

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cont. Case (Civil) No. 387 of 2024

1. Irshad @ Irshad Razi, aged about 34 years, son of Md. Rizwan Mustafa, resident of Manir Compound Mani Tola, Near Mani Tola Kabristan, Doranda P.O. Doranda, P.S. Doranda, District Ranchi-834 002 (Jharkhand).
2. Faiz Ahmad, aged about 36 years, son of Md. Muslim, resident of Kachnar Toli, Hatia, P.O. Hatia, P.S. Hatia, District Ranchi 834 003.

... Petitioners.

Versus

1. The State of Jharkhand through Smt. Vandana Dadel, father's / husband's name not known to the petitioner, Principal Secretary, Department of Home, Jail & Disaster Management, 2nd Floor, Project Bhawan, Dhurwa, District Ranchi 834 004 (Jharkhand).
2. Mr. Haridev Prasad, father's name not known to the petitioner, Officer Incharge, Jagarnathpur Police Station, P.O. Dhurwa, P.S. Jagarnthpur, District Ranchi.
3. Mr. Rajiv Kumar Ranjan, Additional Sub-Inspector, Jagarnathpur Police Station, P.O. Dhurwa, P.S. Jagarnathpur, District Ranchi.

... Opposite Parties

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioners: Mr. Indrajit Sinha, Advocate
For the State: Mr. Rohit, A.C. to A.A.G.-I
For Opp. No.3: Md. Jaisur Rahman, Advocate

Reserved on: 14.11.2024

Pronounced on: 17/12/2024

Per M.S. Ramachandra Rao, C.J.

- 1) This Contempt Case has been filed by the petitioners against the Opposite Party Nos.2 and 3 alleging that they had violated willfully the

judgment rendered by the Hon'ble Supreme Court in **Arnesh Kumar Versus State of Bihar & Others** in (2014) 8 SCC 273 as well as the judgment rendered in **Satender Kumar Antil Vs. Central Bureau of Investigation**, in (2022) 10 SCC 51.

Factual Matrix

2) Petitioners are employed by an agency called Instakart which acts as a logistics arm within the Flipkart Group of Companies. Myntra Designs Private Limited is also a part of the Flipkart Group.

3) The said Group as well as Myntra are engaged in providing e-Commerce entities. The petitioner No.1 was employed in the capacity of Senior Executive – Central at Harmu, Ranchi and he was responsible for delivery of goods to any user of Myntra/Flipkart being delivered through Instakart. The petitioner No.2 was an authorized representative of his wife Shahjahan Parween who was engaged as service provider of Instakart and he was working in the capacity of Manager at the Instakart Hub at Hinoo, Ranchi.

4) According to the petitioners, one Santosh Kumar, co-accused in the F.I.R., is also a service provider of Instakart and is a delivery agent.

5) Opposite Party No.2 was the Officer Incharge of Jagarnathpur Police Station where the F.I.R. was registered and he was in charge of supervision of the investigation and other police actions taken in the F.I.R. registered against the petitioners.

6) Opposite Party No.3 was the Investigating Officer and the person who arrested the petitioners in relation to the above F.I.R.

7) According to the petitioners, the F.I.R. was registered at the instance of the complainant named Deepak Kumar, son of Ashok Kumar Rai, resident of Dinkarnagar Hatia, Station Road, House No.32, PS-Jagarnathpur, District Ranchi; that the complainant had created an account with Myntra on 19.01.2024 with his registered mobile number and on that mobile number, he would be receiving One Time Password (OTP) for transaction done.

8) It is contended that several items had been ordered by the said complainant, some of which he could not receive due to the reason that the orders were cancelled, details of which are given in the Contempt application.

9) According to the petitioners, on 11.12.2024, the complainant placed some orders on Myntra Website in respect of which invoices were raised and though delivery was attempted multiple times, on 18.02.2024, 19.02.2024 and 25.02.2024 by the co-accused Santosh Kumar, who was the delivery agent, but the products could not be delivered due to various reasons attributable to the complainant; and eventually on 25.02.2024, the complainant informed the delivery agent Santosh Kumar that he was unavailable to receive the delivery and demanded to come next morning at 8:00 a.m. to deliver the order. Santosh Kumar is said to have informed the complainant that he would only be able to deliver the order by about 12:00 p.m. (noon), to which the complainant objected and asked Santosh Kumar to cancel the order. Santosh Kumar told the complainant that for cancellation also he would be requiring OTP which was refused to be provided by the latter.

10) On 28.02.2024, the delivery was attempted again at the residence of the complainant. According to the petitioners, the complainant asked Santosh Kumar to wait as the complainant was coming to him to receive the delivery and thereafter, the customer care agent of Myntra called the complainant to look into the issue, but the complainant allegedly denied the order and abused the customer care agent on call asking him to come to the police station.

11) It is alleged that since the complainant did not cancel the order in question, on 28.02.2024 the delivery agent Santosh Kumar had again visited the complainant's premises to deliver the product, but the complainant started harassing and physically abusing Santosh Kumar and forcibly took him to Jagarnathpur Police Station. According to the petitioners, the complainant had hit Santosh Kumar and also damaged his motorcycle.

12) An F.I.R. was registered against the petitioners bearing F.I.R. No.88 of 2024 at Jagarnathpur Police Station, District Ranchi on 28.02.2024 alleging that the petitioners had committed offences under Sections 419, 420, 469 and Section 34 of the Indian Penal Code.

13) According to the petitioners, from the police station Santosh Kumar called petitioner No.2 as well as another Myntra employee named Vidya Sagar. Both of them reached Jagarnathpur Police Station by about 1-2 p.m., however, the police later made petitioner No.2 also an accused in the F.I.R.

14) Later, between 3:00 p.m. to 4:00 p.m., petitioner No.1 also reached Jagarnathpur Police Station. Having the responsibilities of an

Area Manager and having been a local resident for long, petitioner No.1 claimed to have made a *bona fide* effort to explain to the police and the complainant that no cheating or illegal act has been committed by Myntra or its employees. Still, he too was made an accused in the F.I.R.

15) The petitioners' contention is that they were arrested by Opposite Party Nos.2 and 3 when they visited the police station, by simply recording compliance with Section 41(1)(b)(i) of the Code of Criminal Procedure as a mere formality, without issuing any notice under Section 41-A of the CrPC.

16) It is also contended that the copy of the F.I.R. was not uploaded on the website and the representatives of the petitioners, could get the certified copy of the F.I.R. only after the first remand order was passed by the Magistrate concerned; that they were brought to the remand hearing handcuffed before the Magistrate; and that the Magistrate did not permit petitioners to sign *vakalatnamas* for engaging private counsels.

17) It is alleged that the F.I.R. was registered by the complainant in a *mala fide* manner against the petitioners only to harass them and that the allegations in the F.I.R. are frivolous and false. Petitioners denied committing any offence as alleged against them.

18) According to the petitioners, there was no necessity of arrest on account of a flight risk or apprehension of interference with investigation, but, still, in violation of Section 41(1) of the CrPC they were arrested. According to the petitioners, offences as alleged against them in the F.I.R. were punishable with imprisonment of less than seven

years and, that no notice under the provisions of Section 41-A of the CrPC was issued by the police and as such, the mandates in *Arnesh Kumar's case* (1 supra) were violated.

19) On 29.02.2024, the petitioners were produced before the Judicial Magistrate-XVII, Ranchi Civil Courts, for remand in handcuffs, but, due to her unavailability, they were produced before the Judicial Magistrate-XXII and the Opposite Party Nos.2 and 3 sought judicial custody and not police custody which was granted by the Magistrate.

20) The petitioners have contended that even the Magistrate failed to discharge her duties of ensuring compliance with Sections 41(1)(b) and 41-A of the CrPC and mechanically granted remand, even though there was no justification for their arrest.

21) Petitioners contended that the Supreme Court's decisions prohibit handcuffing unless strong reasons for likelihood of the arrestee's escape are shown and a special order is granted by the Magistrate to that effect, and relied on decisions of the Hon'ble Supreme Court in the cases such as **Sunil Batra v. Delhi Administration**, (1978) 4 SCC 494; **Prem Shankar Shukla v. Delhi Administration**, (1980) 3 SCC 526; and, in regard to **M.P. Dwivedi's case**, (1996) 4 SCC 152.

22) According to the petitioners, they and Santosh Kumar approached the Magistrate for bail by filing M.C.A. No.1421 of 2024 on 01.03.2024, that the Magistrate on 02.03.2024 called for the case diary and put up the bail application for hearing on 05.03.2024 and on the same day, the bail application was rejected.

23) Petitioner No.1 thereafter filed Bail Petition No.376 of 2024 on 07.03.2024 before the Judicial Commissioner, Ranchi Civil Courts; that it was listed on 11.03.2024, but due to unavailability of the Judicial Commissioner, the matter was marked to the Additional Judicial Commissioner-I, Ranchi Civil Courts, who thereafter adjourned the matter to 15.03.2024.

24) According to the petitioners, petitioner No.2 filed Bail Petition No.393 of 2024 before the Judicial Commissioner, Ranchi Civil Courts, which came up for hearing on 13.03.2024 and thereafter, it was adjourned to 15.03.2024.

25) The petitioners contended that the Bail Petitions were heard on 15.03.2024 and on 16.03.2024 petitioners were granted bail by the Additional Judicial Commissioner-I, Ranchi Civil Courts.

26) According to the petitioners, it is well settled that in case an F.I.R. is registered for the alleged offences punishable with imprisonment less than or extending to seven years, the arresting officer/respondent No.3 was duty-bound to record reasons for arrest in the manner laid down in judicial pronouncements and, in particular, he was required to record not only the reasons to believe that the petitioners had committed the offences alleged, but also the satisfaction that their arrest was necessary. According to them, this was not done.

27) Petitioners contended that their arrest was totally unnecessary and the allegations in the F.I.R. are demonstrably false.

28) Petitioners also contended that Opposite Party Nos.2 and 3 did not even seek police custody at the time of remand, but, instead, sought

judicial custody, which was allowed; and this itself shows that there was no need for custodial interrogation of the petitioners, but the Magistrate denied them bail.

29) Petitioners contended that Opposite Party Nos.2 and 3 ought to have issued notices under Section 41-A of the CrPC to the petitioners and they have acted in violation of the provisions of Sections 41 and 41-A of the CrPC. It is also alleged that they failed to issue model notice under Section 41-A CrPC as mandated in the Supreme Court's case in **Satender Kumar Antil** (2 supra). It is also contended that Opposite Party Nos.2 and 3 prepared the 'check list' in respect of the petitioners without applying their minds and simply utilized *pre-printed* forms showing that their arrest is necessary to prevent them from committing any further offence and was also necessary for proper investigation of the offence.

30) Petitioners also contended that as per the decision rendered in **Lalita Kumari v. Govt. of Uttar Pradesh and others, (2014) 2 SCC 1**, the Hon'ble Supreme Court had held that where allegation in the F.I.R. relates to economic/commercial offences or those punishable by imprisonment of seven years or less, a preliminary inquiry is to be done before registering an F.I.R. to ascertain whether cognizable offences are even made out.

31) According to them, the grievance of the complainant, at the highest, pertains to delivery of one particular order at a particular time and it only amounts to civil or commercial dispute and was not criminal offence and registration of the F.I.R. is, thus, *mala fide*, particularly,

when the petitioners were described owners of the Myntra Company in the F.I.R. which is totally false.

32) Petitioners have contended that in **Arnesh Kumar** (1 supra) and **Satender Kumar Antil** (2 supra), the Hon'ble Supreme Court has directed that non-compliance with the law laid down in those decisions would render erring police officers liable for contempt of court to be decided by the jurisdictional High Court and also makes such police officers liable for disciplinary action.

33) The petitioners therefore prayed for imposition of punishment on Opposite Parties No.2 and 3 for contempt of court and also initiation of disciplinary action against them for willful disobedience and violation of the above judgments. They also sought award of compensation/damages to them for violation of their fundamental right under Article 21 of the Constitution of India.

The events after filing of the Contempt Case

34) Notices in the Contempt Case were issued to the Opposite Parties on 08.07.2024.

35) On 09.09.2024, having noticed that there was no appearance on behalf Opposite Party Nos.2 and 3, this Court directed the counsel appearing for the first Opposite Party/State to ensure appearance of Opposite Party Nos.2 and 3, since they were employees of the State.

36) Ultimately, Md. Jaisur Rahman, learned counsel, entered appearance for only Opposite Party No.3 on 01.10.2024.

37) Opposite Party No.1/State filed an affidavit on 14.11.2024 stating that it had already communicated the order dt. 09.09.2024 passed in this

Contempt Case to Opposite Party Nos.2 and 3 and, Opposite Party No.3 had already entered appearance. This was reiterated in the Court by the counsel appearing for the Opposite Party No.1/State.

38) Service report under ordinary process also indicates that process was served through the office clerk on Opposite Party Nos.2 and 3. However, there is no representation on behalf of Opposite Party No.2 when the matter was taken up on 14.11.2024.

39) Opposite Party No.3, however, filed a counter affidavit/show-cause.

The stand of Opposite Party No.3

40) In the show-cause/counter affidavit, it is stated by the Opposite Party No.3 that the complainant had submitted an application alleging that the petitioners were asking for OTP over telephone, and had claimed that even though he had never placed any order on Myntra they had visited his residence for delivering of a parcel of value Rs.2600/-.

41) According to Opposite Party No.3, the complainant claimed that he had informed the person who called the complainant over phone that he had not placed any order for delivery of a product from Myntra, and when the said person was asking for an OTP, then he got a suspicion upon the conduct of the person concerned.

42) It is alleged on 19.02.2024 at about 12:00 noon, the complainant received a message from Myntra Company regarding the said order and co-accused of the petitioners reached the residence of the complainant and in his absence had delivered a small packet and had taken Rs.594/-

from his mother. It is contended that on 28.02.2024 at about 12:00 o'clock, the complainant claimed that the co-accused of the petitioners came to his residence and told that some goods have to be delivered and the complainant then told him that he had not placed any order, but the co-accused of the petitioners started again asking for an OTP.

43) The Opposite Party No.3 contended that according to the complainant, the people of the area caught hold of the co-accused of the petitioners, by name, Santosh Kumar, when he tried to flee away and he was brought to the Jagarnathpur Police Station, where he stated that he is a delivery boy of Myntra Company. It is alleged that in the meantime, the petitioners came and asked the complainant to receive the parcel and they also insisted for the OTP.

44) It is alleged that in the premises of the police station, petitioner No.1 took the mobile phone of the complainant and downloaded the App of Myntra Company within the premises of Jagarnathpur Police Station on 28.02.2024 itself and that, the same was apparent from the CCTV footage of the said police station. It is contended that the complainant told the Opposite Parties that he had never placed any order from his mobile, but the accused were insisting for OTP with an intention to cheat him and, therefore, legal action had to be taken against them.

45) It is admitted that thereafter, F.I.R. No.88 of 2024 was registered on 29.02.2024 under Sections 419, 420, 469 and 34 of the Indian Penal Code against the petitioners, the co-accused Santosh Kumar and the owner of Myntra Company.

46) The Opposite Party No.3 admitted that after filing of the F.I.R., he was asked to investigate the case and all the accused were arrested and sent to judicial custody as their conduct was found to be suspicious, as, *prima facie* without any order having been placed by the complainant, petitioners were trying to deliver the goods to the complainant and were continuously asking the complainant for providing OTP which raised a suspicion that they were behaving like cyber criminals.

47) It is contended that nowadays, people are receiving such kind of calls and after providing OTP, cyber criminals are committing crimes and so, on strong suspicion, they were arrested and later after being subjected to medical examination, produced before the Judicial Magistrate, Civil Courts, Ranchi, who remanded them to judicial custody. It is stated that during investigation, the allegations against the petitioners were found to be true and later, they secured bail from the Additional Judicial Commissioner.

48) The Opposite Party No.3 also tendered unconditional apology if he is found to have caused any inconvenience to the Court.

49) The counsel for the Opposite Party No.3 prayed for dropping of the contempt proceedings against Opposite Party No.3.

Consideration by the Court

50) From the facts narrated above, it is clear that the petitioners were arrested in relation to the offences alleged against them in the F.I.R. by Opposite Party Nos.2 and 3 on 29.02.2024 and remained in custody till 16.03.2024 when they were released after securing bail

51) Admittedly, the offences alleged against the petitioners in the F.I.R. No.88 of 2024 dated 28.02.2024 were under Sections 419, 420, 469 read with Section 34 of the IPC.

The maximum imprisonment provided in these provisions of law is admittedly imprisonment of a term which may extend to seven years.

52) These facts are not disputed by the counsel for the Opposite Party No.3.

53) Section 41 of the Code of Criminal Procedure, 1973, enumerates the circumstances in which the police may arrest without a warrant. It states:

*“41. **When police may arrest without warrant.**—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—*

*(a)****

(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)****

(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:

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.”

54) Section 41-A of the CrPC states as under:-

“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 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.”

55) Section 41-B of the CrPC provides for the procedure of arrest and duty of the officer making arrest. The said provision states as under:-

“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) counter-signed 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.”

The decision of the Hon’ble Supreme Court in Arnesh Kumar (1 supra)

56) The above provisions came to be considered by the Hon’ble Supreme Court in the decision in **Arnesh Kumar** (1 supra).

The Hon’ble Supreme Court in the said case held that arrest brings humiliation, curtails freedom and casts scars forever. It emphasized the need for caution in exercising the drastic power of arrest and held that power of arrest is a lucrative source of police corruption and that it contributes to the arrogance of the police because of the failure of the magistracy to check it.

It stated that arrest has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

The Hon’ble Supreme Court noted the above provisions of law contained in the CrPC and observed that as per Section 41(1)(b) of the CrPC, 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; that such 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; 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.

It held that *these are conclusions which one may reach based on facts and that 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 contained in Section 41 while making such arrest.*

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

57) After noticing Section 41-A CrPC, the Hon'ble Supreme Court observed that the said provision states that where the arrest of a person is not required under Section 41(1) of the CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time and the law obliges such an accused to appear before the police officer. 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. It held that at this stage also, condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate. It then stated as under:-

“10. We are of the opinion that if the provisions of Section 41 CrPC 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 41 CrPC 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-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

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-A CrPC 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.

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.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC 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.” (emphasis supplied)

58) Thus, the Hon’ble Supreme Court has enabled action to be initiated for Contempt of Court in para 11.7 and also permitted the High Courts to direct disciplinary action where detention is authorized without following its directions.

59) Coming to the facts of the instant case, as noted above already the offences alleged against the petitioners are punishable with imprisonment which may extend to seven years and less. The offences alleged against the petitioners are not so serious as to warrant the deprivation of their personal liberty.

60) It is not in dispute that the arrest took place while the petitioners were inside the police station and according to the Opposite Party No.3, it was necessitated because the petitioners’ conduct was found to be suspicious.

61) According to the Opposite Party No.3, it was *prima facie* found that without any order having been placed by the complainant, the petitioners and co-accused were trying to deliver the goods to him and were asking him to provide an OTP which raised a suspicion that they were behaving like cyber criminals and that similar instances were happening in society.

The alleged insistence by petitioners and the co-accused to the complainant for an OTP from the complainant to deliver certain products from Myntra Company by itself cannot be a justification for the arrest, that too within the precincts of the police station, and for suspecting them to be cyber criminals. This defence of the Opposite party no.3 is ridiculous and cannot be accepted.

Even if the further allegation that the petitioners had tried to download the Myntra App on the complainant's phone is taken on its face value, still, it is not a situation of the nature mentioned in Section 41 warranting their arrest, as per the principles mentioned in **Arnesh Kumar** (1 supra).

62) In the Contempt application at paragraph 50, the petitioners had specifically alleged that Opposite Party Nos.2 and 3 prepared the check-list in respect of arrest of the petitioners and mechanically used a *pre-printed check-list* containing the answer 'Yes' for the question '*Arrest is necessary to prevent such person from committing any further offence?*' and '*Arrest is necessary for proper investigation of the offence?*'.*"*

In the counter affidavit/show-cause filed by Opposite Party No.3, there is no denial that such pre-printed forms were used at the time of making the arrest.

63) Also Copy of the said memorandum of arrest has not been filed by Opposite Party No.3. Its non-production by the Opposite Party No.3 also corroborates the allegations levelled by the petitioners.

64) Admittedly, notices under Section 41-A CrPC had not been issued to the petitioners as held in the decision of **Arnesh Kumar** (1 supra).

The purpose of the directions in **Arnesh Kumar** (1 supra). extracted above, is that there should not be ‘automatic arrest’ and the police need to satisfy themselves about the *necessity for the arrest as well*.

The check-list containing the specified sub-clauses under Section 41(1)(b)(ii) has to be filled up by applying mind and such reasons need to be recorded in writing. This was not done in the instant case by the Opposite Party No.2 and Opposite Party No.3.

65) The fact that the petitioners’ custodial interrogation was not even sought by the Opposite Party Nos.2 and 3 and they only sought judicial remand is also suggestive of the non-application of mind by Opposite Party Nos.2 and 3 before arresting the petitioners.

66) The directions issued in **Arnesh Kumar** (1 supra) were reiterated by the Hon’ble Supreme Court in **Satender Kumar Antil** (2 supra) and the Hon’ble Supreme Court mandated that investigating agencies and their officers are duty-bound to comply with the mandates of Section 41 and 41-A CrPC and also to the directions issued in **Arnesh Kumar** (1

supra); and any dereliction on their part has to be brought to the notice of the higher authorities by the Court followed by appropriate action.

67) The Hon'ble Supreme Court reiterated that liberty is one of the most essential requirements of the modern man and that, innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the Court. The Hon'ble Supreme Court further reiterated that it is for the prosecuting agency to satisfy the Court that arrest made was warranted and enlargement on bail is to be denied. It declared that Sections 41 and 41-A CrPC are facets of Article 21 of the Constitution. It emphasized that notwithstanding the existence of a reason to believe *qua* a police officer, the satisfaction for the need to arrest should also be present.

68) For the aforesaid reasons, we hold that there is a brazen disregard/violation of the principles laid down in **Arnesh Kumar** (1 supra) by Opposite Party No.2 and Opposite Party No.3.

69) Personal liberty is an important fundamental right guaranteed by the Constitution of India and unless there is an absolute necessity for arrest, personal liberty cannot be taken away in this arbitrary manner as was done by Opposite Party Nos.2 and 3.

Conclusion and directions

70) Having regard to the facts and circumstances, the legal position explained above, and the reasons given as above, we are of the opinion that there is a willful disobedience by Opposite Party Nos.2 and 3 of the directions contained in judgments of the Hon'ble Supreme Court in **Arnesh Kumar** (1 supra) in **Satender Kumar Antil** (2 supra) .

71) Accordingly, the instant Contempt case is allowed. The Opposite Party Nos.2 and 3 are held guilty of contempt of court for willfully disobeying the directions contained in the above decisions and both of them are sentenced to suffer simple imprisonment of one month with fine of Rs.2000/- (Rupees Two Thousand).

72) The sentence of imprisonment imposed on Opposite Party Nos.2 and 3 is suspended for a period of four weeks to enable them to approach the Hon'ble Supreme Court of India, in case they choose to do so.

73) They shall also be subjected to disciplinary action by the Opposite Party No.1/State, which shall be concluded within six months after their release.

74) The petitioners are also awarded costs of Rs.50,000/- each to be paid by respondent Nos.2 and 3 equally. It is open to them to avail other remedies available in law for claiming compensation for wrongful arrest by Opposite party No.2 and Opposite Party no.3.

75) Pending Interlocutory Application, if any, stand disposed of.

(M.S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

N.F.R.

Manoj/-