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CASE COMMENT: ARNESH KUMAR V. STATE OF BIHAR & ANR

~ *Abhijeet Panad*¹

SUPREME COURT CASE: 2 July 2014

APPELLANT: *Arnesh Kumar*

RESPONDENTS: *State of Bihar & Anr.*

BENCH: *Hon'ble Justice Chandramauli Kr. Prasad and Justice Pinaki Chandra Ghose*

INTRODUCTION

The Supreme Court of India has played a crucial role in upholding the right to freedom and preventing unnecessary arrests. The Supreme Court, from time to time through various instances and landmark judgements has intervened to protect the fundamental right to freedom and prevent unnecessary or arbitrary arrests, setting important legal precedents in the process. The right to freedom and the arbitrary arrests are seen as two sides of a coin.

Arrests in India have always been a debatable topic. There is a psychological impact of arrests as well. This adversely affects the social life and future aspects of not only the person arrested but his family members too. This leads to an irreparable loss of his public image. The Supreme Court in several cases such as *D.K. Basu v. State of West Bengal*² for instance, has established guidelines

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² *D.K. Basu v. State of West Bengal* 1997 1 SC 416

for the arrest and detention of the accused. Also, in the cases namely, *Hussainara Khatoon v. Home Secretary, State of Bihar*³ and *Joginder Kumar v. State of Uttar Pradesh*⁴, the Hon'ble Supreme Court held that arrests in non-cognizable offenses should only be made when it is necessary for furthering the investigation or preventing the accused from committing further offenses. The court also emphasized the right to a speedy trial as an integral part of the right to personal liberty.

Arnesh Kumar v. State of Bihar is a landmark judgement in which the Supreme Court expressed concern about the misuse of Section 498A⁵ of the Indian Penal Code which deals with dowry-related offenses. The court also issued guidelines to prevent the automatic arrest of the accused, particularly in cases where it could be considered unnecessary.

FACTS OF THE CASE

The appellant namely, Arnesh Kumar is the husband of respondent no. 2, Sweta Kiran. The marriage between the two was solemnized on 1st July 2007.

Respondent no. 2 alleged that her mother-in-law and father-in-law demanded a dowry of Rupees eight lacs, a Maruti car, an air-conditioner, a television set, etc. from her.

When the respondent brought this fact to the appellant's notice, he supported his mother and threatened to marry another woman.

The respondent also alleged that she was driven out of the matrimonial home due to non-fulfillment of the demand for dowry.

The petitioner was arrested under Section 498A of IPC and Section 4⁶ of the Dowry Prohibition Act, 1961 (DP Act).

Denying these allegations, the appellant applied for anticipatory bail, which was initially denied by the learned Sessions Judge and thereafter by the Patna High Court.

³ *Hussainara Khatoon v. Home Secretary, State of Bihar* 1979 AIR 1369

⁴ *Joginder Kumar v. State of Uttar Pradesh* 1994 AIR 1349

⁵ Indian Penal Code, 1860, s. 498A, No. 45, Acts of Parliament, 1860.

⁶ The Dowry Prohibition Act, 1961, s. 4, No. 28, Acts of Parliament, 1961.

Since his attempt to obtain anticipatory bail failed, he approached the Supreme Court with this Special Leave petition.

ISSUES RAISED

1. Whether the police officer can arrest on a mere allegation commission of a non-bailable, and cognizable offense made against a person?
2. Whether there are any remedies available to the person if section 498A of IPC is misused by a woman for her own advantage?
3. Whether the decision of the High Court to deny the anticipatory bail was correct?

RATIONALE OF THE JUDGEMENT

The Hon'ble Supreme Court observed a phenomenal increase in matrimonial disputes in recent years. The court held that Section 498-A of the Indian Penal Code was introduced with the object of combating the menace of harassment to a woman at the hands of her husband and his relatives. But the fact that this section which is a cognizable and non-bailable offence has lent it a dubious place of pride and the provisions are used as a weapon rather than a shield by disgruntled wives.

The court also observed that the husband and his relatives are harassed by getting arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, and their sisters living abroad for decades are also arrested.

The court also highlighted the provisions of Section 41⁷ of the Code of Criminal Procedure (CrPC), 1973. Section 41 (1) of the CrPC states that- *Any police officer may without an order from a Magistrate and without a warrant, arrest any person.*

The sub-section (b) of Section 41 (1) of the act states that- *against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that*

⁷ The Code of Criminal Procedure, 1973 s. 41, No. 2, Acts of Parliament, 1974.

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.

Section 41 (1) (b) (ii) of the act states that- *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.

Thus, by reading the aforesaid provisions, 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 the 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. The 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.

As per the Hon'ble Supreme Court their endeavor in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate does not authorize detention casually and mechanically. Further, the Hon'ble Court gave the following directions:

All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC; All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);

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;

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;

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;

Notice of appearance in terms of Section 41A of Cr.PC 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 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.

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

We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is 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

. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

The Hon'ble Court allowed the appeal, making the order dated 31st October 2013 absolute (where this court granted bail to the appellant on certain conditions.); along with the directions aforesaid.

INFERENCE

The Arnesh Kumar v. State of Bihar judgment stands as a pivotal moment in the legal landscape of India, particularly concerning the application of Section 498A of the Indian Penal Code. The court, cognizant of the alarming instances of misuse, rendered a verdict that sought to strike a delicate balance between providing legal protection to victims of domestic violence and preventing the arbitrary arrest of the accused.

The acknowledgment of the widespread misuse of Section 498A underscored the need for corrective measures, prompting the court to provide comprehensive guidelines to law enforcement agencies. The shift from the non-bailable nature of the offense to a more nuanced approach, advocating arrests based on the veracity of allegations, represented a departure from the default arrest provisions. The court's emphasis on counseling and mediation, coupled with a call for preventive and precautionary measures, reflected a broader recognition of the need for alternative dispute resolution mechanisms and the importance of safeguarding the rights of the accused.

While the Arnesh Kumar judgment marked a significant step towards addressing the concerns surrounding Section 498A, its effectiveness remains a subject of ongoing debate. Critics argue that the implementation of the guidelines has been inconsistent, with reports of continued misuse of the provision. However, proponents laud the decision to initiate a much-needed dialogue on the intersection of legal protection and the prevention of misuse in cases of domestic violence.