

ARREST AND PRE-TRIAL DETENTION -ROLE OF JUDGE/MAGISTRATE

Paper presentation by

Mr. Shaik Reyaz
Junior Civil Judge, Pondur

INTRODUCTORY:-

Under the Constitution of India as also the international treaties and conventions, the right to get a **fair trial** is a basic fundamental/human right¹. Every person has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, 1973. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. In a criminal case, denial of that right means denial of fair trial. This issue now stands concluded by decision of Hon'ble Apex Court in Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.) [(2007) 2 SCC 258]. A trial primarily aimed at ascertaining truth has to be fair to all concerned which includes the accused, the victims and society at large. Each person has a right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and society. An accused has a right to **fair trial**.

¹ - Dwarka Prasad Agarwal (D) By LRs. v. B.D. Agarwal and Others [(2003) 6 SCC 230]

Article 21 states: 'No person shall be deprived of his life or personal liberty except according to procedure established by law.' Our courts interpreted this Article in catena of decisions. These judicial pronouncements provide valuable instructions to judicial officers on how to protect the rights of accused. In order to assure a fair trial, judicial officers are expected to follow every procedural safeguard and protect every assurance provided by the law to all parties.

Manku Gandhi vs Union of India, AIR 1978 SC 597, it was held that Article 21 is controlled by Art 19, that is it must satisfy the requirement of Art.19 also; Mal-treatment of Woman prisoners in Lockup: *Sheila Barse vs UOI*, AIR 1986 SC 1773; Bar against solitary confinement: *Sunil Batra vs Delhi Administration*, AIR 1978 SC 1675; Bar against Handcuffing and fetters: *Prema Shankar vs Delhi Administration*, AIR 1980 SC 1535; Illegal arrest: *Joginder Singh vs State of UP*, (1994) 4 SCC 280; *Arvind Singh Bagga vs St. of UP*, AIR 1985 SC 117².

Protection of an individual against illegal arrest: Section 50 provides that any person arrested without warrant shall immediately be informed of the grounds of his arrest. The duty of the police when they arrest without warrant is to be quick to see the possibility of crime, but they ought to be anxious to avoid mistaking the innocent for the guilty. The burden is on the police officer to satisfy the court before which the arrest is challenged that he had reasonable grounds of suspicion. In *Pranab Chatterjee v. State of Bihar* [(1970) 3 SCC 926] the court held that Section 50 is mandatory. If particulars of offence are not communicated to an arrested person, his arrest and detention are illegal. The grounds can be communicated orally or even impliedly by conduct.

Meaning Of Arrest: The word "ARREST" is not defined in Code of Criminal Procedure, 1973. But, Section 46 of Cr.P.C explains "Arrest

² - Article titled "Illegal arrest" published in articlesonlaw.wordpress.com

how made". Under this section, a police officer is given power to use all means necessary to effect the arrest in case of such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest. If we refer a legal dictionary, it conveys the meaning that "to deprive one of his liberty by virtue of legal authority." It gives another meaning: "to stop"; and also conveys meaning: "to seize". Thus, it is known that arrest means "A seizure or forcible restraint; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge". However, if we go through the rulings given in this article, the meaning of arrest can succinctly be understood³.

Section 57 of Cr.P.C. and Article 22(2) of Constitution provides that a person arrested must be produced before a Judicial Magistrate within 24 hours of arrest. In *State of Punjab v. Ajaib Singh*[AIR 1953 SC 10] the court held that arrest without warrant call for greater protection and production within 24 hours ensures the immediate application of judicial mind to the legality of the arrest.

In *Sanganagouda A. Veeranagouda and others vs State of Karnataka*, in this case, "one "V" was arrested in a murder case on the direction of Office in charge of the police station and subsequently died by hanging himself in the police station, the Hon'ble Supreme Court considering the undisputed facts viz that at the relevant time A.1 was in charge of the police station, A2 to A5 were working as police constables in the said police station, the injuries sustained by the deceased Guddappa to his death was caused in the said police station, the fact that the IO did not produce "V" before the nearest Magistrate within 24 hours by his arrest as required under Code of Criminal Procedure, held that the death of the deceased has since occurred beyond 24 hours it would amount to wrongful confinement as

contemplated under Section 348 of IPC and accordingly upheld the order passed by the Hon'ble High Court⁴."

The decisions of the Supreme Court in *Joginder Kumar v. State of Uttar Pradesh* [1994 SCC (4) 260] and *D.K. Basu v. State of West Bengal*[1997 (1) SCC 416], were enacted in Section 50-A making it obligatory on the part of the police officer to inform the friend or relative of the arrested person about his arrest and also to make an entry in the register maintained by the police. This was done to ensure transparency and accountability in arrest. Sec.160 of Cr. P.C provides that investigation by any police officer of any male below 15 years or any woman can be made only at the place of their residence. Section 46(4) provides that no woman shall be arrested after sunset and before sunrise, save in exceptional circumstances and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

Settled principles of law in criminal justice system:-

1. An accused to be tried before a competent, independent and impartial tribunal/court.
2. The burden of proof rests on the prosecution.
3. The prosecution must establish guilt beyond reasonable doubt.
4. High probability is not enough to convict – where there are several possible accounts, the account supporting the accused should be upheld.
5. Accused has a right to remain silent.
6. Judicial Officer must ensure that the prosecution and the defence lawyer – are being diligent, honest and learned in their efforts to arrive at the truth.

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– Article titled "Illegal arrest" published in articlesonlaw.wordpress.com

7. Under section 479 of Cr.P.C, a judicial officer may not try or commit to trial any case in which he has a personal interest. The basic principle is such that a judge cannot sit in a case in which he has a financial or other interest.

8. A significant *legal maxim* is that "**Justice must not only be done, but be seen to be done.**"

9. If a criminal court is to be an effective instrument in dispensing justice, the presiding officer must cease to be a spectator and a mere recording machine.

10. Under section 327 of the Code, trial judges to invariably hold the trial of rape cases in camera, rather than in open court.

11. As seen from section 309 of Cr.P.C, it is known that the Code safeguards the right to a speedy trial.

12. Every accused should be provided the opportunity to be defended by a pleader.

13. The State is obliged to provide free legal aid to a prisoner who is indigent or otherwise disable from securing legal assistance where the ends of justice call for such service. Articles 21 and 39A to underline the importance of providing legal aid to accused who have no means to engage a pleader, especially for under trial prisoners. See. *Suk Das vs. Union Territory of Arunachala Pradesh*, 2 (1986) SCC 401

14. Accused should be furnished the copies of Police report and other documents in a criminal case. See. Section 207 of Cr.P.C.

15. Under section 273 of Cr.P.C, evidence to be taken in the presence of the accused. However, in a recent times, it is interpreted that while recording the evidence through video-linkage, physical presence of accused is not necessary.

16. Under the provision of section 243 and 247 of the Code, accused has right to produce witnesses in his defence, and these provisions are applicable equally to cases instituted on a police report or private complaint. Sections 243 ad 246 of the Code afford the accused the right to cross-examine the prosecution witnesses.

17. The object of section 311 of the Code is to discover the truth and deliver a just decision.

18. Under section 279 of the Code, whenever any evidence is given in alanguage not understood by the accused, and he is present in court in person, it shall be interpreted to him in open court in a language understood by him.

19. The principle of double jeopardy is a safeguard provided under Article 20 (2) of the Constitution which prohibits prosecution or punishing a person for the same offence more than once.

20. Section 300 of the Code puts forward three exceptions to the double jeopardy prohibition and provides several illustrations. A person once convicted or acquitted cannot be tried for the same offence. See. *State of Andhra Pradesh vs. Kokkiligadda Meerayya and Anr*, 1 (1969) SCC 161.

21. Section 353 of the Code mandates that judgment must be delivered in an open court; be read out in court; or the operative part of the judgment read out and the substance of the judgment explained.

22. Section 354 (1) of the Code mandates that judgments must be reasoned.

23. When accused is sentenced to imprisonment, free of copy of judgment shall be furnished to him.

24. Every judgment of a court must be based on legal evidence, substantive by law and logic without having to resort to speculations or inferences.

25. In the operative part of the judgment, the court should state the conviction and the sentence in a specific and clear manner.

26. Benefit of doubt always goes to accused.

Conclusion:-

All persons must be equal before the court. Every one shall be entitled to a fair trial by an impartial court established by law. A salient requirement of fair trial is one without undue delay. The right to a speedy trial flowing from Article 21 of the Constitution encompasses all the stages such as investigation, inquiry, trial, appeal, revision and re-trial. In a criminal case, a conviction cannot be based on the testimony of witnesses whose examination in chief stands contradicted by their cross-examination. Basic concept behind a fair trial is succinctly explained, . in *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1. A reasoned judgment diminished the chances of appeal, and reduces the courts overload. Appreciation of

evidence must be rational and dispassionate. In every criminal trial the degree of probability of guilt has to be much higher, almost amounting to certainty; and if there is the slightest reasonable or probable chance of innocence of an accused the benefit must be given to him. Procedure in Article 21 means fair, not formal procedure. Law is reasonable law, not any enacted piece. As Art. 22 specifically spells out the procedural safeguards for preventive and punitive detention, a law providing for such detention should conform to Art. 22.

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