State Of Haryana & Ors vs Dinesh Kumar on 8 January, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1083, 2008 AIR SCW 696, (2008) 5 ALLMR 22 (SC), (2008) 63 ALLINDCAS 265 (SC), 2008 (1) SCC(CRI) 722, 2008 (1) SCALE 268, 2008 (3) SCC 222, 2008 (5) ALL MR 22 NOC, 2008 (70) ALL LR 78 SOC, (2008) 1 RECCRIR 725, 2008 CHANDLR(CIV&CRI) 250, (2008) 1 GUJ LH 447, (2008) 2 LAB LN 120, (2008) 1 SCALE 268, (2008) 2 MAD LJ(CRI) 233, (2008) 39 OCR 636, (2008) 2 SERVLR 331, (2008) 2 ALLCRILR 1

Author: Altamas Kabir

Bench: C.K. Thakker, Altamas Kabir

```
           CASE NO.:
Appeal (civil)  84 of 2008

PETITIONER:
State of Haryana & Ors.

RESPONDENT:
Dinesh Kumar

DATE OF JUDGMENT: 08/01/2008

BENCH:
C.K. Thakker & Altamas Kabir

JUDGMENT:
```

J U D G M E N T (Arising out of SLP(C) No.1840 of 2007 With Civil Appeal No. 85 of 2008 (Arising out of SLP(C) No.14939) Altamas Kabir,J.

1. Leave granted.

2. These two appeals have been taken up for hearing and disposal together, inasmuch as, the issues to be decided in these appeals are common to both, but have been decided differently by two co-ordinate benches of the same High Court giving rise to a question of law which is of great public importance. In these appeals we are called upon to decide what constitutes arrest and custody in relation to a criminal proceeding and the decision in respect thereof may have a bearing on the fate of the respondent in this appeal and that of the appellants in the other appeal in relation to their recruitment as Constable-Drivers in the Haryana Police.

3. The respondent in the first of these two appeals and the appellants in the other appeal applied for appointment as Constable-Drivers under the Haryana Police and submitted their respective application forms, which contained two columns, namely, 13(A) and 14, which read as follows:-

13(A): Have you ever been arrested? 14: Have you ever been convicted by the Court of any offence?

4. As far as the respondent in SLP(C) No. 1840 of 2007, Dinesh Kumar, is concerned, he answered the said two queries in the negative. Subsequently, during verification of the character and antecedents of the said respondent, it was reported that he had been arrested in connection with a case arising out of FIR No. 168 of 13th October, 1994, registered at Kalanaur Police Station under Sections 323/324/34 Indian Penal Code. He and his family members were ultimately acquitted of the charges framed against them on 6th January, 1998, by the Judicial Magistrate, Ist Class, Rohtak. The appellant, however, alleged that the respondent had concealed these facts from the Selection Committee and had not correctly furnished the information in columns 13(A) and 14 of the application form submitted by him for recruitment to the post in question.

5. Since, according to the appellants, the respondent had fai1ed to disclose the aforesaid criminal case, which had been registered against all his family members, he was not offered any appointment. The appeal filed by the respondent was rejected by the Director General of Police, Haryana, by his order dated 18th November, 2005.

6. Before the High Court, it was contended by the respondent that in connection with the aforesaid FIR No. 168 dated 13th October, 1994, he had been granted bail on 17th October, 1994 without having been arrested. It was, therefore, contended on his behalf that since he had not been actually arrested and the case against him having ended in acquittal, it must be deemed that no case had ever been filed against him and hence he had not suppressed any information by replying in the negative to the questions contained in columns 13(A) and 14.

7. The rejection of the respondent s claim for appointment as Constable-Driver on the above mentioned ground was challenged by him before the Punjab and Haryana High Court in Civil Writ Petition No. 18 of 2006. Taking the view that the appellant had not suppressed any material while filling up the said columns 13(A) and 14, the High Court quashed the order of rejection by the Director General of Police, Haryana on 18th November, 2005 and directed the appellants herein to take steps to issue an appointment letter to the respondent subject to fulfillment of other conditions by him.

8. In order to arrive at the aforesaid conclusion, the High Court held that since the petitioner had been acquitted from the criminal case in question, he had quite truthfully answered the query in column 14 by stating that he had never been convicted by any Court for any offence. The High Court also held that even column 13(A) had been correctly answered because the High Court was of the view that the appellant had never been arrested, though he had obtained bail in connection with the said case.

9. In the other writ petition filed by Lalit Kumar and Bhupinder, a co-ordinate Bench of the same High Court took a different view. In the said matter the appellants had been involved in a criminal case, being FIR No.212 dated 3rd November, 2000, registered at Police Station Sadar, Narwana, for offences punishable under Sections 148/149/307/325/323 of the Indian Penal Code, but they had

been subsequently acquitted of the said charges on 10th September, 2001. On behalf of the State, the same stand was taken that the aforesaid piece of information had been withheld by the writ petitioners while filling column 14 of the application form. The High Court was of the view that since the writ petitioners had withheld important information it clearly disentitled them to appointment, as it revealed that they could not be trusted to perform their duties honestly. The High Court, accordingly, dismissed the writ petitions as being without merit.

10. In the first of the two appeals, the respondent had not surrendered to the police but had appeared before the Magistrate with his lawyer of his own volition and was immediately granted bail. Admittedly, therefore, the respondent had not surrendered to the police but had voluntarily appeared before the Magistrate and had prayed for bail and was released on bail, so that as per the respondent s understanding at no point of time was he taken into custody or arrested.

11. As to the second of the two appeals, the appellants in response to the query in column 14, had quite truthfully answered that they had not been convicted by any Court of any offence, since they had been acquitted of the charges brought against them. With regard to column 13(A), the appellants who had been implicated in FIR 108 dated 26th May 2002 under Sections 323/324/34 Indian Penal Code of Police Station Nangal Chaudhary, Mahendergarh, appeared before the Ilaka Magistrate on 7th June, 2002, and were released on their personal bonds without being placed under arrest or being taken into custody. The information disclosed by them was held to be suppression of the fact that they had been involved in a criminal case though the tenor of the query was not to that effect and was confined to the question as to whether they had been arrested.

12. One of the common questions which, therefore, need to be answered in both these appeals is whether the manner in which they had appeared before the Magistrate and had been released without being taken into formal custody, could amount to arrest for the purpose of the query in Column 13A. As mentioned hereinbefore, the same High Court took two different views of the matter. While, on the one hand, one bench of the High Court held that since the accused had neither surrendered nor had been taken into custody, it could not be said that he had actually been arrested, on the other hand, another bench of the same High Court dismissed similar writ petitions filed by Lalit Kumar and Bhupinder, without examining the question as to whether they had actually been arrested or not. The said bench decided the writ petitions against the writ petitioners upon holding that they had withheld important information regarding their prosecutions in a criminal case though ultimately they were acquitted.

13. In order to resolve the controversy that has arisen because of the two divergent views, it will be necessary to examine the concept of arrest and custody in connection with a criminal case. The expression arrest has neither been defined in the Code of Criminal Procedure (hereinafter referred to as the Code) nor in the Indian Penal Code or any other enactment dealing with criminal offences. The only indication as to what would constitute arrest may perhaps be found in Section 46 of the Code which reads as follows:-

> Arrest how made (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless

there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

{(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, 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.}

14. We are concerned with sub-sections (1) and (2) of Section 46 of the Code from which this much is clear that in order to make an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be submission to the custody by word or action.

15. Similarly, the expression custody has also not been defined in the Code.

16. The question as to what would constitute arrest and custody has been the subject matter of decisions of different High Courts, which have been referred to and relied upon by Mr. Patwalia appearing for Dinesh Kumar, respondent in the first of the two appeals. This Court has also had occasion to consider the said question in a few cases, which we will refer to shortly. Reliance was also placed on the dictionary meaning of the two expressions which will also be relevant to our decision.

17. Mr. Anoop Chaudhary, learned senior advocate, who appeared for the State of Haryana, in both the appeals, submitted that when the respondent in the first appeal and the appellants in the second appeal had appeared before the Magistrates and prayed for bail, it must be understood that they had surrendered to the custody of the court, as otherwise, the provisions of Section 439 of the Code would not have had application. Mr. Chaudhary also submitted that it did not matter as to whether the accused persons had been arrested and detained in custody by the police or not, the very fact that they voluntarily appeared before the Magistrate and prayed for bail amounted to arrest of their movements, since thereafter they were confined to the Court room and were no longer free to leave the court premises of their own choice.

18. Mr. Chaudhary submitted that the ordinary dictionary meaning of arrest is to legally restrain a person s movements for the purpose of detaining a person in custody by authority of law. He submitted that in Dinesh Kumar s writ petition the High Court had erred in coming to a finding that he had never been arrested since he had voluntarily appeared before the Magistrate and had been granted bail immediately.

19. Opposing Mr. Chaudhary s submission, Mr. Patwalia, relying on various decisions of different High Courts and in particular a Full Bench decision of the Madras High Court in the case of Roshan Beevi and Anr. Vs. Joint Secretary to the Govt. of Tamil Nadu and Ors. (1984 Criminal Law Journal 134) submitted that although technically the appearance of the accused before the Magistrate might amount to surrender to judicial custody, in actuality no attempt had been made by anyone to restrict the movements of the accused which may have led him to believe that he had never been arrested. It is on a layman s understanding of the principle of arrest and custody that prompted the respondent in the first of the two appeals and the appellants in the second appeal to mention in column 13(A) that they had never been arrested in connection with any criminal offence.

20. Mr. Patwalia referred to certain decisions of the Allahabad High Court, the Punjab High Court and the Madras High Court which apparently supports his submissions. Of the said decisions, the one in which the meaning of the two expressions arrest and custody have been considered in detail is that of the Full Bench of the Madras High Court in Roshan Beevi s case (supra). The said decision was, however, rendered in the context of Sections 107 and 108 of the Customs Act, 1962. Sections 107 and 108 of the Customs Act authorises a Customs Officer empowered in that behalf to require a person to attend before him and produce or deliver documents relevant to the enquiry or to summon such person whose attendance is considered necessary for giving evidence or production of a document in connection with any enquiry being undertaken by such officer under the Act. In such context the Full Bench of the Madras High Court returned a finding that custody and arrest are not synonymous terms and observed that it is true that in every arrest there is a custody but not vice-versa. A custody may amount to arrest in certain cases, but not in all cases. It is in the aforesaid circumstances that the Full Bench came to the conclusion that a person who is taken by the Customs Officer either for the purpose of enquiry or interrogation or investigation cannot be held to have come into the custody and detention of the Customs Officer and he cannot be deemed to have been arrested from the moment he was taken into custody.

21. In coming to the aforesaid conclusion, the Full Bench had occasion to consider in detail the meaning of the expression arrest . Reference was made to the definition of arrest in various legal dictionaries and Halsbury s Laws of England as also the Corpus Juris Secondum. In paragraph 16 of the judgment it was observed as follows:

> 6. From the various definitions which we have extracted above, it is clear that the word arrest when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one s personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested. In this connection, a debatable

> question that arises for our consideration is whether the mere taking into custody of a person by an authority empowered to arrest would amount to arrest of that person and whether the terms arrest and custody are synonymous.

22. Faced with the decision of this Court in Niranjan Singh vs. Prabhakar (AIR 1980 SC 785) the Full Bench distinguished the same on an observation made by this Court that equivocatory quibbling that the police have taken a man into informal custody but have not arrested him, have detained him in interrogation but have not taken him into formal custody, were unfair evasion of the straightforwardness of the law. This Court went on to observe further that there was no necessity of dilating on the shady facet as the Court was satisfied that the accused had physically submitted before the Sessions Judge giving rise to the jurisdiction to grant bail. Taking refuge in the said observation, the Full Bench observed that the decision rendered by this Court could not be availed of by the learned counsel in support of his contentions that the mere taking of a person into custody would amount to arrest. The Full Bench observed that mere summoning of a person during an enquiry under the Customs Act did not amount to arrest so as to attract the provisions of Article 22(2) of the Constitution of India and the stand taken that the persons arrested under the Customs Act should be produced before a Magistrate without unnecessary delay from the moment the arrest is effected, had to fail.

23. We are unable to appreciate the views of the Full Bench of the Madras High Court and reiterate the decision of this Court in Niranjan Singh s case (supra). In our view, the law relating to the concept of arrest or custody has been correctly stated in Niranjan Singh s case (supra). Paragraphs 7, 8 and the relevant portion of paragraph 9 of the decision in the said case states as follows:-

> . When is a person in custody, within the meaning of S. 439 Cr. P.C.? When he is, in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court s jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of S.439.

This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide- and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubiotics are unfair evasion of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody, in the context of S.439, (we are not, be noted, dealing with anticipatory bail under Se.438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and order of the court.

9. He can be in custody not merely when the police arrest him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions..... Sections 107 and 108 of the Customs Act do not contemplate immediate arrest of a person being summoned in connection with an enquiry, but only contemplates surrendering to the custody of the Customs Officer which could subsequently lead to arrest and detention.

24. We also agree with Mr. Anoop Chaudhary s submission that unless a person accused of an offence is in custody, he cannot move the Court for bail under Section 439 of the Code, which provides for release on bail of any person accused of an offence and in custody (Emphasis supplied). The pre-condition, therefore, to applying the provisions of Section 439 of the Code is that a person who is an accused must be in custody and his movements must have been restricted before he can move for bail. This aspect of the matter was considered in Niranjan Singh s case where it was held that a person can be stated to be in judicial custody when he surrenders before the Court and submits to its directions.

25. It is no doubt true that in the instant case the accused persons had appeared before the concerned Magistrates with their learned advocates and on applying for bail were granted bail without being taken into formal custody, which appears to have swayed one of the benches of the Punjab and Haryana High Court to take a liberal view and to hold that no arrest had actually been effected. The said view, in our opinion, is incorrect as it goes against the very grain of Sections 46 and 439 of the Code. The interpretation of arrest and custody rendered by the Full Bench in Roshan Beevi s case (supra) may be relevant in the context of Sections 107 and 108 of the Customs Act where summons in respect of an enquiry may amount to custody but not to arrest , but such custody could subsequently materialize into arrest. The position is different as far as proceedings in the court are concerned in relation to enquiry into offences under the Indian Penal Code and other criminal enactments. In the latter set of cases, in order to obtain the benefit of bail an accused has to surrender to the custody of the Court or the police authorities before he can be granted the benefit thereunder. In Vol.11 of the 4th Edition of Halsbury s Laws of England the term arrest has been defined in paragraph 99 in the following terms:-

> 99 Meaning of arrest. Arrest consists in the seizure or touching of a person s body with a view to his restraint; words may, however, amount to an arrest if, in the circumstances of the case, they are calculated to bring, and do bring, to a person s notice that he is under compulsion and he thereafter submits to the compulsion.

26. The aforesaid definition is similar in spirit to what is incorporated in Section 46 of the Code of Criminal Procedure. The concept was expanded by this Court in State of Uttar Pradesh vs. Deomen (AIR 1960 SC 1125) wherein it was interalia observed as follows:-

> Section 46, Cr.P.C. does not contemplate any formality before a person can be said to be taken in custody. Submission to the custody by words of mouth or action by a person is sufficient. A person directly giving a police officer by word of mouth information which may be used as evidence against him may be deemed to have

submitted himself to the custody of the Police Officer.

27. The sequatur of the above is that when a person, who is not in custody, approaches the police officer and provides information, which leads to the discovery of a fact, which could be used against him, it would be deemed that he had surrendered to the authority of the investigating agency.

28. It must, therefore, be held that the views expressed by the High Court in Dinesh Kumar s writ petition regarding arrest were incorrect, while the views expressed in the writ petitions filed by Lalit Kumar and Bhupinder correctly interpreted the meaning of the expressions arrest and custody . However, how far the same would apply in the ultimate analysis relating to the filling up of column 13(A) is another matter altogether.

29. In our view, the reasoning given in Dinesh Kumar s case in that context is a possible view and does not call for interference under Article 136 of the Constitution. Conversely, the decision rendered in the writ petitions filed by Lalit Kumar and Bhupinder has to be reversed to be in line with the decision in Dinesh Kumar s case. When the question as to what constitutes arrest has for long engaged the attention of different High Courts as also this Court, it may not be altogether unreasonable to expect a layman to construe that he had never been arrested on his appearing before the Court and being granted bail immediately. The position would have been different, had the person concerned not been released on bail. We would, in the facts of these cases, give the benefit of a mistaken impression, rather than that of deliberate and wilful misrepresentation and concealment of facts, to the appellants in the second of the two appeals as well, while affirming the view taken by the High Court in Dinesh Kumar s case.

30. Accordingly, although, we are of the view that the legal position as to what constitutes arrest was correctly stated in the writ petitions filed by Lalit Kumar and Bhupinder, we confirm the order passed in Dinesh Kumar s case and extend the same benefit to Lalit Kumar and Bhupinder also.

31. In the result, the Civil Appeal arising out of SLP(C) No. 1840 of 2007 is dismissed, while the Civil Appeal arising out of SLP(C)No.14939 of 2007 is allowed. The Judgment of the High Court dated 22nd September, 2005, impugned in the said appeal, is set aside and the concerned respondents are directed to take steps to issue appointment letters to the appellants in the said appeals subject to fulfillment of other conditions by them. It is also made clear that the appellants will be deemed to have been appointed as Constable-Drivers with effect from the date, persons lower in merit to them were appointed. However, while they will be entitled to the notional benefits of such continuous appointment, they will be entitled to salary only from the date of this judgment on the basis of such notional benefits.

32. The appeals are disposed of accordingly.

33. In the peculiar facts of the case, the parties will bear their own costs.