



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2015

CORAM

THE HON'BLE MR.JUSTICE C.T.SELVAM

CRL.O.P.(MD)No.23200, 23336, 23383 and 5950 of 2014

and

M.P(MD)No.1 of 2014(In all Crl.O.Ps)

and

Crl.O.P(MD)No.11 of 2015 and M.P(MD)No.1 of 2015

1. SATHISH KUMAR @ SARAVANAN

2. SINDHUJA

3. MURUGAN ... PETITIONERS IN CRL OP(MD). 23200/ 2014

1. V.SRIDHAR

2. T.THANGAVEL

3. M.BALAN @ BALAKRISHNAN ... PETITIONERS IN CRL OP(MD). 23336/ 2014

1. DURAIPANDIAN

2. VINAYAGAM

3. VAIYADURAI

4. JEYARAJ

5. NAGARAJAN ... PETITIONERS IN CRL OP(MD). 23383/ 2014

S. UMAEESWARAN PILLAI ... PETITIONER IN CRL OP(MD). 5950/ 2014

1. DURAI PANDI

2. PRABA @ PRABAWATHY ... PETITIONERS IN CRL OP(MD). 11/ 2015

- VS. -

1. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH, RAMANATHAPURAM,
RAMANATHAPURAM DISTRICT. (CRIME NO.35 OF 2014)

2. PADMANABAN ... RESPONDENTS IN CRL OP(MD). 23200/ 2014

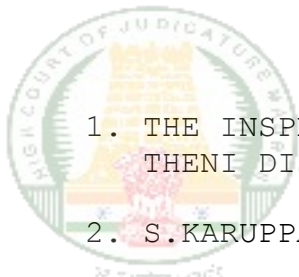
1. THE INSPECTOR OF POLICE,
OTTANCHATHIRAM POLICE STATION,
OTTANCHATHIRAM, DINDIGUL DISTRICT.

2. MR.K.KARUPPASAMY ... RESPONDENTS IN CRL OP(MD). 23336/ 2014

1. THE INSPECTOR OF POLICE,
MANAMADURAI POLICE STATION, SIVAGANGAI DISTRICT.
CRIME NO.593 OF 2014

2. KARTHIYARAJA, ... RESPONDENTS IN CRL OP(MD). 23383/ 2014

1. THE INSEPCTOR OF POLICE,
ARUMANAI POLICE STATION, KANYAKUMARI DISTRICT.
CRIME NO.67/2014



1. THE INSPECTOR OF POLICE, DISTRICT CRIME RBANCH,
THENI DISTRICT. CR. NO.38/2014.

2. S.KARUPPASAMY

... RESPONDENTS IN CRL OP(MD). 11/ 2015

Criminal Original Petition filed under section 482 of the Code of Criminal Procedure,

Prayer in CRL OP(MD). 23200/ 2014 :

To call for the records and quash the FIR in Crime No.35 of 2014 onthe file of the 1st respondent

Prayer in CRL OP(MD). 23336/ 2014 :

To pass an order to call for the records pertaining to the FIR in Crime No.355 of 2014 dated 03.11.2014 on the file of the REspondent No.1 offences U/ss.294b, 447, 448 and 506i of IPC and quash the same as illegal

Prayer in CRL OP(MD). 23383/ 2014 :

To call for records relating to the FIR in Crime No.593/2014 on the file of the 1st Respondent and quash the same

Prayer in CRL OP(MD). 5950/ 2014 :

To call for the records relating to the FIR in Crime No.67/2014 on the file of the 1st Respondent the Inspector of Police, Arumanai Police Station, Kanyakumari Dt and to quash the same.

Prayer in CRL OP(MD). 11/ 2015 :

To call for the records pertaining to the case in Crime No.38/2014 on the file of the Inspector of Police, District Crime Branch, Theni Dt and quash the same.

FOR PETITIONER IN

CRL.OP(MD)NO.23200/14	: MR.R.JEGADEESWARAN
CRL.OP(MD)NO.23336/14	: MR.T.LAJAPATHI ROY
CRL.OP(MD)NO.23383/14	: MR.M.SUBASH BABU
CRL.OP(MD)NO.5950/14	: MR.M.SURI
CRL.OP(MD)NO.11/15	: MR.R.ANAND

FOR R-1

: MR.K.ANBARASAN

(IN ALL CRL.OP'S)

GOVERNMENT ADVOCATE(CRL. SIDE)

COMMON ORDER

Learned counsel for the petitioner in all the Criminal Original Petitions seek permission of this Court to withdraw their petitions. They have also made endorsements to that effect.

2.In view of the same, these Criminal Original Petitions are dismissed as withdrawn. However, the respondents police are to take note of the position that arrest of accused is not to be resorted to as a matter of course. Again in the event of accused persons being produced before them, the jurisdictional Magistrate are required not to effect remand in a mechanical manner. The clear dictum of the Honourable Apex Court in *Arnesh Kumar vs. State of Bihar and Another* reported in (2014) 3



MLJ (Cr1) (SC), is to be followed both by the respondents police as also the concerned jurisdictional Magistrate. For ready reference, the judgment referred to is reproduced hereunder:

1. The petitioner apprehends his arrest in a case under *Section 498-A* of the Indian Penal Code, 1860 (herein after 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.

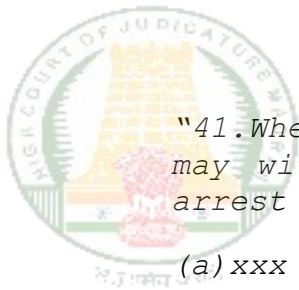
2. Petitioner happens to be the husband of respondent no. 2 Sweta Kiran. The marriage between them was solemnized on 1st July, 2007. His attempt to secure anticipatory bail has failed and hence he has knocked the door of this Court by way of this Special Leave Petition.

3. Leave granted.

4. In sum and substance, allegation levelled by the wife against the appellant is that demand of air-Rupees eight lacs, a maruti car, an 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.

5. 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.

6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. *Section 498-A* of the 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* 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, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under *Section 498-A* of the 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 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 *Indian Penal Code*. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting



"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) xxx xxx

(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.

xxx xxx"

9. From a plain reading of the aforesaid provision, it is evident that a person accused of 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 its satisfaction that such person had committed the offence punishable as aforesaid. 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. 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. Law further requires the police officers to record the reasons in writing for not making the arrest. 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](#) of Cr.PC.

10. An accused arrested without warrant by the police has the constitutional right under [Article 22\(2\)](#) of the Constitution of India and [Section 57](#), Cr.PC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. 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](#) Cr.PC. 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. 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. 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 condition precedent for arrest under [Section 41](#) Cr.PC has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorizing 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, 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 its satisfaction in writing that the Magistrate will authorise the detention of the accused. 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.

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

"41A. 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.

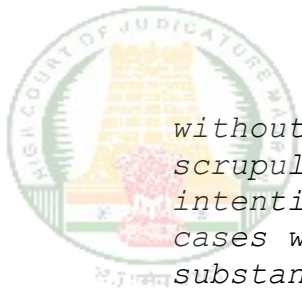
(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(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."

12. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under **Section 41(1)**, Cr.PC, 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 office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under **Section 41** Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

13. We are of the opinion that if the provisions of **Section 41**, Cr.PC 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* Cr.PC for effecting arrest be discouraged and discontinued.

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

•(1)

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

•(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;

•(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 Cr.PC 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;



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.

15. We hasten to add that the directions aforesaid shall not only apply to the cases under *Section 498-A* of the I.P.C. 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.

16. 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.

17. By order dated 31st of October, 2013, this Court had granted provisional bail to the appellant on certain conditions. We make this order absolute.

18. In the result, we allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid."

Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.side)

/True copy/

Sub Assistant Registrar

To

1. THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH, RAMANATHAPURAM, RAMANATHAPURAM DISTRICT.
2. THE INSPECTOR OF POLICE, OTTANCHATHIRAM POLICE STATION, OTTANCHATHIRAM, DINDIGUL DISTRICT.
3. THE INSPECTOR OF POLICE, MANAMADURAI POLICE STATION, SIVAGANGAI DISTRICT.
4. THE INSEPCTOR OF POLICE, ARUMANAI POLICE STATION, KANYAKUMARI DISTRICT.
5. THE INSPECTOR OF POLICE, DISTRICT CRIME RBANCH, THENI DISTRICT.



6. THE CHIEF SECRETARY, STATE OF TAMIL NADU,
FORT ST.GEORGE, CHENNAI-9.

7. THE CHIEF SECRETARY, UNION TERRITORY, PUDUCHERRY.

8. THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI-4.

9. THE REGISTRAR GENERAL, MADRAS HIGH COURT, MADRAS-600 104.

10. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO MR.T.LAJAPATHI ROY, ADVOCATE IN SR : 1054

+1CC TO MR.M.SUBASH BABU, ADVOCATE IN SR : 1122

Pm

SR : 04.02.2015 : 10p/13c

CRL.O.P.(MD)No.23200 of 2014(batch)
08.01.2015