

Ref - Judgement dated 2nd July 2014 delivered by Hon'ble Supreme Court of India in Criminal Appeal No.1277 of 2014 (Special Leave Petition (CRL) No.9127 of 2013) filed by Arneshkumar V/s State of Bihar and others

Sub - Arrest

Circular :
Section 41 of the Cr.P.C. has been amended by the code of Criminal Procedure (Amendment) Act- 2010 and Section 41-A to 41-D have been inserted vide the said amendment which has already been circulated by this office circular No.DGP/14/Guidelines for arrest/2012, dated 30/10/2012.

2. The power to authorize detention is a very solemn function. It affects the liberty and freedom of citizens and need to be exercised with great care and caution. The Hon'ble Supreme Court of India has observed in the above judgment that Section 41. says that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Further section 41 makes it clear that in all cases where the arrest of a person is not required under section 41(1), Cr.P.C., the police officer is required to issue notice directing the accused to appear before him at a specified place and time.

3. In order to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically, the Hon'ble Supreme Court of India have issued following directions - (vide judgement in Criminal Appeal No.1277 of 2014 dated 2nd July 2014)

- 1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C;
- 2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);
- 3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
- 4) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

(Signature)
पोलीस निरीक्षक
स्वा.बु.अ.जा. सिंगुडुर्ज
15 JUL 2014

5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing.

6) Notice of appearance in terms of Section 41 A of Cr.P.C. be served on the accused within two weeks from the dated of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing

7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

8) Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

4. It has been further observed by the Hon'ble Apex Court that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is 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.

5. In the directions mentioned at para 3(2), it has been observed that all police officers be provided with a check list containing specified sub clauses under Section 41(1)(b)(ii); the check list under Section 41(1)(b)(ii) is reproduced for ready reference as under :

“ Section 41(1)(b)(ii) :

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

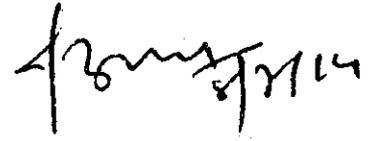
e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured .

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; ”

6. Copy of the above mentioned Judgement is enclosed herewith. All Unit Commanders are directed to go through the above mentioned judgement carefully and bring the said directions to the notice of all subordinates working under them. Also ensure that the check list as provided under Section 41(1)(b)(ii) reproduced above must be provided to all police officers so that the requirements of mandatory provisions of law is complied with by all concerned.

7. It is stressed that failure to comply with the aforesaid directions, render the concerned police officers liable for departmental action & punishment for contempt of court before Hon'ble High Court.



(Deven Bharti)

Spl. Inspector General of Police (L.& O.)
For Director General of Police,
M.S., Mumbai

Encl - Copy of judgement dated 2/07/2014
of Supreme Court of India

To,

All Commrs. of Police (Including Rly.)
All Supdts. of Police (Including Rly.)

Copy to,

Addl. Director General of Police, C.I.D., M.S., Pune.
Addl.D.G.P., Estt. / P.& C./ Admn./ Training / S.R.P.F. / PCR/ Traffic / Railways.
The Commissioner, State Intelligence Department, M.S., Mumbai.
Director, Maharashtra Police Academy, Nashik.
Director, Detective Training School, Nashik.
All Range Spl. Inspector General of Police.
Spl. Inspector General of Police, P.A.W., M.S., Pune.
D.I.G.P., Gadchiroli Range, Gadchiroli.
All Principals, Police Training Centers.
All Commndts. S.R.P.F. Groups.
Legal Advisor to D.G.P., M.S., Mumbai.

Copy for information to,

Addl. Chief Secretary, Home Dept. (Spl.-6), Govt. of Maharashtra, Mantralaya, Mumbai.

Copy to

Dy.S.P., Computer Section, D.G.P. Office.

2. He should put this circular along with the judgement on the website of Mahapolice immediately. Copy of Judgement is enclosed.