 09.03.2019.

3. Counter affidavit has been filed on behalf of respondent Nos.1 to 5. Individual counter affidavit has been filed on behalf of respondent Nos.2, 6 and 7.

3.1. In the counter affidavit filed on behalf of respondent Nos.1 to 5 deposed by Mr. V. Ashok Reddy, Inspector of Police, L.B. Nagar Police Station, Rachakonda Commissionerate, it is stated that Crime No.243 of 2019 was registered for the offences punishable under Sections 498(A), 448, 323 and 506 of IPC and Sections 3 and 4 of the Dowry Prohibition Act 1961 on the report lodged by respondent No.8, who is the father of respondent No.9 against the petitioner. It is stated that while investigation was under progress, on 06.03.2019 at 14:00 hours, on receipt of credible information, the Investigating Officer along with his staff proceeded to the office of the petitioner to apprehend him; upon which the petitioner along with his colleague Vinayaka Singh obstructed the duties of the Government servants and abused the Sub Inspector of Police and his staff in filthy language and prevented his arrest. The petitioner was taken into custody and brought to the police station. The petitioner voluntarily confessed and pleaded guilty, as such, the investigating officer effected his arrest duly following the formalities of arrest and informing him

and his friend about the grounds of arrest as required under Section 50(A) of Cr.P.C.

3.2. In the remand report, the Investigating Officer recorded his satisfaction as under:

“It is submitted that, U/sec.41 (b)(ii) of Cr.P.C., the I.O. has reasons to believe that the accused has committed the said offences U/sec.41(ii) (c) & (d) Cr.P.C., as there is likelihood of tampering the evidence, as well as threatening the witnesses, the accused was required to be remanded for judicial custody.”

3.3. Thus, after following the formalities of arrest, the petitioner was produced before the learned II Additional Metropolitan Magistrate, L.B. Nagar, Rachakonda on 07.03.2019. The learned Magistrate having satisfied with the report furnished by the Investigating Officer and having recorded his satisfaction, sent the petitioner to judicial custody. Pursuant to the remand order, the petitioner was lodged in the Central Prison, Cherlapalli. The petitioner was granted conditional bail on 08.03.2019.

3.4. The Investigating Officer served notice under Section 41-A(1) of Cr.P.C. on the petitioner, conducted counselling, however, as the petitioner was adamant and refused to take back his wife, and as there was possibility of tampering evidence, threatening witnesses, a request was placed by the Investigating Officer before the jurisdictional Magistrate to remand the petitioner to judicial custody. Hence, it cannot be said that the police have violated the guidelines issued by the Hon'ble Supreme Court in **Arnesh Kumar's case** (Supra 1). It is, *inter alia*, stated that as the petitioner failed to heed to the advice of the police to take back his wife and to lead happy marital life, stating that he has already filed O.P. No.150 of 2019 on the file of the Judge, Family Court, Medchal - Malkajgiri, at Malkajgiri for dissolution of their marriage, arrest was effected only after following due procedure under law.

3.5. In the counter affidavit of respondent No.2 - the Commissioner of Police, Rachakonda Commissionerate, Hyderabad, which is filed pursuant to the order of this Court dated 14.10.2019, it is stated that even before respondent No.7 filed

counter affidavit in this writ petition, he has initiated disciplinary proceedings against respondent Nos.6 and 7 (official respondent Nos.4 and 5) based on the allegations made against them in the affidavit under reply by issuing Charge Memo to respondent No.6 vide Rc.No.38/b/PR-2/MPR/RCK/2019 dated 11.04.2019 and Rc.No.38(a)/PR-2/MPR/RCK/2019 dated 11.04.2019 to respondent No.7 which are as under:

Charge Memo against respondent No.6:

“Exhibited gross misconduct by not following due procedure of law in causing the arrest of the Accused in Cr.No.43/2019 u/s 498-A, 323, 506 IPC of L.B. Nagar P.S. which is highly objectionable causing violation of TCS Conduct Rule – 3 (1 to 3), 1964.”

Charge Memo against respondent No.7:

“Exhibited gross misconduct by not following due procedure of law in causing the arrest of the Accused in Cr.No.43/2019 u/s 498-A, 323, 506 IPC of L.B. Nagar P.S.”

3.6. As the explanation submitted by respondent Nos.6 and 7 was unsatisfactory, this respondent came to the conclusion that they failed to follow the due process of law laid down by the

Hon'ble Apex Court in **Arnesh Kumar's case** (Supra 1) and acted in utter disregard to the same. Hence, respondent Nos.6 and 7 were punished by imposing PPI for one year without effect on future increments and pension vide D.O. No.2214/2019/Rc.No.38(a)/PR-2/MPR/RCK/2019 and D.O. No.2014/2019/Rc.No.38(a)/PR-2/MPR/RCK/2019 dated 11.04.2019 respectively.

3.7. In the counter affidavit filed by respondent No.6 - K. Saidulu, Sub Inspector of Police, L.B. Nagar Police Station, Rachakonda Commissionerate, Hyderabad, he reiterated the averments in the counter affidavit filed on behalf of respondent Nos.1 to 5. Additionally, it is stated that the disciplinary proceedings have been initiated by respondent No.2 and punishment of PPI for one year was inflicted against him and respondent No.7 for their failure to follow the guidelines issued by the Hon'ble Apex Court in **Arnesh Kumar's case** (Supra 1). Respondent No.6 has tendered unconditional apology before this Court. Further, it is stated that henceforth, he will be absolutely vigilant in following the law and he will not give any scope for accusation against him. He has put in ten years of service, has a

long service to work and if any punishment is inflicted by this Court, it would adversely affect his career.

3.8. In the counter affidavit filed by respondent No.7 - D. Nagaraju, Sub Inspector of Police, L.B. Nagar, Rachakonda Commissionerate, Hyderabad, he reiterated the averments in the counter affidavit of respondent Nos.1 to 5. It is further stated that on 02.03.2019, notice under Section 41(A)(1) of Cr.P.C. was issued to the petitioner informing him to comply with the terms and conditions, but due to oversight, he did not mention date and time in the notice for which he pays his sincere regrets. Not mentioning date and time in the notice under Section 41-A(1) of Cr.P.C. was neither wilful nor intentional. Being his first posting, inadvertently, he committed the said error. In spite of receipt of notice, the petitioner did not appear and cooperate for investigation in any manner in Crime No.243 of 2019. Hence, on the directions of the Station House Officer, respondent No.6 made efforts to apprehend the petitioner. On 06.03.2019 at 14:00 hours, respondent No.6 went to ADP Company, Somajiguda, where the petitioner was working. As the petitioner obstructed the

respondent No.6 and abused him in filthy language, respondent No.6 apprehended the petitioner and brought him to the Police Station at 15:00 hours by complying with the procedure under Section 50(A) of Cr.P.C. Respondent No.6 acted *bona fide* with a sole intention of protecting the victim and her parents in Crime No.243 of 2019. The respondent has already suffered the order of punishment in the departmental proceedings. The respondent sincerely apologise for his unintentional violation of the directions of the Hon'ble Supreme Court in **Arnesh Kumar's case** (Supra 1).

4. Separate reply affidavits have been filed by the petitioner denying the adverse allegations in the counter affidavits filed by the respondents. It may be noted that the respondent Nos.6 and 7 were already subjected to disciplinary proceedings and both of them have tendered unconditional apology in their sworn affidavit. Further consideration of lapses and the reasons behind the lapses are not necessary to be discussed by this Court in view of the punishment being inflicted on respondent Nos.6 and 7 by their department in the disciplinary proceedings.

5. In these circumstances, the only issue that remains to be considered is “how the petitioner is to be compensated for violation of the guidelines issued by the Hon’ble Apex Court in **Anresh Kumar’s case** (Supra 1) by respondent Nos.6 and 7?”

6.1. The learned counsel for the petitioner submitted that arrest of the petitioner by respondent Nos.6 and 7 is contrary to the dictum laid down by the Hon’ble Supreme Court in **Arnesh Kumar v. State of Bihar**¹. The notice issued to the petitioner is as under:

**“NOTICE TO THE ACCUSED PERSON
U/SEC 41(A)(1) CR.P.C.**

It is to inform that, you have involved in Cr.No.243/2019 U/sec498-A, 448, 323 506 IPC & Sec 3 and 4 of DP Act of PS LB Nagar, which was taken place prior to 02-02-2019 at H.No.3-8-173 Plot No.4 Road No 5, Chandrapuri Colony, LB Nagar and you should appear before me immediately to get the bail along with sureties without fail.

¹ (2014) 8 SCC 273

Acknowledge the receipt of this notice.

(D. Nagaraju)
Sub inspector of police
PS LB Nagar RCK

To,

A1, Sana Nithish Kumar Reddy s/o Divakar
Reddy aged 30 years Occ Business Analyst at
ADP, Somajiguda, Caste Munnuru Kapu R/o Plot
No.5 H.No.7-100/15 Reddy Encalve, Alwal
Temple, Secunderabad.”

6.2. The learned counsel for the petitioner contends that the above notice issued under Section 41-A(1) of Cr.P.C. to the petitioner was not in conformity with the guidelines issued by the Hon’ble Supreme Court in **Arnesh Kumar’s case** (Supra 1). The notice sounds like an invitation to obtain bail but not a notice to answer the alleged offences in the crime. The above notice was furnished to the petitioner at the time of preparing necessary formalities just before producing him before the learned Magistrate. Bunch of papers were served on him and one of such papers is the purported notice under Section 41(A)(1) of Cr.P.C. Respondent No.5 did not allow him to put the date of service on it. The crime was registered on 02.03.2019 (Saturday). Copy of the

F.I.R. was sent to the learned Magistrate on 04.03.2019 (Monday) and arrest was effected on 06.03.2019 (Wednesday). Without service of notice, the petitioner was dragged out of his office by respondent Nos.6 and 6 and taken to the police station in utter disregard to the law laid down by the Hon'ble Supreme Court. Due to arrest without issuing notice, the petitioner was subjected to humiliation, mental agony, his freedom was curtailed and it became a scar on his reputation and life. The manner in which the crime was registered on 02.03.2019 and the fact that the respondents have effected his arrest on 06.03.2019 demonstrate hasty act of respondent Nos.6 and 7 without application of mind.

6.3. In the notice under Section 41-A(1) of Cr.P.C., there is no mention about the date and time of the petitioner's requirement to come to the police station. It is issued in a mechanical way stating that on credible information, the petitioner was apprehended from his office and that he was avoiding arrest. It is contended by the learned counsel for the petitioner that it is a false statement since the petitioner was never put on notice of crime so as to evade his arrest. Respondent No.5 has not recorded any concrete and

cogent reasons justifying the petitioner's arrest. The father of the petitioner was very much available in the police station along with his colleague Mr. Sandeep, but strangely, respondent Nos.4 and 5 have shown him as absconding.

6.4. As per the directions of the Hon'ble Supreme Court, the learned Magistrate ought to have satisfied himself that the arrest made was illegal and not in accordance with law. The learned Magistrate also failed to satisfy himself whether the police had complied with the requirements of Section 41-A of Cr.P.C. The above acts would demonstrate violation of fundamental rights of the petitioner guaranteed under Article 21 of the Constitution of India. Respondent Nos.6 and 7 are guilty of illegally arresting the petitioner in contravention of the directions of the Hon'ble Apex Court in **Social Action Forum for Manav Adhikar v. Union of India, Ministry of Law and Justice**².

6.5. It is submitted that due to illegal arrest and detention of the petitioner in jail, it caused loss to his reputation and put a stigma on his life. Respondent Nos.1 to 5 being official

² (2018) 10 SCC 443

functionaries of the State are bound to compensate the petitioner for their illegal acts. The learned counsel for the petitioner relied on the following decisions:

6.6. In Smt. Nilabati Behera alias Lalita Behera v. State of Orissa³, the Hon'ble Supreme Court held as under:

“16. It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is ‘distinct form, and in addition to the remedy private law for damages for the tort’ resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is

³ AIR 1993 SC 1960

the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts.32 and 226 of the Constitution. This is what was indicated in Rudul Sah (AIR 1983 SC 1086) and is the basis of the subsequent decisions in which compensation was awarded under Arts.32 and 226 of the Constitution, for contravention of fundamental rights.”

6.7. In D.K. Basu v. State of W.B.⁴, the Hon’ble Supreme Court held as under:

“44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public

⁴ (1997) 1 SCC 416

law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the *established* violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to start realities. Mere punishment of the offender cannot give much solace to the family of the victim – civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the

infringement of the inalienable right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.”

6.8. In *Rini Johar v. State of Madhya Pradesh*⁵, the Hon’ble Supreme Court held as under:

“23. In such a situation, we are inclined to think that the dignity of the petitioners, a doctor and a practising advocate has been seriously jeopardised. Dignity, as has been held in *Charu Khurana v. Union of India* [(2015) 1 SCC 192], is the quintessential quality of a personality, for it is a highly cherished value. It is also clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity. When the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonised, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instil faith of the collective in the system. It does not require

⁵ (2016) 11 SCC 703

wisdom of a seer to visualise that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the sanguinity of liberty.

27. In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in *D.K. Basu* [(1997) 1 SCC 416, there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in *Nilabati Behrera* [(1993) 2 SCC 746], *Sube Singh v. State of Haryana* [(2006) 3 SCC 178], *Hardeep Singh v. State of M.P.* [(2012) 1 SCC 748], comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs.5,00,000 (Rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence.

It will be open to the State to proceed against the erring officials, if so advised.”

7. There cannot be any iota of doubt that a person who is arrested by the police is looked down by the society. It creates a scar on his personality and character. Arrest in normal course and in compliance with the provision of law, even if it causes injury to the person cannot give rise to cause of action to award damages. However, when there is violation of law and the person is subjected to humiliation and insult, action of the police authorities will have to be condemned in strict terms and consequently compensation in a given case needs to be awarded. The petitioner is well qualified and is working for a reputed company. It is contended that illegal arrest of the petitioner created mental agony, loss of reputation and created permanent scar on his life. Keeping in view the educational qualification and family background of the petitioner, it cannot be said that such statement of loss of reputation, mental agony etc., is an exaggeration. The social status in India varies from person to person. The factors like family background, educational qualification, economical status,

profession etc., can be considered for grant of compensation to the victims. Right to live with dignity and self-respect is one of the facets guaranteed under Article 21 of the Constitution of India. No person shall be deprived of his right to live save by due process of law. The unimpeachable record placed before this Court proves that respondent Nos.6 and 7 acted in derogation of law. The notice under Section 41-A(1) of Cr.P.C. was issued without mentioning date and time and without giving sufficient time to the petitioner for compliance, straight away he was produced before the learned Magistrate who remanded him to judicial custody. For such lapses, respondent Nos.6 and 7 were inflicted with punishment in the departmental disciplinary proceedings. Thus, there is a clear violation of mandate of law in **Arnesh Kumar's case** (Supra 1) and by doing so, respondent Nos.6 and 7 have infringed upon the fundamental life of the petitioner guaranteed to him under Article 21 of the Constitution of India.

8. The learned senior counsel appearing for respondent Nos.6 and 7 submitted that respondent No.7 is a young officer having long service and if any further punishment is inflicted by

this Court, it would shatter his career opportunities. The learned counsel for the petitioner submitted that Rs.5.00 lakh compensation may be awarded to the petitioner for loss of his reputation in the society on account of his illegal arrest by the erring police officials. However, considering the facts and circumstances of the case, an amount of Rs.2,00,000/- (Rupees two lakhs only) is awarded to the petitioner as compensation for the lapses committed by respondent Nos.6 and 7. Respondent No.1 shall pay the said amount to the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order. Respondent No.1 is at liberty to recover the compensation amount i.e., Rs.1,00,000/- (Rupees one lakh only) each from respondent Nos.6 and 7. So far as the other reliefs are concerned, this Court is not inclined to grant any relief as respondent Nos.6 and 7 were already subjected to disciplinary proceedings and punishment was imposed against them.

9. With the above directions and observations, the writ petition is allowed in part. No order as to costs.

As a sequel thereto, miscellaneous applications, if any,
pending in this writ petition stand closed.

B. VIJAYSEN REDDY, J

April 26, 2023.

PV