
A STUDY ON THE ARREST AND DETENTION IN CIVIL PRISON UNDER THE CODE OF CIVIL PROCEDURE

Ritesha Das, Symbiosis Law School, Hyderabad

ABSTRACT

Throughout the history, the evolution of the power of arresting a defendant in a civil action paints a vivid portrayal of successive generations' shifting attitudes about a specific judicial remedy. Under the civil justice System, the laws pertaining to the arrest and detention of the Judgment Debtor defend and preserve the *Decree Holder's* interests.¹ If the Judgment Debtor has the capacity to pay but ignores or omits to execute his liabilities, he can be transferred to civil prison.² Prior imposing detention, “*the court must be satisfied that there was an ingredient of bad faith,*” not just a non-payment but a mindset of denial on demand to disown of the decree's obligations.³ In light of recent arrests and detentions, there has been a significant increase in the number of false criminal complaints filed to resolve civil matters.⁴ In light of arrest and detention, the recent times has noted a substantial increase in the incidence of false criminal complaints brought to resolve civil issues. Due to prolonged delays in adjudication of civil issues, civil lawsuits are often been converted into criminal proceedings which ultimately harass the judgement-debtor.

The objective of this article is to provide light on the various dimensions of arrest within the civil justice system. It also attempts to elucidate the unnecessary criminalization of civil wrongs and the remedy against false accusations by analysing the concepts of arrest and detention in light of civil wrongs.

Keywords: Arrest and detention, Civil prisons, Civil justice system and Criminalisation of civil matters

¹ P.G. Ranganatha Padayachi vs The Mayavaram Financial Corporation, AIR 1974 Mad 1

² R. Rammoorthy, Difficulties Of Tort Litigants In India, 12 INDIAN L. INST 313 (1970)

³ Jolly George Verghese V/s. Bank of Cochin (1980) 2 SCC 360

⁴ *Ibid.*

INTRODUCTION

The right to personal liberty is guaranteed to every individual, regardless of their background or status.⁵ It is the utmost precious freedom guaranteed to everyone citizens by the Indian Constitution. In the Indian justice system, the deprivation of such liberty is permissible by the virtue of the concept of 'Arrest'. The term 'Arrest' denotes the restriction of an individual's personal liberty by keeping him in custody for his wrongful conducts, but such detention must conform with the law.⁶ The concept of *Arrest and Detention* is generally used to maintain the public interest in respect of preventing the misconducts and maintaining the law and order in society.⁷ In light of the *Civil Procedure Code*, the aim to suspend an individual's liberty is to assist the implementation of a decree by arresting and detaining the judgment-debtor in a civil prison.⁸ Such scenario provides the *decree-holder* a choice of choosing a "mode of execution for his decree" and notably, the court of law doesn't have the power to order for choosing a certain mode of execution unless there is some exceptional circumstance.⁹

Although the judiciary has served a vital role in safeguarding citizens' rights, and their decisions have attempted to incorporate several welcoming modifications to the constitutionally secured protection against arrests and detentions, the aspect of unnecessary criminalization of civil wrongs still calls for a thorough examination by both the legislative and judicial organs of the State. The exploitation of the criminal law machineries to obtain remedy in civil issues, through the exploitation of legal precedents and fictitious allegations, is predominant in today 's world.¹⁰ As a result of this approach, frivolous and hostile litigation unfolds. In consequence, the initiation of "erroneous criminal proceedings" is exploited as a negotiating tool to pressure and intimidate the accused into entering the settlements.¹¹ Despite the fact that these instances entail civil liabilities, they are ascribed to criminal dimensions for "expediting the civil recovery process" or to "impose

⁵ R.V Kelkar, *Law of Arrest : Some Problems And Incongruities*, 22 J. INDIAN L. INST. 314 (1980)

⁶ Vivek Narayan, *Know Your Rights Part -1: Rights of an arrested person*, THE TIMES OF INDIA, 5th July, 2018 <https://timesofindia.indiatimes.com/blogs/lawtics/know-your-rights-part-1-rights-of-an-arrested-person/>

⁷ *Ibid.*

⁸ C.K TAKWANI, *CIVIL PROCEDURE LIMITATION AND COMMERCIAL COURTS*, Eastern Book Company (9th ed. 2021)

⁹ Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker, AIR 1961 All 1

¹⁰ H.S Bobby, *Criminalization Of Civil Disputes: Need For Care And Guidelines*, L & L PARTNERS (5th Feb 2020, at 11:30 am) [https:// www.luthra.com india/crime/888034/criminalization-of-civil-disputes-need-for-care-and-guidelines](https://www.luthra.com/india/crime/888034/criminalization-of-civil-disputes-need-for-care-and-guidelines)

¹¹ *Ibid.*

unnecessary strain on the accused, or out of animosity” towards the accused.¹²

This paper aims to unveil the facets of arrest under the civil justice system. It also aims to outline the unnecessary criminalization of the civil wrongs and the remedy against the wrongful charges by analysing the relevant provisions on the concept of *Arrest and Detention* in light of the civil wrongs. For achieving the above-laid objectives, the researcher has employed doctrinal as well as analytical legal research methodologies. The data collection encompassed various secondary sources like articles, books, journals, cases, law reviews, etc. This paper further aims to address the following research questions:

- i. What are the various dimensions of arrest and detention in light of execution of a decree under the Civil Procedure Code?
- ii. How far the organs of *State* been successful in maintaining the line of distinction between the civil and criminal wrongs?
- iii. Are the remedies against the wrongful charges suffice for redressing the aggrieved party?

1. THE FACETS OF ARREST AND DETENTION UNDER CIVIL JUSTICE SYSTEM

The implementations of a litigation is referred as execution.¹³ If civil litigation has been initiated with the filing of the plaint, a decree or order will be issued.¹⁴ Execution is the legal process by which a decree-holder requires a judgment-debtor to comply the mandates of such decree.¹⁵ It allows the decree-holder to retrieve the proceeds of the judgement.¹⁶ If the judgment-creditor or decree-holder receives the money or other item granted to him by judgement, decree, or order, the execution is completed.¹⁷ As stated in “*Ghanshyam Das v. Anant Kumar Sinha*”¹⁸, the Civil Procedure Code provides extensive and exhaustive procedures for dealing with it in all areas,¹⁹ one of which is “*arrest and detention*” of the

¹² Anshika Saini, *The concept of criminalisation of Civil Disputes*, JUS DICERE (20th Feb 2020, at 4:00pm) <https://www.jusdicere.in/the-concept-of-criminalisation-of-civil-disputes/>

¹³ Anupama Hebbar, *Litigation and enforcement in India: overview*, THOMSON REUTERS (1st Apr 2021, 3:00pm) [https://uk.practicallaw.thomsonreuters.com/5-502-0726?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/5-502-0726?transitionType=Default&contextData=(sc.Default)&firstPage=true)

¹⁴ *Ibid.*

¹⁵ Sanjeev Kumar, *Execution of a Decree: When does the clock start ticking?*, SCC ONLINE (29th Apr 2020, 8:00pm) <https://www.scconline.com/blog/post/2020/04/29/when-does-the-clock-start-ticking/>

¹⁶ *Ibid.*

¹⁷ C.K TAKWANI, *supra note 8*

¹⁸ *Ghanshyam Das v. Anant Kumar Sinha*, 1991 AIR 2251

¹⁹ *Ibid.*

judgement debtor in civil prisons.

1.1 An outline on the concept of arrest under Civil Procedure Code

Under the Civil Procedure Code, the concept of “*Arrest and detention of the judgment-debtors*” in civil prisons is a method of execution of a decree.²⁰ The provisions of Arrest and Detention under Civil Procedure Code is of remedial nature rather than punitive nature. If the decree is for recovery or payment with respect to money matters, the execution can be carried out by arresting and detaining the judgment-debtor.²¹ It attempts to grant the decree-holder a redress if the lawsuit has been adjudicated in his favour. The civil justice system does not assess an offender's guilt or innocence, instead it focuses on whether the accused is liable for the victim's damages.²²

The arrest and detention in the *Civil Justice System* primarily results in the cases wherein the judgement debtor fails or refuses to fulfil the decree issued against him, resulting in arrest and detention for the redressal of the decree-holder.²³ Every individual against whom such decree is issued under the Code is covered by this provision. Whenever a decree is issued in favour of an individual, that individual must approach the court for the decree's enforcement.²⁴ The court may therefore declare the “*arrest and detention of the judgement-debtor*” in accordance with the provisions of the Code.²⁵

Further, according to *Order XXI Rule 37*, an individual to be arrested is issued a show-cause notice to come before the court and present justifications against such arrest necessary for executing the decree.²⁶ Nevertheless, as laid in the case of *Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker*, this notice is not required if the court is convinced, through affidavit or otherwise, that prolonging the execution will result in depart of the judgement debtor from the concerned jurisdiction.²⁷ Whereas if judgement debtor doesn't arrive in court after being served with the notice, the court may issue a warrant of arrest at the request of the decree-

²⁰ Ranganatha Padayachi vs The Mayavaram Financial Corporation, AIR 1974 Mad 1

²¹ Ganesh v. Sankaran and another, 2006 (3) CTC 546

²² David Engel, *Civil Cases and Society: Process and Order in the Civil Justice System*, 4 AM. B. FOUND. RES. J. 295 (1979)

²³ D.N MATHUR, CIVIL PROCEDURE CODE, Eastern Book Company (4th ed. 2017)

²⁴ K.M.Kannu Gounder v. Mahboob Ali Sahib and another, 2003 (2) MLJ 329

²⁵ *Ibid.*

²⁶ D.N MATHUR, *supra* note 12

²⁷ Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker, AIR 1961 All 1

holder.²⁸ The same concept was observed in the case of *Mayadhar Bhoi V. Moti Dibya* wherein it was held that the judgement debtor is required to pay the money-decree issued against him within 30 days from the date of such order; the failure of the same can result in his detention for 3 months.²⁹

The following elements are crucial when it comes to arrest and detention.

a. For executing a decree, *a judgment-debtor can be arrested anytime and on any day*. Following the arrest, he shall be presented before the court at the earliest.³⁰

c. No dwelling residence can be accessed *after sunset or before sunrise* to make an arrest. Furthermore, the outside door of a dwelling residence cannot be broken unless the judgment-debtor occupies such house and denies or prevents entry to it.³¹

c. If the *decree amount is below Rs.2000*, the order of detention of the judgment-debtor cannot be issued.³²

d. If *the judgment-debtor settles the decree value and the arrest expenses*, he shall be discharged just once.³³

e. When the *“judgment-debtor is a woman, a juvenile, or the legal representatives of a departed judgment-debtor,”* the decree pertaining to money could not be enforced through arrest and detention.³⁴

In light of the Civil Procedure Code, Section 51- 59 of Order XXI, as well as Rule 30- 41, lay down the *“arrest and detention of the judgment-debtor in civil prisons”*.³⁵ The conditions are obligatory and must be properly followed. The purpose of judgment-debtor's arrest in the civil prison is multifaceted. Firstly, it allows the decree-holder to reap the benefits of the decree that was issued in his favour and secondly, it safeguards the judgment-debtor, being incapable to settle his outstanding dues because of the circumstances outside his

²⁸B.K. Puttaramiah vs Hajee Ibrahim Essack And Sons, AIR 1959 Kant 94

²⁹ Mayadhar Bhoi V. Moti Dibya, AIR 1984 Ori 162

³⁰ DINSHAH FARDUNJI MULLA, THE CODE OF CIVIL PROCEDURE, LEXIS NEXIS (*15TH ED. 2012)

³¹ *Id.*

³² Ganesh v. Sankaran and another, 2006 (3) CTC 546

³³ Paramanandaswami v. Shanmugharn Pillai, AIR 1949 Mad 822

³⁴ *Ibid.*

³⁵ D.N MATHUR, *supra* note 16

control.³⁶ Hence, the mere negligence or non-payment of the sum to the decree-holder does not warrant arrest and detention of the judgment-debtor.

1.2 Exceptions and release to arrest under Civil Procedure Code:

According to the Civil Procedure Code, the aforementioned individuals cannot be imprisoned in a civil prison:

1. Judicial authorities on their way to or from, or even while serving in their courts;
2. A woman;
3. The parties, respective pleaders, mukhtars, revenue agents, and recognised agents, as well as their witnesses, who acted in contravention of a summons while on their way to, entering, or leaving from court;
4. Legislative body members;
5. Any individual or group of individuals whose arrest, in the opinion of the State Government, may pose a risk or annoyance to the public;
6. A judgement debtor whose decretal sum does not surpass two thousand rupees.³⁷

Furthermore, under Section 58, any individual, held in detention in civil prison must be released before the expiry of the term of detention on the aforementioned conditions:

- If the decree against him has been completely satisfied;
- If the amount stated in the warrant for his detention has been given to the police officer;
- If the individual giving the application for the person's arrest requests the same;
- If the individual on whose application such detention was made fails to pay subsistence allowance.³⁸

Additionally, section 59 states that a warrant granted by a court for the arrest of an individual may be revoked at any moment if the judgment-debtor suffers from a serious illness.³⁹ When such an arrest has been made, and the court determines that the individual is

³⁶ Jolly George Verghese & Anr vs The Bank Of Cochin, AIR 1980 SC 470

³⁷ AVTAR SINGH, THE CIVIL PROCEDURE CODE, Eastern Books Company (5th ed. 2019)

³⁸ *Ibid.*

³⁹ The Code of Civil Procedure 1973, § 59, No. 5 Acts of Parliament, 1908

not in a suitable condition of health to stay in jail, the court may direct his release.⁴⁰

If a judgement debtor has been sent into detention, he may be released:

- By the State Government if any epidemic or contagious disease occurs;
- By the court that awarded the execution;
- By any court that is superior to the aforesaid court, on the pretext of severe ailment⁴¹

Being a liberal provision, it should be used extensively. Furthermore, if a person is freed after serving the time of detention specified in Section 58, he is not relieved of his obligation to pay the decretal sum to the decree-holder.⁴² As observed in *Alamelu Ammal vs T.S. Venkatarama Aiyar*, an individual desires to apply for being declared insolvent as per Section 55, and provides satisfactory assurance to the court that he will file for insolvency within 1 month and he will attend when summoned for procedures pertaining to the insolvency application or the enforcement of the decree for which he was arrested⁴³, the court can order his release him for the stipulated term, and in case he misses the filing of such application and appear, the court can order that the security he provided be realised or send him back for imprisonment.⁴⁴

Further, as observed in *T. Dharmalingam v/s K.P. Bharathi*,⁴⁵ when an inquiry is underway under subrule 1 of Order XXI Rule 40, the court may direct the discharge of the judgement debtor from the civil prison provided the judgement debtor provides satisfactory security for his attendance before the court.⁴⁶ Furthermore, prior to the order of detention of an individual, the court can under subrule 3 of Order XXI Rule 40, offer 15 days to the judgement-debtor for fulfilling the decree, by passing the individual in the police custody, or may free him on providing security to the satisfaction of the court after mandating the person to appear after the expiry of the specified time period.⁴⁷

⁴⁰ *Ibid.*

⁴¹ PC SARKAR AND SUDIPTO SARKAR, SARKAR'S CIVIL COURT PRACTICE AND PROCEDURE MANUAL, Lexis Nexis (12th ed. 2015)

⁴² *Ibid.*

⁴³ *Alamelu Ammal vs T.S. Venkatarama Aiyar*, AIR 1927 Mad 919

⁴⁴ The Code of Civil Procedure 1973, § 59, No. 5 Acts of Parliament, 1908

⁴⁵ *T. Dharmalingam v/s K.P. Bharathi & Others*, 2017 Mad (2) 284

⁴⁶ *Ibid.*

⁴⁷ AVTAR, *supra* note 30

2. REMEDIES FOR FALSE IMPRISONMENT AND DETENTION

False imprisonment or arrest is defined as confining an individual in a confined place without justifications or consent. It is both a crime and a tort under common law. False arrest is defined as the arrest of an individual lacking legal authorization by a police officer or a private individual. It is an intentional tort, similar to assault, battery, illegal harassment, and breach of privacy and are known as torts of trespass against an individual. There are two-fold remedies for false imprisonment: *damages and habeas corpus*.⁴⁸ Since false arrest and detention is a tort, the fundamental recourse is an action for damages, causing by virtue of bodily or mental distress, injury to image, or even intentional intent on the part of the defendant.⁴⁹ When a person is wrongfully detained, the Writ of Habeas Corpus can be used to have him freed. Apart from these two remedies, the *Indian Penal Code* also provides relief against the false charges, which has been discussed in the subsequent lines.

2.1 The remedy to claim damages against malicious prosecutions

An Individual will be penalised for malicious prosecution in the view of securing justice to the aggrieved individual, being wrongly charged and for the prevention of the wasting of valuable time of the court. A “*malicious prosecution*” is described as a court process initiated by one individual against another, with an unlawful or inappropriate motive with no reasonable basis to justify it.⁵⁰ It can be filed in reaction to any *false and malicious criminal or civil action*. The aggrieved party of an illegitimate and malicious case can later bring his suit in civil court against the parties who actively participated in originating or assisting the initial case. In the lawsuit of malicious prosecution, the defendant in the initial case becomes the plaintiff, and the plaintiff in the original case becomes the defendant.

The following ingredients are required for establishing malicious prosecution:⁵¹

- i. The defendant prosecuted the plaintiff.
- ii. The procedure alleged of was ended in favour of the plaintiff if it was capable of

⁴⁸ Greg O’Ceallaigh, *False Imprisonment*, LEXIS NEXIS (12th Dec 2020, 3:30 pm) <https://www.lexisnexis.co.uk/legal/guidance/false-imprisonment>

⁴⁹ Jaeson Varuhas, *The Concept of 'Vindication' in the Law of Torts: Rights, Interests and Damages*, 32 OXFORD J. LEGAL STUD. 253 (2014)

⁵⁰ *Id.* at 255

⁵¹ O. Ramadoss vs R. Sanhasi Chettiar And Ors., (1957) 1 MLJ 79

being terminated by its essence.

- iii. The prosecution was brought against him without any legitimate or substantial grounds.
- iv. The prosecution was initiated with malicious intentions rather than intending to put the law into motion.
- v. The plaintiff has sustained injury to his reputation, personal safety, or the security of his possessions.

Further, as laid in *Gobind Chandra Sambarsingh vs Upendra Padhi*⁵² defendant can claim to claim reparations for losses incurred due to such legal procedures, that may include the insolvency proceedings against the businessman, or a winding-up action against a trading organization, or an action that ends to arrest, execution, or seizure of the defendant's belongings.⁵³ According to the civil laws, the plaintiff is entitled to get compensation upto the amount of consideration of every aspects of fraudulent litigation, including reputational damage, impairment of social circles, and failure of income throughout the course of the lawsuit.⁵⁴ The plaintiff will be compensated in every aspects based on the gravity of the situation. The same concept was observed in *Vishweshwar Shankarrao Deshmukh and Anr v. Narayan Vithoba Patil*⁵⁵, wherein the case was initiated without any legitimate grounds, and as a result of the fraudulent prosecution, the plaintiff's reputation suffered, and his position as a sarpanch and politician was degraded in community; the court determined that the defendant intentionally persecuted the plaintiff with no legitimate and probable cause, and ordered to pay the plaintiff Rs 12,500.00 in compensation.⁵⁶

2.2 Remedy of Habeas Corpus

Habeas corpus is the acronym of a legal action or writ used by inmates to request release against wrongful incarceration under common law.⁵⁷ The English legal system regards this writ as the *most valuable remedy*.⁵⁸ By the virtue of this writ, the court instructs the individual or authority who has imprisoned or arrested another individual to produce the detainee's body before the

⁵² *Gobind Chandra Sambarsingh vs Upendra Padhi*, AIR 1960 Ori 29

⁵³ *Ibid.*

⁵⁴ *Ramdhan S/O Bhuraji vs Kanmal S/O Nathuram*, 1981 WLN 87

⁵⁵ *Vishweshwar Shankarrao Deshmukh and Anr v. Narayan Vithoba Patil*, 2005 (2) BomCR 491

⁵⁶ *Ibid.*

⁵⁷ *Sunil Batra vs Delhi Administration*, AIR 1980 SC 1579

⁵⁸ *Albert S. Glass, Historical Aspects of Habeas Corpus*, 9 S.T JOHN'S L. REV.55 (1934)

Court so that the Court can determine the legitimacy or such arrest or detention.⁵⁹ If there is no lawful basis for the confinement, the party is directed to be freed.

The “*justifications and validity*” of an individual's detention are explored by summary procedure under this prerogative writ,⁶⁰ and in case the concerned authority which has his custody fails to appease the court that the “*deprivation of his personal liberty is in accordance with the procedures laid by law*”, the individual is granted liberty.⁶¹ Nevertheless, releasing on habeas corpus is not an acquittal and no subsequent writ can be employed as a route of appeal.

The “*Supreme Court and the High Courts*” have the power to issue this writ under *Articles 32 and 226 of the Constitution of India*.⁶² Further, an application for habeas corpus can be brought by the person imprisoned or by anybody on his behalf, according to the standards established by the High Courts.⁶³ The writ of habeas corpus is an efficient way of obtaining prompt release from illegal incarceration, whether in jail or in private custody.⁶⁴ The petitioner can immediately file this writ in case of an unlawful detention.⁶⁵ Notwithstanding the well-established principle that a party in a writ petition is not allowed to introduce new arguments at the hearings beyond the content indicated on affidavit, a habeas corpus writ cannot be rejected on the basis of imprecise pleadings.⁶⁶ Similarly, the detainee's inability to allege the necessary remedies in his petition would not prevent considerations on the merits.⁶⁷ This writ provides an essential means to test the legality of arrest and detention.

2.3 Remedy under the Indian Penal Code

In addition to the remedies provided under civil and public law, the Legal system provides punishment for those who misuse the process by filing frivolous suits. It is crucial to remember that “*falsely charging someone with an offence*” with the “*intent to harm*” them is offence under “*Section 211 of the Indian Penal Code (IPC)*”.⁶⁸ The offence can be read in conjunction with Section 182 of the IPC. “*Section 44 of the IPC*” defines *injury* as “*any harm whatsoever,*

⁵⁹ *Ibid.*

⁶⁰ Shrutanjya Bhardwaj, Preventive Detention, Habeas Corpus and Delay at the Apex Court: An Empirical Study, 13 NUJS L. REV. 1 (2020)

⁶¹ *Ibid.*

⁶² M.P JAIN, INDIAN CONSTITUTIONAL LAW, Lexis Nexis (8th ed. 2018)

⁶³ Kent S. Scheidegger, *Habeas Corpus, Relitigation, and the Legislative Power*, 98 COLUM. L. REV. 888 (1998)

⁶⁴ DURGA DAS BASU, COMMENTARY ON CONSTITUTION OF INDIA, Wadhwa and Company (5th ed. 2003)

⁶⁵ *Ibid.*

⁶⁶ Mohinuddin v. D.M., (1987) 4 SCC 58.

⁶⁷ Cherukuri Mani v. State of A.P., (2015) 13 SCC 722

⁶⁸ RATAN LAL & DHIRAJ LAL, INDIAN PENAL CODE, (ed. 30th Wadhwa & Co. Ltd., 2005)

unlawfully inflicted to any individual in body, mind, reputation, or property.”⁶⁹

When an individual is charged under the first clause of *Section 211*, he may face “*imprisonment for a term of up to two years, a fine, or both*”⁷⁰. Furthermore, when such an individual is condemned under “*offence punishable with death, life imprisonment, or imprisonment for seven years or upwards, he shall be punished with imprisonment and shall also be liable to fine*”.⁷¹ The following are the elements required to establish a false charge under *Section 211*.⁷²

- i. The purpose to inflict injury to a specific individual.
- ii. There must be the *presence of intention* while inflicting such harm-
 - a. by “*initiating or inducing*” criminal proceedings to be commenced against that individual,
 - or b. by “*falsely accusing*” him with having “*committed an offence*”.
- iii. *Knowledge* that such procedures or accusation against that individual had no reasonable or legal basis.⁷³

As a result, if a criminal charge is falsely filed for civil issues, a relief is provided *under Section 211 of the IPC*. Nevertheless, if “*an offence under Section 211*” is perpetrated in connection to a *judicial process*, “*cognizance on private complaint*” is precluded by “*Section 195(1)(b) of the Code of Criminal Procedure*”.⁷⁴ The Court cannot take “*cognizance of an offence*” charged under *Section 211* unless “*a written complaint*” from that court or from such official of the court as that court can allow in writing in this respect or of any other superior court, is received.⁷⁵

3. CRIMINALIZATION OF CIVIL WRONGS: A NEED FOR CARE

The recent times have noted a substantial increase in the incidence of false criminal complaints brought to resolve civil issues.⁷⁶ The majority of civil issues include family inheritance,

⁶⁹ *Ibid.*

⁷⁰ PSA PILLAI, CRIMINAL LAW, Lexis Nexis (14th ed. 2019)

⁷¹ *Ibid.*

⁷² Sessions Judge of Tinnevely Division v. Sivan Chetti I.L.R. (1909) 32 M. 258

⁷³ *Ibid.*

⁷⁴ RATAN LAL, *supra* note 61

⁷⁵ E. Pedda Subba Reddy And Ors. vs State And Anr., AIR 1969 AP 281

⁷⁶ Sushila Aggarwal And Ors. V. State (Nct Of Delhi) And Anr, 2020 SCC Online Sc 98

partition, property, will execution, issues between two businesses, or problems arising from a contract between two persons.⁷⁷ In addition to bringing civil cases or initiating arbitration processes, the standard practise has become to file a criminal complaint against the opposing party.⁷⁸ This method of resolving civil disputes is gradually being utilised for collecting the disputed overdue amounts owed by one person to another in the context of a contract-bound commercial transaction. Due to prolonged delays in adjudication of civil issues, civil lawsuits are often been converted into criminal proceedings. Furthermore, “*the expedited remedy provided by a criminal prosecution,*”⁷⁹ as contrasted to the civil disputes, pushes the plaintiff to file fictitious and frivolous actions.⁸⁰

3.1 Judicial Pronouncement on the Criminalization of Civil Issues

Throughout the times, the courts have condemned the initiations of bogus criminal proceedings in situations resembling civil disputes. In the “*Commissioner of Police & Ors vs Devender Anand & Ors,*” the *Hon'ble Supreme Court* observed in its decision that the matter concerns a civil discontent, and the criminal complaint brought to settle a civil matter is an exploitation of the legal processes.⁸¹

The filing of a criminal a complaint of cheating or fraud rather than availing the civil remedies especially in the cases of breach of contract, is widely prevalent in India.⁸² Nevertheless, it should be emphasized that a mere civil issue resulting from the parties' contractual agreement can never be transformed into a criminal action for obtaining favourable outcomes.⁸³ The Court distinguished between the offence of violation of a contractual agreement and deception in the case of “*Hriday Ranjan Prasad Verma & Ors. v. State of Bihar & Anr*”.⁸⁴ The essence of the crime, as per the Supreme Court, is the intention.⁸⁵ For convicting someone of cheating, it must

⁷⁷ H.S Bobby, *supra* note 10

⁷⁸ Pradeep Nayak, Keyword Finder, *Arbitration procedures and practice in India: Overview*, THOMAS REUTERS PRACTICAL LAW (1st Feb 2021, 9:00am) [https://uk.practicallaw.thomsonreuters.com/9-502-0625?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/9-502-0625?transitionType=Default&contextData=(sc.Default)&firstPage=true)

⁷⁹ *Ibid.*

⁸⁰ Gal L. Bakatis Dewolf, *Protecting The Courts From The Barrage Of Frivolous Prisoner Litigation: A Look At Judicial Remedies And Proposed Legislative Remedy*, 57 OHIO STATE L. J. 258 (1996)

⁸¹ The Commissioner of Police & Ors vs Devender Anand & Ors, Crim. App. No. 834 of 2017

⁸² Jeevan Ballav Panda, *Civil Or Criminal Liability: Are Legal Cases The New Pressure Tactic?*, BW LEGAL WORLD (17th Nov 2020, 11:00 am) <http://bwlegalworld.businessworld.in/article/Civil-Or-Criminal-Liability-Are-Legal-Cases-The-New-Pressure-Tactic-/17-11-2020-343464/>

⁸³ *Ibid.*

⁸⁴ *Hriday Ranjan Prasad Verma & Ors. v. State of Bihar & Anr*, 2000 (2) SCR 859

⁸⁵ *Ibid.*

be proven there is a false or deceptive intent at the moment he made the promise.⁸⁶ Further, as laid in *M. Sivaram And Ors. vs State Of A.P. And Anr*, the failure of upholding his promise, a guilty intention cannot be assumed right from the outset of making the commitment, a simple violation of contract can never lead to the birth of criminal actions for cheating except if deceptive or unscrupulous intent is demonstrated immediately from the outset of the agreement, whenever the offence is deemed to have been perpetrated.⁸⁷

The rule of law permits everybody with a “*legitimate cause or concern*” to seek the redress provided under criminal law.⁸⁸ Nevertheless, a complainant who begins a complaint knowing that criminal proceedings are unnecessary and that the relief rests under civil laws shall be held liable for initiating erroneous criminal actions.⁸⁹ In the case of “*G. Sagar Suri v. State of U.P.*”⁹⁰, the Apex Court stated that “*it must be determined if an issue that is fundamentally civil in character has been provided the guise of a criminal offence*”.⁹¹ The key grounds on which the *High Court* would execute its “*jurisdiction*” under “*Section 482 of the Criminal Procedure Code, 1973*” has already been laid by the court, which must be utilised to avoid exploitation of any court's procedure or to advance the objectives of justice.⁹²

Criminal proceeding is not a substitute for other legal recourse, hence a criminal court must take extreme prudence when granting a process. It is a severe concern for the accused. Courts have often condemned the initiation of fictitious and frivolous criminal complaints in instances involving civil disputes.⁹³ The expedited redress provided by a criminal prosecution, compared to a civil matter, encourages the plaintiff to begin fraudulent and frivolous actions. Furthermore, in a country burdened by the globe's highest pending cases, litigants frequently regard criminal procedures as a weapon to pressurise and intimidate the opposite party into entering favourable settlements.⁹⁴

The Apex Court stated in “*Indian Oil Corporation v. NEPC India Ltd. & Others*”⁹⁵ that it is important to pay notice of a *rising trend in corporate circles to transform merely civil issues*

⁸⁶ *M. Sivaram And Ors. vs State Of A.P. And Anr*, 2007 CriLJ 1259

⁸⁷ *Ibid.*

⁸⁸ Brian Z. Tamanaha, *The History And Elements Of The Rule Of Law*, 1 SINGAPORE J. LEGAL STUD. 232 (2012)

⁸⁹ *M. Sivaram And Ors. vs State Of A.P. And Anr*, 2007 CriLJ 1259

⁹⁰ *G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636

⁹¹ *Ibid.*

⁹² RATAN, *supra* note 61

⁹³ *Hriday Ranjan Prasad Verma & Ors. v. State of Bihar & Anr*, 2000 (2) SCR 859

⁹⁴ Jeevan, *supra* note 73

⁹⁵ *Indian Oil Corporation v. NEPC India Ltd. & Others*, 2006 (6) SCC 736

into criminal proceedings.⁹⁶ It's often due to the widespread perception that civil law redressals are time-consuming and therefore do not sufficiently safeguard the plaintiff's rights.⁹⁷ Further, there is also the notion that when an individual becomes involved in a criminal case, the resolution is likely to be achieved soon. Any attempt to resolve civil issues and claims that do not include a criminal activity by putting strain on the accused through criminal prosecution should be condemned and avoided. Unfortunately, despite numerous cautions from the Supreme Court against employing criminal proceedings to resolve civil matters, the amount of the criminal complaints brought in civil matters has not decreased.

3.2 Powers to quash FIR in the civil disputes

The High Court has the fundamental powers of quashing the criminal proceedings for matters between two contractual parties that are fundamentally civil in essence.⁹⁸ In the case of "*State of Haryana v. Bhajan Lal*"⁹⁹, the Apex Court observed that if a criminal proceeding is indisputably instituted with *mala-fide intention* or is maliciously initiated with the underlying agenda of ravaging revenge on the accused and defiance him because of a personal enmity, such proceedings must be quashed and set down.¹⁰⁰

On contrary, slew of instances argue that quashing at the FIR stage must be avoided. The law stipulates that meddling with the FIR is only permitted in extreme cases.¹⁰¹ The Courts have uniformly decided that FIRs should be dismissed judiciously and with caution only in the rarest of rare instances.¹⁰² In the case of "*State of Andhra Pradesh v. Golconda Linga Swamy and Ors*"¹⁰³, the Apex Court stated that the *mere accusation* of "*mala-fides against the informant*" is futile and *cannot be used to halt the proceedings*.¹⁰⁴ The High Court is *not compelled* to undertake a "*detailed study*" of the evidence "*before conducting the trial*" for determining if the matter would result in guilt or innocence and the FIR is interfered only if the information is baseless, obnoxious, or scurrilous, or fail to reveal any wrongdoing¹⁰⁵

⁹⁶ *Ibid.*

⁹⁷ H.S. Bedi vs. National Highway Authority of India, 2015 SCC OnLine Del 9524

⁹⁸ H.S Bobby, *supra note* 10 at para 12

⁹⁹ State Of Haryana And Ors vs Ch. Bhajan Lal And Ors, 1992 AIR 604

¹⁰⁰ *Ibid.*

¹⁰¹ *T.T Antony v. State of Kerala* 2001 6 SCC 181

¹⁰² Abasaheb Yadav Honmane vs The State of Maharashtra and another, 2008 (2) MhLj 856

¹⁰³ State of Andhra Pradesh v. Golconda Linga Swamy and Ors, 2004 SCC(Cri) 1805

¹⁰⁴ *Ibid.*

¹⁰⁵ *Id.* at para 12

In another decision, “*State of Kerala and Ors. v. O.C. Kuttan and Ors.*,” the Apex Court ruled that the authority to halt criminal proceedings should be used rarely and only in the most exceptional of circumstances.¹⁰⁶ The Court noted that it was a well-established stance that a FIR is essentially a starting point for moving the machineries and investigating a cognizable offence. Thereby, while exerting the powers under “*Section 482 of the Code of Criminal Procedure 1973*” for determining if the investigation as whole must be quashed, the court should exercise extreme caution, and at initial level, it is not conceivable for the court to evaluate the components and then draw conclusions. In the case of “*State of U.P. v. O.P. Sharma*,”¹⁰⁷ the Apex Court stated that the “*High Court should be wary*” while interfering at the juncture to prevent the prosecution from exerting its underlying powers under “*Section 482 or Articles 226 and 227 of the Indian Constitution*” and should let the law draw its path.¹⁰⁸ The inherent powers should be used rarely and carefully the court believes that not doing so would result in a grave injustice.

CONCLUSION AND RECOMMENDATIONS

The objective of arrest and detention is to provide remedy to a decree-holder and condemning the judgement debtor to civil prisons in the event of failure of the payment of decretal sum despite having the resources to do so. It, nevertheless, safeguard honest debtors whose incapacity to pay is backed by a justifiable cause. For achieving the ends of justice, the court must grant debtors the chance to be heard and the same has been laid in the principles of natural justice. Though, the Indian Justice system has provided several remedies for the false arrest and detention, but unfortunately, it has failed to curb the upsurge of criminalization of the civil disputes. Excessive reliance and improper usage of criminal machineries for attaining civil goals accomplishes nothing except acting as a barrier to the nation's expanding economy. Criminal justice system should indeed be utilised solely as a final alternative (*ultima ratio*) when culpability is evident from the outset of the activities. Criminal punishment is utmost severe of the State's institutional instruments, and therefore, it should be employed as the last resort in a democratic state. The practise of attempting to resolve civil disputes by exerting pressures via criminal prosecution has a significant power of having a catastrophic influence on the economic system and will almost certainly have a negative influence on the environment of development and growth. Following are some recommendations to curb this

¹⁰⁶ *State of Kerala and Ors. v. O.C. Kuttan and Ors.*, 1999 (2) SCC 651

¹⁰⁷ *State of U.P. v. O.P. Sharma*, JT 1996 (2)

¹⁰⁸ *Ibid.*

menace:

- i. The facts of a FIR involving a civil matter must be confirmed by a preliminary inquiry before proceeding with the arrest procedure.
- ii. There shouldn't be any rationale for arrest during the time of undertaking the preliminary inquiries, and following completion of the same, the accused must be notified of the findings of the inquiry and must be provided a fair duration of time to exercise his legal remedies.
- iii. Close monitoring by supervisory personnel is necessary; otherwise, the preliminary investigation may be rendered ineffective. Further, it should be time bound and any deviation should be supported by reasonable justifications.
- iv. The preliminary investigations should conclude in the filing of criminal charges or the recommendation of departmental actions, or the matter being dismissed due to a lack of obvious criminality. As a result, prompt resolution of preliminary inquiries is critical.
- v. In situations wherein civil procedures are already ongoing, *anticipatory bail* should be allowed, and the "*confiscating of passports should not be a precondition*" for the grant of bail in the case of people residing outside of India. Passport impoundment should be used only in extreme cases where the offence causes substantial bodily damage or death.

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