

41 A CrPC

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In the recent time, I don't think that any other provision of law must not have been misinterpreted like 41 A CrPC. Though 41 A CrPC was introduced in the statute as long back as in 2009, it did not attract the attention of all till Mid,2014, when the judgment of Arnesh Kumar Vs State of Bihar **{(2014) 8 SCC 273 }** was delivered by Supreme Court (2nd July, 2014). While the said judgment, reiterated the provision in 41 A CrPC, it added a new condition of sending the check list along with the remand papers, depicting the satisfaction of the I.O. for arresting the accused. It also restricted the usage of Sec. 41A CrPC, to offences punishable with imprisonment less than 7 years, which is not in consonance with the statute. Let us examine the same in detail.

INTRODUCTION:

Let us first observe the Sec 41 A CrPC, which had been inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008(Act 5 of 2009), which is relevant in the context reads as follows:

"41A. 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."

IS ISSUANCE OF SEC 41A CRPC NOTICE MANDATORY BEFORE ARREST

A bare reading of the first sentence of the said provision will clear the doubt lingering in the minds of police and others, that *"Is issuance of 41A CrPC is mandatory before arrest in all cases?"*

The Sec 41A CrPC, starts with *"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"*. So, the sum and substance is that Sec 41A CrPC, comes into play only when the I.O. feels that Arrest is not necessary. So, if the I.O. is of the opinion that the accused has to be arrested, then, the I.O. can directly arrest the accused, without resorting to Sec 41 A CrPC notice. What is required for an I.O. to resort to arrest without notice under sec 41 A CrPC, is the subjective satisfaction of the conditions in Sec 41(1) CrPC.

JUDICIAL INTERPRETATION

The Arnesh Kumar Vs State of Bihar, has suddenly jolted the Criminal justice functionaries and general public alike from what can be termed as deep slumber, as the amendment of Sec 41A CrPC was inserted in 2009, but it was not strictly implemented till 2014. The said judgment gave guidelines for following the Sec 41 A CrPC, which are summarized as under:

EXTRACT FROM THE ARNESH KUMAR Vs STATE OF BIHAR JUDGMENT	REMARKS
<p>Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded,</p>	<p>Where the arrest of the accused is not required, notice to appear before the I.O. be given and conditions like to co-operate with the investigation and not to leave the jurisdiction etc, be mentioned. Even after issuance of the notice, the Accused can be arrested, if he commits default of conditions mentioned in notice or if he interferes or meddles with investigation.</p>
<p>the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid. We are of the opinion that if the provisions of Section 41, Cr.P.C which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC for effecting arrest be discouraged and discontinued.</p>	<p>Where the arrest of accused is required, Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid</p>
<p>Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:</p>	<p>No mechanical arrest and no mechanical remand.</p> <p>REASONS to be mentioned for ARREST and also REMAND</p>
	<p>IF ACCUSED IS TO BE ARRESTED</p>
<p>(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.PC;</p> <p>(2) All police officers be provided with a check list containing specified sub clauses under Section 41(1)(b)(ii);</p> <p>(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/</p>	<p>I.O. to satisfy himself about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;</p> <p>forward the check list containing specified sub-clauses under Section 41(1)(b)(ii) duly filed and furnish the reasons and materials which necessitated the arrest,</p> <p>forward the same to the Hon'ble Court with the remand, who after satisfying with the reasons mentioned by the</p>

producing the accused before the Magistrate for further detention; (4) The Magistrate while authorising 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 authorise detention;	I.O, will remand the accused.
	IF ARREST OF THE ACCUSED IS NOT REQUIRED
(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 41A of Cr.PC be served on the accused within two weeks from the date 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;	Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case . The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case/41 A Notice .
	DEFAULT CLAUSES
(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.	the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court
(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.	Departmental action against the Magistrate

TO WHAT CASES DOES SEC 41A CRPC APPLY.

This is one aspect, which always lingers in the minds of the officers, whether the said notice under sec 41A CrPC could be served in special and local laws, etc. We try to answer the same as under:

A. Regarding Special Acts:

The Sec 41A CrPC does not mention that it is applicable only in IPC offences. What all is stated in Sec 41(1) is the punishment of imprisonment. Further, the judgment in Arnesh Kumar Vs State of Bihar, clears this cloud by stating in the said judgment as

“We hasten to add 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.”

Further, in the judgment between Konidhana Anand Sharma Vs State of A.P. [2017 (2) ALD (Cri) 756], wherein the Hon'ble judge reiterated the fact that Sec 41 A CrPC notices can be served even in Special laws like S.C & S.T.POA Act, 1989.

B. Regarding Punishment:

The judgment delivered in Arnesh Kumar judgment appears to be restricting the service of notice to offences punishable with imprisonment upto Seven Years, but when we give a cursory reading of Sec 41 A CrPC, it refers to offences covered by sec 41(1) CrPC.

Sec 41(1) CrPC, consists of sub sections (a); (b) and (ba). In Sub-section (ba), the offences referred are punishable with more than 7 years.

Hence, with due respects to the Hon'ble Judges of Apex Court, we cannot conclusively pin down the applicability of Sec 41A CRPC, to offences punishable with imprisonment upto seven years.

However, in order to not to add further to the already existing dilemma about the implementation of Sec 41 A CrPC, It is advisable that the sec 41A CrPC notice be confined to offences punishable with imprisonment upto 7 years.

ARE THERE ANY GUIDELINES TO POLICE WHILE EXERCISING THIS DISCRETION TO ISSUE 41A CRPC NOTICE:

In **Shaukin Vs. State of U.P. and Others**; reported as {**2012 2 ACR 2293; 2012 78 AllCriC 858; 2012 134 FLR 436; 2012 0 Supreme(All) 1315; 2013 1 Crimes(HC) 306;**} the Hon'ble judges of the Division Bench of Allahabad High Court while holding that there is no total embargo has been placed on effecting arrests even in cases punishable upto 7 years imprisonment and while further holding that they have given sufficient illustrations for the guidance of the investigating officers to make arrests only when it is necessary, and to avoid them when the same can legally and justifiably be avoided in the facts and circumstances of a particular case. They are

1. where the accused has not been named in the FIR;
2. when the co-accused were picked up, and other accused are absconding;
3. in a case of vehicle theft or recovery of other stolen goods;
4. where the co-accused has been arrested while committing a crime and he names another accused as also having participated in the crime,
5. whose custodial interrogation may be necessary
6. the disclosure furnishes credible information or gives rise to a reasonable suspicion for inferring that the accused whose arrest is sought could also be involved,
7. there are chances that such an accused would abscond
8. does not respond to a notice under section 41A Cr.P.C. to appear,
9. looking to the nature of the crime
10. the background of the particular accused,
11. Accused to be habitually engaged in committing crimes
12. Accused appears to be participating in some organized crimes,
13. it appears that he is trying to win over witnesses.

IS THERE ANY PROFORMA OF SEC 41 A CRPC NOTICE

The CrPC, does not envisage any proforma of Sec 41A CrPC, and there is lot of varied forms being followed by investigating officers of different states. However, the DGP's of Kerala and Telangana, have circulated proformas of Sec 41A CrPC.

Thankfully, the division bench of High court of Delhi, has profounded a model 41A CrPC notice, in its judgment rendered between Amandeep Singh Johar Vs State of NCT of Delhi, [2018 2 Crimes(HC) 601] which is reproduced hereunder

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

Notice under Section 41A Cr.P.C

In exercise of the powers conferred under subsection (l) of section 41A of Cr.P.C., I hereby inform you that during the investigation of FIR/Case No.....dated.....u/s.....registered at Police Station.....it is revealed that there are reasonable grounds to question you to as certain facts and circumstances from you, in relation to the present investigation. Hence you are directed to appear before me atam/pm on.....at.....Police Station with proof of Identify and residence.

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 as per law.
- g) You will produce all relevant documents/material required for the purpose of investigation as per law.
- h) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.
- i) 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 Section 41A(3) and (4) of CrPC.

[Signature]
[Name and Designation] [affix seal]

Though the above model of notice appears to be effecting testimonial compulsion, the same can be followed, as the same is upheld by the Hon'ble Division Bench of Delhi High Court, and further till the said notice is assailed and reversed by a larger bench or the Apex Court.

CAN SURETIES BE COLLECTED FROM THE ACCUSED AT THE TIME OF ISSUANCE OF SEC 41A CRPC NOTICE:

Many Investigating officers are under the impression that the accused can be directed to produce sureties at the time of appearance in pursuance of sec 41A CrPC notice.

The stage of sureties comes at the stage of bail that is after arrest, whereas the stage of Sec 41A CrPC notice is before any Arrest(Decision not to arrest). Though the Hon'ble Judge of our High Court in Konidhana Anand Sharma's judgment (Supra) has referred the Sec 41A CrPC notice as Station Bail, it cannot be given the said literal meaning, in view of the first sentence of sec 41 A CrPC. Hence, sureties cannot be accepted in pursuance of sec 41 A CrPC notice.

CAN AN ACCUSED BE ARRESTED AFTER ISSUANCE OF SEC 41A CRPC NOTICE.

Sub-section 3 and 4 of sec 41A CrPC, comes into play, after the service of notice under Sec 41A CrPC.

Sub Section 3 states about the stage, where the accused/addressee, complies and continues to comply the terms of Sec 41A CrPC notice, issued to him/her.

Sub-section 4 states about the stage, where the accused/ addressee, does not comply with the terms of Sec 41A CrPC notice, issued to him/her.

As per sub-sec 3, the addressee can be arrested, on sufficient grounds, even if the addressee complies or continues to comply with the terms of the notice, whereas, as per Sub-sec 4, the addressee cannot be arrested, if he/she does not comply with the terms of the notice, unless the I.O. procures permission/ orders from the jurisdictional court.

This fact is reiterated in the judgment between **Kalki Ramu Vs State of Telangana [2015 3 ALT(Cri) 250]**, wherein the Hon'ble judge held that

"It is at that stage no doubt the petitioner/accused moved the learned Sessions Judge for grant of anticipatory bail apprehending arrest after police issued Section 41-A Cr.P.C. notice having come to the conclusion of not to arrest otherwise, however, in his saying same not complied with the requirements of Section 41 read with 41-A(4) Cr.P.C. No doubt, it requires the permission of Magistrate for non-appearance to Section 41-A notice to arrest, once reasons assigned not to arrest."

WHAT OTHER STEPS ARE TO BE TAKEN ONCE SEC 41A CRPC, AT THE TIME OF REMAND:

As per the judgment of Arnesh Kumar, a check list is to be accompanied with the remand of accused. The said judgment also states as to what should be the contents of the said Check list. The relevant extract from the said judgment is

"All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii); 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;"

Hence, a proforma Check list containing clauses under Section 41(1)(b)(ii) CrPC, is depicted hereunder,

CHECK LIST

(to accompany Remand Case Diary in pursuance of Judgment reported in Arnesh Kumar Vs State of Bihar)

The accused having been found prima facie of committing the offence U/Sec. _____ and the I.O. is satisfied not to issue 41a Cr.P.C. notice on the accused /or having issued the 41A notice is now satisfied that the accused has to be arrested and is remanding the accused along with the present check list, in pursuance of orders reported in Arnesh Kumar Vs State of Bihar.

1. The police officer (I.O.) is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence	YES/NO
(b) for proper investigation of the offence	YES/NO
(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner	YES/NO
(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	YES/NO
(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,	YES/NO
the police officer shall record while making such arrest, his reasons in writing.	Habitual Offender/ Not Local Resident/ Influential/ Security/
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.	Complied with the conditions of the notice.

Date:

Place:

I.O. with Designation

CAN THE REMAND OF THE ACCUSED BE RETURNED

It is the sole discretion of the Investigating officer, either to follow 41A CrPC or not, basing on the reasons for such decision. The court, may at the most state the I.O. to follow 41 A CrPC, but cannot insist the I.O. to mandatorily issue notice under Sec 41 A CrPC.

Once, the I.O. comes to a conclusion to remand the accused, (even prior to the issuance of the 41 A CrPC notice), duly enclosing the check list mentioning the reasons for remand, the Court, cannot return the remand. If the court is not in concurrence with the grounds of remand, then the court can act under sec 59 CrPC, and discharge from remand, by accepting sufficient surety or sureties, as mentioned in **Gulab Chand Upadhyaya Vs State Of U.P. And Ors {2002 CrIj 2907}**. This discharge from remand by the Court, does not preclude the I.O. to file a final report.

CONCLUSION:

Law is not static and it is ever changing and dynamic, hence, we have to keep abreast with latest trends of law and its interpretations. Hope this little effort will help to satiate the doubts lingering about 41A CrPC, though I cannot claim this to be exhaustive.

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