

\$~8(1)

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

+ CONT.CAS(C) 480/2020 & CM APPL. 25054/2020

RAKESH KUMAR

..... Petitioner

Through: Mr. Ajay Kumar Pipaniya, Ms. Pallavi Pipaniya, Mr. Prakash Punyani, Mr. Akash Sethi, Mr. Imtiaz Hussain, Ms. Nikita Garg, Mr. Deepak Mathur, Mr. Sandeep Kumar, Ms. Madhurima Soni, Mr. Aditya Sharma and Mr. Lakshay Tomar, Advocates.

versus

VIJAYANTA ARYA (DCP) AND ORS

..... Respondents

Through: Mr. Shadan Farasat, ASC with Mr. Shourya Dasgupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **28.10.2021**

The hearing was conducted through video conferencing.

1. The petitioner was taken into custody on 23.08.2020 by R-3, Sub-Inspector, Mr. Kuldeep posted at PS: Maurya Enclave, Block-FP, Poorvi Pitampura, Delhi-34.
2. No notice was served upon him in terms of the dicta of the Supreme Court in *Arnesh Kumar Vs State of Bihar*, which directed *inter-alia* as under:

“ ...

13. *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:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;

(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 checklist 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 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,

(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 Code of Criminal Procedure 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;

(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.

... ”

3. In *Amandeep Singh Johar v. State of NCT of Delhi & Anr* [W.P.(C) No.7608/2017] a Division Bench of this court on 07.02.2018 directed Delhi police to strictly follow the procedure for effecting service under Section 41A of the Cr.P.C:-

“15...

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 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 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...”

(emphasis supplied)

4. Pursuant to the aforesaid directions, a Standing Order No.109/2020 has been issued by the Delhi Police, which specifies the manner of service of notice under Section 41A of the Cr.P.C. The standing order reads as under:-



DELHI POLICE

STANDING ORDER NO.109 OF 2020

PROCEDURE FOR ISSUANCE OF NOTICES OR ORDERS BY POLICE OFFICERS

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 91 Cr.P.C. stipulates issuance of summons to produce document or other things before a Police Officer and as per directions of Hon'ble High Court of Delhi, a model format for notice under this section is enclosed as **Annexure - B**.

According to Sections 160 and 175 Cr.P.C., an officer making an investigation or enquiry shall invariably issue an order in writing to any person summoned to attend such investigation or enquiry and shall endorse on the copy of the order retained by the person so summoned, the date and time of his arrival and the date and time of his departure from the place where he is summoned. The Model Forms regarding the instant sections, as per the

directions of Hon'ble Delhi High Court, are also enclosed with this Standing Order at **Annexure C & D** respectively.

II. RELEVANT STATUTORY PROVISIONS

Prior to examining the judgement in case titled '*Amandeep Singh Johar Vs Govt. of NCT of Delhi & Ors.*' passed by the Hon'ble Delhi High Court, it would be useful to set out the statutory provisions which relates to requirement of appearance before a Police Officer of any person. For ready reference, the extracts of provisions of Sections 41A, 91, 160 and 175 of CrPC are reproduced as below:-

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."

Section 91 Cr.P.C. (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.

Section 160 CrPC (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 above the age of sixty-five years or woman or a mentally or physically disabled person 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.

Section 175 Cr.P.C. (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 Cr.P.C. applies, such persons shall not be required by the police officer to attend a Magistrate's Court.*

III. PROCEDURE FOR ISSUANCE OF NOTICES/ORDERS

Upon consideration of the Judgement in case titled '*Amandeep Singh Johar Vs Govt. of NCT of Delhi*' passed by Hon'ble High Court of Delhi, it is directed

that as far as working of Section 41A is concerned, the following procedure shall be strictly followed by the police in Delhi: -

- (i) Police officers should be mandatorily required to issue notices under Section 41A Cr.P.C. (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 Criminal Procedure Code. Model form of notice under Section 41A Cr.P.C. and its acknowledgement is enclosed herewith as Annexure-A.
- (ii) The concerned suspect or accused person will necessarily need to comply with the terms of the notice under section 41A Cr.P.C. and make himself available at the requisite time and place.
- (iii) Should the accused be unable to present himself at the given 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 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 IO believe that such extension is being sought to cause delay to the investigation or the suspect or accused person is being evasive by seeking time, (subject to intimation to the SHO/DCP of the concerned Police Station), deny such request and mandatorily require the said person to attend.
- (v) A suspect or accused on formally receiving a notice under section 41A Cr.P.C. and appearing before the concerned officer for investigation or interrogation at the police station, may request the concerned IO for an acknowledgement.
- (vi) In the event the suspect or accused is directed to appear at a place other than the police station (as envisaged under Section 41A(1) Cr.P.C.), 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 triplicate 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 or suspect;
- (b) A carbon copy (on white paper) is retained by the IO in his or 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.

IV. DIRECTIONS OF THE HON'BLE HIGH COURT OF DELHI

- (a) The Hon'ble Delhi High Court further directed that the above procedure shall apply also to the working of Sections 91, 160 and 175 of the Cr.P.C. as well. The above procedure shall be mandatorily followed by Delhi Police when working the requirements of all the above noted sections.
- (b) The format of notices to be issued u/s 41-A, 91, 160 & 175 have been enclosed as **Annexure - A, B, C & D.**
- (c) A Non-PPR Register as per **Annexure-E** shall be maintained year-wise by the Duty Officer in each Police Station containing the relevant details of the Notices issued by Investigating Officers.

V. AREA OF RESPONSIBILITY

1. While issuing such notices, the concerned Investigating Officer must ensure his or her presence on the given date and time and if due to any unforeseen circumstances or official exigencies, the he is required to be away, Inspector (Investigation) or SHO will take the needful action in respect of the noticee. However, in a rare situation of serious exigency of an operational nature, where none of the above officers is present, while recording the presence of the noticee, the Duty Officer will issue the necessary acknowledgement and also record a DD entry to this effect. The Duty Officer will also collect a copy of self-attested ID proof from the noticee and inform the IO or SHO accordingly. A copy of DD entry and ID proof shall be handed over to the Investigating Officer upon his or her arrival.

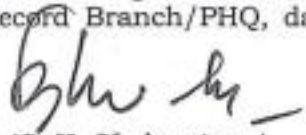
2. The Investigating Officers are responsible for exercising full care and precautions with regard to the personal safety of persons summoned by them. They should guard against the possibility of such witness or suspect attempting to commit suicide or causing any bodily harm to himself. The task of IO should as far as possible be carried out in *Sankraman Kaksha* or on the ground floor of the Police Stations.
3. When a woman has to be questioned or interrogated and a notice under section 160 of Cr.P.C. needs to be served, the IO must keep in mind that a woman cannot be summoned to the police station. However, the notice can mention the details and time where the women will be questioned, which should ordinarily be where the women resides, preferably in the presence of other family members or women police personnel.
4. As per section 160 Cr.P.C., no male person under the age of fifteen years or above the age of sixty-five years or woman or a mentally or physically disabled person, is required to attend at any place other than the place in which such male person resides. As per Juvenile Justice Act, male person under the age of eighteen years be questioned where he resides and preferably in the presence of other family members, guardians, fit persons or Juvenile Welfare Officers.
5. Procedure booklets (containing serially numbered notices in triplicate) in format identical to the above prescription in guidelines (vii) & (viii) with modifications having regard to the statutory provisions in the forms for notices and acknowledgment shall be maintained.
6. Failure on the part of IO, to comply with the mandate of provisions of Cr.P.C. and the above procedure, shall render him liable for appropriate disciplinary proceedings under the applicable rules.
7. Wide publicity should be given for educating the public at large through various modes of Public Advocacy.
8. This Standing Order shall also be **posted on the official website** of Delhi Police in Hindi as well as English language to ensure that public is apprised of the procedure that has to be followed.
9. The above information should be displayed at prominent places in Police Stations, Subordinate Courts and the Hon'ble High Court and made available to State and District Legal Services Authorities, in order to inform the public of their rights and recourses available to them.
10. 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 Criminal Procedure Code.

VI. RETENTION/DESTRUCTION OF RECORD

Used booklets deposited by the IO with the SHO of the Police Station shall be retained for **03 years** after the completion of the investigation and submission of the Final Report under section 173 (2) and 173(8) of the Cr.P.C. for any requirement during the trial of the cases. If the record is to be retained beyond specified period, concurrence of the concerned ACP will be required. In any case, the concurrence of ACP be taken for final disposal of such records.

VII. SUPERSESSION CLAUSE.

This supersedes the previous Standing Order No. 109/2019, issued vide No. 1651-1800/Record Branch/PHQ, dated 11.07.2019 along with Standing Order No. 109/2009, issued vide No. 7401-7550/Record Branch/PHQ, dated 14.05.2009.


(S. N. Shrivastava),
COMMISSIONER OF POLICE:
NEW DELHI.

O.B. NO. 16 /RB/PHQ, Dated 04/06/2020.

No. 2801-2950/Record Branch (AC-)/PHQ, dated Delhi, the 04/06/2020

Copy forwarded for information and necessary action to the:-

1. All Special Commissioners of Police, Delhi.
2. All Joint Commissioners of Police and Additional Commissioners of Police, Delhi.
3. Principal/PTC, Jharoda Kalan, Delhi.
4. All Deputy Commissioners of Police of Districts/Units, including FRRO, Delhi.
5. SO to Commissioner of Police and LA to Commissioner of Police, Delhi.
6. All ACsP of Sub-Divisions and all SHOs in Delhi.
7. Incharge, IT Centre and Librarian, PHQ, Delhi.
8. Record Branch, PHQ, New Delhi.

5. In the said Standing Order format of service of notice is also prescribed as under:-

Serial No..... Police Station
To

[Name of Accused/Noticee]

[Last Known Address]

[Phone No./Email ID (if any)]

Notice under Section 41(A) Cr.PC

In exercise of the powers conferred under sub-section (1) 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 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.PC.

[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 notice that she/he may receive during the course of the present investigation.

[Signature of Accused]/Noticee] _____ [Signature of IO] _____

Sr.No..... Police Station

To

[Name of Accused/Noticee]

[Last Known Address]

[Phone No./Email ID (if any)]

Notice under Section 91 Cr.PC

Whereas it has been made to appear to me that the production of documents/articles mentioned below is necessary or desirable for the purpose of investigation in case FIR No..... dated.....u/s registered at Police Station Therefore, you are directed to produce the required documents/articles before the undersigned at Place..... time AM/PM on date

Details of documents

- 1.....
- 2.....
- 3.....
- 4.....

Failure to attend/comply with the terms of this Notice can render you liable for legal action u/s 175 IPC.

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

ACKNOWLEDGEMENT

Sr.No.....

In compliance with the above mentioned notice dated issued under Section 91 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 91 Cr.PC The documents produced upon the issuance of this notice have duly been seized vide seizure memo/production memo (copy enclosed).

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

[Signature of Accused]/Noticee]

[Signature of IO]

Sr. No.....

Police Station

To

[Name of Accused/Noticee]_____
[Last Known Address]_____
[Phone No./Email ID (if any)]**Notice Under Section 160 Cr.P.C.**

In exercise of powers conferred under sub-section (1) of Section 160 of Cr.P.C, I hereby inform you that during investigation of FIR/Case No. dated u/s registered 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 appear before the Court as and when required/directed.
- (b) You will join the investigation of the case as and when required and will cooperate in the investigation.
- (c) 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.
- (d) You will produce all relevant documents/material required for the purpose of investigation.
- (e) You will render your full co-operation/assistance in apprehension of the accomplice.
- (f) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.
- (g) 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 legal action u/s 174 IPC.

[Signature]

[Name and Designation]

[affix seal]

ACKNOWLEDGEMENT

Sr.No.....

In compliance with the abovementioned notice dated issued under Section 160 Cr.P.C., 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 160 Cr.P.C. 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 notice that she/he may receive during the course of the present investigation.

[Signature of Accused/Noticee]

[Signature of IO]

Sr.No.....
To

Police Station

[Name of Accused/Noticee]

[Last Known Address]

[Phone No./Email ID (if any)]

Notice under Section 175 Cr.PC

Whereas the presence of aforesaid person is necessary for the purpose of enquiry into the offence reported to have been committed in case FIR/DD No..... dated.....u/s..... registered at Police Station Therefore the said person is hereby directed to appear before the undersigned at Place..... time AM/PM on to give such information relating to the said alleged offence as he may possess.

Failure to attend/comply with the terms of this Notice can render you liable for legal action u/s 174 IPC.

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

.....
ACKNOWLEDGEMENT

Sr. No.....

In compliance with the abovementioned notice dated issued under Section 175 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 175 Cr.P.C.

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

[Signature of Accused]/Noticee]

[Signature of IO]

NOTICE ISSUE REGISTER

S. No.				
FIR/DD No.	Dated			
Under section				
Notice issued U/s (Please specify)	41 - A	91	160	175
Booklet S. No., Name & telephone number of IO				
Name/address/telephone number of person called by IO				
Date & time given for joining/appearance				
Actual Date & time of joining/appearance				
Action taken on failure to comply				
DD No. of arrival of noticee and information to IO(if not available)				

6. Admittedly, none of these procedures were followed by the IO (R-3), albeit some attempts are said to have been made to contact the petitioner. However, in so far as, the substantive law and the procedure prescribed has not been followed, it cannot be deemed to be service of notice.
7. The petitioner had complained to the Commissioner of Delhi Police that certain persons were indulging in extortion through criminal intimidation misusing the name of government officials and were committing criminal breach of trust. In particular, the following response was conveyed to the police:-

“...8 That to my utter shock and surprise and I felt like rug swept under my feet, when I came to know that the above culprits in order to save themselves from the clutches of law and to get wrong full gain from us, they had filed a false and frivolous complaint against us at PS Maurya Enclave. It is pertinent to mention here that now I am receiving calls from the culprits and they are threatening me to settle the matter with them and they further said that “Tu Humari Approach Ko Janta Nahi Hai Aur Jo Yaha Par DCP Lagi Hui Hai Vijayanta Arya Aur Unke Husband Devender Arya Ka Humare Ghar Ana Jana Hai Aur Agar Tu Humhae Pure Paise Nahi Dega to Teri Company Ko Hum Badnaam Kardenge Aur Tere Upaar case

Bhi Darz Karwa Denge Kyu Ki Humari DCP Madam Se Baat Ho Gayi Hai...”

8. On 21.08.2020, the petitioner received an intimation from R-3 as under:-

Against A.F.

OFFICE OF THE STATION HOUSE OFFICER POLICE STATION
MAURYA ENCLAVE DELHI

Complaint No. C- 864 Dated 19.08.2020 PS Maurya Enclave, Delhi

To

Mr. Rakesh Arora
Director/CEO, Luxury Vacations & Holidays Pvt. Ltd.
19-20, Central Market, west Avenue Road, Punjabi Bagh
New Delhi.

Sub :- Notice to join the inquiry.

You are hereby informed through this notice that above mentioned complaint has been lodged at this police station on the complaint of Varisuth Nagrik Manch.

You are hereby requested to join the inquiry in the above said complaint on 22/08/2020 at 2.00 PM at Police Station Maurya Enclave, Delhi. If you fail to join the inquiry, it will be assumed that you have nothing to say in your favour and action will be taken on the complaint as per law.

Kuldeep
Sub- Insp. Kuldeep
(Delhi Police)
Police Station Maurya Enclave.
Distt. North-West, D.)
Mob. No. 7503418062
Dated-21.08.2020

Station House Officer
P.S. Maurya Enclave
North West District, Delhi

9. The petitioner responded to the aforesaid notice right away (Annexure-A9, p. 41) as under:-

TO

The SHO/IO

P.S : Maurya Enclave

New Delhi

21st August, 2020

Subject: Reply to notice dated 21.08.2020 sent to Mr. Rakesh Arora, Mr. Nishant Arora and Ms. Aishwarya Arora.

Sir,

In reply of your notice it is humbly submitted that I along with my son had joined the enquiry three times with Sh. Babu Lal ASI Maurya Enclave and even met the SHO Maurya Enclave and gave the representation and documents showing that the complainant are misusing the police machinery in order to recover the money for which they are not legally entitled. **The copy of documents and the notices sent to us are hereby enclosed as Encloser A.** However again during the enquiry I along with my son were pressurized for settlement in the name of the link of the complainant with high officials including the rank of DCP. I refused to succumb to the undue pressure for settlement and they threatened me that a false case would be register and I along with my family would be sent behind the bars without following our due process of law. Against the misusing of govt. post I have already given the representation to DCP North-West District , Commissioner of Delhi police and to SHO P.S Maurya Enclave. **Copy of the representation and the proof of sending the same are hereby enclosed as Encloser A1.**

That whatever the documents I have in my favour to show that the complaint is false, I have already given and even the audio recordings of the complainants where they are threatening my family that if they would come to the police station they would not let us leave the Police station as the DCP is their known and they would get me and my family illegal detain in the police

station. It is pertinent to mention here that the audio recordings of the complainants and other evidences pertaining to the bookings, which I have would be produced before the competent/ appropriate authority.

That so far as sending the notice to my daughter namely Ms. Aishwarya Arora and to my son namely Nishant Arora is one more pressure tactics as my son is not the director in the company and so far as my daughter is formal director and she has not done any dealing with the complainants and even her name is not mentioned in the complaint hence dragging the name of my daughter, the complainant stooped such a low level to succeed in their ulterior motives.

Please file/close the fictitious complaint otherwise I would be legally constrained to take an appropriate action for misusing the police machinery by the complainants.

Thanking you,


Rakesh Kumar

(Director in Luxury Vacations and holidays Pvt. Ltd.)

Mob: 9519145414

10. However, the police kept quiet and did nothing within the next 48 hours. Suddenly, on 23.08.2020, SI Kuldeep took the petitioner into custody without having served him any notice under Section 41A of the Cr.P.C, as required under law. On a query by the court, it has been clarified by counsel on behalf of respondent Delhi Police, that the petitioner was prosecuted only under ss. 406 and 34 IPC. It relates to an allegation of breach of trust. The maximum punishment for the offence alleged in FIR 310/2010 is 3 years.
11. The learned counsel for the respondents submits that efforts were made to intimate the petitioner, including messages through Whatsapp, e-mail and a visit to the residence of the petitioner, of his need to join investigations and to appear before the investigating officer. If the officer visited the petitioner's residence and did not find him there, surely, the IO could have pasted the requisite notice u/s 41A Cr.P.C. on the door of the residence or at some prominent place. There is no record of any such visits, the said contention is,

therefore, rejected. Furthermore, notice through e-mail or Whatsapp is not contemplated as a mode of service under Section 41A of the Cr.P.C.

12. Ordinarily, while the notice is required to be served personally upon the noticee, it could well have been pasted on the door of the house of the noticee, additionally, the notice can be sent through Speed Post. Neither of the procedure was adopted by R-3. Admittedly, the so-called 'intimation' through Whatsapp was not in the aforesaid format. Therefore, the intimation cannot be treated as a notice under Section 41A of the Cr.P.C or of it having been served, as per the procedure laid down. Certainly, the IO (R-3) is in breach of the prescribed procedure as well as the Supreme Court's direction in *Arnesh Kumar*. Personal liberty is a natural right of every human being. In India, it is guaranteed by the Constitution. The liberty of an individual cannot be trifled with. It can be curtailed by the State only through the procedure prescribed by law. The police officer has acted in clear breach of the constitutional guarantee and the specific orders of the Supreme Court. R-3 is therefore guilty of having committed contempt of court.

13. List for orders on sentencing on 22.11.2021. R-3 shall remain present in the court on the next date.

14. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J

OCTOBER 28, 2021

SS/rd