

Reserved on : 03.07.2024
Pronounced on : 19.07.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.15125 OF 2024 (GM - RES)

BETWEEN:

SRI TAVARAGI RAJASHEKHAR SHIVA PRASAD
S/O. TAVARAGI RAJASHEKHAR,
AGED ABOUT 47 YEARS,
RESIDING AT NO. 116/65, GROUND FLOOR,
2ND MAIN, 5TH AND 6TH CROSS,
CHAMARAJPET, BENGALURU,
KARNATAKA – 560 018.

... PETITIONER

(BY SRI M. ARUNA SHYAM, SR. ADVOCATE A/W
SRI SUYOG HERELE E., ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
THROUGH SECRETARY OF
HOME DEPARTMENT,
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA BUILDING,
BENGALURU – 560 001.
- 2 . THE COMMISSIONER OF POLICE
BENGALURU NO.1,

INFANTRY ROAD,
BENGALURU,
PIN CODE – 560 001.

- 3 . THE DEPUTY COMMISSIONER
OF POLICE NORTH EAST
AMRUTHNAGAR MAIN ROAD,
SECTOR B, BYATARAYANPURA,
BENGALURU – 560 092.
- 4 . THE SUB INSPECTOR OF POLICE
AMRUTHALLI POLICE STATION,
AMRUTHNAGAR MAIN ROAD,
SECTOR B, BYATARAYANPURA,
BENGALURU – 560 092.

... RESPONDENTS

(BY SRI HARISH GANAPATHI, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO i) QUASH THE IMPUGNED NOTICE DATED 06/06/2024 ISSUED BY R4 CALLING UPON THE PETITIONER TO APPEAR BEFORE R4 AND ALL FURTHER PROCEEDINGS PURSUANT THERETO (PRODUCED AT ANNEXURE-A); ii) DIRECT THE RESPONDENTS NOT TO INTERFERE WITH THE LIFE AND LIBERTY OF THE PETITIONER EXCEPT FOLLOWING DUE PROCESS OF LAW.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question a notice dated 06-06-2024 issued by the 4th respondent/Sub-Inspector of Police, Amruthalli Police Station under Section 41(1)(a) of the Cr.P.C.

2. Heard Sri M. Aruna Shyam, learned senior counsel appearing for the petitioner and Sri Harish Ganapathi, learned High Court Government Pleader appearing for the respondents.

3. The facts, in brief, germane are as follows:-

The petitioner claims to be a reputed renowned senior Journalist. The averments are that he has worked in reputed media channels and news papers to name a few, ETV, TV-9, Samaya TV, Janasri Bhrarth-1 and Vijaya Karnataka. It is the further averment that he has worked in various capacities like, reporter, anchor, editor-in-chief, CEO and Director. The story in the petition commences from a notice that he has received on whatsapp on 06-06-2024, issued by the 4th respondent calling upon him to

appear before him at Amruthahalli Police Station on 07-06-2024 at 10.30 a.m. The petitioner is said to have requested for time and also sought the reason for summoning or issuing a police notice which had been transmitted by way of whatsapp. The 4th respondent did not disclose the reason for issuance of the impugned notice. The notice was styled to be issued under Section 41(1)(a) of the Cr.P.C., which does not refer to registration of any crime under which the notice was issued. The petitioner then claims that he enquired about the impugned notice at the police station at around 12 p.m. through his Advocate and sought reasons for issuance of the notice. Even then, he was not informed the crime details. It is, therefore, the petitioner knocked at the doors of this Court in the subject petition.

4. Learned senior counsel Sri M. Aruna Shyam contends that Section 41 of the Cr.P.C., cannot be invoked for issue of notice, without at the outset the crime being registered against any person who is issued notice, failing which it would become an abuse of the process of law. He would contend that after filing of the writ petition by inserting crime number a second notice issued on 10-06-2024

and it is communicated again by whatapp on 11-06-2024 directing the petitioner to appear before the police. In the light of the interim order granted on 11-06-2024 the petitioner has not appeared before the jurisdictional police.

5. In the light of mentioning of the crime being conspicuously absent in the notice so issued, the 4th respondent/Station House Officer was directed to be present before the Court. He would admit that he did forget to mention the crime number while issuing the notice. Therefore, he has issued second notice indicating crime number by directing the petitioner to appear before him. By then, the petition had been filed.

6. The learned High Court Government Pleader would also submit that non-mentioning of crime number in the first notice was out of inadvertence. The corrective action has been taken in the second notice which is communicated to the petitioner for the second time. He would submit that the matter be disposed of in the light of the second notice, which is in consonance with the provisions of law.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The issue lies in a narrow compass, much is said about the notice being issued under Section 41A of the Cr.P.C., both by the State and the learned senior counsel for the petitioner. But, the notice is otherwise, it is issued under Section 41(1)(a) of the Cr.P.C. Section 41 is under Chapter-V - arrest of persons. What is invoked in the notice is Section 41(1)(a) of the Cr.P.C., which mandates that any police officer, without an order from the Magistrate and without a warrant, arrest any person who commits an offence in the presence of a police officer and it should be cognizable offence. Since other provisions of the section are not invoked they are not considered. Section 41 of the Act reads as follows:

***"41. When police may arrest without warrant.—(1)
Any police officer may without an order from a Magistrate
and without a warrant, arrest any person—***

- (a) who commits, in the presence of a police officer, a cognizable offence;**
- (b) *against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence 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, if the following conditions are satisfied, namely:—*
- (i) *the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;*
 - (ii) *the police officer is satisfied that such arrest is necessary—*
 - (a) *to prevent such person from committing any further offence; or*
 - (b) *for proper investigation of the offence; or*
- (c) *to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or*
- (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*
- (e) *as unless such person is arrested, his presence in the Court 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 under the provisions of this sub-section, record the reasons in writing for not making the arrest.

- (ba) *against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;*
- (c) *who has been proclaimed as an offender either under this Code or by order of the State Government; or*
- (d) *in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or*
- (e) *who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or*
- (f) *who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or*
- (g) *who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or*
- (h) *who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 356; or*
- (i) *for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.*

(2) Subject to the provisions of Section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate."

(Emphasis supplied)

Section 41(2) mandates that no person shall be arrested in a non-cognizable offence without a warrant from the hands of the Magistrate. Therefore, Section 41 deals with arrest without warrant and Section 41(2) mandates only with warrant.

9. Section 41-A of the Cr.P.C., reads as follows:

"41-A. Notice of appearance before police officer.—

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be

recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice."

The Police Officer in all cases where arrest of a person is not required under the provisions of Section 41(1), a notice directing the person to appear can be issued. There are certain conditions stipulated in sub-sections (2), (3) and (4) of Section 41A which would not require elaboration. Therefore, the notice so issued in the case at hand though quotes Section 41(1)(a), it is in fact issued under Section 41-A, as the petitioner is directed to appear before the Police. The notice so issued requires to be noticed. The first notice issued on 06-06-2024 reads as follows:

"ಕಲಂ-41(1)(ಎ) ಸಿ.ಆರ್.ಪಿ.ಸಿ ಅಡಿಯಲ್ಲಿ ನೀಡಿದ ಪೊಲೀಸ್ ನೋಟೀಸ್"

ಈ ಮೂಲಕ ನಿಮಗೆ ತಿಳಿಯಪಡಿಸುವುದೇನೆಂದರೆ, ಪಿರ್ಯಾದುದಾರರ ಆದ ಶ್ರೀ.ವಿಜಯ ಟಾಟಾ ರವರು ಸಮಯ ಟಿವಿ ಚಾನಲ್‌ನಲ್ಲಿ ಸಿ.ಇ.ಓ ಆಗಿದ್ದು, ಜವಬ್ದಾರಿಯುತ ವ್ಯಕ್ತಿ ಆಗಿರುತ್ತಾರೆ. ಹಿಗ್ಗಿರುವಾಗ ದಿನಾಂಕ:-05-04-2024 ರಂದು ಅವರ ಮನೆಯ ಮುಂದೆ ಇದ್ದ ತನ್ನ ಸಿಬ್ಬಂದಿಯ ಬೈಕ್‌ನಲ್ಲಿ 4 ಎನ್‌ವಲಪ್ ಕವರಗಳು ಪತ್ತೆಯಾಗಿದ್ದು, ಅದನ್ನು ಮದನ್‌ಕುಮಾರ್ ಎಂಬುವವರು ಆ ಎನ್‌ವಲಪ್ ಕವರಗಳು ಬೈಕ್‌ನಿಂದ ತೆಗೆದುಕೊಂಡು ಬಂದು ಪಿರ್ಯಾದುದಾರರಿಗೆ ನೀಡಿರುತ್ತಾರೆ. ಪಿರ್ಯಾದುದಾರರು ಎನ್‌ವಲಪ್ ಕವರುಗಳು ತೆಗೆದು ನೋಡಿದಾಗ ಯಾರೋ ಅಪರಚಿತ ವ್ಯಕ್ತಿ ತನಗೆ ಹಾಗೂ ತನ್ನ ಕುಟುಂಬದ ಸದಸ್ಯರ ಜೀವ ಬೆದರಿಕೆ ಹಾಕಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆಂದು ಕೊಟ್ಟ ದೂರು ಇತ್ಯಾದಿ.

ಪ್ರಕರಣದ ತನಿಖೆಯ ಸಲುವಾಗಿ ನಿಮ್ಮನ್ನು ವಿಚಾರಣೆ ಮಾಡಬೇಕಾಗಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ದಿನಾಂಕ:07/06/2024 ರಂದು ಬೆಳಿಗ್ಗೆ 10-30 ಗಂಟೆಗೆ ಈ ಕೆಳಗೆ ಸಹಿ ಮಾಡಲಿರುವ ನನ್ನ ಮುಂದೆ ಹಾಜರಾಗಿ ಪ್ರಕರಣದ ತನಿಖೆಗೆ ಸಹಕರಿಸುವಂತೆ ಈ ಮೂಲಕ ನಿಮಗೆ ತಿಳಿಯಪಡಿಸಿರುತ್ತದೆ.

Sd/-
Sub-Inspector of Police
Amruthahalli Police Station
Bangalore City."

(Emphasis added)

This is communicated to the petitioner through whatsapp. A perusal at the notice does not indicate that the petitioner is being summoned in any crime registered. Therefore, it is directing appearance without a crime being registered. The petitioner and the Station House Officer would exchange certain chats on whatsapp. They become germane to be noticed and they read as follows:

"You, This
FIR has been registered U need to cooperate for this.
12.47 p.m."

"Hello Shiprasadh

This is the notice give for your appearance in front of me tomorrow date 7-06-2024 for investigation purpose.
12.52 p.m.

Regards,

Praveen B.N.
Police Sub-Inspector,
Amruthahalli Police Station

12.54 p.m."

+91 77606 38907

**FIR has been registered U need to cooperate for this.
100 pc.
I will** 12.54 p.m.

"Sir Namaste,

I am out of station. I will be back in Bengaluru on June 22.

**Also our Advocate has requested for crime number and
FIR or NCR number kindly request to provide the same
sir,**

Namaste, Thank you, 1.17 p.m"

*Can u send me the live location so that I can tell my inspector
that u r not here.* 1.28 p.m.

Up to 22nd not possible 2.53 p.m.

**Sir already I am in Davangere and have fixed all the
programs. So, I will come on the 22nd and will
immediately come and meet you sir.** 2.54 p.m.

It will be of great help if you can provide the case no. sir
2.54 p.m."

(Emphasis added)

The petitioner pleads that if a copy of the FIR is made available it would be of great help to him. No reply is received. But communications between the two galore. Therefore, the petitioner knocks at the doors of this Court. This Court on 11-06-2024 has passed the following order:

"Heard the learned Senior counsel, Sri. Aruna Shyam M., appearing for the petitioner.

Office objection qua maintainability stands over ruled.

Learned HCGP waives notice for the respondents.

The petitioner claims to be a renowned senior journalist. He is now knocking at the doors of this Court calling in question the notice issued under Section 41A of the Cr.P.C. The petition appends Section 41A notice issued to the petitioner directing him to appear before the Station House Officer of Amruthahalli Police Station, Bengaluru. The notice does not refer to any crime registered much less against the petitioner, for him to be summoned. A bald notice under Section 41A of the Cr.P.C. is issued to the petitioner.

The learned Senior counsel representing the petitioner, would submit that the petitioner has received another notice on the morning of today i.e., 11.06.2024 directing the petitioner to appear immediately before the police again without indicating any crime being registered against the petitioner. Without registering the crime against the petitioner, as found in Section 41A of the Cr.P.C., a summoning cannot kick in.

Therefore, there shall be an interim order of stay of the notice dated 06.06.2024 or any other notice issued to the petitioner in the aftermath of the notice dated 06.06.2024.

There is not even a semblance of procedure followed in the case at hand.

The Station House Officer or the signatory to Section 41A notice shall be present before the Court on 21.06.2024 at 2.30 p.m.

List the matter on 21.06.2024 at 2.30 p.m."

It is admitted by the Station House Officer that there was an error in the notice and it is defended on the score that the error was out

of inadvertence. Further, the defence is that a second notice is issued in which crime number does figure. The second notice dated 10-06-2024 reads as follows:

“ಕಲಂ-41(1)(ಎ) ಸಿ.ಆರ್.ಪಿ.ಸಿ ಅಡಿಯಲ್ಲಿ ನೀಡಿದ 2ನೇ ಪೊಲೀಸ್ ನೋಟೀಸ್

ಈ ಮೂಲಕ ನಿಮಗೆ ತಿಳಿಯಪಡಿಸುವುದೇನೆಂದರೆ, ಪಿರ್ಯಾದುದಾರರ ಆದ ಶ್ರೀ.ವಿಜಯ ಟಾಟಾ ರವರು ಸಮಯ ಟಿವಿ ಚಾನಲ್‌ನಲ್ಲಿ ಸಿ.ಇ.ಟಿ ಆಗಿದ್ದು, ಜವಬ್ದಾರಿಯುತ ವ್ಯಕ್ತಿ ಆಗಿರುತ್ತಾರೆ. ಹಿಗ್ಗಿರುವಾಗ ದಿನಾಂಕ:-05-04-2024 ರಂದು ಅವರ ಮನೆಯ ಮುಂದೆ ಇದ್ದ ತನ್ನ ಸಿಬ್ಬಂದಿಯ ಬೈಕ್‌ನಲ್ಲಿ 4 ಎನ್‌ವಲಪ್ ಕವರಗಳು ಪತ್ತೆಯಾಗಿದ್ದು, ಅದನ್ನು ಮದನ್‌ಕುಮಾರ್ ಎಂಬುವವರು ಆ ಎನ್‌ವಲಪ್ ಕವರಗಳು ಬೈಕ್‌ನಿಂದ ತೆಗೆದುಕೊಂಡು ಬಂದು ಪಿರ್ಯಾದುದಾರರಿಗೆ ನೀಡಿರುತ್ತಾರೆ. ಪಿರ್ಯಾದುದಾರರು ಎನ್‌ವಲಪ್ ಕವರಗಳು ತೆಗೆದು ನೋಡಿದಾಗ ಯಾರೋ ಅಪರಚಿತ ವ್ಯಕ್ತಿ ತನಗೆ ಹಾಗೂ ತನ್ನ ಕುಟುಂಬದ ಸದಸ್ಯರ ಜೀವ ಬೆದರಿಕೆ ಹಾಕಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆಂದು ಕೊಟ್ಟ ದೂರು ಪಡೆದುಕೊಂಡು ಠಾಣಾ ಮೊ.ಸಂ.166/2024 ಕಲಂ 506, 507 ಐ.ಪಿ.ಸಿ ರೀತ್ಯ ದೂರು ದಾಖಲಿಸಿಕೊಂಡು ತನಿಖೆ ಕೈಗೊಂಡಿರುತ್ತದೆ..

ಪ್ರಕರಣದ ತನಿಖೆಯ ಸಲುವಾಗಿ ನಿಮ್ಮನ್ನು ವಿಚಾರಣೆ ಮಾಡಬೇಕಾಗಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ದಿನಾಂಕ:12/06/2024 ರಂದು ಬೆಳಿಗ್ಗೆ 10-30 ಗಂಟೆಗೆ ಈ ಕೆಳಗೆ ಸಹಿ ಮಾಡಲಿರುವ ನನ್ನ ಮುಂದೆ ಹಾಜರಾಗಿ ಪ್ರಕರಣದ ತನಿಖೆಗೆ ಸಹಕರಿಸುವಂತೆ ಈ ಮೂಲಕ ನಿಮಗೆ ತಿಳಿಯಪಡಿಸಿರುತ್ತದೆ.

Sd/-
Sub-Inspector of Police
Amruthahalli Police Station
Bangalore City.”

This notice does not have clarity as to why the petitioner is being summoned. The matter could be disposed of by recording the fact that the second notice does not contain the crime number, as the issue may seem to be very simple. In the considered view of the Court, it is not, as Section 41 of the Cr.P.C., deals with arrest of persons. Any

notice so issued under Section 41-A if not complied with, the Station House Officer is entitled to arrest the noticee. Therefore, the noticee must be aware of why he is being summoned to the Police Station, as summoning to the Police Station is not summoning a person to a happy place. A citizen must know as to why he is being summoned. The information to the citizen cannot be half baked; it must be in full. The notice must contain the crime number and the purpose for which he is being summoned. While it can be transmitted electronically, no fault can be found with that, but it should mention crime number. The duty of the Station House Officer would not stop at mentioning crime number, but he should also attach to the communication, a copy of the FIR, so registered against the noticee, as power is available to summon the accused or any person in connection with a crime. Therefore, the noticee, without knowing the crime number and without getting a copy of the FIR, cannot be asked to appear before an officer of the police station on receipt of notice under Section 41-A.

10. Since the issue would crop up every now and then, I deem it appropriate to notice the provisions of the new regime –

Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short). Section 35 of the BNSS is the corresponding provision which deals with arrest of persons. It is again in Chapter-V. Sections 41 and 41A of the Cr.P.C., are completely found in a solitary provision, Section 35 of the BNSS. It reads as follows:

"35. When police may arrest without warrant.—(1)
Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

- (a) *who commits, in the presence of a police officer, a cognizable offence; or*
- (b) *against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence 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, if the following conditions are satisfied, namely:—*
 - (i) *the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;*
 - (ii) *the police officer is satisfied that such arrest is necessary—*
 - (a) *to prevent such person from committing any further offence; or*
 - (b) *for proper investigation of the offence; or*
 - (c) *to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or*
 - (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

- (e) *as unless such person is arrested, his presence in the Court 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 under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

- (c) *against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or*
- (d) *who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or*
- (e) *in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or*
- (f) *who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or*
- (g) *who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or*
- (h) *who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or*

- (i) *who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 394; or*
- (j) *for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.*

(2) Subject to the provisions of Section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy

Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age.”

(Emphasis supplied)

Sub-sections (2) to (6) of Section 35 of the BNSS assume significance. Section 35(4) permits issuance of a notice to any person and the noticee shall be bound to comply with the terms of the notice. Section 35(6) commands that if a person fails to comply with the terms of the notice or is unwilling to identify himself, the Police Officer may, subject to such orders as may have been passed by the competent Court in this behalf, arrest him for the offence mentioned in the notice. Therefore, the rigour is little stronger. Stronger the rigour, the noticee is required to know all that he has to reply, prior to his appearance before the Police. It, thus, becomes mandatory for a notice to be issued under Section 35 of the BNSS to mention the crime number, the offence alleged in the crime so registered and necessarily append to it a copy of the FIR so registered, as any person who receives the notice must be aware for what he is being summoned to the Police Station.

11. The Apex Court, in several judgments, has considered the importance and purpose of notice under Section 41A of the Cr.P.C., A Division Bench of High Court of Delhi in the case of **AMANDEEP SINGH JOHAR v. STATE OF NCT OF DELHI**¹ considering the said importance has issued certain guidelines and even a format of Section 41A notice. It becomes necessary to notice the said judgment. It reads as follows:-

"... .."

15. *These reports were placed before this court and considered on 23rd November; 4th December; 14th December; 28th December, 2017 and 19 January, 2018. During these deliberations, it appears that Mr. Sanjay Jain, learned Additional Solicitor General of India had also entered appearance and the matter was closely examined. A final document captioned as "Suggestions on Implementation of the Status Report of the Registrar General of the Court dated 3^r November, 2017 and 2nd December, 2017" was handed over on 19th January, 2018 which was taken on record.*

16. *We have heard Mr. Sanjay Jain, learned ASG and Mr. Satyakam, ASC, GNCTD on the aforesaid issues and the reports. Upon consideration of the report and the suggestions made by the parties under the leadership of the Worthy Registrar General and with their consent, it is directed that so far as working of Section 41 A, the following procedure shall be strictly followed by the police in Delhi:*

Procedure for issuance of notices/order by police officers under Sections 41A

"(i) Police officers should be mandatorily required to issue notices under Section 41A CrPC (in the prescribed format)

¹ 2018 SCC OnLine Del.13448

formally to be served in the manner and in accordance with the terms of the provisions contained in Chapter VI of the Code.

Model form of notice under Section 41A CrPC is reproduced herein below:—

"MODEL SECTION 41A CrPC NOTICE

Sr.No.....
Police Station.....

To,
[Name of Accused/Noticee]
[Last Known Address]
[Phone No./Email ID (if any)]

Notice under Section 41(A) CrP.C

In exercise of the powers conferred under subsection (1) of section 41A of CrP.C, I hereby inform you that during the investigation of FIR/Case No. dated u/sregistered at SV & A CB Police Station, it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances from you, in relation to the present investigation. Hence you are directed to appear before me at am/pm on atPolice Station.

You are directed to comply with all and/or the following directions:—

- (a) You will not commit any offence in future.
- (b) You will not tamper with the evidences in the case in any manner whatsoever.
- (c) You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing, such facts to the court or to the police officer.
- (d) You will appear before the Court as and when required/directed.
- (e) You will join the investigation of the case as and when required and will cooperate in the investigation.

- (f) *You will disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.*
- (g) *You will produce all relevant documents/material required for the purpose of investigation.*
- (h) *You will render your full co-operation/assistance in apprehension of the accomplice.*
- (i) *You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.*
- (j) *Any other conditions, which may be imposed by the Investigating Officer/SHO as per the facts of the case.*

Failure to attend/comply with the terms of this Notice, can render you liable for arrest under Section 41A(3) and (4) of Cr. P.C.

[Signature]
[Name and Designation]
[affix seal]
Sr.No.....

ACKNOWLEDGEMENT

In compliance with the abovementioned notice dated issued under Section 41A CrPC, the Noticee has appeared on from to That the Noticee's presence has been recorded in the register to be maintained by the Police Station.....

This acknowledgement is being issued in compliance with Section 41A CrPC. The documents produced by the noticee have duly been seized vide seizure memo/production memo (copy enclosed).

The noticee undertakes to continue to comply with any further notices that she/he may receive during the course of the present investigation.

[Signature of Accused] *[Signature of IO]"*

- (ii) *The concerned suspect/accused person will necessarily need to comply with the terms of the notice under section 41 A and attend at the requisite time and place.*
- (iii) *Should the accused be unable to attend at the time for any valid and justifiable reason, the accused should in writing*

immediately, intimate the investigating officer and seek an alternative time within a reasonable period, which should ideally not accede a period of four working days, from the date on which he/she were required to attend, unless he is unable to show justifiable cause for such non-attendance.

- (iv) *Unless it is detrimental to the investigation, the police officer may permit such rescheduling, however only for justifiable causes to be recorded in the case diary. Should the investigating officer believe that such extension is being sought to cause delay to the investigation or the suspect/accused person is being evasive by seeking time, (subject to intimation to the SHO/SP of the concerned Police Station), deny such request and mandatorily require the said person to attend.*
- (v) ***A suspect/accused on formally receiving a notice under section 41A CrPC and appearing before the concerned officer for investigation/interrogation at the police station, may request the concerned IO for an acknowledgement,***
- (vi) ***In the event, the suspect/accused is directed to appear at a place other than the police station (as envisaged under Section 41A(1) CrPC), the suspect will be at liberty to get the acknowledgement receipt attested by an independent witness if available at the spot in addition to getting the same attested by the concerned investigating officer himself.***
- (vii) ***A duly indexed booklet containing serially numbered notices in duplicate/carbon copy format should be issued by the SHO of the Police Station to the Investigating Officer. The Notice should necessarily contain the following details:***
 - a Serial Number***
 - b Case Number***
 - c Date and time of appearance***
 - d Consequences in the event of failure to comply***
 - e Acknowledgment slip***
- (viii) ***The Investigating Officer shall follow the following procedure:—***
 - a The original is served on the Accused/Suspect;***

- b A carbon copy (on white paper) is retained by the IO in his/her case diary, which can be shown to the concerned Magistrate as and when required;**
 - c Used booklets are to be deposited by the IO with the SHO of the Police Station who shall retain the same till the completion of the investigation and submission of the final report under section 173 (2) of the Cr. P.C.**
 - d The Police department shall frame appropriate rules for the preservation and destruction of such booklets**
- (ix) *Procedure booklets in format identical to the above prescription in guideline (vii) & (viii) with modifications having regard to the statutory provisions in the forms for the notices and acknowledgment shall be maintained.*
 - (x) *Failure on the part of the IO to comply with the mandate of the provisions of the CrP.C and the above procedure shall render him liable to appropriate disciplinary proceedings under the applicable rules and regulations as well as contempt of Court in terms of the directions of the Hon'ble Supreme Court in the case of Arnesh Kumar v. State of Bihar (2014) 8 SCC 273.*
 - (xi) *Publicity should be undertaken and pamphlets educating the public at large, should be issued by the DCP of all Districts.*
 - (xii) *The above information should be displayed at prominent places in Police stations, the subordinate courts and the High Court and made available to with the State and District Legal Services Authorities, to inform the public of their rights and recourses available to them.*
 - (xiii) *Training programmes be specially formulated for Police Officers and Judicial Officers to sensitize them towards effective compliance of Section 41 A, 91, 160 and 175 of the CrPC."*

17. It is directed that the above procedure shall apply also to the working of Sections 91, 160 and 175 of the CrPC as well. The above procedure shall be mandatorily followed by the Delhi Police when working the requirements of all the above noted sections.

18. The respondent no. 2 shall issue a circular forthwith upon receipt of a copy of this order directing the strict compliance of the procedure laid above, by every police personnel. The Circular shall be also posted on the official website of the Delhi Police and effective publicity given to ensure that the public is apprised of the procedure which has to be followed.

19. The necessary features of the Circular shall be prominently displayed at all police stations in English and vernacular to enable every person who visits the police station of the procedure which has to be followed.

20. The present writ petition is a laudable effort on the part of a petitioner who, though facing criminal prosecution, has opted to pursue larger public interest and to bring some transparency to the manner of police functioning.

21. We also place on record our deep appreciation for the assistance tendered by Mr. Sanjay Jain, learned ASG; Mr. Nikhil Borwankar, Advocate; Mr. Satyakam, learned ASC-GNCTD and Mr. Dinesh Kumar Sharma, the Registrar General of this court in assisting this court in the formation of effective guidelines which shall go a long way in ensuring transparency in the working of the police machinery and ensuring justice to suspect accused persons as well as those required to appear before the police."

(Emphasis supplied)

The Division Bench judgment of the High Court of Delhi is accepted by several States and respective Departments of Police and have issued guidelines. To quote, the Delhi Police have issued a standing order regarding Section 41A notice. It reads as follows:

"I INTRODUCTION

It has been noticed that some investigating officers do not comply with the legal requirements of Sections 41A, 91, 160 and 175 of the Code of Criminal Procedure (Cr.P.C.) with regard to summoning of witnesses or suspects in the course of an investigation or in connection with an inquest held u/s 174 Cr.P.C. These sections of the Criminal Procedure Code empower investigating officers to examine orally any person who is believed to be acquainted with the facts and the circumstances of the case(s).

*Section 41A Cr.P.C. stipulates issuance of notice for appearance before a Police Officer in all cases where the arrest of person is not required. The Hon'ble High Court of Delhi in its judgement titled 'Amandeep Singh Johar Vs. State of NCT of Delhi' dated 07.02.2018, has categorically explained about the procedure to be mandatorily followed by Police Officers as has been mentioned in Section 41A Cr.P.C. also. A Model format for notice under section 41A Cr.P.C. and directions of Hon'ble High Court of Delhi are enumerated in this S.O. and also enclosed **as Annexure - A.***

.... ..

"Section 41A Cr.P.C.(Notice of appearance before police officer.

- (1) *The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*
- (2) *Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.*
- (3) *Where such person complies and continues to comply with the notice, he shall not be arrested in*

respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

- (4) *Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice."*

The format is also prescribed by the Delhi Police implementing the order of the Division Bench of the High Court of Delhi. The format reads as follows:

"Notice under Section 41(A) Cr.PC

In exercise of the powers conferred under subsection (1) of section 41A of CrP.C, I hereby inform you that during the investigation of FIR/Case No. dated u/sregistered at Police Station, it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances from you, in relation to the present investigation. Hence you are directed to appear before me at AM/PM on atPolice Station.

You are directed to comply with all and/or the following directions:—

- (a) *You will not commit any offence in future.*
- (b) *You will not tamper with the evidences in the case in any manner whatsoever.*
- (c) *You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing, such facts to the court or to the police officer.*

- (d) *You will appear before the Court as and when required/directed.*
- (e) *You will join the investigation of the case as and when required and will cooperate in the investigation.*
- (f) *You will disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.*
- (g) *You will produce all relevant documents/material required for the purpose of investigation.*
- (h) *You will render your full co-operation/assistance in apprehension of the accomplice.*
- (i) *You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.*
- (j) *Any other conditions, which may be imposed by the Investigating Officer/SHO as per the facts of the case.*

Failure to attend/comply with the terms of this Notice, can render you liable for arrest under Section 41A(3) and (4) of Cr. P.C.

[Signature]_____

[Name and Designation]_____

[affix seal]_____

.....

ACKNOWLEDGEMENT

Sr.No.....

In compliance with the abovementioned notice dated issued under Section 41A Cr.PC, the Noticee has appeared on from to The Noticee's presence has been recorded in the register maintained by the Police Station.

This acknowledgement is being issued in compliance with Section 41A Cr.PC. The documents produced by the noticee

have duly been seized vide seizure memo/production memo (copy enclosed).

The noticee undertakes to continue to comply with any further notices that she/he may receive during the course of the present investigation.

[Signature of Accused]

[Signature of IO]"

12. In the light of the mandate of law under Sections 41 and 41-A of the Cr.P.C., which is now under Section 35 of the **BNSS**, it becomes necessary to the State to issue guidelines drawing a check list to all those Station House Officers, *akin* to what other states have done, who would summon any person under Section 35 of the BNSS.

13. It is made clear that till the guidelines/check list is so notified by the State, if any person is necessary to be summoned, the drill that shall be followed are:-

- (a) *The notice under Section 35 of the BNSS shall mention the crime number and the offence alleged in the crime number. This can be communicated to the noticee either through the conventional method or through electronic mode.*

- (b) *The communication shall attach copy of the FIR so registered, as the FIR would contain the gist of the complaint.*
- (c) *In the event notice does not contain the crime number, the offence alleged or appending of the FIR, subject to just exceptions, the noticee is not obliged to appear before the officer who has directed him to appear and no coercive action can be taken for non-appearance.*
- (d) *It is also necessary for the Police Department to bring about robust system for the FIR being uploaded immediately on their registration and make it search friendly.*

14. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed in part.
- (ii) The notice dated 06-06-2024 issued against the petitioner stands obliterated. The notice dated

10-06-2024 stands sustained, to be executed bearing in mind the observations made in the course of the order.

- (iii) The Registry is directed to transmit the copy of the order to the Secretary, Department of Home Affairs, the DG and IGP of the State of Karnataka, for appropriate action, in compliance with the order, for issuance of guidelines, as observed in the course of the order, within 8 weeks from the date of receipt of the copy of the order.
- (iv) Such compliance be reported back to this Court on the expiry of 8 weeks.

**Sd/-
JUDGE**

bkp
CT:MJ