

Amendment of provision of 41 CrPC vide the code of Criminal Procedure (Amendment Act-2008)(5 of 2009) .

The following amendment of Section 41 of the Criminal procedure code vide CrPC Amendment Act 2008(5 of 2009) which was brought into force on 01.11.10 vide S.O. 2687(E) dated 30.10.10 is reproduced below :-

5. Amendment of Section 41- In section 41 of the principal Act,-

(i) In sub-section (1) for clauses (a) and (b) the following clauses shall be substituted, namely:-

” (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 or 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 presence in the Court whenever required cannot be ensured , and the police officer shall record while making such arrest ,his reasons in writing ;

(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 ";

III. for sub-section (2) the following sub-section shall be substituted, namely :-

"(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".

Clause 5. -The clause amends section 41 relating to power of police to arrest without warrant. It amends clauses (a) and (b) of sub-section (1) so as to provide that the powers

of arrest conferred upon the police officer must be exercised after reasonable care and justification and that such arrest is necessary and required under the section . Amendment is also made in sub-section (2) of section 41 so as to provide that subject to the provisions of section 42 relating to arrest on refusal to give name and residence , no person shall be arrested in non-cognizable offence except under a warrant or order of a Magistrate .(Notes on Clauses).

6. Insertion of new section 41-A,41-B,41-C and 41-D.-After section 41 of the principal Act, the following new sections shall be inserted, namely :-

"41-A. Notice of appearance before police officer-(1) The police officer may ,is 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 officers 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 ,it shall be lawful for the police officer to arrest him for the offence mentioned in the notice ,subject to such orders as may have been passed in this behalf by a competent Court .

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 at least 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.

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 bard 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 arrest.

(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.

41-D. *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 " .

Clause-6- This clause inserts new sections 41-A, 41-B, 41-C and 41-D. Section 41-A provides that the police officer may 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. Section 41-B lays down the procedure of arrest and duties of officer making arrest. Section 41-C requires the State Government to establish a police control room in every district and at the State level, where the names and addresses of the person arrested, nature of offences with which they are charged and the name and designation of the police officers who made the arrest are to be displayed .Section 41-D makes provisions for right of the arrested persons to meet an advocate of his choice during the interrogation though not throughout interrogation (Notes on Clauses).