

● HANDLING SECTION 498A CASES: POLICING PREDICAMENTS IN WAKE OF JUDICIAL ASSERTIONS AND COMPELLING REAL TIME IMPERATIVES AND NEED FOR INCLUSIVE DELIBERATION



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Abstract

Cruelty in matrimonial milieu is criminally prohibited offence. The offence being cognizable and non-bailable vests enormous powers in the hands of police and complainant as well. Police can cause havoc under the guise of policing such cases. Judicially noticing such 'police attitude' different guidelines have been laid in different context which have become contextually contrary. The aim of the paper is to address the omnipresent power of the police to police section 498A cases which power has been judicially cut to size.

Key words

Cruelty, Matrimony, Offence, Police and Judiciary.

INTRODUCTION

Several enactments and provisions have been brought on the statute book during the last two or three decades to address the concerns of liberty, dignity and equal respect for women.¹ The insertion of Section 498A IPC is one such move and it penalizes offensive conduct of the husband and his relatives towards the married woman.² Section 498A was introduced in the year 1983 to protect married women from being subjected to cruelty by the husband or his relatives. A punishment extending to 3 years and fine has been prescribed. Section 498A is in statue book on the premise that the dowry is a social evil and the law designed to punish those who harass the wives with demand of dowry should be allowed to take its full course instead of putting its seal of approval on the private compromises. The social consciousness and the societal interest demands that such offences should be kept outside the domain of out-of-court settlement.³ This law has served its purpose but failed in its direction. The law which was supposed be protective turned to be defensive of 'hidden agenda' of ill minded. This law has been misused to such an extent that the government of India had to appoint law commissions to study the misuse of this law. The reports of such commissions have stamped the already arrived conclusions. The law as such has always been good but it has been failed by police and complainant (beneficiaries of this law). In the following sections deliberation is attempted to reconcile police powers, legal imperatives and rights of common man.

THE TEETH OF SECTION 498A

There is phenomenal increase in matrimonial disputes in recent years. The institution

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¹ Section 498A of IPC, 243rd Report, 2012, Law Commission of India, at 2

² *Ibid.*

³ *Compounding of (IPC) Offences*, 237th Report, 2011, Law Commission of India, at 16

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.⁴ Section 498A reads as under

498A. Husband or relative of husband of a woman subjecting her to cruelty:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.⁵

Explanation.- For the purpose of this section, "cruelty" means-

- (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of woman; or
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

The expression 'cruelty' has been defined in wide terms so as to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security. Harassment for dowry falls within the sweep of latter limb of the section. Creating a situation driving the woman to commit suicide is also one of the ingredients of 'cruelty'.⁶ It is, unfortunate to note that, this law far from serving the real purpose has been a tool in the hands of 'few' to harass husband and in-laws. Of late, complaints under S. 498A were being filed with an oblique motive to wreck personal vendetta.⁷ Exaggerated versions of the incidents are reflected in a large number of complaints.⁸

The harsh law, far from helping the genuine victimized women, has become a source of blackmail and harassment of husbands and others.⁹ Unprecedented numbers of persons are implicated in courts of law.¹⁰ The implication of the relatives of husband was found to be unjustified in a large number of decided cases.¹¹ It has become a tool of educated and learned¹² to bring the husband and in law to their terms.

POLICING 498A CASES AND TRIPLE PROBLEMS

Section 498A cases are essentially criminal and quasi-criminal cases. Explanation A attached to section 498A speaks of certain circumstance which assume all essential ingredients of crime. However Explanation B attached to section 498A is more of matrimonial in nature rather than criminal. It is the legislature which chose to classify such offence as criminal in response to spurt in relevant crimes.¹³ This distinction is not dubious in the sense that, the swiftness of policing in the former is not warranted in the latter. In latter cases police may have enough time to investigate and conclude the seriousness or otherwise of a situation which is not possible in the

⁴ *Arnesh Kumar v. State of Bihar & Anr* Criminal Appeal No. 1277 of 2014 Special Leave Petition (Crl.) No.9127 of 2013, decided on July 2, 2014 at 3

⁵ The offence under section 498A is cognizable, non-compoundable and non-bailable.

⁶ *Supra* note 1, at 1

⁷ *Sushil Kumar Sharma v. UOI* 2005 6 SCC 281

⁸ *Preeti Gupta v. State of Jharkhand* AIR 2010 SC 3363

⁹ See Government of India Report, 2003, *Committee on Reforms of Criminal Justice System* (hereinafter called Malimath Committee's Report)



former. Further, conciliation is best suited for latter cases which may not be advisable in the former though not totally ruled out. In spite of these academic yet practical distinctions, the policing does not cease in either of the case and resultantly all 498A cases are treated as 'police cases'.

Section 498A is cognizable and non-bailable and these features that bring in the conflicting interest of policing rights of the society at large and personal rights of individuals. Since the offences under section 498A are cognizable the police are bound statutorily to register the complaint. Though in cases of non-bailable offences also bail can be obtained, the rigorous process of convincing the police or magistrate is not ruled out in which cases generally bail is denied or routine basis. The third element is of compoundability. Though police do not have much role to play in compounding of offences, the non availability of such option make the police to stringently view Section 498A cases. On the other hand, police themselves may feel that complaints under section 498A may be the result of momentary emotions which may result in frivolous and vexatious complaint. Therefore, the informed police may seek to have 'preliminary investigation or so to say enquiry' before registering such complaint. But in the presence of imperatives of section 154 police have to register such cases and consequently proceed to spot for investigation.¹⁴ Non observance of

¹⁰ The Law Commission reported that "According to information received from the Hon'ble High Courts (during the year 2011) 340555 cases under Section 498A IPC were pending trial in various courts towards the end of 2010. There were as many as 938809 accused implicated in these cases. This does not include cases pertaining to Punjab and Haryana (statistics not available)". Crime in India 2012 Statistics published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 197762 persons all over India during the year 2012 for offence under Section 498A 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. 47951 which depict that mother 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 theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 372706 cases are pending trial of which on current estimate, nearly 317000 are likely to result in acquittal.

¹¹ 243rd Report, Law Commission of India, at 2

¹² While so, it appears that the women especially from the poor strata of the society living in rural areas rarely take resort to the provision, though they are the worst sufferers.

¹³ Section 498A has to be seen in the context of violence and impairment of women's liberty and dignity within the matrimonial fold. Mindless and senseless deprivation of life and liberty of women could not have been dealt with effectively through soft sanctions alone, see 243rd Report, Law Commission of India, at 14

¹⁴ See *Lalita Kumari v. Govt. of U.P. & Ors* Writ Petition (Criminal) No. 68 of 2008, decided by Constitutional Bench consisting of P. Sathasivam, CJ, Dr. B.S. Chauhan, Ranjana Prakash Desai, Ranjan Gogoi, S.A. Bobde JJ on November 12, 2013. The court held that registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given *ex facie* discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

procedural imperatives may result in substantive punishment, departmental strictures and remarks by the committee/commission¹⁵ reports. Therefore, police appear to be less sensitive and intolerant in respect of section 498A cases. Thus, the triple problems that have cropped up in the course of implementation of the provision are:

- i. The police straightaway rushing to arrest the husband and even his other family members (named in the FIR)
- ii. Tendency to implicate, with little or no justification the in-laws and other relations residing in the marital home and even outside the home, overtaken by feelings of emotion and vengeance or on account of wrong advice, and
- iii. Lack of professional, sensitive and empathetic approach on the part of the police to the problems of woman under distress.

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.¹⁶ Various High Courts¹⁷ in the country have also noted that in several instances, "that omnibus allegations are made against the husband and his relations and the complaints are filed without proper justification". Delhi High Court observed that "there is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims".¹⁸ It was also observed that "by misuse of the provision, a new legal terrorism can be unleashed".¹⁹

However, the predicament that results from registering section 498A cases 'routinely' without thought process has been succinctly depicted by Justice Malimath Committee as

"A less tolerant and impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, especially if the husband cannot pay. Now the woman may change her mind and get into the mood to forget and forgive. The husband may also realize the mistakes committed and come forward to turn over a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make

¹⁵ Malimath Committee Report, *supra* note 9, observed that "It has come to the notice of the Committee that even in cognizable cases quite often the Police officers do not entertain the complaint and send the complainant away saying that the offence is not cognizable. Sometimes the police twist facts to bring the case within the cognizable category even though it is non-cognizable, due to political or other pressures or corruption. This menace can be stopped by making it obligatory on the police officer to register every complaint received by him. Breach of this duty should become an offence punishable in law to prevent misuse of the power by the police officer."

¹⁶ *Arnesh Kumar v. State of Bihar & Anr*, *supra* note 4

¹⁷ See for example, the observation of Delhi High Court in *Chandrabhan v. State* (order dated 4.8.2008 in Bail application No.1627/2008) and of the Madras High Court in the case of *Tr. Ramaiah Vs. State* (order dated 7.7.2008 and 4.8.2008 in MP No.1 of 2008 in CrI. O.P. No.10896 of 2008). Delhi High Court in *Court on its own in Motion v. CBI*, reported in 109 (2003) Delhi Law Times 494

¹⁸ *Chandrabhan v. State* order dated 4.8.2008 in Bail application No.1627/2008

¹⁹ *Sushil Kumar Sharma v. UOI*, 2005 6 SCC 281



amends by withdrawing the complaint, she cannot do so as the offence is non-compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family... This section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship. Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations.²⁰

It is in this context that the predicament of police in registration of FIR and arrest of persons surfaces. Section 498A cases being cognizable, police have to register FIR and arrest the offenders if need be. However this is not as easy as said and done. The real time experience at the spot and hovering judicial guidelines at the neck speak of different situations sandwiching the police in discharge of their functions. The predicaments of registration of FIR and arrest are as under.

REGISTRATION OF FIR

Whether a police officer shall register the FIR straight way in section 498A cases or not is not a question which has not been completely resolved. Offence under section 498A being cognizable offences invoke simultaneous and subsequent sections of the criminal procedure code.²¹ In terms of section 154(1) a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973.²²

Though section 154 is clear in wordings, preliminary inquiry was read into it by the judiciary. According to certain cases, police are not bound to register every information as FIR unless they are satisfied that sufficient causes exist for recording so.²³ On the other hand, *Lalita Kumari v. Govt. of UP & Ors*²⁴ has ruled that Section 154(1) is mandatory as the use of the word 'shall' is indicative of the statutory intent of the legislature and therefore there is no discretion left to the police officer except to

²⁰ Therefore, the committee suggested making this offence bailable and compoundable to give a chance to the spouses to come together.

²¹ See Chapter XII of Code of Criminal Procedure (From Section 154 to 176) deals with 'Information to the Police and Their Powers to Investigate'

²² The Cr.P.C., 1973, section 154- Information in cognizable cases: (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

²³ These are few rulings of the Supreme Court which have advocated that if the police officer has a doubt about the veracity of the accusation, he has to conduct preliminary inquiry. See *S.M.D. Kiran Pasha v. Government of Andhra Pradesh* (1990) 1 SCC 328, *D.K. Basu v. State of W.B.* (1997) 1 SCC 416, *Uma Shankar Sitani v. Commissioner of Police, Delhi & Ors.* (1996) 11 SCC 714, *Preeti Gupta (supra)*, *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981) 1 SCC 608, *Common Cause, A Registered Society v. Union of India* (1999) 6 SCC 667, *District Registrar and Collector, Hyderabad v. Canara Bank* (2005) 1 SCC 496 and *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* (2005) 5 SCC 294. *Vineet Narain v. Union of India* (1998) 1 SCC 226, *Elumalai v. State of Tamil Nadu* 1983 LW (CRL) 121, *A. Lakshmanarao v. Judicial Magistrate, Parvatipuram* AIR 1971 SC 186, *State of Uttar Pradesh v. Ram Sagar Yadav & Ors.* (1985) 1 SCC 552, *Mona Panwar v. High Court of Judicature of Allahabad* (2011) 3 SCC 496, *Apren Joseph v. State of Kerala* (1973) 3 SCC 114, *King Emperor v. Khwaja Nazir Ahmad* AIR 1945 PC 18

²⁴ *Supra* note 14

register an FIR.²⁵ Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of information disclosing a cognizable offence.²⁶

In the presence of this general ruling, there is a second school of thought which advocates for 'restraint' in registration of FIR in section 498A cases. In *Chandrabhan v. State*²⁷ it was observed that "there is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims". The following directions²⁸ were given to the police authorities:

- i. FIR should not be registered in a routine manner.
- ii. Endeavour of the police should be to scrutinize complaints carefully and then register FIR.
- iii. No case under section 498-A/406 IPC should be registered without the prior approval of DCP/Addl. DCP.
- iv. Before the registration of FIR, all possible efforts should be made for reconciliation and in case it is found that there is no possibility of settlement, then, necessary steps should, in the first instance, be taken to ensure return of stridhan and dowry articles to the complainant.

This decision which has been mandatorily followed in Delhi and followed as persuasive in other states is contrary to the recent judgment of *Lalita Kumari*²⁹ v. *Govt. of UP & Ors* which requires compulsory registration of cognizable cases. The juxtapositioned reading of these two judgments presents a contradictory position for

²⁵ Following judgments were relied upon to conclude the same. See *B. Premanand and Ors. v. Mohan Koikal and Others* (2011) 4 SCC 266, *M/s Hiralal Rattanlal Etc. Etc. v. State of U.P. and Anr. Etc. Etc.* (1973) 1 SCC 216 and *Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, Godhra and Ors.* (1975) 2 SCC 482. *Bhajan Lal (supra)*, *Ganesh Bhavan Patel and Another v. State of Maharashtra* (1978) 4 SCC 371, *Aleque Padamsee and Others v. Union of India and Others* (2007) 6 SCC 171, *Ramesh Kumari (supra)*, *Ram Lal Narang v. State (Delhi Administration)* (1979) 2 SCC 322 and *Lallan Chaudhary and Others v. State of Bihar and Another* (2006) 12 SCC 229. *CBI v. Tapan Kumar Singh* (2003) 6 SCC 175, *M/s Hiralal Rattanlal (supra)*, *B. Premanand (supra)*, *Khub Chand v. State of Rajasthan* AIR 1967 SC 1074, *P. Sirajuddin (supra)*, *Rajinder Singh Katoch (supra)*, *Bhagwant Kishore Joshi (supra)*, *State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal* (2010) 3 SCC 571. *H.N. Rishbud and Inder Singh v. State of Delhi* AIR 1955 SC 196, *Bhajan Lal (supra)*, *S.N. Sharma v. Bipen Kumar Tiwari* (1970) 1 SCC 653, *Union of India v. Prakash P. Hinduja* (2003) 6 SCC 195, *Sheikh Hasib alias Tabarak v. State of Bihar* (1972) 4 SCC 773, *Shashikant (supra)*, *Ashok Kumar Todi v. Kishwar Jahan and Others* (2011) 3 SCC 758, *Padma Sundara Rao (Dead) and Others v. State of T.N. and Others* (2002) 3 SCC 533, *P. Sirajuddin (supra)*, *Rajinder Singh Katoch (supra)*, *Bhagwant Kishore Joshi (supra)* and *Mannalal Khatic v. The State* AIR 1967 Cal 478.

²⁶ *Supra* note 14, at para 39

²⁷ Order dated 4.8.2008 in Bail application No.1627/2008

²⁸ Even in an earlier judgment of Delhi High Court in the case of *Court on its own in Motion v. CBI*, reported in 109 (2003) Delhi Law Times 494, similar directions were issued to the police and courts regarding arrest, grant of bail, conciliation etc.

²⁹ *Supra* note 14



the police and readers. In *Chandrabhan*³⁰ the court has provided enough opportunity to the police to make preliminary enquiry, before noting such offence, to ensure the occurrence or otherwise of the cognizable offences. The generalized reading of this judgment would have gone to the extent of saying that police may reconcile the parties to section 498A cases even without registering it in FIR or general diaries. Conversely, the 'general' power of preliminary inquiry has been taken away by constitutional bench in *Lalita Kumari*³¹ which mandated compulsory registration of FIR on disclosure of offence of cognizable nature.

It does not, however, mean that power of the police officer to ensure himself the occurrence or otherwise of the events alleged is totally taken away by the judgment. Even this judgment admits of a situation (illustrative off course) in which preliminary enquiry is admissible. The constitutional bench held that:

Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offence, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time.

- (vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under Matrimonial disputes/ family disputes.³²
- (vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.³³
- (viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.³⁴

The effect of this ruling is that the earlier direction of Delhi High Court etc has been overruled in letter but not in spirit. Even in *Lalita Kumari*³⁵ the court has admitted of preliminary enquiry in certain cases. Though section 498A has not been specifically named, it is not omitted either from the categories. Further, *Lalita Kumari*³⁶, provides two way opportunity for preliminary investigation that is in some cases (as has been named in the judgments illustratively) it can be carried out even before registration of FIR and in remaining, the police may register the compliant of section 498A cases in their General Diary/Station Diary/Daily Diary and may seek a time line of seven days to make preliminary inquiry. Needless to say that, this deduction from the judgment is related only in respect of cases falling in explanation B to section 498A cases. In respect of Explanation A cases, where life or limb is at threat, immediate registration of FIR and proceeding towards the spot to take actual stock of the thing is statutory duty and constitutional obligation of the police.

³⁰ *Supra* note 27

³¹ *Supra* note 14

³² *Id.*, at Para 111

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

ARREST OF PERSONS

The common misconception that surrounds the common man and police as well is that 'because FIR has been registered, it would require arrest of the accused as well'. In some of the cases, in-laws and distant relatives have been picked up from railway station, airport and public places in filmy style. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. The registration of FIR under Section 154 of the Code and arrest of an accused person under Section 41 are two entirely different things. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. In most of the cases ingredients of section 41 are missing yet the police resort for arrest. Despicable consequences of arrest have well been documented by the Supreme Court as under:

"Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. 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."³⁷

The court observed that

"We believe that 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. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation."

The court further held that

"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'.

Issuing detailed guideless for arrest the court observed that

"Our endeavour in this judgment is to ensure that police officers do not arrest

³⁷ *Arnesh Kumar v. State of Bihar & Anr*, *Supra* not 4



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:

- i. 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;
- ii. All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);
- iii. 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;
- iv. 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;
- v. 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;
- vi. 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;
- vii. 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.
- viii. Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.
- ix. 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.
- x. 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.

Observance of these guidelines is mandatory for the reasons well stated above. However, this is not for the first time that such guidelines have been issued. The efficacy of such guidelines depends to a large extent on the level of maturity and understanding of the police. Police need to be trained now and then by appraising such guidelines to them. Forwarding of judgment copy should never result in 'another correspondence' by the Supreme Court.

Further it is not easy to distinguish cases of section 498A falling in Explanation A and Explanation B. If the case were to fall in Explanation B, police have to swiftly initiate

the process of initial investigation by visiting the house of the husband and have a firsthand account of the version of husband and other relations and take such measures as may be necessary (including arrest) to ensure that the accused do not indulge in acts calculated to endanger the safety and liberty of the complainant.

There is pressing need, therefore, to maintain a balance between individual liberty and societal order while exercising the power of arrest. This can be done by the police themselves. The police have to learn that "The existence of the power to arrest is one thing, the justification for the exercise of it is quite another."

CONCLUSION

In view *Lalita Kumari v. Govt. of U.P. & Ors*³⁸ and *Arnesh Kumar*³⁹ it has been made clear that though section 498A offences are cognizable warranting registration of FIR and arrest procedurally, police have to exercise a restraint in invoking arresting powers though they have to register FIR on receipt of information disclosing cognizable offences. Law commissions/ committees have, apart from demanding section 498A to be bailable, even advocated for making section 498A compoundable.⁴⁰ The distinction of explanation A and B attached to section 498A shall be understood which itself may solve substantial problems as such. Though court order copies are circulated to police stations, they are never seriously viewed. Police have to be educated and trained in handling cases under section 498A. The fact that larger percentages of cases filed have been found to vexatious in nature goes to indicate that, a little more attention at the police station itself would have avoided the judicial wastage of time. It is at this juncture that the recommendation of law commission of India appears to be relevant which advocated for insertion of subsection (3) to Section 41 of CrPC on the following lines:

"Where information of the nature specified in clause(b) of subsection(1) of Section 41 has been received regarding the commission of offence under section 498-A of Indian Penal Code, before the police officer resorts to the power of arrest, shall set in motion the steps for reconciliation between the parties and await its outcome for a period of 30 days, unless the facts disclose that an aggravated form of cruelty falling under clause (a) of Explanation to S, 498-A has been committed and the arrest of the accused in such a case is necessary for one of the reasons specified in clause (b) of Section 41."

It is high time that the police should note that mechanical, casual and hasty application of the power of arrest is counter-productive and negates the fundamental right enshrined in Article 21. Such attitude is at the root of misuse of S. 498A. The provisions in Cr.PC regulating and channelizing the power of arrest should act as guiding star to the police and their spirit and purpose should be foremost in their minds. Overreach is as bad as inaction.⁴¹

³⁸ *Supra* note 14

³⁹ *Arnesh Kumar v. State of Bihar & Anr*, *Supra* note 4

⁴⁰ See, *The Code of criminal procedure 1898*, 41st Report, Law Commission of India, 1969; *Law Relating To Arrest*, 177th Report, Law Commission of India, 2001, *Committee on Reforms of Criminal Justice System* Parliamentary Standing Committee, 111th Report, the 128th Report of the said Standing Committee, 2008, the Committee of Petitions, 2011, *Compounding of (IPC) Offences*, 237th Report, Law Commission of India, 2011, *Section 498A IPC*, 243rd Report, Law Commission of India, 2012. The view point of National Commission for Women represented by Member-Secretary was placed before the Parliamentary Committee on Petitions on 07.09.2011

⁴¹ 243rd Report, Law Commission of India, at 25