

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO.503 OF 2024

Vishwajeet Vinayakrao Jadhav

...Petitioner

V/s.

Manisha Jadhav and Ors.

...Respondents

Mr. Sangramsing R. Bhonsle with Mr. Siddharth A. Mehta, Mr. Mr. Pushkaraj Bhonsle, Nrupal Dingankar, Ms Sneha Bhonsle, Ms. Harshada Shrikhande, Naman Sherstra, Sanmitra Pol, Mr. Vaibhav Kaushih and Ms Bhargavi Mundhe for the Petitioner.

Mr. Shrikrishna Ganbawale for Respondent No.1.

Mr. Harshad Bhadbhade for Respondent Nos.2 and 3.

CORAM: SANDEEP V. MARNE, J.

Dated: 26 March 2025.

P.C.:

1) The Contempt Petition is filed alleging breach of directions issued by the Hon'ble Apex Court in its judgment in ***Arnesh Kumar Vs. State of Bihar***¹. Ordinarily, actions contrary to the principles enunciated in a Court's judgment delivered in an unrelated case would not constitute contempt of that Court. However contempt jurisdiction of this Court is invoked on account of direction of the Hon'ble Apex Court in para

MEGHA
SHREEDHAR
PARAB

Digitally signed by
MEGHA
SHREEDHAR PARAB
Date: 2025.03.28
18:12:00 +0530

¹ (2014) 8 SCC 273

11.7 of the judgment in ***Arnesh Kumar*** that failure to comply with its directions shall make police officers liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

2) It Petitioner's case that the FIR was lodged against the accused on 26 August 2023 and that under para 11.5 of the directions issued by the Hon'ble Apex Court in ***Arnesh Kumar***, it was mandatory for the Investigating Officer to forward to the Magistrate the decision of not arresting the accused within two weeks of the date of lodging of FIR. By relying on direction No.11.6, it is alleged that notice of appearance in terms of Section 41A of the Code of Criminal Procedure, 1973 (**the Code**) ought to have been served on the accused within a period of two weeks from the date of institution of the case. It is submitted that though the FIR was lodged and the case was instituted on 26 August 2023, the notice of appearance under Section 41A of the Code was served on the accused on 27 March 2024. This is how breach of directions in judgment in ***Arnesh Kumar*** is alleged in the present contempt petition.

3) This Court issued preliminary notices to the Respondents by order dated 12 September 2024. Accordingly, all the three Respondents had appeared before this Court and have filed their respective affidavits-in-reply.

4) I have heard Mr. Bhonsle, the learned counsel appearing for the Petitioner. Mr. Ganbavle, the learned counsel

appearing for Respondent No.1 and Mr. Bhadbhade, the learned counsel appearing for Respondent Nos.2 and 3.

5) The Hon'ble Apex Court in its judgment in ***Arnesh Kumar*** has essentially highlighted the tendency on the part of the police officers to arrest accused unnecessarily, mechanically and casually, especially in cases involving offence under Section 498A of the IPC. The Apex Court has given following directions in paragraph 11 of the judgment:

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

- 11.1 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;
- 11.2 All police officers be provided with a check list containing specified sub-clauses Under Section 41(1)(b)(ii);
- 11.3 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;
- 11.4 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;
- 11.5 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;
- 11.6 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;

11.7 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.

11.8 Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

6) Though the directions in paragraph 11 are essentially in respect of offences registered under Section 498A of the IPC, the Apex Court has clarified that said directions shall also extend to all cases where offences punishable with imprisonment for a term, which may be less than 7 years or which may extend to 7 years. Paragraph 12 of the judgment in ***Arnesh Kumar*** reads thus:-

12. We hasten to add that the directions aforesaid shall not only apply to the cases Under Section 498-A of the Indian Penal Code 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.

7) I have gone through the affidavits-in-reply filed by the Respondents. It appears that there is a family feud between the Petitioner over ownership of property and business, being a popular eatery in Pune named 'Vaishali'. This aspect is highlighted in the affidavit-in-reply filed on behalf of Respondent No.2, in which the action of issuing notice under Section 41A of the Code on 27 March 2024 is also sought to be justified. Paragraph 3 of the Affidavit reads thus:-

3 With reference to paragraph no.3 of the present petition, I deny the contents of the same. The investigating officer i.e. Respt.1 has sought the guidance of her senior police officers because in this matter accused no.1 is the mother of the victim and the offences mentioned in the case entail a sentence of less than 7 yrs of imprisonment. I told her to follow the guidelines of the Hon'ble court regarding the issue of arrest for taking appropriate legal action.

Another aspect was that the antecedents of the present matter goback to a family and especially a property dispute between the father of minor victim and the accused no.1 and an offence bearing CR.No.119/2023 u/s 376, 377, 419, 406, 420, 498a, 323, 506(2), 34 of IPC r/w 3, 25 of Arm Act was registered at Shivajinagar police station on 18/06/2023 against the father of minor victim.

That the father of accused no.1 owned and used to run the reputed restaurant named Vaishali situated at FC Road, Pune. After the death of the father of accused no.1, the father of minor victim conspired against and cheated the accused no.1 into that he forcefully at gunpoint gifted all the hereditary properties belonging to the accused no.1 including the restaurant, residential house and the farm house of the accused no.1 in his favour. So another offence at Deccan polcie station vide cr.no.103/2023 dated 29/06/2023 u/s 143, 1477, 149, 323, 387, 427, 452, 506 of IPC was registered against the father of the minor victim and his associates who had gone to take forceful possession of the said restaurant Vaishalli at FC road, even after the cr.no.119/2023 had been registered against him. So much so, when the father of the minor victim failed to take possession of the above mentioned restaurant property, he tried to threaten the employees working at the restaurant, and with reference to this a non cognizable offence no.283/20023 u/s 504, 506 of IPC was registered against the father of the minor victim at Deccan police station. Thus the chain of events leading to the registration of the said offence under consideration and the number & kind of serious offences registered against the father of the minor victim was needed to be perused. Because of that the respondent No.1 has issued notice to accused no.1 &2 u/s 41(A)(1) of CRPC on 27/03/2024. So it is not correct to say that the respondent no.1 has issued delayed notice to the accused with the deliberate intention to protect the accused persons from being arrested.

8) The Respondent Police officials thus faced a situation where the concerned FIR was lodged against the first accused in the background of offences already registered against the Petitioner for having forcefully gifted the properties of the first accused at the threat of gunpoint. There are multiple offences registered against the Petitioner in respect of his actions relating

to taking over business and property of the restaurant Vaishali. The police has acted cautiously in the matter and has accordingly issued notice under Section 41-A of the Code.

9) Thus, there are valid reasons why this Court would be disinclined to initiate any action under Contempt of Courts Act against Respondent -police officials. Firstly, Petitioner's locus to file contempt petition is highly questionable as Petitioner himself is not first informant.

10) Secondly, judgment of the Apex Court in ***Arnesh Kumar*** (supra) essentially aimed at curbing the menace in the society of securing arrests in every case involving Section 498A of the IPC, possibly after noticing the fact that said provision is often misused for ensuring unnecessary arrest and for settling scores in matrimonial disputes. The measures directed by the Hon'ble Apex Court in paragraph 11 of the judgment are essentially aimed at preventing unnecessary arrests in cases which do not involve either serious offences or particularly offences involving Section 498A of the IPC. The directions ensure that without following the procedure enumerated in paragraphs 11.1 to 11.8 of the judgment, arrest should not be resorted in cases involving offence under Section 498A of the IPC. In the present case, offence under Section 498A is admittedly not involved.

11) Thirdly, there appears to be some justification provided by the Respondents in their respective affidavits-in-reply for

issuance of Notice under Section 41A of the Code on 27 March 2024. In fact, in the affidavit-in-reply filed by Respondent No.1 an allegation is raised that after registration of the FIR on 26 August 2023, the first informant (aunt) was called upon on 27 and 29 August 2023 to bring the victim for recording her statement under Section 164 of the Code, but the first informant did not co-operate with the police in doing so.

12) Considering the overall conspectus of the case, in my view there is no intentional or deliberate breach on the part of the Respondents of directions issued by the Hon'ble Apex Court in judgment of ***Arnesh Kumar*** (supra). I am therefore, not inclined to entertain the contempt petition. The contempt petition is accordingly disposed of.

[SANDEEP V. MARNE, J.]