

**Circular No. 20/ 2014**

**Sub:- Directions on arrest of persons under Section 498 A of IPC or Section 4 of the Dowry Prohibition Act and for offences punishable which may be less than 7 years imprisonment.**

- Read.- 1. Judgement of the Hon'ble Supreme Court dated 02/07/2014 in Crl.(A) No. 1277/ 2014  
2. PHQ Circular No. 7/2011.  
3. PHQ Circular No. 28/2012.

The Hon. Supreme Court vide its recent Judgment dated 02.07.2014 in Crl.(A) No. 1277/2014 observed as follows;

- A. "The fact that Section 498 'A' is a cognizable and nonbailable 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, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested." "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".
- B. "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".
- 02.** The above referred Circulars No. 7/2011 and 28/2012 are also relating to the arrest of persons without warrants. Indiscriminate arrests without adequate evidence has always been taken critical/adverse note by various courts in India including the Apex Courts. **In this scenario the latest directions of the Hon. Supreme Court are as below;**
- a.** 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 in Section 41 CrPC;
- b.** All police officers be provided with a check list containing specified sub-clauses under Section 41(1) (b) (ii),CrPC;
- c.** The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
- d.** The magistrate while authorizing 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 authorize detention;

e. 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;

f. Notice of appearance in terms of Section 41A of CrPC 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;

g. 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 jurisdictions.

h. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

**03. The Court also held that the directions aforesaid shall not only apply to the cases under Section 498 – A of the IPC or Section 4 of the Dowry Prohibition Act, 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.**

**04.** In the light of above directions all Police Officers are instructed that while enforcing arrest under Section 41 CrPC, they must satisfy themselves the following conditions specified in Section 41(1)(b)(ii) CrPC.

- "The police officer is satisfied that such arrest is necessary – to prevent such person from committing any further offence; or for proper investigation of the offence; or
- To prevent such person 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 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
- As unless such person is arrested, his presence before the Court as and 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, the police officer shall, record the reasons in writing for not making the arrest".

**05.** Henceforth while forwarding / producing the accused before the Magistrate for further detention, the police officer shall forward the check list containing specified sub clauses under Section 41(1)(b)(ii) CrPC duly filled. The form of check list is given below:

**Form of check list to be furnished while forwarding the accused before the Magistrate**

Office Address

1)	Whether the police officer is satisfied that the arrest is necessary?	Yes / No
a	To prevent the person from committing any further offence.	Yes / No
b	For proper investigation of the offence	Yes / No
c	To prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or	Yes / No
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	Yes / No
e	Whether his arrest is necessary to ensure his presence in the court	Yes / No
2)	The facts reasons and the conclusions of the police officer for arresting the person.	Furnish details
3)	If arrest is not required state the reasons.	Furnish details
Date		Signature Name & Designation

All District Police Chiefs of Districts / Cities are hereby instructed to strictly adhere the above Guidelines / Directives of the Hon'ble Supreme Court.

**//Approved for issue//**

**Sd/  
State Police Chief**

*hm 14/8/2014*  
**(LOKNATH BEHERA IPS)**

**Additional Director General of Police  
(Modernisation)**

To

All Officers in List 'B' for information and necessary action.

Copy to: CAs to all Officers in Police Headquarters for information

" LA, Manager, Police Headquarters for information

" All Ss and JSs, PHQ/RAC/Stock file.

" SP PCC. Must be uploaded in i-aps also