(2014) 8 Supreme Court Cases 273

(BEFORE CHANDRAMAULI KR. PRASAD AND P.C. GHOSE, JJ.)

ARNESH KUMAR .. Appellant;

Versus

STATE OF BIHAR AND ANOTHER .. Respondents.

Criminal Appeal No. 1277 of 2014†, decided on July 2, 2014

A. **Criminal Procedure Code, 1973 — Ss. 41, 41-A and 57 — Power of police to arrest without warrant — Proper exercise of — Balance between individual liberty and societal order while exercising power of arrest — Directions issued**

— Directions issued herein, held, shall apply to all 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 — Police officers shall not arrest the accused unnecessarily and Magistrate shall not authorise detention casually and mechanically — Failure to comply with these directions, shall, apart from rendering police officers concerned liable for departmental action, also make them liable to be punished for contempt of court — Authorising detention without recording reasons by Judicial Magistrate concerned shall be liable for departmental action by appropriate High Court — Copy of judgment to be forwarded to Chief Secretaries as also DGs of Police of all States and UT and Registrar General of all High Courts for ensuring compliance therewith — Police — Arrest — Penal Code, 1860 — S. 498-A — Constitution of India, Arts. 21 and 22(2) (Paras 11 to 13)

B. **Penal Code, 1860 — S. 498-A r/w S. 4, Dowry Prohibition Act, 1961 — Exercise of power of arrest — Detailed directions issued — Held, due to the rampant misuse of these provisions, it would be prudent and wise for a police officer, that no arrest is made without reasonable satisfaction reached after some investigation as to genuineness of allegations**

— Maximum sentence provided under S. 498-A IPC is imprisonment for a term which may extend to 3 yrs and fine and under S. 4 of Dowry Prohibition Act, 2 yrs with fine — Demand of Rs 8 lakhs, a Maruti car, air conditioner, television set, etc. was allegedly made by complainant's mother-in-law and father-in-law and when this fact was brought to appellant's notice, he supported his mother and threatened to marry another woman — Anticipatory bail application was rejected by courts below

— S. 498-A IPC, held, was introduced with avowed object to combat the menace of harassment to a woman at the hands of her in-laws — The fact that S. 498-A IPC is a cognizable and non-bailable offence has lent it a

† Arising out of SLP (Crl.) No. 9127 of 2013. From the Judgment and Order dated 8-10-2013 in Crl. M. No. 30041 of 2013 of the High Court of Patna

dubious place of pride amongst provisions that are used as weapons rather than shield by disgruntled wives — Simplest way to harass is to get the husband and his relatives arrested under this provision — In a quite number of cases, bedridden grandparents of husbands, their relatives (sisters) living abroad for decades are arrested — Thus, held, it would be prudent and wise for a police officer that no arrest is made without reasonable satisfaction reached after some investigation as to genuineness of allegation — Provisional bail granted to appellant, made absolute — Dowry Prohibition Act, 1961, S. 4 (Paras 3 to 10 and 14)

C. **Police — Generally — Colonial attitude of police — Persistence of, even after 60 yrs of Independence — Deprecated (Para 5)**

Allowing the appeal and issuing detailed directions on the exercise of the power of arrest, the Supreme Court

Held :

Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive. (Para 5)

No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. (Para 6)

A person accused of an 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 his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before 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. Before arrest first the police officers should have reason to

believe on basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or more purposes envisaged by sub-clauses (*a*) to (*e*) of clause (1) of Section 41 CrPC. (Para 7)

In all cases where arrest of a person is not required under Section 41(1) CrPC, police officer is required to issue notice directing the accused to appear before him at a specified place and time. The law obliges such an accused to appear before police officer and it further mandates that if such an accused complies with terms of notice he shall not be arrested, unless for reasons to be recorded, police officer is of the opinion that the arrest is necessary. At this stage also, condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to same scrutiny by the Magistrate as aforesaid. If the provisions of Section 41 CrPC which authorises police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by police officers intentionally or unwittingly would be reversed and number of cases which come to the Court for grant of anticipatory bail will substantially reduce. Practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued. (Paras 9 and 10)

Arnesh Kumar v. *State of Bihar*, (2014) 8 SCC 469, *confirmed*

Arnesh Kumar v. *State of Bihar*, Criminal Misc. No. 30041 of 2013, order dated 8-10-2013 (Pat), *reversed*

Hence, the following directions are issued:

(*i*) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, 1961, 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, is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

(*ii*) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(*b*)(*ii*) CrPC;

(*iii*) The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(*iv*) 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;

(*v*) 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;

(*vi*) Notice of appearance in terms of Section 41-A CrPC 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. (Para 11)

J-D/53425/CR

Advocates who appeared in this case :
Rakesh Kumar and Kaushal Yadav, Advocates, for the Appellant;
Rudreshwar Singh, Samir Ali Khan, Ms Aparna Jha, Braj K. Mishra and Abhishek Yadav, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2014) 8 SCC 469, *Arnesh Kumar* v. *State of Bihar* 282*a-b*, 282*b*
2. Criminal Misc. No. 30041 of 2013, order dated 8-10-2013 (Pat), *Arnesh Kumar* v. *State of Bihar* **(reversed)** 276*d*

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J.— The petitioner apprehends his arrest in a case under Section 498-A of the Penal Code, 1860 (hereinafter called as "IPC") and Section 4 of the Dowry Prohibition Act, 1961. The maximum sentence provided under Section 498-A IPC is imprisonment for a term which may extend to three years and fine whereas the maximum sentence provided under Section 4 of the Dowry Prohibition Act is two years and with fine.

2. The petitioner happens to be the husband of Respondent 2, Sweta Kiran. The marriage between them was solemnized on 1-7-2007. His attempt to secure anticipatory bail has failed[1] and hence he has knocked the door of this Court by way of this special leave petition. Leave granted.

3. In sum and substance, allegation levelled by the wife against the appellant is that demand of rupees eight lakhs, a Maruti car, an air conditioner, television set, etc. was made by her mother-in-law and father-in-law and when this fact was brought to the appellant's notice, he supported his mother and threatened to marry another woman. It has been alleged that she was driven out of the matrimonial home due to non-fulfilment of the demand of dowry. Denying these allegations, the appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court.

4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section 498-A IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951

1 *Arnesh Kumar* v. *State of Bihar*, Criminal Misc. No. 30041 of 2013, order dated 8-10-2013 (Pat)

which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under the Penal Code. It accounts for 4.5% of total crimes committed under different sections of the Penal Code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

6. Law Commissions, Police Commissions and this Court 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. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short "CrPC"), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest.

7. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(*b*) CrPC which is relevant for the purpose reads as follows:

"**41.** ***When police may arrest without warrant.***—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(*a*) * * *

(*b*) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that 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—

(*i*) * * *

(*ii*) the police officer is satisfied that such arrest is necessary—

(*a*) to prevent such person from committing any further offence; or

(*b*) for proper investigation of the offence; or

(*c*) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(*d*) 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

(*e*) 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."

7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an 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 his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before 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.

7.2. 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. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (*a*) to (*e*) of clause (1) of Section 41 CrPC.

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation

of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads as follows:

> "**41-A.** ***Notice of appearance before police officer.***—(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.
>
> (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.
>
> (3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.
>
> (4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice."

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong

committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(*b*)(*ii*);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/ producing the accused before the Magistrate for further detention;

11.4. 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;

11.5. 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;

11.6. Notice of appearance in terms of Section 41-A CrPC 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;

11.7. 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 the High Court having territorial jurisdiction.

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

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC 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.

13. 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.

14. By order dated 31-10-2013[2], this Court had granted provisional bail to the appellant on certain conditions. We make this order absolute.

15. In the result, we allow this appeal, making our aforesaid order dated 31-10-2013[2] absolute; with the directions aforesaid.

(2014) 8 Supreme Court Cases 282

(BEFORE S.J. MUKHOPADHAYA AND KURIAN JOSEPH, JJ.)

RAM KARAN (DEAD) THROUGH LEGAL REPRESENTATIVE AND OTHERS .. Appellants;

Versus

STATE OF RAJASTHAN AND OTHERS .. Respondents.

Civil Appeal No. 5853 of 2014†, decided on June 30, 2014

A. **Tenancy and Land Laws — Rajasthan Tenancy Act, 1955 (3 of 1955) — S. 42 proviso (as ins. by amending Act 27 of 1956) — Transfer of landholding by member of Scheduled Caste in favour of person not belonging to Scheduled Caste — Held, forbidden and unenforceable under proviso — Hence, such transfer also unlawful under S. 23 of Contract Act and agreement of such transfer void under S. 2(g) of Contract Act — Contract Act, 1872 — Ss. 23 and 2(g) — Transfer of Property Act, 1882 — Ss. 10 and 54 — Statutory bars on alienation (Paras 22, 27 and 29)**

Triveni Shyam Sharma v. *Board of Revenue*, AIR 1965 Raj 54, *distinguished*

B. **Tenancy and Land Laws — Rajasthan Tenancy Act, 1955 (3 of 1955) — Ss. 175 and 42 — Limitation period for filing ejectment case — Period should be reasonable when no period is prescribed — Relevant factors for determining reasonable period — Unreasonable delay**

— Sale of landholding effected in 1962 in violation of prohibition under S. 42 — Land mutated in vendee's name in 1963 — No action taken by vendors for restoration of land in their favour — Suit for ejectment of vendees filed by Tahsildar after 31 yrs in 1993 — Application for appointment of Receiver filed in that suit, rejected by Assistant Collector by holding that vendee had been in possession and cultivating suit land for 32 yrs — Held, ejectment suit filed beyond reasonable period of limitation, hence barred by limitation and not maintainable — Practice and Procedure — Delay/Laches/Limitation — Reasonable period (Paras 34 to 39)

2 *Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 469

† Arising out of SLP (C) No. 16638 of 2012. From the Judgment and Order dated 2-2-2012 in CWP No. 639 of 1996, SA No. 557 of 2002 of the High Court of Rajasthan at Jaipur