

CORAM: HON'BLE MR. JUSTICE H.S. BHALLA, ACTING CHAIRPERSON.
SH. J.S. AHLAWAT, MEMBER.

PRESENT: None

ORDER:

The complainant has knocked the door of this Commission through the complaint in hand, wherein, he has pleaded that a case was registered against him under FIR No.105 at the instance of his wife at Narnaud Police Station, District Hisar, and in fact, the registration of those case is a counter blast to the divorce petition filed by him against her before the competent Court. On the directions of Investigation Officer Raghubir Singh, he joined the investigation on 15.04.2015 and when he went to Police Station to join the investigation, he was arrested and the guidelines issued by the Hon'ble Supreme Court were not followed. He has further pleaded that in the lockup, inhuman treatment was given to him and he was mentally tortured. In the end he has prayed that an action be taken against the police official for ill-treatment given to him and for violating the guidelines issued by the Hon'ble Apex Court with regard to the arrest of the person.

The report from the Superintendent of Police, Hisar was requisitioned, wherein it has been mentioned that a complainant was called for recovery of the dowry articles and the allegations during the course of

investigation against the complainant, his father, mother and sister were found to be correct and accordingly, they were arrested and produced before the competent Court. During the remand, the police recovered the dowry articles and after the expiry of the remand, they were sent to the judicial custody by the Court. With regard to the allegations against Raghubir Singh and Narinder Kumar, it has been mentioned in the report that they were found to be incorrect and it appears that the complainant has filed this complaint as a result of the arrest made by the police and has levelled false allegations.

The complainant approached to file objections to the report of the police reiterating his stand contained in his complaint and again asserted that the police has not complied with the guidelines issued by the Hon'ble Supreme Court and also violated the provisions of Section 41-A of Cr.P.C. Keeping in view the facts discussed above, the Director of Investigation was directed to inquire into the matter. The Director of Investigation submitted its report after recording the statements of the parties and after having gone through the record. As per his report, the investigation of the case registered against the complainant was investigated by ASI/ESI Raghubir Singh and Sh. Bhagwan Das, the then Deputy Superintendent of Police, Hansi. It has further been reported that the guidelines issued by the Hon'ble Supreme Court issued in Arunesh Kumar case with regard to the arrest to be made in matrimonial dispute and further the provisions of Section 41-A Cr.P.C. for issuance of notice have not complied with by ASI/ESI Raghubir Singh and the Director of Investigation has also recommended that the Superintendent of Police, Hisar be directed to take necessary action against the Investigating Officer Raghubir Singh for not following the directions of the Hon'ble Supreme Court.

In order to proceed further, it is necessary to reproduce the law laid down by the Hon'ble Supreme Court in the judgment of **Arunesh Kumar Vs. State of Bihar and others reported in 2014(7) JT 527**, which runs as under.

1. *All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498a of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above following from Section 41 Cr.P.C.*
2. *All police officer 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 filed 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 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.*
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 41A of Cr.P.C. 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 High Court having territorial jurisdiction.

- 8. Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.*

Further Section 41A of the Code of Criminal Procedure prescribes to issue a notice and after a person complies and continue to comply with the notice he shall not be arrested in respect of offence referred to in the notice unless the statement recorded by the police officer is of the information he ought to be arrested.

The Superintendent of Police, Hisar, was directed to take disciplinary action against the concerned investigation officer whereupon it has been intimated that a departmental inquiry against ASI/ESI Raghubir Singh was initiated and inquiry officer had also submitted his finding holding him guilty of the charges levelled against him, but while proceeding a departmental action the departmental inquiry initiated against ASI/ESI Raghubir Singh the same was filed keeping in view the entire evidence and reply filed by the said official. The departmental inquiry against ASI/ESI Raghubir Singh was filed. In the present case the inquiry officer had indicted the investigation officer but the Superintendent of Police, Hissar, filed the departmental inquiry on the basis of the evidence and reply filed by the delinquent official.

Power to take departmental action against the delinquent official is with the department but on the given facts it is proved that the compliance of guidelines issued by the Hon'ble Supreme Court as well as provision of Section 41 A Cr.P.C. have not been complied with by the concerned police official and it goes to prove that the grievances of the complainant is

justified in as much as no notice was given to him before his arrest and further when he had joined the investigation the reasons for making arrest have not been given.

Keeping in view the facts and the law laid by the Hon'ble Apex Court, it is crystal clear that it is a case of violation of the human rights of the complainant and to our mind, a compensation of Rs.50,000/- would meet the ends of justice. We order accordingly. It is further made clear that the compensation shall be paid by the State Government. A copy of the order be sent to Director General of Police to examine the matter in light of the direction issued by the Hon'ble Apex Court and take appropriate action against the concerned police officials. A copy of the judgment be also sent to Chief Secretary, Government of Haryana for compliance and taking further necessary action. The complaint is disposed of accordingly.

Sd-

(JUSTICE H.S. BHALLA)
ACTING CHAIRPERSON

Sd-

(J.S. AHLAWAT)
MEMBER

19.04.2017
sushant