

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

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Case Commentary on Arnesh Kumar v. State of Bihar

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ABSTRACT

Arnesh Kumar v State of Bihar is a landmark case in Criminal Law of India especially pertaining to the application of Criminal Procedure Code, 1973. This case raises a lot of questions pertaining to many socio-legal problems like dowry, rights of accused people, pre and post-arrest, granting of anticipatory bail and Section 498 A of the Indian Penal Code, which penalises cruelty subjected to married women in their marital home within seven years of marriage. The verdict, in this case, gave certain guidelines which are to be followed for executing an arrest. Due to this case facilitating a judge-made law which is eventually a revision in the existing law, this case had to be studied. Hence, this paper has attempted to comment on this case through the method of IRAC analysis, which involves examining the facts of the case, the issues or points of laws, applicable rules and then followed by a critical analysis.

Keywords: Cr.PC, Arnesh Kumar Guidelines, 498A of IPC.

I. INTRODUCTION

Citation: (2014 8 SCC 273)

Petitioner: Arnesh Kumar

Respondent No 1: State of Bihar

Respondent No 2: Sweta Kiran

Court: Supreme Court of India

Bench: Justice Chandramauli Kr. Prasad and Justice Pinaki Chandra Ghose

Case Type: Special Leave Petition; Criminal

Decided on: 2nd July 2014

(A) Facts

The marriage between the petitioner and respondent number 2 (hereinafter referred to as Sweta Kiran) was solemnised in 2007. Sweta Kiran alleged that petitioner's parents demanded a

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Maruti car, television, money, etc as dowry and that the petitioner supported them. He also threatened to marry another woman if dowry list was not fulfilled. It has been alleged that she was forced out of the matrimonial home due to non-fulfilment of the demand of dowry. Denying these allegations and apprehending arrest, the petitioner had applied for anticipatory bail which was rejected by Sessions Court and High Court. Special Leave Appeal was then made to the Supreme Court.

(B) Issues:

1. Accused person's rights pre and post arrest: granting of anticipatory bail
2. Remedies against misuse of section 498 A of IPC

(C) Rules:

1. Section 4 of Dowry Prohibition Act, 1961, (hereinafter referred to as DPA) provides for punishment for demanding dowry, directly or indirectly.
2. Section 498A Indian Penal Code, 1860, (hereinafter referred to as IPC) provides for punishment to the husband or his relative for subjecting a woman to cruelty.
3. Section 41 of Code of Criminal Procedure, 1973 (hereinafter referred to as CrPC) entails the provisions when police may arrest without warrant.
4. Article 22(2) of Constitution of India entails that the arrested person needs to be produced before the magistrate within 24 hours of arrest excluding traveling time and no person will be detained beyond that time period without authorization from magistrate.
5. Section 438 of CrPC is a provision of Anticipatory Bail Application for non-bailable offences.

(D) Arguments raised by the petitioner:

Allegedly she was driven out of the matrimonial home due to non-fulfilment of the dowry demands.

(E) Arguments raised by defendant:

Section 498A of IPC has been used unfairly by wives to harass husbands.

(F) Judgement:

The Apex Court granted provisional bail to Arnesh Kumar on certain terms and conditions because the Court observed that women have at times abused Section 498A of IPC to her advantage. Hence, mandatory directions regarding the power of arrest, is given by Court to the

Police.

II. ANALYSIS

Section 498A was introduced with the primary goal of combating cruelty inflicted upon women by her husband and his relatives. Contrary to its objective, this section is a very quick method of tormenting the husband and his family, as the offence is cognizable and non-bailable. There is a vast difference between the rate of filing chargesheet for this offence and the conviction rate, implying that majority of the cases end up in acquittal. In *Preeti Gupta & Anr v State of Jharkhand*² the Apex Court commented on misuse of anti-dowry laws.

Moreover, it was also becoming a practice for police officers to make arbitrary arrests on mere allegations, without adequate justification. Due to increasing number of arrests, the 177th Law Commission Report³ recommended the Parliament to amend section 41 of CrPC reflecting the impact of judgements in *DK Basu Case*⁴, *Maneka Gandhi Case*⁵ and *Joginder Kumar Case*⁶. Similar recommendations were made through 152nd⁷ and 154th⁸ Reports. These Reports and Judgements all centre around the rights of prisoners and procedures for arrests and custody upholding the fundamental right of life and personal liberty under Article 21⁹.

The Court in this judgement after discussing the provisions related to safeguard against arrest, rightly laid down certain guidelines to be followed for arrest, which is famously called the *Arnesh Kumar Guidelines*: The Court directed that all police officers should not arrest immediately in a case of 498A without being satisfied about the fulfilment of specifications laid down in Section 41 of CrPC. Police officers have to duly fill a checklist having all sub-clauses under section 41(1)(b)(ii)¹⁰, providing all necessary reasons for such arrest and produce the same along with the accused to the Magistrate. If the Magistrate finds this report to be satisfactory then authority will be given to police for further detention. More such directions have been given specifying the time limits for preparation of required documents, for example, notice of appearance in terms of Section 41 of CrPC be served on the accused within two weeks from the institution of the case and the decision to not to arrest an accused is to be forwarded to

² *Preeti Gupta v State of Jharkhand*, (2010) 7 SCC 667

³ Law Commission Report No. 177 on Law Relating to Arrest, 2001, Law Commission of India

⁴ *DK Basu v State of West Bengal*, 1997 (1) SCC 416

⁵ *Maneka Gandhi v Union of India*, 1978 AIR SC 597

⁶ *Joginder Kumar v State of Uttar Pradesh*, 1994 SCC (4) 260

⁷ Law Commission Report No. 152 on Custodial Crimes, 1994, Law Commission of India

⁸ Law Commission Report No. 154 on Code of Criminal Procedure, 1973 (Act No. 2 of 1974), 1996, Law Commission of India

⁹ Article 21 of Constitution of India, 1950: Protection of Life and Personal Liberty

¹⁰ Section 41(1)(b)(ii) of Code of Criminal Procedure, 1973 (Act No. 2 of 1974) entails procedures like identification, memorandum of arrest, etc.

the Magistrate within two weeks of institution of the case. It is also mentioned that failure of compliance by policemen will result in institution of contempt of court cases and failure of compliance by Magistrate will lead to departmental action.

Therefore, these guidelines should be thoroughly considered while hearing Anticipatory Bail Applications in cases pertaining to section 498A.

European Court of Human Rights in the case of Fox, Campbell and Hartley v The United Kingdom¹¹ while interpreting the notion of “reasonable suspicion” while exercising arresting powers, observed that “bonafide intention” of police is not sufficient to get through the test of “reasonableness”, there must exist some additional information or facts that will satisfy “objective observer”. The checklist of Section 41(1)(b)(ii) acts as a guideline for such additional information which will account for the rationale behind the arrest.

The provisions of arrest in India are quite similar to few other countries. For example, Section 41 of CrPC restricts the power of arrest without warrant to aspects like “cognizable offence”, “reasonable complaint”, “credible information”, “reasonable suspicion”, etc. Similarly, section 24 of Police and Criminal Evidence Act¹² of UK expounds that an arrest can be done by the police without warrant on the basis of reasonable grounds for believing that the person’s arrest was necessary and that person was involved or suspected to be involved in the commission of the crime. In USA, the Fourth Amendment¹³ requires that an arrest be based on probable cause, meaning that the arresting officer reasonably believes that the arrest is needed depending on circumstances of the case. In Philippines, on the other hand, the revised rules of Criminal Procedure¹⁴, 2000, says that a police officer can arrest without warrant if the crime has been committed in front of the Investigating Officer or has a probable reason to think that the person has committed crime or escaped the penal establishment.

Since, arrest curtails the personal liberty of a person, one must compare Article 21 with other jurisdictions. It says that personal liberty cannot be deprived without procedure established by law. This notion of ‘procedure established by law’ is taken from American notion of ‘due process of law’. In this regard, Justice Krishna Iyer observed in Maneka Gandhi’s case that procedure established by law means reasonable law and fair procedure instead of formal procedure.¹⁵ Hence, it validates the ‘reasonableness’ attached to the provisions of arrest in CrPC, as well as in other laws in other states. Also, it is to be noted that the essence of protection

¹¹ Fox, Campbell and Hartley v/s The United Kingdom, Application No. 12244/86, 12245/86, 12383/86

¹² Section 24 of Police and Criminal Evidence Act, 1984, UK: Power of Arrest without Warrant given to Constables

¹³ The Constitution through Fourth Amendment Act protected citizens from unreasonable searches and seizures

¹⁴ Section 5, Rule 113 of Criminal Procedure, 2000, Philippines

¹⁵ Supra Note 4

of personal liberty seen in Article 21 is the justification behind introducing anticipatory bail under section 438 of CrPC.

III. RECOMMENDATIONS

- Very heavy penalty of fine and imprisonment, more than currently prescribed in the statute, should be imposed on police officers for not being able to comply with the Arnesh Kumar Guidelines.
- To prevent misuse of section 498 A the offence might be made compoundable.
- Awareness campaigns should be initiated to tell women that the Indian law is feminist and that there are rights for women. However, at the same time they should be told about the prevention of abuse of this section to preserve the sanctity of marriage.
- In cases where the Court finds that women have grossly misused the privilege given to the women community under section 498A then action should also be taken against such women for wasting the time of court and for malicious prosecution.

IV. CONCLUSION

The Court propounded that the aforesaid directions can also be applied to such cases where the punishment for the offence is seven or less years of imprisonment, with or without a fine, thus expanding the scope of the precedence. It has also recognised how police corruption can be sourced from arresting powers. Law Commissions, Police Commissions and the judiciary in a large number of judgments emphasised the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. The need for caution in exercising drastic power of arrest has finally having implementation. For example, in a recent case, *V Bharath Kumar v State of Telangana*¹⁶, Telangana High Court granted the petitioner freedom to initiate legal proceedings against the policemen if the process for arresting as per section 41A of CrPC and Arnesh Kumar Guidelines are breached¹⁷. The Bench strictly ordered the police-force to adhere to the guidelines given in Arnesh Kumar's case and Section 41 of CrPC to avoid punishment.

¹⁶ *V Bharath Kumar v State of Telangana*, Criminal Petition No. 8108 of 2021

¹⁷ "Police Officials to Face Action If Arrest Procedure Under Section 41A CrPC & Arnesh Kumar Guidelines Are Violated - Others". *lawyersclubindia*. Retrieved 1st February 2023.

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