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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 6195/2023

OMLATA & ORS.

..... Petitioners

Through: Appearance not given

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP for State
with SI Anu Pundir, PS-Shahdara.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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28.08.2023

CRL.M.A. 23208/2023 (for exemption)

1. Exemption allowed, subject to all just exceptions.
2. This application stands disposed of.

CRL.M.C. 6195/2023

3. The petitioners vide the present petition under Sections 482 of the Code of Criminal Procedure, 1973 seek quashing of the chargesheet dated 04.06.2022 in FIR No. 280/2021 dated 04.09.2021 registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 at PS.: Shahdara, Delhi and all proceedings emanating therefrom.
4. Issue notice. Learned APP for the State accepts notice.
5. On the petitioner taking requisite steps within one week, let notice be issued to respondent no.2, returnable on 14.12.2023.
6. List on 14.12.2023.

CRL.M.C. 6195/2023

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CRL.M.A. 23207/2023 (for stay)

7. The petitioners vide the present application under Section 482 of the Code of Criminal Procedure, 1973 seek stay of the proceedings in Cr.Case No. 5585/2022 pending against the petitioners before the learned MM(Shahdara), Karkardooma Courts, New Delhi.

8. Learned counsel for the petitioners submits that the order dated 21.01.2023 passed by the learned MM (Mahila Court)-01, SHD/KKD/Delhi has been passed in a cryptic manner and without application of judicial mind.

9. The FIR No. 280/2021 dated 04.09.2021 registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 at PS.: Shahdara, Delhi was emanating from a marital discord between the respondent no.2 and her husband. The husband of the respondent no.2 filed a divorce petition before the Principle Family Court, Bangalore on 30.11.2022. Thereafter, allegedly, as a counterblast to the filing of the said divorce petition, respondent no.2 filed a complaint before the CWC, Shahdara District, Delhi, on the basis of which, the present FIR came to be registered. At the time of taking *cognizance* on the basis of the charge sheet, the learned Trial Court passed the following order:-

“Present: Ms. Amandeep Kaur, Ld. APP for the State.

Heard. Record Perused.

There is sufficient material available on record to proceed further against accused persons. Hence, I take cognizance of the alleged offences against accused.

Let summons be issued to accused (kept in column no.11) for 12.04.2023.”



10. Before dwelling into the merits of the issues involved, let me first deal with the procedure to be followed by the Magistrates while issuing summons. The procedure for issuance of summons is laid down in *Chapter XIV: CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS* of the CrPC. As this Court is concerned about the manner/ procedure to be followed by a Magistrate while taking *cognizance*, there is no requirement for moving ahead with the other provisions mentioned in the aforesaid *Chapter XIV* barring what is stated in Section 190 of the CrPC wherein it is provided that while issuing summons the Magistrate is free to take *cognizance* of any offence upon consideration of *three* basic factors, which as enumerated therein, is reproduced hereunder:-

“1.

(a) upon receiving a complaint of facts which constitute such offences;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.”

11. At the time of taking *cognizance* a Magistrate is required to judicially apply the mind and be satisfied on the basis of the facts what are borne out from the statement of the complainant as made in the complaint or what are borne out from the report of the Investigating Officer involved or what are the surrounding facts and circumstances based on the prima facie documents and materials in existence or what the contents of the FIR are. The Magistrate is to be aware of the situation/ position as it is at the time of



taking *cognizance* because what is before him are mere allegations which are nothing but a bundle of facts made by a complainant at the preliminary stage which are yet to be tested.

12. In effect, it is the satisfaction of the magistrate which plays a predominant role while taking *cognizance* coupled with the fact that there are enough materials to convince him for taking such cognizance. The order passed by the Magistrate taking *cognizance* has to be a speaking one justifying the steps taken by him which convinced him of taking *cognizance*. Such order has to be expressive and reflective of the bare minimum reasons. The order taking such cognizance ought to reflect that the Magistrate is indeed aware of and has knowledge of the facts involved. The said order should sound convincing.

13. Any order by which the Magistrate is taking *cognizance* out not to be a routine exercise which is a mere knee-jerk reaction which is automated. If there is such an order taking *cognizance* then the same would be perfunctory and not reflective of the Magistrate having applied its mind. The Magistrate cannot be mechanical in his approach. More so, whence at the end of the day the Magistrate is setting into motion the judicial machinery against the alleged accused person which inevitably involve their personal liberty and freedom. Therefore, the Magistrate must necessarily exercise due care, caution and precaution while taking all the relevant factor(s) into consideration. However, it in no way means that the Magistrate has to give detailed reasons while taking *cognizance* as the Magistrate, while taking *cognizance*, has to only ensure that he does not pass a blanket order without expressing his opinion and judicial mind.

14. This Court finds able support in *Sanjit Bakshi vs State of NCT of*



Delhi & Ors. (Crl.M.C. 4177/2019) wherein a co-ordinate bench of this Court has recently, while taking note of the position of law laid down by the Hon'ble Court in various pronouncements, held that *cognizance* implies application of judicial mind by the Magistrate to the facts as stated in a complaint or a police report or upon information received from any person that an offence has been committed and further that. He further submits that the learned MM while issuing summons to the petitioners failed to consider the fact that the present complaint against the petitioners has been filed by the respondent no.2 after almost 12 years and therefore, in view of the limitation period prescribed under Section 468 of the CrPC, the learned MM should not have taken the *cognizance* of the same. Even otherwise, he submits, that the said *cognizance* was taken in a cryptic way and without application of judicial mind.

15. On a wholistic reading of the aforesaid, this Court finds that the impugned order passed by the learned Trial Court taking cognizance is a very casual, mechanical and is containing no semblance of reasoning which *prima facie* reflects that it has been done in a perfunctory manner which is far from what was required of the Magistrate.

16. In view thereof, the present application of the petitioners namely *Omlata, Rajkumar, Poonam and Renu Kataria* is allowed and the proceedings in Cr.Case No.5585/2022 pending against the petitioners before the learned MM(Shahdara), Karkardooma Courts, New Delhi are stayed till the outcome of the present petition. Since the husband of the respondent no.2 namely *Vikas Thakur* is not arrayed as a party before this Court in the present petition even though he is named in the FIR as well as the chargesheet, therefore, the present order granting stay of the proceedings



shall not operate against him.

17. The present application is accordingly disposed of in the above terms.

18. As the present order is of judicial importance, let a copy of the present order, though passed in an application, be sent to all the concerned Principal District & Sessions Judges through the Registrar General of this Court, for information and compliance for betterment of the justice delivery system.

SAURABH BANERJEE, J

AUGUST 28, 2023/vp