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## **Law**

Arrest can be regarded as a form of deprivation of liberty of a person, which is a guaranteed right under the Constitution. This process shall deal with the use of force by the police officers that may result to a humiliating and demeaning course of action. Arrest has been regarded as a de facto punishment since it is done even before any trial proceeding takes place, and prior to the sentencing process which provides for punishment. Under the present rules, arrest can only be done by the police as a measure of last resort, after all other options had been exhausted.

In the decision of the case DPP v Carr [2002] NSWSC 194, the issue is whether or not a lawful arrest may be tantamount to an impropriety arrest, pursuant to Section 138 of the Evidence Act for failure of the arresting officer to follow the common law principle that arrest must be considered only as a measure of last resort. Such ruling of the magistrate was based on the fact that the police improperly obtained the evidence that should be inadmissible as evidence since it was taken through subsequent offences including resist arrest and assault police.

Based from the facts of the case, a police officer was on duty and while patrolling on the street, there was a rock that struck the patrol car. The officer was forced to stop the patrol car and sought the help of Carr to help him find the culprit who had thrown the rock which hit the patrol car. However, Carr thought that he was being accused as the person who threw the rock against the patrol car and he started to hurl foul language directed at the police officer. On his end, the police officer declared the Carr will be arrested for using offensive and taken the alleged suspect by the arm. As

part of his defense, Carr, pushed the police officer to flee from the arrest and started to run away. The police officer ran him for at least 25 meters. Finally, the police officer was able to pin Carr into the ground and he was later on charged for using offensive language, resisting arrest and assault on the police officer. Due to the alleged utterances and invectives stated by Carr inside the police station, he was also charged for intimidation. During the cross examination, it was revealed that Carr had been a long-time resident of the town where the arrest took place and his identity had been known by the police officer for quite a long time. Hence, the police officer can easily locate Carr since he knows where he lives within the neighborhood. The police officer failed to issue a summons against Carr, to comply with the requirement under the law. The act of the police officer in arresting Carr was illegal since he failed to issue the summons against Carr after the incident and there was failure on the part of the officer to serve the summons to Carr. Based on the Handbook of the NSW Police Service, it is stated that arrest should be considered as a measure of last resort. In fact, the evidence of assault, resisting police and police intimidation had not been admitted by the Magistrate, in accordance to Section 138 of the Evidence Act. The impropriety that was relied upon by the police is considered as a manifestation that there was failure on the part of the police officer to follow the common law principle that arrest must only be done as the measure of last resort.

Pursuant to Section 99 (3) of the LEPR, the law provides that a lawful arrest without a warrant can only be done by the police provided that the police officer has reasonable grounds to believe that the person to be arrested has

committed an offence. This will require that the police officer who is about to make an arrest has a reasonable suspicion or belief that the person to be arrested has just committed an offence. Under Section 99 (3) of the LEPR, the law has empowered the police officer to make an arrest provided that such arrest is vital to achieve the purposes stated under Section 99(3) (a) to (f). Section 99 shall refer to the subsequent offences that shall contain the element of “ execution of duty”.

Section 99 states that a police officer shall not arrest a person for the purpose of taking the proceedings for an offence against the individual provided that the police officer has reasonable grounds to believe that the suspects it is indispensable to arrest the person for in order to attain one or more of purposes mentioned: (a) for the purpose of ensuring the appearance of the person to be arrested before the court in connection to the offence committed; (b) to stop the repetition of the offence, or the commission of a subsequent offence; (c) to stop the concealment, loss or destruction of evidence in connection to the offence that was just committed; (d) to prevent harassment or interference of a person who is required to give evidence during the proceedings in relation to the offence; (e) to stop the fabrication of evidence of the offence; and (f) to preserve the well-being and safety of the person to be arrested.

The arrest made by the police officer shall be considered illegal in the event that the preconditions under the law were not achieved. Thus, the illegal or unlawful arrest by the police officer shall amount to an act that was beyond the scope of his duty. In addition, such unlawful arrest cannot form part of authorized powers given to police officers under the law. In effect, the

circumstances such as resisting arrest and assault of police officer while execution of duty, are absent in the case of Carr which made his arrest unlawful. Under the express provision of Section 99, it was clearly stated that arrest is not mandatory or compulsory on the part on the police officers because the presence of the word “ May”. Thus, the law has provided the police officers the discretion on whether to make the arrest or not. Before making an arrest, the police officer must have a reasonable suspicion that the person to be arrested has committed a crime. In the case of R v Rondo, the High Court defined reasonable suspicion as one that involves less than a reasonable belief but it should be more than just a mere possibility. In the case of Queensland Bacon Pty Ltd v Rees, the High Court stated that the reason to suspect refers to a fact which actually exists and is more than just a reason to consider or look into the probability of the existence of such fact.

In effect, the common law shall remain, where arrest should only be considered as a measure of last resort. Under practical terms, there are cases when the offender continues to commit a minor infraction or offence recognized by law. Thus, any instance of arrest shall fall under the definition of “ impropriety” if the person to be arrested has used foul or offensive language that has been heard by the police. Other minor offenses shall include a person shall continue to leave his vehicle in a “ no parking” area despite the request of the police officer to remove the vehicle; and when a person shall continue to throw his cigarettes inside the gutter that bears a notice that it is illegal to do the same.

The vital change to Section 99 is that it has empowered the police officers to

make arrests on the basis of the nature and seriousness of the offence. This particular clause of the section shall be useful for police officers who have to deal with issues on domestic violence since international academic research manifest that arresting domestic violence offenders has prevented them from committing such repeat offences. At the same time, the changes on this section shall grant the police the power to arrest persons who are about to escape the police arrest or have the intention to leave the location where a suspected offence has occurred. The amendments in the law shall specifically deal with the arrest powers which are presently being implemented in Britain and Victoria, Queensland. The duty and obligation of the police officers in terms of making arrests will be easier to handle since they no longer have to deal with legal complexities and loopholes presented under the previous Section 99 of the LEPPRA. The new changes in the 2013 version of this section shall freely allow the police officers to arrest and put all the criminals to jail.

I agree that arrest should be a measure of last resort since arrest is as a form of deprivation of liberty of person, a right which is warranted under the Constitution. Hence, arrest must not be process to be resorted by the police officers by using force that may result to a humiliating and demeaning course of action. It is also considered as a de facto punishment for it can only be done before the trial, and prior to the sentencing process.

Under the law, the arrest by the police officer must be the measure of last resort after all other options had been exhausted. Although the power of the police to make arrests, with or without warrant has been regarded as a lawful exercise of executive authority, it must be carried out with care and

caution. The authority granted to the police to make arrests, serves as an expression of the power of the state to exercise legitimate force against individuals who committed offences and for other defined purposes provided under the law. If the arrest was made without a warrant, such action may even be characterized to fall as an administrative action that was made under the discretion of the police officer. Hence, such action on the part of the arresting officer may be done without judicial oversight.

The new law on warrantless arrest has mapped out the boundaries for the police officers when to make a valid arrest should be clearly defined that the police must have a reasonable ground that the suspicion is based on a factual belief to justify the arrest. Giving the police officers that authority to determine if there is a reasonable ground to believe that the person to be arrested has committed an offence should also make the police personally accountable in the event that the arrest was not justifiable. The power to make a warrantless arrest should not be abused wantonly, capriciously, and without due regard to the Constitutional guarantees such as the deprivation of a person's liberty. The crux of the fundamental issues that are at stake involves the relationship between persons and the executive authority of the state.

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