

In the Court of Additional Sessions Judge, 1st Court, Uluberia, Howrah.
Special case No. 47/23
Amta P.S. case No. 111/23, dated 03.05.23.
Present : Sandip Choudhury
(JO Code : WB 00587)

Order No.4, dated 18.05.2023

Today is fixed for I.O's appearance and for giving explanation by the I.O. regarding non-compliance of section 41A Cr.P.C.

On the last occasion bail has been granted to the accused for non-compliance of section 41A Cr.P.C.

Ld. Special P.P in-charge submits that on last occasion there was no mentioning about serving notice in the CD and today some pages have been changed in the CD showing an attempt to serve notice upon the accused and refusal by the accused to receive it.

It appears also from the case record that in the forwarding report there is no mentioning about any attempt of serving notice u/s 41A and/or any ground for arresting the accused without serving notice which is mandatory in view of the judgment. No check list has been filed by the I.O. prior to forwarding him before this court which is mandatory in view of the direction of the Hon'ble Apex Court reported in *Satender Kumar Antil vs Central Bureau of Investigation & Anr.*

In the said judgment in Para 11 the direction has been specified by the Hon'ble Apex Court and in particular in Para 11.3 which reads as follows:

“ 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; and

in Para 11.7 which reads as follows “ 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.”

In the instant case no ground has been specified in the forwarding and/or no check list has been issued. Accordingly, it is clear case of the violation of the mandate of the Hon'ble Apex Court by the I.O. S.I. Gobinda Roy of Amta P.S. and I.O. has not given any satisfactory explanation for arresting without serving notice u/s 41A Cr.P.C.

I.O. in his explanation has stated that he has attempted to serve notice upon the accused but the accused refused.

Ld. Special P.P in-charge Manas Kumar Das vehemently opposed the said prayer of the I.O. and categorically submitted that there was no such whisper in the CD about attempt of serving notice by the I.O. and refused by the accused. Ld. Special P.P in-charge further submits that the I.O. has changed some pages of the CD and has come with a new pages in the CD wherein he has inserted about his attempt of serving notice u/s 41A Cr.P.C. upon the accused but the accused refused according to the contention of the I.O.

Ld. Special P.P. in-charge by pointing the forwarding report dated 04.05.2023 wherein no mentioning about his attempt of serving notice upon the accused. No check list has issued in the instant case stating ground of arresting the accused without serving notice. There is also no mentioning about issuance of check list in the forwarding report dated 04.05.2023.

In view of the direction of the Hon'ble Apex Court mentioned in Para 11.7 such offence Erring Officer is liable for departmental action.

Contd.

Contd. Order No.4, dated 18.05.2023

The Superintendent of Police, Howrah Rural District is to take appropriate action for starting departmental action against the erring officer I.O. S.I. Gobinda Roy of Amta P.S. and to submit a report before this court what steps he has taken according to the direction of the Hon'ble Apex Court by 21.06.2023 toward the violation of the mandate of the Hon'ble Apex Court.

Let a copy of this order be sent to the Superintendent of Police, Howrah Rural District and to the I.O. concerned who is present today for taking copy of the 164 Cr.P.C statement for causing service upon the S.P. office.

Let a copy of this order be sent to the I.O. for his information.

To date 10.07.2023 for I.O.'s report.

Dictated and corrected by me.

Sd/-
Additional Sessions Judge,
1st Court, Uluberia, Howrah.

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1st Court, Uluberia, Howrah.