

CONTINUING LEGAL EDUCATION PROGRAMME

ARNESH KUMAR

Vs.

STATE OF BIHAR

Discussion by

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BACKGROUND OF THE CASE

- The present verdict arises from an appeal preferred by a husband who apprehended his arrest in a case under Section 498-A of the India Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961.
- Petitioner happens to be the husband of Respondent No. 2, Sweta Kiran. The marriage between the two was solemnized on 1st July 2007.
- The allegation leveled by the wife against the Appellant is that demand of Rs. 8 lakh, a Maruti car, and air-conditioner, TV set, etc. was made by her mother-in-law and supported by her husband, the Appellant herein. It has been alleged that she was driven out of the matrimonial home due to non-fulfillment of the demand of dowry.
- Denying these allegations, the Appellant preferred an application for anticipatory bail, which was earlier rejected by the Ld. Sessions Judge, and thereafter by the High Court. Hence, this petition.

JUDGMENT OF THE SUPREME COURT

- Judges have endeavoured to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically.
- Given the following directions:
 - (1) All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;
 - (2) All police officers 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;

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- (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 Code of Criminal Procedure 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.

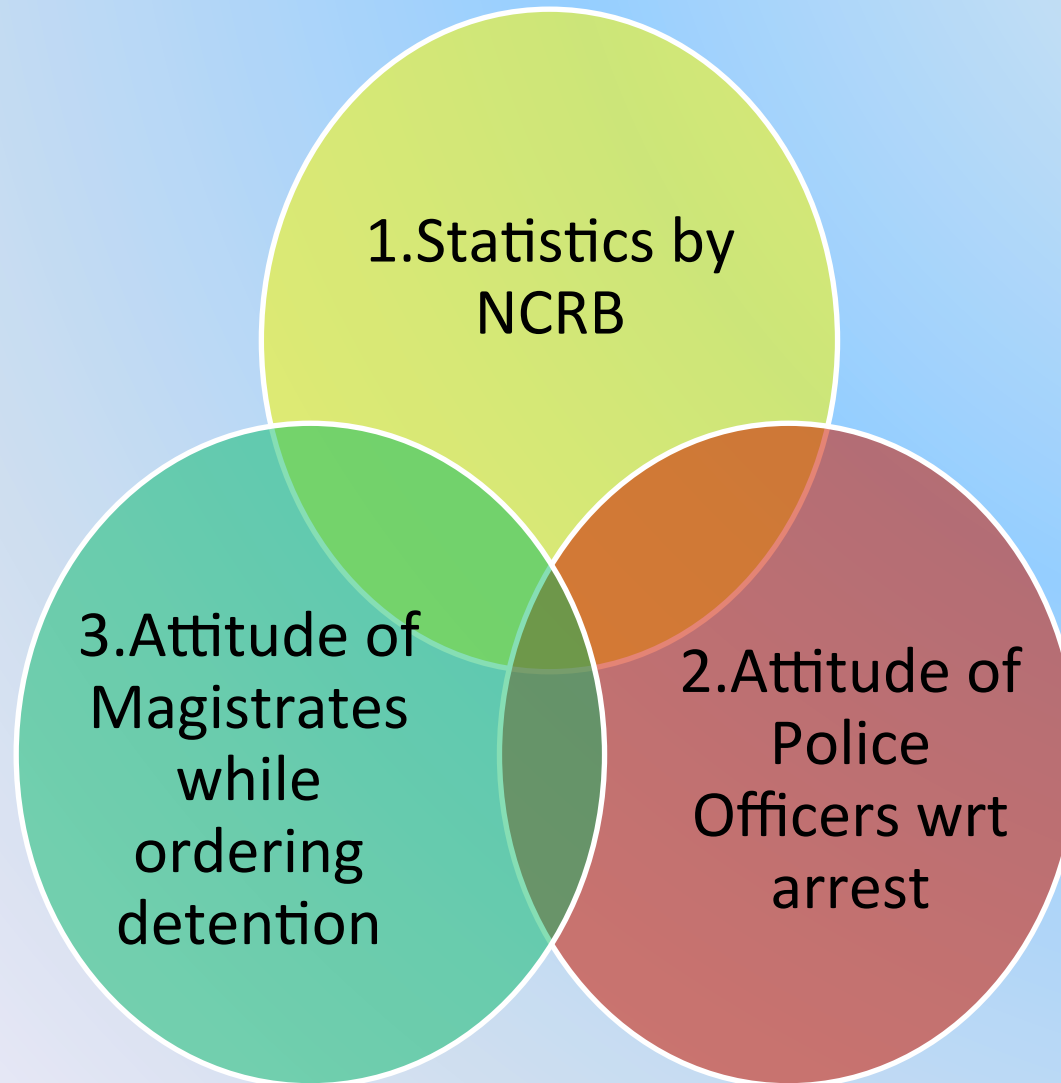
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- Above directions shall not apply to only cases u/s 498A of the IPC or Sec. 4 of the DPA
- Will apply to all cases where offence is punishable with imprisonment for a term which may be less than seven years or may extend to seven years; whether with or without fine
- Provisional bail granted to Appellant
- Appeal allowed

POINTS OF DISCUSSION

- Whether the judgment, which is mostly based on statistics presented by NCRB, is founded on weak grounds
- Whether data related to crime against women can be applied to offences of all categories which are punishable with imprisonment for a term which may be less than seven years, or which may extend to seven years; with or without fine
- Whether the time limit of two weeks given to the Police Officers will lead to a drop in the number of cases filed with regard to Section 498-A by women, fearing threat to life, etc. since no clear guidelines have been laid down as to how the investigation should be carried out

APPROACH OF SUPREME COURT



1. STATISTICS BY NCRB

- The SC, in what seems to be a very gender-neutral methodology, has approached this case largely on the basis of statistics and empirical data
- It has relied heavily on “Crime in India 2012 Statistics” published by “National Crime Records Bureau, Ministry of Home Affairs”
- Some of the relevant statistics produced in the judgment are as follows:
 - 1, 97, 762 persons all over India were arrested in 2012 for offence u/s 498-A, IPC
 - Nearly a quarter of these were women, i.e. 47, 951
 - Arrests made u/s 498-A is 6% of the total share of persons arrested under crimes committed under IPC
 - Rate of charge-sheeting u/s 498-A: 93.6%
 - Rate of conviction u/s 498-A: 15%
 - An estimated 3, 17, 000 cases are likely to result in acquittal out of the total 3, 72, 706 cases that are pending trial

The conclusions drawn by the Hon'ble Bench from the given stats are:

- Phenomenal increase in matrimonial disputes in recent cases
- 498A has a dubious place of pride; used a weapon rather than as a shield by “disgruntled wives”
- Simplest way to harass is to get the husband and the relatives arrested under this provision
- Bed-ridden grandfathers and grandmothers are also implicated
- Sisters living abroad are arrested

As opposed to:

- Increase in rate because relatively more women are coming forward and reporting such offences
- 498A being the only “weapon” which can be invoked by wives who are being ill-treated
- “Simplest” way to protect oneself
- Rate of conviction could be low because of other reasons apart from most of these cases being filed by “disgruntled wives”
- High rate of acquittal could be due to any of the following reasons:
 - Lack of support system from the family of the victim
 - Out-of-court settlements
 - Cultural biases against female litigants and divorcees
 - Financial dependence of the woman on her husband
 - Fear of homelessness
 - Fear of physical security of self/children

2. ATTITUDE OF POLICE OFFICERS WRT ARREST

- Arrest brings humiliation, curtails freedom and cast scars forever
- Police has not learnt its lesson
- Arrest is considered as a tool of harassment, oppression and surely not considered a friend of public
- Power of arrest is one of the lucrative sources of police corruption.
- Attitude to arrest first and then proceed with the rest is despicable
- Police officers make arrest as they believe that they possess the power to do so
- The existence of the power to arrest is one thing, the justification for the exercise of it is quite another
- 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

3. ATTITUDE OF MAGISTRATES WHILE ORDERING DETENTION

- Magistrate authorise detention casually and mechanically
- Do not record evaluate the report filed by the Police Officer
- Do no record their own observations
- Detention is authorised in a routine, casual and cavalier manner

CONCLUSION BY SC

To sum up, the Hon'ble Supreme Court came to the following conclusions...

- Cases u/s 498A are largely false because rate of conviction (15%) is much lower than rate of charge-sheeting (93.6%)
- Police officers misuse the power to arrest and, hence, for every offence punishable with less than three years imprisonment, automatic arrest is not mandatory
- Magistrates should be more careful while ordering detention and should not function mechanically

...which led to it to pass the said judgment

RELEVANT PROVISIONS OF LAW

- **Section 4, Dowry Prohibition Act, 1961**

Penalty for demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.] tc "Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

- **Section 498A, The Indian Penal Code, 1860**

Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

•Section 41(1)(b), Code of Criminal Procedure, 1973

Section 41 of the CrPC has been amended twice recently-

- ❑ Act 5 of 2009: Sub-sections (1) and (2) amended
- ❑ Act 41 Of 2010: Proviso to sub-section (1) inserted

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) x x x x x x

(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) x x x x x

(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.

BACKGROUND OF THE 2008 AMENDMENT BILL

- Bill was proposed in 2006
- As per the third report of the National police Commission, 60% of the arrest carried out by police are unnecessary and unjustified
- 2007: Out of 68 lakh, 40 lakh arrests were “unnecessary”
- Unnecessary arrests contributed to 43.2% increase in the jail expenditure
- Joginder Kumar V UOI [(1994) 4 SCC 260]: Unjustified arrest of a person violates his right to liberty as mandated by Article 21 of the Indian Constitution; leads to serious ignominy and fatal degradation of social reputation

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- Malimath Committee Report, March 2003: “Reforms of Criminal Justice System”: suggested that non-bailable nature of 498A, IPC be made mandatory for police to arrest the accused; 98% of such cases are false, as per Govt. records; hence, offence should be made bailable
- State HRC’s and NHRC: Commented on the atrocities committed inside lock-ups and the misuse of powers of arrest in by police in connivance with lawyers

Keeping the above mentioned points in mind, the 154th report of the Law Commission of India, drafted the CrPC Amendment Bill of 2008

OPPOSITION TO THE BILL

- Vociferously opposed by the legal fraternity on the ground that amendment to S. 41 was unwarranted and uncalled for
- Diluted the powers of the police to arrest to a great extent
- Was expected to seriously hamper the law and order situation
- Since guidelines by the SC and the NHRC were already in place, what needed to be done was implement them, rather than putting fetters on the power of the police

AMENDMENTS OF 2009 and 2010: PURPOSE?

- Were the codification of the Supreme Court's orders on arrest and the procedures to follow upon arrests
- Stopped the police from making arbitrary arrests
- Laid down the procedure to be followed by PO while making any arrest
- Fixed responsibility on PO to record reasons in writing
- Stressed on the importance of investigation prior to making an arrest
- "Notice of Appearance" u/s 41A was added in line with the right to life and liberty of Indian citizens; to bring down the number of arrests
- To make the system of administration of law more transparent

AMENDMENT TO CrPC AND ARNESH KUMAR JUDGMENT: A STEP AHEAD?

In addition to reinstating the 2009 Amendment, the SC has gone a step ahead and laid down clear guidelines regarding the conduct of the police while making/not making an arrest in each and every offence punishable with imprisonment up to seven years, with or without fine.

Additions:

- Investigation, mentioned u/s 41(1)(b)(ii)(b) has to be conducted within two weeks and the report has to be furnished to the Magistrate [Note: No clarity on HOW the said investigation is to be carried out]
- This period may be extended by SP; reasons to be recorded in writing
- Check-list wrt ingredients of Sec. 41(1)(b) has to be forwarded to the Magistrate for further detention
- Notice of Appearance in terms of 41A: to be served within two weeks from the date on institution of case
- Liability on Police Officers and Magistrate in case they fail to comply with the given guidelines

COMMENTS:

- *Whether the judgment, which is mostly based on statistics presented by NCRB, is founded on weak grounds:*
 - Reasons recorded by the Hon'ble Bench are not convincing; arbitrary conclusion from the statistics regarding frivolous cases
 - No effort has been/in being made to find out other causes that may be behind low rate of conviction
 - Report of NCRB not in consonance with other reports based on surveys conducted by independent bodies
 - The aim of inclusion of 498A was to protect oppressed women from harassment, and did not aim to give unchecked power to women to exploit this provision; the judgment, however, is directed towards those women who exploit this and such related provisions, thereby making this section even more inaccessible to the class of women that actually needs it

- *Whether data related to crime against women can be applied to offences of all categories which are punishable with imprisonment for a term which may be less than seven years, or which may extend to seven years; with or without fine:*
 - No justification given for making this judgment applicable for all cases falling into the same category
 - Straight-jacket formula of following the given guidelines in all such cases cannot, and should not, be made mandatory
 - No mention of the 2009 Amendment and whether the said judgment is in furtherance of the same or exists independently

- *Whether the time limit of two weeks given to the Police Officers will lead to a drop in the number of cases filed with regard to Section 498-A by women, fearing threat to life, etc. since no clear guidelines have been laid down as to how the investigation should be carried out:*
 - No clarity on HOW the investigation should be conducted in these two weeks prescribed; procedure to be followed should be made clear
 - Should include provisions ensuring safety of women, like relocation to a local Women's Cell, in case their life/liberty is at stake
 - Should lay down other measures to be taken regarding the safety and security of the victim while the investigation is being carried on with, respect to offences not relating to crime against women

THANK YOU

