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# **“ARNESH KUMAR V. STATE OF BIHAR, (2014) 8 SCC 273”**

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## **ARNESH KUMAR V. STATE OF BIHAR, (2014) 8 SCC 273<sup>1</sup>**

**Citation:** (2014) 8 SCC 273

**Petitioner:** Arnesh Kumar **Respondent No 1:** State of Bihar **Respondent No 2:** Sweta Kiran

**Court:** High Court of Patna, Supreme Court of India

**Bench:** Justice Chandramauli Kr. Prasad and Justice Pinaki Chandra Ghose **Case Type:**

Application for Anticipatory Bail HC, Special Leave Petition SCC **Case Decided on:** 2nd July 2014

### **INTRODUCTION:**

**“IT IS USED AS A WEAPON AND NOT SHIELD BY THE WIVES”<sup>2</sup>**

A significant case in Indian criminal law, particularly regarding the use of the Criminal Procedure Code, 1973, is Arnesh Kumar v. State of Bihar. This case raises many issues relating to dowry, rights of accused individuals, pre- and post-arrest, granting of anticipatory bail, and Section 498 A of the Indian Penal Code<sup>3</sup>, which punishes cruelty committed against married women in their marital home within seven years of marriage. The decision in this instance provided specific instructions on how to carry out an arrest. Because of how this case enabled a judge to create a new statute that ultimately amended an old one.

The lawsuit is significant in two ways: first, it addresses the overuse of Section 498-A of the Indian Penal Code, 1860 (IPC), and second, it addresses the need for more oversight and accountability on the officer's ability to make arrests without the need for a warrant.

<sup>1</sup> (Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273)

<sup>2</sup> (Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273)

<sup>3</sup> INDIAN PENAL CODE, 1860, SECTION 498A

### **FACTS:**

- Arnesh Kumar and Sweta Kiran were legally wed on January 7, 2007.
- In court, Sweta Kiran alleged that her mother-in-law and father-in-law had wanted Rs. 8 lakhs, a Maruti car, an air conditioner, a television, etc. Once Arnesh Kumar learned of this, he allegedly stood by his mother and exposed him to the wedding of a different lady. She further claimed that the non-fulfillment of the dowry demand was the reason she was evicted from her marital home.
- These accusations were refuted by Arnesh Kumar, who also submitted a request for anticipatory bail, which was initially denied by the learned Sessions Judge and afterwards upheld by the High Court.

As a result, Arnesh Kumar filed a **Special Leave Petition** in the Supreme Court.

### **ISSUES:**

1. Accused person's rights pre and post arrest: granting of anticipatory bail
2. Remedies against misuse of section 498 A of IPC<sup>4</sup>

### **RULES:**

1. In accordance with Section 498A of the Indian Criminal Code of 1860 (hence referred to as the IPC), the spouse or a member of his family who treats a lady/woman cruelly can be punished.
2. Direct or indirect dowry demand is punishable under Section 4 of the Dowry Prohibition Act of 1961<sup>5</sup>.
3. For Non-Bailable offences, Section 438 of the Criminal Procedure Code provides for an anticipatory bail application.
4. According to Article 22(2) of the Indian Constitution, no one may be held for more than one day without the magistrate's consent. The accused individual must appear before the magistrate as soon as possible after being detained, excepting journey time.
5. The conditions under which officers may make an arrest without a warrant are outlined in Section 41 of the Code of Criminal Procedure, 1973 (hence known as the CrPC).

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<sup>4</sup> INDIAN PENAL CODE, 1860 SECTION 498A

<sup>5</sup> DOWRY PROHIBITION ACT OF 1961, SECTION 4

**PETITIONER'S ARGUMENT:**

According to petitioner, she was ejected from the marital residence since the dowry requirements weren't met.

**DEFENDANT'S ARGUMENT:**

The inappropriate use of Section 498A of the IPC by women to torture their husbands.

**HIGHLIGHTS OF JUDGEMENT****HIGH COURT'S JUDGEMENT**

The applicant i.e., the wife Arnesh Kumar alleged him under section 498A and Section 4 of Dowry Prohibition Act, where both counsels submitted and the High Court of Patna came to conclusion that according to the allegation of demand of dowry and physical tortures alleged in the complaint, Justice Shailesh Kumar Sinha stated that "I am not inclined to allow anticipatory bail to the petitioner in this Complaint case pending under Sub Judicial Magistrate, Patna. Accordingly, the prayer for Anticipatory bail of the petitioner is rejected."<sup>6</sup>

**SUPREME COURT'S JUDGEMENT**

Justice Chandramauli Kr. Prasad continued and took forward the issue from where Justice Kapoor had finished and highlighted numerous statistics and data about this legal provision and made the statement:

"The fact that Section 498A is the cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than a shield by the wives."

Where further it was ordered that police cannot arrest any person under this provision before making an investigation about the matter of the case, also ordered the State Governments to restrain every police officer from making an automatic arrest just on the ground of allegations made by the wife.

The Supreme Court stated that the women have occasionally misused the Section 498A of the INDIAN PENAL CODE for her advantage and granted Arnesh Kumar interim bail under specific terms and restrictions. As a result, the apex court provides the officers with obligatory instructions about the procedures for making an arrest.

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<sup>6</sup> ARNESH KUMAR v STATE OF BIHAR, (2013) SCC OnLine PAT 770

The Court correctly established some standards to be followed for arrest in this judgement after analysing the statutes pertaining to safeguards opposed arrest, which also are referred to as the Arnesh Kumar Guidelines.

- Supreme Court ordered that no police personnel may make a detention in a case of 498A without first verifying that the requirements outlined in Section 41 of the CrPC had been met.
- Police must properly complete a list that includes all of the subclauses required by section 41(1)(b)(ii)<sup>7</sup>, provide all appropriate justifications for the arrest, and present the completed checklist and the accused to the Judge.
- The police will be allowed permission to continue the custody of the suspect if the magistrate considers this report to be sufficient.
- Several of these directives have already been issued, defining the deadlines for the creation of necessary papers, for instance, summons of attendance pursuant to Section 41 of the Criminal Procedure Code<sup>8</sup> must be served on the accused within two weeks of the case's initiation, and the decision neither to detain a suspect must be communicated to the Magistrate within 2 weeks of the custody.
- The default of police officers to comply will result in the initiation of contempt of court proceedings, and the failure of the magistrate to comply will result in administrative actions.
- Hence, while hearing Anticipatory Bail Petitions in situations involving section 498A, these rules should be carefully considered.

### **ANALYSIS**

The main reason for the introduction of Section 498A was to stop the abuse of women by a woman's spouse and their family members. The spouse and his family can be tormented very quickly under this clause, which is contrary to its intended purpose because the crime is cognizable and not subject to bail. The frequency of filing chargesheets for this conduct and the percentage of conviction are significantly different, indicating that most instances result in acquittals. The Supreme Court made a statement against the abuse of anti-dowry laws in *Preeti Gupta & Anr v. State of Jharkhand*<sup>9</sup>.

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<sup>7</sup> CODE OF CRIMINAL PROCEDURE, 1974 SECTION 41(1)(b)(ii)

<sup>8</sup> CODE OF CRIMINAL PROCEDURE, 1974 SECTION 41

<sup>9</sup> (*Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667)

Yet, it also started becoming common act for policemen to unilaterally initiate arrests depending on unverified accusations. Section 41 of the CrPC<sup>10</sup> was recommended for revision by the 177th Law Commission Report<sup>11</sup> so that it would be considered the implications-decisions in the case of D.K. Basu, Maneka Gandhi, and Joginder Kumar, the main reason of this recommendation was the increase in arrests.

Similar recommendations were made in the 152<sup>nd</sup> and 154<sup>th</sup> Reports<sup>12</sup>. These reports and judgements are all centred around the rights of prisoners and the methods of detention and arrest that uphold the Article 21 of the Indian Constitution<sup>13</sup> i.e., fundamental rights to life and freedom of conscience.

India's arrest laws are relatively similarly to those of a select very few nations. For instance, Section 41 of the Criminal Procedure Code<sup>14</sup> limits the ability to make an arrest without a warrant to situations including "cognizable offence," "accusation," "relevant evidence," and "sufficient evidence," among other things. Similar to this, 'Section 24 of the Police and Criminal Evidence Act of the United Kingdom states that police may make an arrest without a warrant if they have a good reason to believe the suspect was responsible for the offence or was at least suspected of being responsible.' According to the Fourth Amendment, an arrest in the USA must be supported by probable cause, which means that the arresting officer must have a good faith belief that the arrest is necessary in light of the particulars of the case. Manila, the amended laws of Criminal Procedure, 2000, which are in effect in the Philippines, states that a police officer may make an arrest without a warrant if the crime was committed in front of the investigating officer or if the officer has a reasonable suspicion that the person has committed a crime or escaped from a penal institution. A comparison of "Article 21" with the other legal systems is necessary because detention restricts a people's individual freedom. It states that even a people's individual freedom cannot be taken away without following a legal process. This idea of "procedure prescribed by law" is derived from the idea of "proper process of law" in the United States.

In this regard, Judge Krishna Iyer noted in the case of Maneka Gandhi that legal procedure does

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<sup>10</sup> CODE OF CRIMINAL PROCEDURE, 1974 SECTION 41

<sup>11</sup> B.P. JEEVAN REDDY, (177th LAW COMMISSION REPORT ON LAW RELATING TO ARREST, 2001)

<sup>12</sup> B.P. JEEVAN REDDY, (177th LAW COMMISSION REPORT ON LAW RELATING TO ARREST, 2001)

<sup>13</sup> CONSTITUTION OF INDIA, 1950 ARTICLE 21

<sup>14</sup> CODE OF CRIMINAL PROCEDURE, 1974 SECTION 41

not always mean formal procedure but rather reasonable law and fair procedure. As a result, it supports the notion of "reasonableness" that is associated with the requirements of arrest in the CrPC as well as in other laws in different states.<sup>15</sup>

### **CONCLUSION**

In order to broaden the application of the precedent, the Council posited that the aforementioned instructions can be used in situations when the penalty for the offence is seven years or less of imprisonment, with or without a fine. It acknowledged the connection between arresting authority and police corruption. In several decisions, the judiciary, police commissions, and law commissions emphasised the importance of preserving a delicate balancing act among society order and individual freedom. Now, the necessity for prudence while using draconian powers of arrest is being put into practise.

But time and again there has been mockery of law in different cases, for instance the cases of domestic violence has used in different ways where there have been cases when the woman is actually a victim but also there are cases where allegations are made just to get monetary or other benefits.

It is also evident that not all the cases are same, so the guidelines given by the Apex court in this case have been a saviour but helplessness at the same time. In the cases where the domestic violence or cruelty has happened u/s 498A CrPC<sup>16</sup>, till the time police does the investigation of the matter, many times happen that either the woman is threatened to withdraw the complaint. There should be amendment in provisions where the arrest should be made of the accused but keeping in mind few requisites such as if there are wound or any physical harassment on the complainant and even in cases where police thinks that the arrest is necessary as per complainant's statement and other circumstances supports the statement of complainant then the arrest should be made for a certain period and investigation should be conducted in that period.

Which brings the next point that the offence should be made bailable as it is the matter which depends on case-to-case basis and is very sensitive.

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<sup>15</sup> MANEKA GANDHI v UOI, AIR 1978 SC 597; (1978) 1 SCC 248

<sup>16</sup> CODE OF CRIMINAL PROCEDURE, 1974 SECTION 498A

**“It is better than ten guilty persons escape than that one innocent suffer”:** William Blackstone

Hence the police officer should be given power to make instant decision by recording their reason in writing and further it should be submitted to the magistrate which will prevent the police officer to misuse their power.

It will ensure arbitrary arrest and the follow up by both police and magistrate with written reason ensures there is accountability and transparency.

