IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3778 of 2022

With

CRAN 3 of 2024

Rakhi Mitra and Anr.

Versus

The State of West Bengal

For the Petitioners	:	Mr. Krishnendu Bhattacharya. Adv. Mr. Priyankar Ganguly, Adv.
For the State	:	Ms. Sreyashi Biswad, Adv. Mr. Sachit Talukdar, Adv.
Heard on	:	01.09.2025
Judgment on	:	17.09.2025

Ajay Kumar Gupta, J:

1. The petitioners in the instant case have been arraigned and implicated in the criminal proceedings being GR Case No. 388/2021

arising out of Park Street Police Station Case No. 42 dated 29.03.2021 under Sections 283/188 of the Indian Penal Code, 1860, presently pending before the Court of the Learned 9th Metropolitan Magistrate at Calcutta. The petitioners have preferred this Criminal Revisional application under Section 482 of the Cr.P.C., thereby seeking quashing of the proceeding.

2. The brief facts of the case are that the petitioner no. 1 was the State Secretary of Mahila Morcha of an opposition party of the State, and petitioner no. 2 was the candidate for the Ballygunge Assembly constituency belonging to the same opposition party. On 29th March, 2021, in the afternoon, the petitioners, along with some party workers, had gone to offer prayers at the Mallickbazar Kali Temple. While on the street near the Temple, they were attacked by a mob of around 50-60 miscreants. They attacked and pushed the petitioner no. 2 to the ground. They also molested and pushed the petitioner no. 1 to the ground. Petitioner no. 1 and other party workers suffered severe injuries due to a sudden attack and were treated at NRS Medical College and Hospital.

3. A complaint was lodged with the Officer-in-Charge, Park Street Police Station, on 29th March, 2021, along with medical documents of the injured persons. However, instead of taking steps in line with the

complaint of the petitioners, the police authority initiated the instant proceeding against the petitioners and many others.

4. It was alleged that on 29th March, 2021, in between 18:25 hours to 19:25 hours, the petitioners, along with the opposition party workers, under the leadership of Lokenath Chatterjee, candidate of the opposition party, Ballygunge Assembly, and Debdutta Majhi, blocked the Park Street main road, to protest against various issues, obstructing vehicular and pedestrian movement, violating Model Code of Conduct issued by the Election Commission of India.

5. It was further alleged that senior officials, as well as other officials of the Park Street PS, tried to convince them to remove the roadblock, and ultimately, at 19:25 hours, they dispersed and normal traffic movement was restored. FIR No. 42 dated 29.03.2021 was registered under Sections 283/188 of the Indian Penal Code, 1860, against eight known persons and 50 to 60 unknown persons, on the basis of the aforesaid allegations.

6. Learned counsel appearing on behalf of the petitioners vehemently argued and submitted that due to a political vendetta, the police authority implicated the petitioners in a false and fabricated case without sufficient materials, upon the insistence of the ruling party to harass the petitioners for illegal gain.

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7. In addition to the aforesaid, the learned counsel submitted that the instant case should be quashed as the Charge Sheet was not filed within the statutory period fixed under Section 167(5) of the Cr.P.C. The learned Magistrate should have discharged the petitioners instead of taking cognizance of the offence, since the charge sheet was filed on 5th April, 2022, i.e. more than a year later, without any prior permission.

8. The learned counsel further submitted that since the investigation of the alleged offences under Sections 283/188 of the IPC could not be completed within six months, the bar of taking cognizance in terms of Section 468(2)(a) of the CrPC categorically applies. Therefore, the trial court erred in taking cognizance of the offences under Sections 283/188 of IPC, and the proceedings should be quashed and set aside.

9. Lastly, it has been submitted that the accused persons were unaware of the initiation of the FIR or investigation, since no notice under Section 41A of Cr.P.C. was issued to them during the investigation. Issuance of notice under section 41A is mandatory when the punishment for an offence is less than 7 years, which was not complied with in the instant case. Instead, the accused persons were disclosed as absconders while filing the charge sheet. Therefore, this

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proceeding is a gross abuse of the process of law and is liable to be quashed.

10. Learned counsel appearing on behalf of the State produced the case diary and opposed the prayer of the learned counsel for the petitioners. In the case diary, it has been stated that attempts had been made to serve notice under Section 41A of Cr.P.C. during investigation, particularly to the named accused (serial nos. 1 to 3) in the FIR, but to no effect. It has also been stated that in spite of efforts, the accused persons, namely, serial nos. 4 to 8 could not be ascertained and/or traced out.

11. Having heard the arguments advanced by the learned counsels for the respective parties and upon perusal of the case diary, this Court would firstly like to highlight Sections 283/188 of IPC, for fair and effective disposal of this case:-

> **Section 283 of IPC reads as under: -**
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> *"**283. Danger or obstruction in public way or line of navigation.** —Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees."*
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> **Section 188 of IPC reads as under: -**
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> *"**188. Disobedience to order duly promulgated by public servant. —**Whoever, knowing that, by an order*

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promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both,

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation. —It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

12. Upon perusal of these aforesaid sections, this Court finds that the maximum punishment in case of offence punishable under Section 188 of IPC is imprisonment for one month or fine upto Rs. 200/- or both, and under Section 283 of IPC, is a fine of Rs. 200/-.

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13. Even upon perusal of the entire case record, this Court does not find any independent witness who could say whether the roads had been blocked or vehicular or pedestrian movement obstructed, which was the main allegation of the complainant.

14. None of the pedestrians or drivers of vehicles were examined. Furthermore, the complaint was lodged on 29th March, 2021, and the chargesheet was filed on 5th April, 2022, over a year later, which is beyond the prescribed period of 6 months. Section 167(5) of the Cr.P.C. clearly indicates that when any investigation has not been completed within the specified time, the police authority can take permission from the concerned jurisdictional Court. No such permission was taken by the police authority, praying for extension of time to file the charge sheet. Even then, the Learned Magistrate took cognizance of the alleged offence.

15. In view of the above facts, this Court is of the view that there is clear violation of Section 167(5) of Cr.P.C. At the same time, it appears from the case diary that though the learned counsel for the State has submitted that the authorities have complied with section 41A, issuing notice upon the accused person which is reflected in CD, neither a copy of Section 41A Notice, nor any endorsement with regard to the notice was found in the case diary. Rather, the petitioners denied having received any notice.

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16. No sufficient material was also found in the case diary against the present petitioners. Rather, it appears from the written complaint and attached medical documents submitted by the Petitioners that they were clearly the victims of the incident. The incident, as narrated by the Petitioners, has been corroborated by the treating doctor narrating the actual incident in the medical report as well.

17. In the above facts and circumstances, this Court is of the view that this is a fit case and, therefore, it would be appropriate to quash the impugned proceedings, to prevent gross abuse of the process of law and to secure the ends of justice.

18. The Hon'ble Supreme Court strictly held in the case of ***Arnesh Kumar v. State of Bihar and Anr***[1] particularly in paragraph 11 thereof that any police officer who does not comply with service of notice u/s 41 A of CrPC corresponding to Section 35 of BNSS, 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, shall be liable for departmental action, and also be liable to be punished for contempt of Court.

[1] (2014) 8 SCC 273

19. Similarly, the Hon'ble Supreme Court in the case of ***Satender Kumar Antil v. Central Bureau of Investigation and Anr***[2] particularly in paragraphs 26 to 32 held as under:-

> *"**26.** Section 41-A deals with the procedure for appearance before the police officer who is required to issue a notice to 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, and arrest is not required under Section 41(1). Section 41-B deals with the procedure of arrest along with mandatory duty on the part of the officer.*
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> ***27.** On the scope and objective of Sections 41 and 41-A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in Arnesh Kumar v. State of Bihar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] : (SCC pp. 278-81, paras 7-12)*
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> > *"7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an 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 his 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;*

[2] (2022) 10 SCC 51

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 41CrPC.

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a

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period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording

his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. … The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1)CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the 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-AIPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41CrPC;

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-ACrPC 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.*
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> *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.*
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> *12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-AIPC 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."*

28. *We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the court, which is expected to be reflected in the orders.*

29. *Despite the dictum of this Court in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , no concrete step has been taken to comply with the mandate of Section 41-A of the Code. This Court has clearly interpreted Sections 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 7-2-2018 [Amandeep Singh Johar v. State (NCT of Delhi), 2018 SCC OnLine Del 13448] , followed by order dated 28-10-2021 in Rakesh Kumar v. Vijayanta Arya [Rakesh Kumar v. Vijayanta Arya, 2021 SCC OnLine Del 5629] , 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) [Amandeep Singh Johar v. State (NCT of Delhi), 2018 SCC OnLine Del 13448] dated 7-2-2018, this Court has also passed an order in Abhyanand Sharma v. State of Bihar [Abhyanand Sharma v. State of Bihar, (2022) 10 SCC 819 : 2022 SCC OnLine SC 784] dated 10-5-2021 (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 [Mahesh Kumar Chaudhary v. State of Jharkhand, 2022 SCC OnLine Jhar 620] dated 16-6-2022.

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 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 [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , 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."*

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20. In the aforesaid decision at paragraph 27, the Hon'ble Supreme Court observed that the scope and object of Sections 41 and 41A are facets of Article 21 of the Constitution of India, referring to the judgment of ***Arnesh Kumar (supra),*** particularly paragraphs 7 to 12 thereof.

21. Despite the dictum of both the aforesaid cases, the police officers of the instant case had not followed the provision of section 41A of the Cr.P.C. during investigation, as it is revealed prima facie from the case diary.

22. Therefore, the Commissioner of Police is directed to depute an officer, not below the rank of Assistant Commissioner of Police, to inquire into the matter of the aforesaid inaction and take appropriate steps, if found against the officials involved in the instant case.

23. Accordingly, **CRR 3778 of 2022** is, thus, **allowed**.

24. Consequently, proceedings being GR Case No. 388/2021 arising out of Park Street Police Station Case No. 42 dated 29.03.2021 under Sections 283/188 of the Indian Penal Code, 1860, presently pending before the Court of the Learned 9th Metropolitan Magistrate at Calcutta, is hereby quashed insofar as the Petitioners are concerned.

25. In view of disposal of the main application, **CRAN 3 of 2024** and all connected applications, if any, are also, thus, disposed of.

26. Interim order, if any, stands vacated.

27. Let a copy of this Judgment be sent to the Learned Court below for information.

28. Let a copy of this judgment also be forwarded to the Registrar General of this Court who, in turn, shall circulate the same to all the District and Sessions Judges of the State for onward circulation amongst the Judicial Officers for information and for the purpose of implementing the aforesaid directions of the Hon'ble Supreme Court in letter and spirit.

29. Case Diary, if any, be returned to the learned counsel for the State.

30. Parties shall act on the server copies of this Judgment uploaded on the website of this Court.

31. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)