No. 8/2011

CIRCULAR

Subject: -Reg. provisions of arrest as per Cr.P.C. (Amendment) Act-2008.

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Police officers derive their powers of arrest from section 41 of Cr.PC. Standing Order No.330/2008 clearly stipulates the circumstances under which the power of arrest is to be exercised.

Section 41 of the Cr.PC was amended in 2008 listing out in detail the circumstances under which a police officer can arrest without a warrant. These provisions of Cr.PC as listed in Sections 41, 41-A, 41-B, 41-C & 41-D have come into force w.e.f. 01.11.2010. The amended provision are produced below:

Section - 41 when Police officer may arrest without warrant

(1) Any Police officer may, without an order from a Magistrate and without a warrant, arrest any person-

(a) Who commits, in the presence of a police officer, a cognizable offence.

(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 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 officer 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 present in the court whenever required cannot be ensure, 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.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence.

(c) Who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) In whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonable be suspected of having committed an offence with reference to such thing; or

(e) Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody, or

(f) Who is reasonable suspected of being a deserter from any of the Armed Forces of the Union, or

(g) Who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India, or

(h) Who, being a released convict, commits a breach of any rule made under subsection (5) of section 356;or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

Section 41-A 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 the 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 41-B Procedure of arrest and duties of officer making arrest.

Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification,

(b) prepare a memorandum of arrest which shall be—

(i) attested by atleast one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made.

(ii) countersigned by the person arrested and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

Section 41-C Control room at Districts

(1) The State Government shall establish a police control room--

(a) in every district, and

(b) at state level.

(2) The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests.

(3) The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

Section 41D-Right of arrested person to meet an advocate of his choice during interrogation.

When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

The above amended provisions should be brought to the notice of all Police Officers and particularly all Investigating Officers for strict compliance. It shall be the duty of SHOs of Police Stations and Inspectors/Crime Branch, EOW, Special Cell and DIU to ensure that these instructions are personally brought to the notice of all the subordinate staff. Copies of these provisions should also be placed on the notice board as well as kept with the Duty Officers. All supervisory officers should also ensure that these instructions are invariably complied with. The above guidelines are being issued in addition to the guidelines already issued in Standing Order No.330/2008.

10.2.11

(KEWAL SINGH)
JOINT COMMISSIONER OF POLICE
PHQ : DELHI.

No.859-1100 /Record Branch/PHQ, dated Delhi, the 10/2/2011.

Copy to:

1. All Special Commissioners of Police, Delhi.
2. All Joint/Additional Commissioners of Police, Delhi, including P/PTC, Jharoda Kalan, New Delhi.
3. All Deputy Commissioners of Police, District/Units, Delhi including FRRO, Delhi/New Delhi.
4. SO to C.P., & LA to CP, Delhi.
5. DCP/Legal Cell, Delhi.
6. All ACsP/PHQ, including ACP/IT Centre/PHQ.
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