



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CONT. No. 598 of 2023**Order reserved on : 15.12.2023Order delivered on : 12.01.2024

Lokesh Tiwari, S/o. Santosh Tiwari, Aged About 22 Years, R/o. Sitamani Korba, Tehsil & District Korba, Chhattisgarh.

---Petitioner**Versus**

1. Krishna Sahu, Station House Officer, Police Chowki Rampur, P.S. Kotwali, Korba, Chhattisgarh.
2. Ramswaroop Chandra, Investigating Officer, Police Chowki Rampur, P.S. Kotwali, Korba, Chhattisgarh.

----Respondents

(Cause title taken from Case Information System)

For Petitioner : Ms. Nupur Trivedi, Advocate
For Respondent No.1 : Mr. Arjit Tiwari, Advocate
For Respondent No.2 : Mr. Prateek Singh Thakur, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. Invoking jurisdiction of this Court under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act, 1971 (hereinafter for brevity 'the Act of 1971') and also read with para 11.7 of the direction issued by the Supreme Court in the



matter of **Arnesh Kumar v. State Of Bihar & Another**¹, this contempt petition has been filed by the petitioner herein alleging that he has been arrested by the respondents herein in violation of the direction issued by the Supreme Court in **Arnesh Kumar** (supra) that before arresting an accused for offence, which is punishable for 7 years unless the provision contained in Section 41(1)(b)(ii) Cr.P.C. has to be complied with in its letter and spirit; however, the petitioner has been arrested without compliance of that provision.

2. It is the case of the petitioner that he runs a mobile repair shop at Sitamani, Korba, in the name & style of Lokesh Mobile Repairing Center. It is further case of the petitioner that on 22.08.2022, the respondents herein arrested the petitioner herein and seized one Vivo mobile phone from him vide Annexure R-2 and check list under Section 41(1)(b)(ii) Cr.P.C. was prepared at the time of arresting the petitioner at 14:00 hours on 22.08.2022 (Annexure R-3) and the police registered an Istegasha under Section 41(1-4) Cr.P.C. read with Section 379 of I.P.C. against the petitioner and he was taken on remand by the police on the same day by the Judicial Magistrate.

1 (2014) 8 SCC 273



Thereafter, the petitioner was served with a notice under Section 91 Cr.P.C. on 22.08.2022 without registration of an FIR vide Annexure R-2(1) and thereafter, the petitioner applied for grant of bail under Section 436 Cr.P.C., which was eventually granted by the learned Chief Judicial Magistrate on 27.08.2022, as he remained in custody for a period of six days. However, the FIR was registered against the petitioner for offence under Section 380 & 457 of I.P.C. on 08.08.2023, which is contrary to the direction issued by the Supreme Court in **Arnesh Kumar** (supra) and the respondents are liable to be punished for non-compliance of directions of the Supreme Court in **Arnesh Kumar** (supra).

3. Return has been filed on behalf of the respondent No.1 that since petitioner had committed offence under Section 41(1-4) Cr.P.C. and Section 379 of I.P.C., the petitioner has been arrested and directions issued by the Supreme Court in **Arnesh Kumar** (supra) has been complied with and the respondent No.1 has no involvement in the investigation and arrest and he was not present on the alleged date of offence and the investigation, seizure of property and arrest has been made by respondent No.2, as per



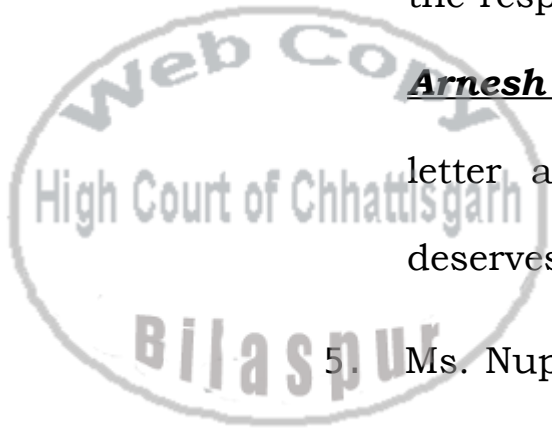


property seizure memo (Annexure R-2), memorandum of arrest (Annexure R-3) and the check list (Annexure R-4) and therefore, it is the Respondent No.2 who is responsible for that.

4. The respondent No.2 has filed its return separately that there was sufficient reason to arrest the petitioner, therefore, he was arrested and the check list has already been prepared and that has also been filed as Annexure R-4 in the return filed along-with the respondent No.1. As such, the direction issued in

Arnesh Kumar (supra) has been complied with in its letter and spirit and therefore, contempt petition deserves to be dropped.

5. Ms. Nupur Trivedi, learned counsel for the petitioner, submits that arrest of the petitioner has been in gross violation of the direction issued by the Supreme Court in the matter of **Arnesh Kumar** (supra). The petitioner has been arrested on 22.08.2022, whereas the FIR has been registered on 08.08.2023 and the check list prepared vide Annexure R-2(3) by the respondent No.2 is only an eye-wash, no reason has been assigned for arresting the petitioner and notice under Section 91 Cr.P.C. has been issued at the stage of investigation, which is *per se* illegal and, as such,

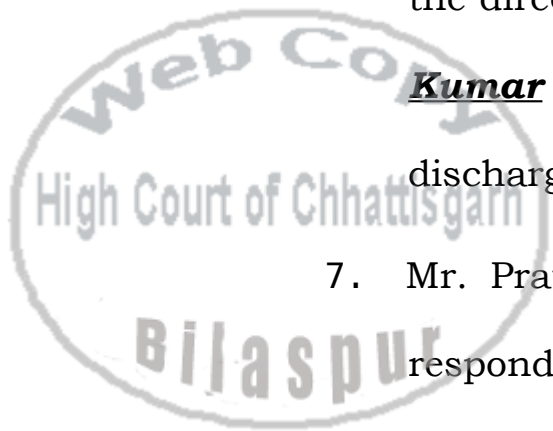




the respondents are liable to be punished for non-compliance of direction issued by the Supreme Court in **Arnesh Kumar** (supra).

6. Mr. Arjit Tiwari, learned counsel for the respondent No.1, would submit that seizure and arrest has been made by respondent No.2, as he is the only Investigating Officer and therefore, if any responsibility is there, it is of the respondent No.2 and he is not responsible at all for non-compliance of the direction issued by the Supreme Court in **Arnesh Kumar** (supra) and therefore, he deserves to be discharged.

7. Mr. Prateek Singh Thakur, learned counsel for the respondent No.2, would submit that since the petitioner could not give satisfactory explanation about the ownership of the mobile phone, therefore, notice under Section 91 Cr.P.C. was served upon him to produce the document about the ownership of the mobile and in present case the directions issued by the Supreme Court has been followed before arresting the petitioner and since the petitioner tried to run away from the spot when he was caught with possession of the mobile phone, he was arrested and the necessary check list has been prepared and, as





such, there is a strict compliance of the order passed by the Supreme Court in **Arnesh Kumar** (supra) and therefore, the respondent No.2 deserves to be discharged.

8. I have heard the learned counsel for the parties, considered their rival submissions made herein-above and gone through the records with utmost circumspection.

9. To consider as to whether the direction issued by the Hon'ble Supreme Court in the matter of **Arnesh Kumar** (supra) has been violated or complied with and case for civil contempt is made out in terms of Section 2(b) read with Section 12 of the Act of 1971, it would be appropriate to notice Section 41 of the Cr.P.C. which states as under:-

“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) xxx xxx xxx

(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 office 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]"





10. The aforesaid provision makes it compulsory for the police to record the reason for making arrest as well as for not making arrest in respect of cognizable offence for which maximum sentence is of upto 7 years. The aforesaid provision contained in Section 41(1)(b) of Cr.P.C. came up for consideration before the Supreme Court in the matter of **Arnesh Kumar** (supra) and their Lordships held in para 7.1 to 7.3 as under:-

“7.1. From a plain reading of the aforesaid provision, it is evident 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. A Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be





ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of [Section 41](#) of Cr.PC.”

11. As such, their Lordships have clearly held that before arrest, first the police officers should have reason to believe that on the basis of information and material that the accused has committed the offence. It has further been held by their Lordships that apart from that, the police officer has to be satisfied that the arrest is necessary for one or the more purposes





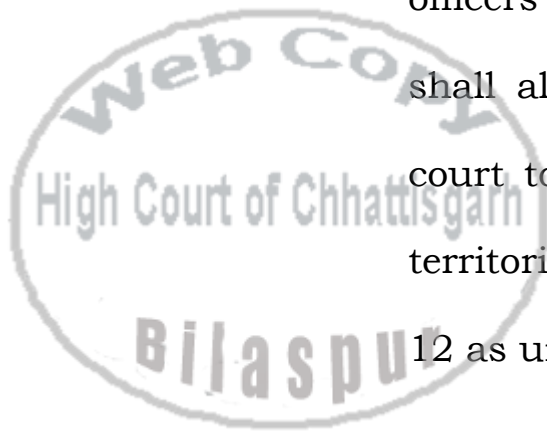
envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of the Cr.P.C.

12. Further their Lordships in the matter of **Arnesh Kumar** (supra) has held that to ensure that the police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically and issued the directions and further held that failure to comply with the directions aforesaid issued 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 the High Court having territorial jurisdiction and held in paragraph 11.1 to 12 as under:-

“11. 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 directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A 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;

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





11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. 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;

11.5. 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;

11.6. Notice of appearance in terms of Section 41-A 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;

11.7. 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 the High Court having territorial jurisdiction.

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

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC 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.”

13. As such, their Lordships of the Supreme Court has clearly held that before arresting the accused, police officers should have reason to believe on the basis of information and material that the accused has committed the offence and apart from that, he has to be satisfied that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of the Cr.P.C.

14. Furthermore, the principles of law laid down in the matter of **Arnesh Kumar** (supra) has been followed with approval by their Lordships of the Supreme Court recently in the matter of **Satender Kumar Antil v. Central Bureau of Investigation and another**². Their Lordships in **Satender Kumar Antil** (supra) while noticing the mandate issued in the **Arnesh Kumar** (supra) has held that both the elements of “reasons to believe” and “satisfaction qua an arrest” are mandated and accordingly are to be recorded by the police officer and further emphasised that the Courts to come heavily on the officers effecting arrest without due compliance of Section 41



and Section 41-A of the Cr.P.C. and held in para 29 to 32 as under:-

“29. Despite the dictum of this Court in *Arnesh Kumar* (supra), no concrete step has been taken to comply with the mandate of Section 41-A of the Code. This Court has clearly interpreted Section 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of “reason to believe” and “satisfaction qua an arrest” are mandated and accordingly are to be recorded by the police officer.

30. It is also brought to our notice that there are no specific guidelines with respect to the mandatory compliance of Section 41-A of the Code. An endeavour was made by the Delhi High Court while deciding Writ Petition (C) No. 7608 of 2017 vide order dated 07-02-2018³, followed by order dated 28-10-2021 in *Rakesh Kumar v. Vijayanta Arya*⁴, wherein not only the need for guidelines but also the effect of non-compliance towards taking action against the officers concerned was discussed. We also take note of the fact that a Standing Order has been passed by Delhi Police viz. Standing Order 109 of 2020, which provides for a set of guidelines in the form of procedure for issuance of notices or orders by the police officers. Considering the aforesaid action taken, in due compliance with the order passed by the Delhi High Court in *Amandeep Singh Johar v. State (NCT of Delhi)* dated 07-02-2018, this Court has also passed an order in *Abhyanand Sharma v. State*

³ *Amandeep Singh Johar v. State (NCT of Delhi)*, 2018 SCC OnLine Del 13448

⁴ 2021 SCC OnLine Del 5629





of Bihar⁵ dated 10-05-2021 (sic 10-5-2022) directing the State of Bihar to look into the said aspect of an appropriate modification to give effect to the mandate of Section 41-A. A recent judgment has also been rendered on the same lines by the High Court of Jharkhand in *Mahesh Kumar Chaudhary v. State of Jharkhand*⁶ dated 16-06-2022.

31. Thus, we deem it appropriate to direct all the State Governments and the Union Territories to facilitate Standing Orders while taking note of the Standing Order issued by the Delhi Police i.e., Standing Order 109 of 2020, to comply with the mandate of Section 41-A. We do feel that this would certainly take care of not only the unwarranted arrests, but also the clogging of bail applications before various courts as they may not even be required for the offences up to seven years.

32. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41-A. We express our hope that the investigating agencies would keep in mind the law laid down in *Arnesh Kumar* (supra), the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance. Our view is also reflected by the interpretation of the specific provision under Section 60-A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code.

15. Reverting to the facts of the case, it is quite vivid that
the petitioner was suspected of stealing a mobile

5 (2022) 10 SCC 819 : 2022 SCC OnLine SC 784

6 2022 SCC OnLine Jhar 620





phone of Rs.5000/- and raid was conducted in his shop and ultimately the respondents caught the contempt petitioner herein and he was served with a notice under Section 91 Cr.P.C. for which he could not explain and thereafter, he was arrested on 22.08.2022 at 2:00 p.m. under Section 41(1-4) Cr.P.C. read with Section 379 of I.P.C. and produced before the Magistrate on the same day and he was taken on remand. The check list has been prepared which has been filed by respondent No.2 along with return vide Annexure R-2(3), which states as under :

चेक लिस्ट दण्ड प्रक्रिया संहिता की
धारा 41 (1) (b) (ii) के अंतर्गत निर्मित
कार्यालय : चौकी प्रभारी/थाना : कोतवाली चौकी रामपुर जिला-कोरबा (छ.ग.)

क्रमांक	0/22	धारा 41 (1-4)/379 भा.द.वि.	
अपराधी का पूर्ण विवरण	लोकेश तिवारी S/o संतोष तिवारी 22 वर्ष सा. मोतीसागर पारा चंडिका मंदिर के पास थाना कोतवाली		
गिरफ्तारी का दिनांक	22/8/22	समय	14/00 बजे

उपरोक्त नामित अपराधी की गिरफ्तारी निम्नलिखित कारण से की गई है :-

01.	अपराधी को आगे अन्य कोई अपराध करने से रोकने के लिए गिरफ्तार किया गया है?	हां/ नहीं
यदि हां तो कारण	आरोपी मोबाईल रिपेयर करने के दुकान के आड़ में मोबाईल चोरी करने एवं खरीदी बिक्री का काम करने के संबंध में मुखबीर सूचना मिला है। इसलिये गिरफ्तारी आवश्यक है।	
02.	इस अपराध की समुचित जांच के लिए गिरफ्तार किया गया है?	हां/ नहीं
यदि हां तो कारण	आरोपी पुलिस को देखकर भागने लगा था जिसे दौड़ाकर घेरा बंदी कर पकड़ा गया है मोबाईल किसका है कहां से आरोपी को मिला इस संबंध में	



	जांच हेतु गिरफ्तारी आवश्यक है। किस दुकान से खरिदा है नही बता रहा है।	
03.	अपराधी को इस अपराध से संबंधित सबूत को गायब या किसी तरह से छेड़छाड़ करने से रोकने के लिए गिरफ्तार किया गया है?	हां/नहीं
यदि हां तो कारण	आरोपी पुलिस को देखकर भाग रहा था यदि भाग जाता तो मोबाईल को गायब कर देता ऐसी भी संभावना है कि आरोपी के पास चोरी का और भी मोबाईल मिल सकता है	
04.	अपराधी को किसी ऐसे व्यक्ति के द्वारा न्यायालय या पुलिस को ऐसे किसी तथ्य की जानकारी देने से प्रवचन, धमकी या वचन के द्वारा निवारित करने के लिए जो कि इस मामले के तथ्य की जानकारी रखता है, गिरफ्तार किया गया है?	हां/नहीं
यदि हां तो कारण	X	
05.	अपराधी की उपस्थिति न्यायालय के समक्ष सुनिश्चित करने के लिए गिरफ्तार किया गया है?	हां/नहीं
यदि हां तो कारण	हाँ	
000 नोट	प्रत्येक अपराधी के पृथक चेक लिस्ट भरी जावेगी। 01. चेक लिस्ट में दर्शित कारण की सत्यता साबित करनी होगी। 02. चेक लिस्ट का प्रत्येक पृष्ठ विवेचना अधिकारी के द्वारा हस्ताक्षरित होगा। 03. चेक लिस्ट में कारण दर्शित करने के लिए पृथक पृष्ठ का प्रयोग किया जा सकेगा। 04. चेक लिस्ट को विधिवत पूर्ण कर कस डायरी सहित समक्ष क्षेत्राधिकारिता वाले न्यायालय के समक्ष पेश करें।	हां/नहीं

स्थान :- पथरी पारा गणेश पंडाल के पास

दिनांक- 22/8/22

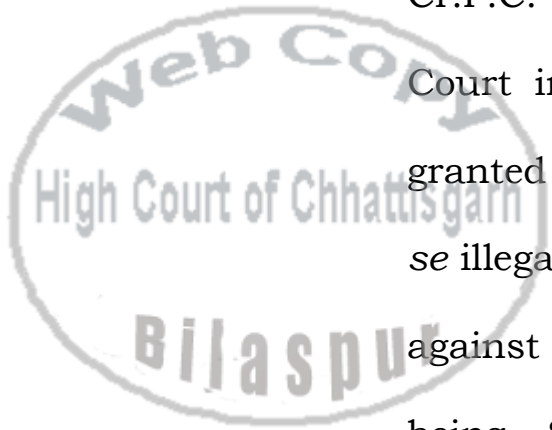
Sd/-
विवेचक का हस्ताक्षर

16. A careful perusal of the check list would show that simply a formality has been done to arrest the petitioner and no reasons have been assigned as to why arrest of the petitioner is necessary particularly when the offence registered against the petitioner is



punishable for less than 7 years and more particularly, the FIR was registered much later as per Annexure R-2(5) on 08.08.2023 and the petitioner has been arrested on 22.08.2022 at 2:00 p.m. As such, there is a prima facie blatant and gross violation of the direction issued by the Supreme Court in the matter of **Arnesh Kumar** (supra).

17. Learned Chief Judicial Magistrate, Korba, also did not look into the requirement of Section 41(1)(b)(ii) Cr.P.C. as well the direction issued by the Supreme Court in **Arnesh Kumar** (supra) and mechanically granted remand in the cyclostyle order, which is *per se* illegal and, as such, it is fit case where the charges against the respondent No.1 is liable to be framed, he being Station House Officer cannot shirk his responsibility by stating that the respondent No.2 has arrested. Since the respondent No.1 was the Station House Officer at that time and respondent No.2 has arrested both will be responsible for willful non-compliance of the order of the Supreme Court in **Arnesh Kumar** (supra) followed in **Satender Kumar Antil** (supra). The respondents are directed to remain present before this Court either personally or through





his duly instructed counsel for framing of charge on
09th of February, 2023.

Sd/-
(Sanjay K. Agrawal)
Judge

Ashok

