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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 7608/2017

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Date of decision : 7th February, 2018

AMANDEEP SINGH JOHAR

..... Petitioner

Through : Mr. Nikhil Borwankar,
Mr. Pankaj Sharma,
Mr. Roopenshu Pratap Singh,
Mr. David Vijay Thomas, Mr.
Vikram Singh Kushwaha and
Mr. Kaushik Barua, Advs.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through : Mr. Sanjay Jain, ASG with Mr.
Satyakam, ASC-GNCTD and
Ms. Sneh Suman, Mr. Vidur
Mohan and Mr. Sarfaraz
Ahmad, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition has been filed under Articles 226 and 227 of the Constitution of India by the petitioner who claims that he, alongwith his parents and relatives, has faced proceedings before the

Crime Against Women Cell, Nanak Pura, New Delhi at the instance of his wife. It is complained that despite regularly attending all sessions fixed at this Cell and extending full cooperation, the proceedings culminated in registration of a FIR being FIR No. 313/16 by the Police Station Patel Nagar, New Delhi under Section 498A/406 of the Indian Penal Code.

2. It is stated in the writ petition that the petitioner was regularly summoned to the Police Station to join investigations, without a single written notice under Section 41A of the CrPC being served upon him. As such, the petitioner complains that he joined investigation on eight dates which have been detailed in para 9 of the writ petition.

3. Grievance stands made that several documents relied upon by the petitioner in his defence which were tendered by him during the proceedings before the Crime Against Women Cell during the investigation. No receipt thereof was given to the petitioner and these documents having a critical bearing on the case were not made part of the record by the police.

In those above circumstances, the petitioner had no material or evidence to support his contention that he had regularly joined investigation and also that he had tendered several documents which manifested that he was innocent in the case.

4. Amongst the documents relied upon by the petitioner as having been handed over to the police are details of the recovery memo; list

of *stridhan* articles, text messages exchanged between the petitioner and her investigating officer.

5. Reference is made to Circular No. 08/2011 dated 10th February, 2011 issued by the Delhi Police. It is complained by the petitioner that not only are the directions contained in this and other Circulars not being properly worked by local police stations and officers but also that the directions contained in the Circulars by themselves are wholly insufficient to ensure protection of the rights of the persons who are called for enquiries or are the subject matter of criminal investigations.

6. It has been submitted by Mr. Nikhil Borwankar, learned counsel who appears for the petitioner that the petitioner's experience at the Crime Against Women Cell and the police station highlight the fact that this was a practice followed in all criminal enquiries and investigations undertaken by the Delhi Police necessitating the filing of the present writ petition in Public Interest making a prayer to this court for *inter alia* directions to the Delhi Police to modify its Circular No.08/2011 dated 10th February, 2011 and to frame fair and balanced rules with regard to issuance and service of notices under Section 41A and Section 160 of the CrPC.

7. The petitioner consequently took a pro-active stand and initiated queries under the Right to Information Act resulting in his obtaining copies of various circulars of the Delhi Police governing the working of Section 41 of the CrPC. In this regard, the petitioner has drawn our attention to above Circular No.8/2011 referred which is concerned with "*provisions of arrest as per the CrPC (Amendment) Act, 2008*"

(page 400) and the Circular no. 30A of 2014 dated 17th November, 2014 (page 404) which is concerned with “*Directions Relating to Arrest in Pending Investigation Cases.*”

8. Before examining the grievance made by the petitioner, it would be useful to set out the statutory provisions which relate to the requirement of appearance before police officer of any person, for expediency, we extract hereunder the provisions of Sections 41A, 91, 160 and 175 of CrPC :

“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."

91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

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160. Police officer' s power to require attendance of witnesses.

(1) Any police officer, making an investigation under this Chapter may, by order in writing,

require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required: Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

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175. Power to summon persons.

(1) A police officer proceeding under section 174, may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate's Court."

(Emphasis supplied)

9. Pursuant to the notices issued by this court, the respondents have entered appearance. Appearing for the Delhi Police, Mr. Satyakam, learned ASC for the Govt. of NCT of Delhi has staunchly

disputed the factual narration. This court is not examining either the grievances of the petitioner regarding the treatment by the Delhi Police or his defence on the merits in respect of the complaints against him. We make it clear that we are not expressing any opinion on the merits of the factual narration made by the petitioner, either with regard to the complaints made against him by his wife and in-laws or his complaints and allegations against the Delhi Police.

10. We may note that the writ petitioner has also categorically stated that this writ petition is being filed purely in public interest.

11. Be that as it may, the issues raised by the petitioner are of seminal importance and impact the working of the Delhi Police and the rights of all persons who are called for enquiries or whose conduct is the subject matter of investigation at the hands of the police. It is only for this reason that we have examined the grievance made by the petitioner regarding the insufficiency and inefficacy of the available machinery on the above issues.

12. In this background, on the 30th of August, 2017, we had called upon a report from the Registrar General of this court who is a senior officer of the Delhi Higher Judicial Services. The Worthy Registrar General was requested to examine the issues urged by the petitioner as well as the circulars issued by the Commissioner of Delhi Police which are in vogue and have been noticed above. It appears that an extensive consultative process was adopted by the Registrar General who was joined in the deliberations not only by Mr. Satyakam, learned ASC but also by senior officers of the Delhi Police including Mr.

Virender Chahal, Joint Commissioner of Police, Central District. A report dated 3rd November, 2017 (page 422) stands submitted to this court.

13. Inasmuch as the parties before us had some suggestions of these recommendations, the matter was subjected to reconsideration which culminated in an additional report dated 12th December, 2017 (page 477).

14. These reports were placed before this court and considered on 23rd November; 4th December; 14th December; 28th December, 2017 and 19th 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 3rd November, 2017 and 2nd December, 2017*” was handed over on 19th January, 2018 which was taken on record.

15. 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 41A, 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) 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) Cr.P.C.

In exercise of the powers conferred under subsection (1) of section 41A of Cr.P.C., I hereby inform you that during the investigation of FIR/Case No. dated u/sregistered at SV & ACB 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 CrPC.

[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 exceed 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 Cr.P.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 Vs. 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 41A, 91, 160 and 175 of the CrPC.”

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. In view of the above, the prayer made in this writ petition stands satisfied. The petition is disposed of in terms thereof.

22. Let a copy of this order be sent to the District Judges for circulation amongst all trial courts to ensure compliance thereof.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 07, 2018/kr