POLICE DEPARTMENT

KERALA

No. U6-78463/2023/PHQ
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Dated. 12-05-2023

KERALA POLICE

STANDING ORDER N0.1 OF 2023

COMPLIANCE OF HON'BLE SUPREME COURT GUIDELINES ON PROCEDURE OF ARREST AND ISSUANCE OF NOTICES

I. INTRODUCTION

Hon'ble Supreme Court vide judgment dated 11-07-2022 in *Satender Kumar Antil Vs CBI* had issued directions *interalia* to the effect that-

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the Accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate Standing Orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the Standing Order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

Further, a division bench of the Hon'ble High Court of Kerala vide judgment dated 27-07-2022 in CCC No.808/2022 had also directed the State Police Chief to take such steps to see that the police in the State of Kerala is directed to scrupulously follow the directions in the judgment of the Supreme Court in *Arnesh Kumar* as well as the recent Judgment in *Satender Kumar Antil v. Central Bureau of Investigation & Another*.

In view of the above Supreme Court and High Court judgments, it became obligatory to take note of the order dated 07-02-2017 of the Delhi High Court in *Amandeep Singh Johar vs State of NCT of Delhi* [WP(C) No.7608/2017] and Delhi Police Standing Order No.109 of 2020 in modifying the format of Notice under section 41A Cr.P.C issued as per Circular No.07/2011. The modified format had already been circulated vide Circular No.04/2023. In compliance with the latest directions of the Hon'ble Supreme Court, the modifications in respect of the format of notice under section 41A of the Code of Criminal Procedure (Cr.P.C.) and the modified formats of notices under sections 91, 160 and 175 of Cr.P.C. are issued in the form of a Standing Order as

provided hereunder.

It has been noticed that some investigating officers do not comply with the legal requirements of Sections 41A, 91, 160 and 175 of the 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 Cr.P.C. 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 vide judgment dated 07.02.2018 judgement titled *Amandeep Singh Johar Vs. State of NCT of Delhi,* has categorically explained about the procedure to be mandatory 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 as *Annexure C & D* respectively.

II. RELEVANT STATUTORY PROVISIONS

Prior to examining the judgement in case titled *'Amandeep Singh Johar Vs Govt, of NCT ofDelhi* & *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 Cr.P.C 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 the State of Kerala: -

(i) Police Officers should mandatorily 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 (IO) 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 Investigating Officer 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 mandatory 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 Investigating Officer 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:

1. Serial Number
2. Case Number
3. Date and time of appearance
4. Consequences in the event of failure to comply
5. Acknowledgment slip

(viii) The Investigating Officer shall follow the following procedure:- •

1. The original is served on the accused or suspect;
2. 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;
3. 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.
4. 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

1. 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 mandatory be followed by Kerala Police while working the requirements of all the above noted sections.

2. The format of notices to be issued u/s 41-A, 91, 160 & 175 have been enclosed as *Annexure - A, B, C & D* respectively.
3. 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 the 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, 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 GD 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 GD 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 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 woman will be questioned, which should ordinary be where the woman 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 uploaded in the official website of Kerala Police in Malayalam as well as English languages 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 recourse's available to them.

10. Training programmes be specially formulated for police officers and judicial officers to sensitize them towards effective compliance of Sections 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. AMENDMENT CLAUSE.

This Standing Order is issued in partial modification of Circular No.07/2011.

ANNEXURES

Annexure - A

Serial No……
Police Station ……

To

_____

[Name of Accused/Noticee]

_____

[Last Known Address]

_____

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

Notice under Section 41(A) CrPC

In exercise of the powers conferred under sub-section (1) of section 41A of the Code of Criminal Procedure, 1973, 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 …….. at ……. Police 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 co-operate 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 above mentioned 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]

Annexure - B

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]

ANNEXURE-C

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 ..... at..... Police Station.

You are directed to comply with all and/or the following directions: -

1. You will appear before the Court as and when required/directed.
2. You will join the investigation of the case as and when required and will cooperate in the investigation.
3. 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.
4. You will produce all relevant documents/material required for the purpose of investigation.
5. You will render your full co-operation/assistance in apprehension of the accomplice.
6. You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.
7. 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 above mentioned 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]

Annexure - D

Sl.No..... .
Police Station.....

To

[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 been committed in case FIR 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

Sl.
No.....

In compliance with the above mentioned 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]

ANNEXURE -E

NOTICE ISSUE REGISTER

Sl. No.	
FIR/GD 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	
GD No. of arrival of noticee and information to IO (if not available)	

Anil Kant IPS
State Police Chief

To : All Officers in list 'B'

Copy To : CAs to all Officers in PHQ/Manager,PHQ/ Operation Cell, PIC, PHQ/Stock File/Circular Book

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