Arnesh Kumar vs State of Bihar & Anr.

Guidelines to Prevent Arbitrary Arrest and Ensure Compliance with Procedural Safeguards in Offences Punishable Up to Seven Years.

Date of Order: July 2, 2014
Case Law No: GIB-SC-2014-05
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

This was a non-tax, criminal matter arising from a matrimonial dispute. The case reached the Court against the backdrop of rampant misuse of Section 498-A IPC (a cognizable, non-bailable offence carrying up to three years' imprisonment), which had acquired "a dubious place of pride" as a weapon to harass husbands and their relatives. NCRB data cited showed nearly 1.98 lakh persons arrested under the provision in 2012 — a quarter of them women (mothers and sisters of husbands) — with a 93.6% charge-sheeting rate but only 15% conviction, the lowest across all heads. The Court took up the matter to curb the "arrest first, proceed with the rest" attitude of the police.

Facts

The appellant, husband of respondent no. 2 (married on 01.07.2007), apprehended arrest in a case under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. The wife alleged that a demand for Rs. 8 lakhs, a Maruti car, an air-conditioner, a television set and other items was made by her in-laws; that when informed, the appellant supported his mother and threatened to marry another woman; and that she was driven out of the matrimonial home for non-fulfilment of the dowry demand. The appellant denied the allegations and sought anticipatory bail, which was rejected first by the Sessions Judge and then by the High Court, bringing him to the Supreme Court by way of Special Leave Petition.

Court's Observations (verbatim)

"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."

"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... No arrest can be made in a routine manner on a

mere allegation of commission of an offence made against a person."

"In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve?"

"Before a Magistrate authorises detention under Section 167, Cr.PC, 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 is 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."

"The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer..."

Directions Issued (binding safeguards)

The Court directed, inter alia, that police shall not automatically arrest in Section 498-A cases but satisfy themselves of necessity under Section 41 Cr.PC parameters; officers be given a check-list under Section 41(1)(b)(ii) and forward it with reasons while producing the accused; the Magistrate authorise detention only after recording satisfaction on that report; notice under Section 41A be served within two weeks; and that failure to comply would invite departmental action and contempt proceedings. These directions were extended to **all offences punishable with imprisonment up to seven years**, not just Section 498-A.

Final Verdict

The appeal was allowed. The Court made absolute its earlier order dated 31.10.2013 granting the appellant provisional bail, subject to the directions framed to prevent unnecessary arrests and mechanical authorisation of detention.

Cases / Authorities Referred by the Court

The judgment did not turn on prior case-law citations; the Court relied on statutory provisions and official reports, namely:

- Section 498-A, Indian Penal Code, 1860 & Section 4, Dowry Prohibition Act, 1961
- Sections 41, 41A, 57 & 167, Code of Criminal Procedure, 1973; Article 22(2), Constitution of India
- 177th Report of the Law Commission of India (2001); 152nd & 154th Reports (1994)
- "Crime in India 2012 Statistics," National Crime Records Bureau, Ministry of Home Affairs

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