**CASE ANALYSIS OF DR. RINI JOHAR & ANR. V. STATE OF M.P.**

BY

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**PROTECTION AGAINST ARREST: A STUDY OF DR. RINI JOHAR’S CASE**

**BACKGROUND OF THE CASE**

RiniJohar, petitioner 1 is a doctor and was associated with a US based company called M/s Progen and Gulshan Johar, petitioner 2, a septuagenarian lady, is a practising advocate for the last 36 years. Respondent 8, the informant, had marked an email to purchase “Aura Cam 6000 Machine” to the Progen Company in India and in return the company had sent an email to the respondent, mentioning a reference to petitioner 1. Following, the said respondent addresses an email to petitioner 1, asking her to send the address where they could meet to discuss the details for making payment and exhibited his interest to become a distributor. Thereupon, the respondent visited petitioner 1 at Pune and settled to purchase a lesser price machine i.e., “Twinaura Pro” for a total sum of Rs. 2,54,800/-. A sum of Rs. 2,50,000/- was paid by the respondent for which a receipt was given in writing. In the meanwhile, the respondent asserted his desire to acquire a laptop of the Progen company of which petitioner 1 was the representative. Upon that, the laptop was given to him, acknowledging a sum of Rs. 4800/- as balance consideration towards the machine and an amount of USD 350 against the laptop. Correspondingly, the competent authority of the US company in India gave rise to certain allegations against the respondent which was brought to the notice of police concerned in the State of M.Pthat he represented himself as the sole distributor in India.

Subsequently, the respondent had filed a complaint before the Cyber Cell, Bhopal, alleging that petitioner 1 and Mr. Guy Coggin had carried out a fraud of USD 10,500 and accordingly, a FIR under sections 420 and 34 Indian Penal Code, 1860 and section 66-D Information Technology, Act, 2000 was registered against the petitioners. The State Cyber Police, Bhopal ordered that the petitioners should be arrested and brought to Bhopal. As a consequence, the petitioners were arrested from their residence at Pune. As a result, the legality of the arrest, non-presence of independent witnesses, non-mentioning of date and detention by unauthorised officers etc. was questioned as the petitioners were not produced before the local magistrate. It was also alleged that petitioner 2 was not taken to a doctor despite several requests and faced undignified treatment and humiliation. Petition 2 was enlarged on bail after kept in custody for about 17 days and petitioner 1 was let out after more than 3 weeks. It was also averred that the petitioners were forced to pay Rs. 5,00,00/- to respondent 3, Deepak Thakur, DSP, Cyber Cell, Bhopal.

Further, a charge sheet was filed and thereafter, a Petition under section 482 CrPC wasfiled before the High Court for quashing of the FIR. However, the same was disposed of as the petitioners were disinterested to prosecute under section 482 CrPC. It is pertinent to mention that the petitioners had filed an application for discharge for which the learned Magistrate passed an order, discharging the petitioners under section 66-D of IT Act but on the other hand was of the view that there exists a prima facie case under Section 66-A(*b*) of IT Act along with section 420 and 34 of IPC. The unlawful arrest made due to which the dignity of the petitioners was sullied, authorizing the atrocities to reign along with the flagrant violation of the law was challenged by the petitioners on 27 November, 2012 by way of a Criminal Writ Petition[[1]](#footnote-2)under Article 32 of the Constitution before the Supreme Court. It is to be noted that despite several efforts made by the petitioners as well as the State of M.P, respondent 8 who belonged to Jabalpur, M.P, could not be served. The Supreme Court appointed Mr. Sunil Fernandes as amicus curiae to assist in the case.

**FACTS IN ISSUE**

A writ petition was filed before the Supreme Court by two women petitioners challenging the way in which they have been arrested and how the atrocities by the police personnel led to mutilation of their dignity. It was contended that the norms fixed by the Apex Court were breached and the liberty of the petitioners was curtailed, hence, violating Article 21 of the Constitution. The arrest made was not within the provisions of section 41 CrPC nor any notice was sent out to the petitioners as is required under section 41-A CrPC. The power of arrest in the hands of police was used arbitrarily as a tool of harassment and oppression, becoming one of the chief sources of corruption in the police. The petitioners also urged that if the Court is prima facie contended that violations are absolutely impermissible in law, they should be entitled to compensation.

**PETITIONER’S ARGUEMNETS**

1. The legality of the arrest was challenged along with assertions that the arrest was made by unauthorized officers and the petitioners were treated with disgrace since they were denied essentials like food, water and medical help and were made to sleep on the floor of an unreserved railway compartment.
2. It was submitted that the petitioners were not produced before a Magistrate within 24 hours of arrest. Also, the petitioners were forced to pay bribe to respondent 3 in order to set them free.
3. It was absolutely imperative on the part of police personnel to comply with the procedure defined under section 41-A CrPC as section 66-A(*b*) of the Information Technology Act, 2000 provides a maximum sentence of 3 years and section 420 of the Indian Penal Code, 1860 stipulates a sentence of maximum 7 years.
4. Section 66-A(*b*) of the Information Technology Act, 2000 is not applicable since it has been struck down in its entirety for violating Article 19(1)(*a*) and not saved under Article 19(2).

**RESPONDENT’S ARGUMENTS**

1. It was submitted that the matter should not be adjudicated at this stage, as the State Government had already directed an enquiry and initiated proceedings against respondent 3.
2. That a prima facie case exists against the petitioners under section 66-A of IT Act along with section 420 and 34 of IPC.

**ON CORRUPTION**

A complaint was filed by the petitioners to the Lokayukta Police alleging that Deepak Thakur, respondent 3, had demanded a bribe of Rs. 10 Lakhs in order to set them free. Initially, a sum of Rs. 5,00,000/- was also given. Consequently, the police had already registered a preliminary enquiry stating that a prima facie case was made out under section 13(1)(*d*) and 13(2) of the Prevention and Corruption Act, 1988 along with section 120-B of Indian Penal Code, 1860.

**ON SECTION 41 OF CODE OF CRIMINAL PROCEDURE**

An arrest without a warrant can be made by the police under section 41 CrPC if there exists reasonable and credible suspicion or information, providing vast discretion to the police officers with no checkover such powers, leading to its abuse. When grounds mentioned under section 41(b) are not found, the suspect should be turned in for the interrogation in the investigation by issuing a notice to him. Moreover, section 41(2) CrPC accords power to the investigator that if the suspect shows non-compliance to the notice, he can be arrested with the reason being mentioned in the case diary which should be produced before the Magistrate. However, in the present case, no reason has been recorded in the case diary nor any notice has been issued to petitioner 2. Only a draft of Rs. 2.50 Lakhs had been deposited in her account and no conclusive ground has been stated in respect of her arrest in the case diary.

The Supreme Court in the case of **Joginder Kumar v. State of U.P**[[2]](#footnote-3), examined the exploitation of police power of arrest and held that there is a difference between the existence of power of arrest and justification for its exercise. Without a reasonable satisfaction attained after some investigation as to the genuineness and bona fides of a complaint, no arrest should be made as withholding a person of his liberty is a serious matter. A realistic approach should be drawn in regard to complaints of human rights pre and after arrest by striking a balance between the two. **D.K. Basu v. State of West Bengal**[[3]](#footnote-4) is a landmark judgement which was pronounced by the Apex Court, laying down specific guidelines required to be followed while making arrests. The Court held that:

* Accurate, visible and clear identification along with name tags and designations should be carried by the police personnel carrying out arrest and interrogation.
* A memo of arrest at the time of arrest should be made by the police office carrying out the arrest and such a memo shall be attested by at least one witness, who can be a family member of the arrestee or any respectable individual of the locality. The memo should contain the date and time of arrest and shall be countersigned by the arrestee.
* The detainee shall be entitled to have a person known to him who shall be informed about the arrest and the place of detention as soon as possible.
* Where the person known to the arrestee lives outside the district or town, he shall be briefed about the time, place of arrest and venue of custody by the police through Legal Aid Organisation in the district and to the concerned police station telegraphically within a period of 8 to 12 hours after the arrest.
* As soon as a person is put under arrest, he must be made aware of his right to have someone informed of his arrest.
* The diary must contain an entry at the place of detention regarding the arrest along with the name of the person who has been informed of the arrest and particulars of the police officials in whose custody the arrestee is.
* Where a request is made by the arrestee to examine him at the time of arrest, all major and minor injuries, if any, should be recorded. Both the police officer and arrestee should sign the “Inspection Memo” and its copy to be provided to the arrestee.
* A panel of approved doctors to be appointed by Director, Health Services of State or Union Territory concerned in order to provide medical examination to the arrestee by a trained doctor every 48 hours. Such panels should be prepared for tehsils and districts as well.
* Copies of all the documents mentioned above shall be sent to Illaqa Magistrate for his record.
* During interrogation, the arrestee may be allowed to meet his lawyer, though not throughout the interrogation.
* Information relating to arrest and place of custody shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest at the police control room which shall be provided in all districts and State headquarters.

It was observed that in the case in hand, certain guidelines have been violated after scrutinising the enquiry report and factual assertions. The Court in **Arnesh Kumar v. State of Bihar**[[4]](#footnote-5)referred to Section 41-A CrPC, which was inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), clarifying that in a situation where the arrest of a person is not necessary under section 41(1) CrPC, the police officer is required to issue a notice, directing the accused to appear before him at a particular place and time. Power of arrest being one of the lucrative sources of police corruption has become a handy tool for police officers lacking sensitivity or acting with oblique motive.

Furthermore, the Court rejected the submission that initiation of a disciplinary proceeding or criminal prosecution should not be a restraint for delineation with regard to violation of procedure of arrest and curtailment of liberty. Moreover, the Court had also put reliance on the preliminary enquiry that was conducted by CID, Bhopal. Nowhere it is mentioned in the arrest memo and case diary that any information regarding the arrest of both women was furnished to any of their relatives or friends. No information was registered at the Pune police station nor in the District Police Control Room that the M.P. Police is taking away the petitioners by arresting them. Neither the petitioners were produced before a local judge nor a rail warrant was obtained in order to take them from Pune to Bhopal. The Apex Court in the case of **M.C. Abraham v. State of Maharashtra**[[5]](#footnote-6)reiterated that arrests must be made cautiously by following the correct procedure. Since an arrest acts as an encroachment on the liberty of the subject, affecting the reputation and status, it has to be exercised with circumspection.

**ON SECTION 66-A(*b*)INFORMATION TECHNOLOGY ACT, 2000**

Section 66-A of IT, Act prescribes punishment for computer related crimes such as sending of offensive messages through the internet, leaking of confidential data, phishing, identity theft etc. However, it was declared as unconstitutional by the Supreme Court in the landmark judgement of **Shreya Singhal v. Union of India[[6]](#footnote-7)***,* as the said section was found to be in contrary to both Article 19 (Right to freedom of speech) and Article 21 (Right to life and personal liberty) of the Constitution. As a result, section 66-A has no applicability in the present case.

**ON SECTION 420INDIAN PENAL CODE, 1860**

In the present matter, the learned Magistrate was of the view that there is some material which reveals that the petitioners had intention to cheat and hence, they should be prosecuted under section 420 IPC. It is perceived on examination of FIR, that the dispute is purely of a civil nature, however, a maladroit effort has been made to give it a criminal colour.

The Supreme Court in **Devendra v. State of U.P.**[[7]](#footnote-8)observed that the superior courts would not encourage harassment of a person in a criminal court for nothing if allegations made in FIR or evidences collected during investigation do not fulfil the ingredients of an offence. No provision of section 420 is remotely attracted and since the entire case projects a civil dispute, the Court quashed the prosecution initiated against the petitioners at the instance of the eighth respondent.

**RIGHTS OF ARRESTED PERSONS**

A democratic society provides for the rights of an accused since our legal system is based on the basic tenet that the accused should be given the benefit of the presumption of innocence until proven guilty. In the leading case of **Kishore Singh Ravinder Dev v. State of Rajasthan**[[8]](#footnote-9), it was asserted that constitutional, procedural and evidentiary laws have elaborate provisions in order to protect and safeguard the dignity of the accused as a human being, giving him benefits of a just, fair and impartial trial. There are two types of rights conferred to an arrested person:

* Rights at the time of arrest, &
* Rights at the time of trial

Under the first category, the Constitution of India guarantees every person the right against self-incrimination i.e., the person accused shall not be compelled to act as a witness against himself, as is provided under Article 20(3). The Supreme Court in the case of **Nandini Sathpathy v. P.L. Dani**[[9]](#footnote-10) restated the same rule that nobody can forcibly extract any statement from the accused, and he has the sole right to remain silent during the course of investigation and interrogation. The Apex Court in the year 2010 held in the case of **Selvi and Ors. v. State of Karnataka and Anr**.[[10]](#footnote-11) that brain mapping, narco-analysis and lie-detector tests violates Article 20(3) as it acts as a forcible intrusion into a person’s mind, nullifying the validity and legitimacy of the right guaranteed under the Constitution.

In like manner, section 50 and 50-A of CrPC are statutorily recognized rights which imposes a legal duty on the police officer to communicate the grounds of arrest to the arrested person without any delay. Furthermore, section 57 of CrPC provides that where an arrest is made with or without a warrant, the arrested person has to brought before the Magistrate within 24 hours. Also, except in the case where a special order of Magistrate exists under section 167 CrPC, the person arrested without a warrant cannot be detained for more than 24 hours.

The Indian Constitution also recognises this as an essential fundamental right under Article 22. It states that the person who is arrested shall not be detained in custody without informing the grounds for which such an arrest is made and further needs to be produced before the nearest Magistrate within a period of 24 hours, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. In **Khatri and Ors. v. State of Bihar and Ors**.[[11]](#footnote-12), the Supreme Court has strongly urged for the enforcement of Article 22 of the Constitution as it enables the Magistrate to keep a check over the police investigation. The police officer shall be found guilty of wrongful detention if he fails to produce the arrested person before a Magistrate within 24 hours.

Under the second classification of rights, the Code of Criminal Procedure provides that for a fair trial, it must be held in an open court. Correspondingly, right to speedy trial has been given a status of fundamental right under Article 21 of the Constitution, relevant at all the stages of a trial. Justice P.N. Bhagwati in the case of **KadraPahadiya v. State of Bihar**[[12]](#footnote-13) observed that the Court in discharge of its constitutional obligations can give directions to the state governments and other appropriate authorities for securing a speedy trial to the accused. In addition, sections 162, 173(4) and 207(A)(3) of CrPC administers the rights of accused to obtain copies of all relevant documents in order to know the particulars of the case against him. Section 303 of CrPC and Article 22(1) of the Constitution provides that the accused person has the right to be defended by a legal practitioner of his choice. In the leading case of **Hussainara Khatoon v. Home Secretary, State of Bihar**[[13]](#footnote-14), it was declared that it is a constitutional obligation to provide free legal aid to every indigent person under trial, witnessing a direct mention under Article 39(A) and is implicit under Article 21 of the Constitution. The accused further has a right to be examined by a medical practitioner under section 54 of CrPC in order to enable him to defend and protect himself properly.

**ON ARTICLE 21**

The Apex Court is of the view that there has been a gross violation of Article 21 as right to personal liberty of the petitioners have been curtailed, being the most fundamental of all rights. It was observed that there was dereliction of duty on behalf of the officers of the State, playing and mocking with the liberty of the petitioners, causing themimmense trauma and pain. Article 21 provides us with the sacred freedom of life and liberty which has been commonly hampered by police exploitation due to their misuse of powers mentioned in the CrPC and under apparent pretext of protection of the public.

The petitioners were compelled to face disgrace as they were treated with an attitude of insensibility, due to which the dignity of the petitioners, a doctor and a practicing advocate has been gravely jeopardised. In **Charu Khurana v. Union of India**[[14]](#footnote-15), dignity was held to be a quintessential quality of a personality, for it is a highly cherished value. When the liberty of an individual is taken down illegally, the victim is likely to feel more agonised, anguished, perturbed and emotionally torn as his respect is ruined and such an act becomes an assault on his identity. Therefore, certain requisite norms are to be followed before curtailing one’s liberty. The two ladies were arrested and put in the compartment of the train by the overly enthusiastic investigating agency without following the due procedure of law i.e., to produce the suspects before the local Magistrate. In the case of Mehmood **Nayyar Azam v. State of Chhattisgarh**[[15]](#footnote-16)**,** the Court ascertained that the dignity of a citizen is secured by the majesty of law and when citizenry rights are sometimes dashed against and pushed back, Article 21 of the Constitution springs up to action as a protector.

The Court is of the view that in no circumstances the investigating officers can defy the law with impudent proclivity. Thereupon, the Court by taking into consideration the totality of facts and the humiliation and anguish suffered by the petitioners, granted a sum of Rs. 5,00,000/- as compensation which is regarded as a redeeming feature towards each of the petitioner to be paid by the State of M.P.

**INTERNATIONAL LAW RELATED TO LAW OF ARREST**

Article 9 of the Universal Declaration of Human Rights, 1950 (UDHR) states no one shall be subjected to arbitrary arrest or detention and a person who is arrested shall be informed promptly the grounds of his arrest and of any charges against him. Arbitrariness is not to be identified as “against the law” but must predominantly include elements of inappropriateness, lack of predictability, injustice and due process of law. The International Court of Justice in the case of **United States of America v. Iran**[[16]](#footnote-17)observed that to wrongfully deprive freedom to human beings and to expose them to physical constraint in conditions of hardships is opposed to the principles of the Charter of United Nations along with Article 3 of UDHR which guarantees the right to life, liberty and security of person. All states are obligated by international law to respect and ensure every person’s right to liberty and security, irrespective of their treaty obligations.

**OVERVIEW OF THE JUDGEMENT**

The judgement brings out the significance of basic human freedom and individual dignity that forms a core value in the Constitution of India. It points out the draconian way in which the police personnel missuses the power of arresting people and provides a requisition for need of greater police accountability. It is observed how an unlawful arrest curtails individual liberty, leading to disillusionment and shaking faith of people in the rule of law. The way in which the arrest was made along with denial of basic necessities including medical help for the mother who was made to sleep on the cold floor of an unreserved train compartment is clearly a blow to the petitioner’s dignity. Due to no check on the power of arrest, several unlawful practices are undertaken by the police such as false arrest, distortion of evidence, forced confessions etc., leading to brutality and inhuman treatment of the accused person. In order to attain an active and responsive police system, the police personnel should be properly trained and must be made aware of the amended arresting powers. Protecting the rights of people and complying with law are the twin requirements for establishing good policing. The judgement emphasis on the importance of human rights and the need for caution in exercising the drastic power of arrest.

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