

SC: No automatic arrests under anti-dowry law

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In a significant ruling, the Supreme Court on Wednesday said that the anti-dowry law is being increasingly used by women these days to harass in-laws and the apex court ordered police not to arrest the husband and his relatives on mere lodging of a complaint under Section 498A of the Indian Penal Code.

The top court said that the conviction rate in such cases is very low and directed the state governments to instruct police "not to automatically arrest when a case under Section 498A of IPC is registered but to satisfy themselves about the necessity for arrest under the parameters (check list) provided under Section 41 of criminal procedure code".

Section 41 contains a 9-point check list which the police are required to take into account before arresting the accused.

A bench of Justices C K Prasad and P C Ghose said if the accused is arrested by the police, it is the duty of the magistrate to weigh the preliminary evidence against the Section 41 checklist before allowing further detention.

"The magistrate, while authorising detention of the accused shall peruse the report furnished by the police officer in terms of Section 41 and only after recording its satisfaction, the magistrate will authorize detention," the bench said.

The SC ordered that this check-list for arrest and detention would apply to all offences, which are punished with a prison term less than 7 years. Punishment under Section 498A is a maximum of three years but it had been made a cognizable and non-bailable offence and the accused find it very tough to get bail.

Writing the judgment for the bench, Justice Prasad said that the cases of dowry harassment in India have increased rapidly in the last few years. "The fact that Section 498A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives," he said.