

Before Rajbir Sehrawat, J.

GURJEET SINGH JOHAR—Petitioner

versus

STATE OF PUNJAB AND ANOTHER—Respondents

CRM-M-47872 of 2019

November 08, 2019

*Criminal Procedure Code, 1973- Sections 41, 73, 482 & 483-
Petition filed for quashing of FIR under Sections 406,420 & 120-B
IPC as well as orders passed by Magistrate whereby warrants of
arrest issued against petitioner- Held, police officer has power to
arrest without warrant in cognizable offence by following procedure
as laid in Section 41 and as such, jurisdiction of Magistrate to issue
warrants of arrest cannot be invoked in routine manner-Unless there
is any specific obstacle because of which police were not able to
arrest and which could not be removed by police on their own and
without aid of warrant of court, issuance of warrant of arrest by
Magistrate only on assertion of police that accused is evading arrest
would be routine exercise to aid investigating officer which could not
be done by Magistrate- In present case, application silent qua any
reason which requires assistance from court for arresting petitioner-
No reason spelt out in application qua requirements of arrest as
mentioned in Section 41 CrPC except that petitioner is evading
arrest- Petition partly allowed- Impugned warrants of arrest set aside.*

Held, that Hence, as observed above, this court is also of the view that before the Magistrate/court has taken cognizance of any offence, the power of issuance of warrants of arrest under any provision of Cr.P.C., on an application of a police officer, cannot be invoked by the Magistrate as a routine matter. Needless to say, at the cost of repetition; that under the provisions of Cr. P. C. itself, the police have power to arrest a person without warrant even by following such a person at any place in India. Therefore, it is clear that only for arresting a person; the police do not require any warrant as such. Unless, there is any specific obstacle; because of which the police were not able to arrest; and which could not be removed by the police on their own and without the aid of the warrant of the court, the issuance of warrant of arrest by the Magistrate, only on assertion of the police that the accused was evading arrest, would be only a routine exercise, and would be only for the aid of the investigating officer, which could not be done by

the Magistrate,

(Para 15)

Held, that this court is presented with only an application moved by the police officer before the Magistrate; seeking issuance of warrant against the petitioner. The said application is silent qua any reason, which requires assistance from the court for arresting the petitioner. The application does not specify whatever obstacles, which were preventing the investigating officer from arresting the accused/petitioner without the aid of the warrant. Not only this, no reason, whatsoever, has been spelt out in the application, even qua the requirements of arrest as mentioned in Section 41 Cr.P.C, to justify arrest of the petitioner, except to say that the petitioner is evading arrest. It is upon this application that the impugned warrants of arrest have been issued against the petitioner.

(Para 16)

Held, that accordingly, this court finds that impugned warrants issued by the Magistrate cannot be sustained. Hence, the present petition is partly allowed. The impugned warrants of arrest and consequent orders impugned in the present petition are quashed.

(Para 18)

Vikram Chaudhri, Senior Advocate with
Sangram Singh Saron, Advocate
Rahil Mahajan, Advocate and
Shubhreet Saron, Advocate
for the petitioner.

RAJBIR SEHRAWAT, J. (oral)

(1) The present petition has been filed by the petitioner under Section 482/483 Cr.P.C. for quashing of FIR No.150 dated 14.08.2018 (Annexure P-2) registered under Sections 406, 420 & 120-B IPC at Police Station Phase-I, District SAS Nagar, Mohali and the orders dated 26.03.2019, 26.04.2019, 30.05.2019, 18.07.2019 & 27.08.2019 whereby the warrants of arrest were issued against the petitioner, as well as, the subsequent consequent orders.

(2) At the outset, the counsel for the petitioner submits that for the time being, the petitioner does not press the present petition qua challenge to the FIR as such; and that he has been instructed by the petitioner, to restrict the present petition only qua challenge to the warrants issued by the Magistrate against the petitioner in the said FIR.

(3) De hors any merits of the case qua the FIR, it is contended by the counsel for the petitioner that the warrants have been issued by the Magistrate in a mechanical manner. The application moved by the police, seeking issuance of warrants from the Magistrate, does not reflect any reason for the same. Therefore, the learned Magistrate had no reason or occasion to exercise his discretion to decide whether the petitioner was evading his arrest or not. In such a situation, the exercise of discretion by the Magistrate stands vitiated, being in negation of law as is laid down by the Hon'ble Supreme Court in the case of *State through Central Bureau of Investigation versus Dawood Ibrahim Kaskar*¹. Still further, it is contended that since, the police had not disclosed any reason even in their application, therefore, arrest of the petitioner would be in violation of the provisions of Section 41(1)(b)(ii) of Cr.P.C. It is further submitted by the counsel that in the absence of any such reasons, the Magistrate could not have even authorized the police custody of the petitioner, in case of his arrest. Therefore, if the Magistrate could not have authorized police custody, due to absence of valid reasons then the Magistrate could not have even issued warrant authorizing arrest of the petitioner, as such.

(4) Notice of motion.

(5) Mr. Harbir Sandhu, AAG, Punjab, accepts notice on behalf of the State and Mr. Arun Kumar Batra, Advocate accepts notice on behalf of respondent No.2-complainant.

(6) It is submitted by the counsels for the respondents that the petitioner is involved in a heinous crime of huge fraud. But, it is not disputed that the application moved by the investigating officer for obtaining the warrant from the Magistrate; does not contain any reason, and only this much has been written in the application that the petitioner is evading arrest. Still further, since the police was not able to arrest the petitioner despite repeated attempts and the raids at the known addresses of the petitioner, therefore, the investigating officer had rightly applied for the warrant of arrest against the petitioner. The Magistrate is not required to record any reasons for issuing warrants of arrest against an accused. Hence, the Magistrate has not committed any illegality in issuing warrants against the petitioner.

(7) Before proceeding further, it would be appropriate to have reference to the bare language of the provisions of Cr.P.C. which deals with arrest of a person without warrant, power of the Magistrate to

¹ (2000) 10 SCC, 438

authorize the detention of a person after he has been arrested by the police and also regarding power of the Magistrate to issue warrants against a person/accused of a non-bailable offence. Sections 41, 47, 48, 58, 70 to 73, 82, 87 & 89 of Cr.P.C. are reproduced below:

Chapter-V

Arrest of Persons

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) 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:

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.]

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

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

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

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

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

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

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

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and

it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

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

47. Search of place entered by person sought to be arrested.—(1) If any person acting under warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an

arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

48. Pursuit of offenders into other jurisdictions.—A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India

58. Police to report apprehensions.—Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

CHAPTER VI

PROCESS TO COMPEL APPEARANCE

A. —Summons xxx.... xxx.... xxx....

B. —Warrant of arrest

70. Form of warrant of arrest and duration.—(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

71. Power to direct security to be taken.—(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

- (a) the number of sureties;
- (b) the amount in which they and the person for whose

arrest the warrant is issued, are to be respectively bound;

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

72. Warrants to whom directed.—(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

73. Warrant may be directed to any person.—

(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

C. —Proclamation and attachment

82. Proclamation for person absconding.—(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified

place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]

D. —Other rules regarding processes

87. Issue of warrant in lieu of, or in addition to, summons.—A Court may, in any case in which it is empowered by this Code to issue a summons for the

appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

89. Arrest on breach of bond for appearance.—When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

(8) A bare perusal of the above said provisions makes it clear that under these provisions of Cr.P.C., a police officer has almost omnipresent power to arrest. He can arrest a person even on having a suspicion that such person has committed a cognizable offence. Although in certain circumstances the police officer is required to record reasons for arresting a person or is required to have a satisfaction qua the necessity of arrest, however, all these requirements are intrinsic to the arresting officer. These requirements do not create any external or outside hurdle, for removal of which the assistance of a court or Magistrate may be required. Hence, if a police officer has some valid reasons to arrest a person, he has as wide powers to arrest a person without warrant, as it could have been. He has an authority of hot-pursuit as well, if the person sought to be arrested happens to have moved out of the territorial jurisdiction of such police officer. Not only that, the police officer also has the power to enter into a premises if the need arises and to conduct any search and seizure. Even in those cases where the warrant from a court or Magistrate may be necessary, an exception has been carved out for the said police officer, that is, if obtaining warrant from court would create a scope for the offender to flee, the police officer can arrest a person even by entering any premises and conducting a search and seizure there. Therefore, for the purpose of arresting a person during investigation of a case, a police officer has all pervasive powers, without requiring any assistance from the court or the Magistrate. The only limiting factor created by law is that in certain situation he is required to record reasons for arrest and in

certain other cases required to have reasons to believe qua involvement of the person in the cognizable offence, even though not required to record reasons as such. Still further in certain cases, a police officer can arrest a person only if he has reasons to have suspicion over such a person qua certain aspects. Hence the crux of the limiting factors for the power, of arrest without warrant, of a police officer is the existence of some reasons for exercise of such power. If such reasons exist, and there is no other pre-existing legal hurdle in the way of a police officer, he can arrest without warrant, virtually in every possible situation, if the alleged offence is cognizable. He is not required to go to the Magistrate or the court for that purpose.

(9) In consonance of the above, the Chapter XII of Cr.P.C. which deals with Investigation of Crime also does not contemplate any assistance of a Magistrate or a court; to the police officer, qua investigation of a crime. Although certain provisions in this Chapter envisage intervention by a Magistrate, but all these provisions are envisaged only qua the protection to the alleged accused or qua ensuring fairness in procedure being adopted by the police during investigation. Even this chapter does not envisage the Magistrate or the court as collaborator in ensuring the arrest of the alleged accused or as part of law and order machinery, to be used by the police at will. In this Chapter there is no provision for issuing warrants of arrest by a Magistrate. At the stage of investigation, where the court has not even taken cognizance of an offence, the role of Magistrate is envisaged only as an arbitrator for individual's liberty and not as routine part of investigating machinery, to be used by police indiscriminately. Therefore, Section 167 Cr.P.C. requires that after arrest if investigation is not conducted within 24 hours then the person shall be produced before the Magistrate. Even the Magistrate is prohibited from permitting police custody for more than 15 days in all. Even for authorizing custody, other than the police custody, beyond 15 days, the Magistrate is required to have reasons for that. Still further the custody cannot be extended more than 90 days or 60 days, as the case may be.

(10) Even Chapter VI Cr.P.C., where courts have been conferred with the powers to issue warrant of arrest is not concerned with the investigation of a crime, as such, by the police. This chapter, as it expressly proclaims, deals with the processes to compel appearance before a 'Court'. The Court, obviously, is not concerned with the accused person, as such, unless it has taken cognizance of the offence under Section 190 of Cr.P.C., which again is a stage after the

completion of the investigation. Under Section 204 (1)(b), after taking cognizance and for causing appearance of an accused before it, in a warrant case, the court is authorized to issue warrants against an accused. For ensuring such appearance, provisions have been made in Chapter VI, providing procedure for such warrants. Otherwise, court can never require the 'appearance' of an accused before it, only to hand over that accused to the police. Doing otherwise would convert a court into the enforcement wing of the police, whereas the court, actually, is envisaged even under Cr.P.C., only as a check upon the excessive use of powers by the police even at the stage of investigation. Therefore, in ordinary course, no warrant of arrest can be issued by a court or the Magistrate, only to assist the police officer in investigation and only to ensure that the person against whom warrant is issued by the court; appears before the court and is handed over to the police.

(11) Although, Section 73 of Cr.P.C. confers a power upon the Chief Judicial Magistrate and a Magistrate of First Class to issue warrants against any person who is 'evading arrest', however, this power has to be read in the contextual perspective of the provisions and in the nature of *ejusdem generis* to the other categories of persons mentioned preceding this category in the same section. A reading of this Section shows that the power conferred upon the Magistrate is not restricted to direct the warrant to a 'police officer'. The warrant issued under this Section can be directed to 'any person'. So this power conferred upon the Magistrate is in the nature of extra-ordinary power, not limited to direct the warrants to police officers only. Still further, this power is not of routine even qua the subjects of the warrant of arrest. This Section is in the nature of general and all inclusive powers of courts in a criminal trial; to ensure smooth running of trial. Under this Section the Magistrate can issue warrants of arrest against a person:-

- (a) Who is an escaped convict
- (b) Proclaimed offender
- (c) Person accused of 'non-bailable' offence and is 'evading arrest'.

(12) Hence this Section envisages three specific categories of person against whom a Magistrate can issue warrant of arrest. First two categories mentioned at (a) and (b) above, evidently, relate to situation where the court has already taken cognizance of offence or has already convicted a person. The third category mentioned as (c) also does not

contemplate a person whom the police wanted to arrest during the investigation. The category of persons whom the police can arrest without warrant during investigation and the category (c) envisaged under Section 73 above, are not co-extensive or the same thing. The police could arrest any person whom it suspects to be involved in any 'cognizable' offence. Whereas the category (c) above is relating to only those offences which are 'non-bailable'. Obviously, 'cognizable' and 'non-bailable' are not belonging to either the same species of offences or the same stage of criminal trial or criminal procedure. There are lot many offences even in the first schedule attached to Cr.P.C. itself; which are 'cognizable' but 'bailable' and also which are 'non-cognizable' but also 'non-bailable'. Otherwise also, it is for the legislature to specify whether the offence would be cognizable or non-cognizable and, at the same time, whether it would be bailable or non-bailable. So there is no necessary connection between the cases where police can arrest the accused without warrant and the cases where the Magistrate could issue warrant of arrest against a person under Section 73 of Cr.P.C. The Magistrate may not be authorized to issue warrants in a given case; where even the police could have arrested such a person without warrant. On the contrary, the Magistrate may be authorized to issue warrants even where the police was not authorized to arrest a person without warrant at all. Therefore, category (c) above has to be read in the same sense and as meant for the same stage of proceedings, as are meant in category (a) and (b) above. Hence, it has to be held that under Section 73 the Magistrate can issue warrants against a person who is evading arrest, only if such a person was required to appear before the court under some other order passed under some other provision; like under Section 87, Section 89 or under the Section 390 of Cr.P.C.; during the trial or at the time of or after taking cognizance. This provision cannot be used only in aid of the investigation officer or for ensuring that such a person appears before the court and is handed over to the investigating officer. After all, the word 'non-bailable' is having significance only when a person comes to court to seek bail against his arrest and not otherwise. Still further the investigating officer is under duty under Section 41 to arrest a person, unless he records reasons for not doing so. Hence it is obvious that neither there is any necessity for a warrant of arrest for arresting an accused during investigation nor has the court been given any specific power in this regard by any specific provision of Cr.P.C. As a corollary to the above, it is also clear that before filing report under Section 173 the police cannot get a warrant of arrest against a person, without any

specific reason, and therefore a person can not be declared as a proclaimed person or offender in routine by following procedure under Section 82 of Cr.P.C.; only because despite having power to arrest an accused the police had not succeeded in arresting such a person or might not have chosen to arrest such a person.

(13) Accordingly, having heard learned counsel for the parties and having perused the file, this court finds substance in the argument of learned counsel for the petitioner. As discussed above, provisions of Section 41 of the Cr.P.C. are quite clear that unless a cognizable offence is committed by a person in the presence of such police officer, police officer cannot arrest an accused only on the basis of his whims that he suspects the said person to have committed some offence. If such person has committed some cognizable offence, which is punishable for imprisonment, then before arresting the person, the police officer has to satisfy himself that the arrest of such person is necessary; for the purposes delineated in the Section itself. This court finds reliance of the counsel for the petitioner on *Arnesh Kumar* versus *State of Bihar and another*², befitting in the facts of the case. In that judgment, the Hon'ble Supreme Court has unequivocally held that before arresting the accused, alleged to have committed a cognizable and non- bailable offence punishable with imprisonment up to seven years, the police officer has to record reasons qua his satisfaction that the arrest of the said person is necessary for the purpose mentioned in the Section. As a necessary corollary, this would mean that if the conditions mentioned in these provisions are not complied with by the investigating officer, the arrest of the petitioner, from very inception, may be rendered invalid, inviting the adverse legal consequences, even for the concerned police officer. To clarify further, the Supreme Court has also said that even at the time of authorizing detention of a person, who has already been arrested by the police, Magistrate would not go by *ipse dixit* of the language, which might be reproduced in the record of the police. He has to apply his independent mind as to whether the reasons are sufficient to sustain the satisfaction qua requirements of getting such person arrested. Only if the reasons are found sufficient, the person arrested by the police, can be authorized to be put in further custody of the arresting officer.

(14) Still further, in case of judgment in the case of *Dawood Ibrahim Kaskar* (supra), the Supreme Court has dealt with the

² (2014) 8 SCC 273

language of Section 73 of Cr.P.C., and has explained the situation in which the Magistrate can issue warrant of arrest. As observed above, although the bare language of the Section, read as it is, requires as a pre-condition; for the issuance of warrants by the Magistrate, only this much, that the person is evading the arrest, however, even this has been interpreted by the Supreme Court. It has been held by the Supreme Court that to arrest such a person, who is evading arrest, the Magistrate has to exercise his discretion, in judicial manner and the Magistrate cannot issue warrants of arrest only for the purpose of the arrest, and for the aid and assistance to the police officer.

(15) This court also finds that more often than not, the police use the power of the Magistrate to issue warrant of arrest against an accused, only as a tool to avoid its responsibility to carry out the investigation to the logical end; and only for the purpose of getting such an accused declared as proclaimed offender. This methodology is normally adopted by the police just to get rid of the responsibility of putting a report before the Magistrate qua investigation, which otherwise is a mandate of law cast upon the police, or even to avoid arresting an accused in inconvenient cases or inconvenient circumstances. As a result, lots of persons are got declared as proclaimed offenders; and forgotten altogether by the police thereafter. Hence, as observed above, this court is also of the view that before the Magistrate/court has taken cognizance of any offence, the power of issuance of warrants of arrest under any provision of Cr.P.C., on an application of a police officer, cannot be invoked by the Magistrate as a routine matter. Needless to say, at the cost of repetition; that under the provisions of Cr. P. C. itself, the police have power to arrest a person without warrant even by following such a person at any place in India. Therefore, it is clear that only for arresting a person; the police do not require any warrant as such. Hence, it would not lie in the mouth of the police to allege before the Magistrate, without there being any specific reasons or any barrier in their way, that the accused is evading arrest. During investigation; even if there is some specific legal or factual obstacle or barrier, which makes the arrest without warrant impossible, and if the police intend to seek warrant of arrest from the Magistrate for such arrest, under any provision of the Cr.P.C., the police are required to specify the obstacle, which the warrant issued by the court would remove and because of which such obstacle or the barrier in way of the police; the accused was succeeding in evading his arrest. Unless, there is any specific obstacle; because of which the police were not able to arrest; and which could not be removed by the

police on their own and without the aid of the warrant of the court, the issuance of warrant of arrest by the Magistrate, only on assertion of the police that the accused was evading arrest, would be only a routine exercise, and would be only for the aid of the investigating officer, which could not be done by the Magistrate, as has been held by the Supreme Court in the case of *Dawood Ibrahim Kaskar* (supra).

(16) Coming to the facts of the present case, undisputedly, the petitioner has not been arrested by the police despite having power to arrest him without warrant. Therefore, there is nothing on record of the present petition; showing whether the investigating officer was ever satisfied qua the requirement of the petitioner to be arrested or not. This court is presented with only an application moved by the police officer before the Magistrate; seeking issuance of warrant against the petitioner. The said application is silent qua any reason, which requires assistance from the court for arresting the petitioner. The application does not specify whatever obstacles, which were preventing the investigating officer from arresting the accused/petitioner without the aid of the warrant. Not only this, no reason, whatsoever, has been spelt out in the application, even qua the requirements of arrest as mentioned in Section 41 Cr.P.C, to justify arrest of the petitioner, except to say that the petitioner is evading arrest. It is upon this application that the impugned warrants of arrest have been issued against the petitioner.

(17) By perusing the warrants issued by the Magistrate also, it is quite clear that the Magistrate has issued the warrant only to enlarge the effort of the police qua its investigation; as the reason for issuing warrant of arrest. The only other reason mentioned is that there is no stay of arrest qua the petitioner by any other court. Although the Magistrate may not be required to record any detailed reasons as such for issuing warrants, however, this court is of the view that none of these reasons given in this case is germane to the provisions under which the Magistrate is required to exercise his powers to issue warrants of arrest. There is nothing, either in the order passed by the Magistrate, from which it can be discernible that the Magistrate had some reasons or material to justify the discretion exercised by him.

(18) Accordingly, this court finds that impugned warrants issued by the Magistrate cannot be sustained. Hence, the present petition is partly allowed. The impugned warrants of arrest and consequent orders impugned in the present petition are quashed.

(19) However, this shall not preclude the police or the Magistrate

from proceeding further in the matter, in accordance with law.

(20) Let a copy of this order be sent to all the Magistrates and the Courts exercising criminal jurisdiction in the States of Punjab, Haryana and Union Territory, Chandigarh.

Angel Sharma