

CASE COMMENT ON “ARNESH KUMAR V. STATE OF BIHAR, (2014) 8 SCC 469

BENCH: JUSTICE C.K. PRASAD & JUSTICE P.C. GHOSE

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ABSTRACT & INTRODUCTION

One of the historic judgements of the Supreme Court that is “Arnesh Kumar v. State of Bihar”⁷⁴² provides principles that while making an arrest the police have to work in accordance with these principles for the offences punishable by imprisonment less than or equal to 7 years and which may be with or without fine. The judgement provides that the arrest should be made only in exceptional cases and it should not be general in offences which are punishable for imprisonment less than or equal to 7 years which may be with or without a fine. In the 1980s there was a huge increase in cases related to dowry and violence against married women. The Indian Penal Code in section 498⁷⁴³ prescribes punishment for 3 years and fine and the offence was cognizable and non-bailable which provided powers to police officers under section 41⁷⁴⁴ of CrPc. Initially, it was having a positive impact after its execution which reduced the number of dowry deaths but after the passing of time, it was misused by the married women against married men. Consequently, the not-guilty husband and his family used to face groundless charges under ‘section 498’ of IPC. With the passing of time court also understood by thorough investigation and by the interrogation of the parties that the number of these illusory cases have increased and so the cases which are undecided have increased. In judgement for Preeti Kumar & Anr v. State of Jharkhand ⁷⁴⁵The Supreme Court ordered to conduct a detailed enquiry before making an arrest under the scope of the particular provision, but none of them was applied and followed in real life.

GRASP - EDUCATE - EVOLVE

⁷⁴² “Arnesh Kumar v. State of Bihar (2014) 8 SCC 469.”

⁷⁴³ Section 498-A, Indian Penal Code, 1860.

⁷⁴⁴ Section 41, Code of Criminal Procedure, 1973.

⁷⁴⁵ “Preeti Kumar & Anr v. State of Jharkhand (2010) 7 SCC 677.”

ISSUES:

1-What if the woman who is married abuses the provision for her personal gain and personal grudges against her spouse and his family members?

2- How should the arrest procedure be taken into consideration if an individual has been charged with a cognizable and non-bailable offence?

3- What norms should the police follow while making an arrest in these particular circumstances?

ANALYSIS:

The Supreme Court in this case gave a commendable decision and attempted to look into the loopholes which resulted in arbitrary power of arrest in the hands of police the only reason being that the offence was cognizable and nonbailable. The court also discussed the societal stigma which gets attached to a person when he or his family members get arrested. In the cases of the cognizable and non-bailable offences, the court even tried to evolve the long-standing belief that police had complete discretion in using their power of arrest by making it necessary for the police to reasonably justify the arrest made by them. In the present days, the courts have discussed and debated over the power of arrest, however, it must be interpreted by considering the different facts of various cases as it is practically impossible to construe whether the arrest should be made or not. But with this judgement, the court did try to assist the police authority by providing them with the guidelines which must be met while using their power to arrest in cases where the "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. The court mentioned that police official should interpret certain questions in light of the data brought before them. Are issues such as detention truly needed? Will it serve a purpose? Which objective will it pursue? Authority should reach

an agreement about whether or not to conduct. Beyond that, the police officials must be satisfied that the detention is needed for any or all of the reasons stated in sub-clauses of 'Section 41'⁷⁴⁶, which declares. in addition, why this ruling, "try to emphasise the need for investigating to consume the truthfulness in an accusation that is being established, particularly when the married woman is more inclined to exploit laws, such as 498A⁷⁴⁷ since they have an inner dispute or desire to take revenge on their spouse and family. The investigation that is taking place has to be verified with the basis of the claim that is being presented in order to come to a decision about whether the accusation has any significant substance in it, or residence or not. The arrested person's constitutional rights were also upheld by the Apex Court. Here the noteworthy fact is that the court took a strong stance against certain procedural irregularities which the police failed to follow and also looked into the instances where the magistrates lacked in exercising their authority with appropriate caution and diligence following an arrest. Our constitution guarantees the right to be presented before the magistrate to the arrested person under Article 22⁷⁴⁸, which must be adhered and for further detention beyond 24 hours, it must be at the discretion of the magistrate. In such cases, magistrates possess this exclusive power which may jeopardise an individual's liberty and freedom. It should hence be exercised reasonably after looking into all the aspects, facts, dimension, and reasoning with the magistrate's judicious mind which was provided to him in the checklist by the police. Furthermore, the magistrate should also reasonably determine whether detention for more than 24 hours is required or not for the offence committed by him rather than using his discretion in an irrational and arbitrary way. Through this rationale, the court ensured that any additional detention beyond twenty-four hours would not be influenced by the police

⁷⁴⁶ Section 41, Code of Criminal Procedure, 1973.

⁷⁴⁷ Section 498-A, Indian Penal Code, 1860.

⁷⁴⁸ Article 22 (2), Constitution of India, 1950.

authority's views on the matter. here, what the police think of further detention won't affect the magistrate's decision. For instance, even if the police dispose of all relevant facts, materials, and justifications the approval of further detention after 24 hours will be given only if he is satisfied with the evidence in front of him in order to reach a reasonable conclusion otherwise, the reasons and materials will have no bearing on the matter.

By Highlighting the significance section 41A⁷⁴⁹ which puts an obligation in the form of notice that one must appear before the police within 2 weeks of the institution of the case, the court tried to set a precedent with this judgement, avoiding arrest in the majority of cases if one is not required. The court's reasoning for considering this provision was based on the previously stated fact that, in light of the times, arrests should be made on an exception basis rather than as a general rule in order to protect fundamental human rights. Through this verdict, even though the court elaborated the departmental proceedings and linked contempt of court charges against police officers and magistrates for failing to act upon the aforementioned guidelines, the implementation of these guidelines is a big task and in the year 2023 it is still far from implementing it properly in our country, in spite of cases such as in Re v. Shri Chandan Kumar, when a law enforcement official was jailed for noncompliance with protocols.

CONCLUSION

None of the realities that could be taken away from the ruling is that certain women's exploitation of the legal system is going to prevent other women in blank need of fairness from getting it as quickly as feasible. But the very serious terminology used in the Supreme Court judgement, as well as the warnings to the police to refrain from arresting until the permission of the magistrate is taken, are going to render the situation for women very difficult.

In the meantime. Making this clause compoundable with the consent of the court is one of the alternative alternatives for guaranteeing that it is neither overused nor becomes a solar clause. As a result of ruling one thing that can be established into 498A to render it more efficient is the fact that after the FIR are has been filed against the spouse, no immediate arrest should be conducted rather, the parties should be given a while during which no serious measure should be used by the police towards the spouse and his family. In the interim, the issue can be referred to the family welfare committee. This gives both the parties and appropriate opportunity to come to a peaceful solution that can Benefit both of them mutually. They can end up continuing their relationship without harming their marriage. But the court must first verify that no additional penal offences has been linked to section 498A of the IPC.

REFERENCES:

1. Case of Arnesh Kumar vs State of Bihar (2014) 8 SCC 469.
2. THE CODE OF CRIMINAL PROCEDURE, 1973
3. CONSTITUTION OF INDIA, 1950
4. INDIAN PENAL CODE, 1860.

⁷⁴⁹ Section 41A, Code of Criminal Procedure, 1973.