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

\+ CRL.M.C. 4177/2019 & CRL M.A.34231/2019

SANJIT BAKSHI ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Madhav Khurana, Ms. Trisha Mittal, Mr. Kartikeye Dang, Mr. Sanjeevi Seshadri, Advocates

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Raghuvinder Varma, APP for State
SI Divya Gehlot, P.S. South Campus

CORAM:
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

O R D E R

% 19.05.2022

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the order dated 18.09.2018 passed by the Metropolitan Magistrate-06, New Delhi, Patiala House Courts, Delhi, whereby cognizance was taken in pursuance of charge sheet dated 04.12.2017 filed in FIR no. 509/2015 under Sections 447/506/420/120B IPC registered at P.S. South Campus.

2. The petitioner has challenged the impugned order dated 18.09.2018 on the grounds as mentioned in para 3 of the petition.

3. Issue notice. Mr. Raghuvinder Varma, Additional Public Prosecutor accepts notice on behalf of the respondent no.1.

4. The counsel for the petitioner argued that the impugned order had been passed in the cryptic manner and without application of judicial mind. It is also not mentioned in the impugned order regarding which offences, the

cognizance was taken by the Trial Court and the impugned order is liable to be set aside.

5. FIR no. 509/2015 dated 06.09.2015 under Sections 420/467/471/120B IPC was got registered at P.S. South Campus, Delhi on the basis of complaint made by Vanita Vohra. After completion of investigation, the charge sheet was filed for the offences punishable under Sections 47/506/420/120B IPC. The Trial Court at the time of taking the cognizance on the basis of charge sheet passed the following order:-

> " **Counsel for the complainant undertakes to file vakalatnama during the course of the day.**
>
> **Heard. Record perused.**
>
> **Cognizance of offence taken.**
>
> **Accused be summoned through IO for 22.01.2019**."

6. Section 190 empowers a Magistrate to take cognizance of an offence in certain circumstances. Sub-section (1) reads as under:-

Cognizance of offences by Magistrates.-1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence-

> **(a) upon receiving a complaint of facts which constitute such offence;**
>
> **(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.**

7. 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. It is the stage when a Magistrate applies his mind to the suspected commission of an

offence. The cognizance of an offence is stated to be taken once the Magistrate applies his mind to the offence alleged and decides to initiate proceeding against the proposed accused. The Court before taking cognizance needs to be satisfied about existence of prima facie case on basis of material collected after conclusion of investigation. The magistrate has to apply his mind to the facts stated in the police report or complaint before taking cognizance for coming to the conclusion that there is sufficient material to proceed with the case. Taking of cognizance is a judicial function and judicial orders cannot be passed in a mechanical or cryptic manner. It is not only against the settled judicial norms but also reflects lack of application of judicial mind to the facts of the case. It is equally important to note that at time of taking cognizance a Magistrate is not required to consider the defence of the proposed accused or to evaluate the merits of the material collected during investigation. It is not necessary to pass a detail order giving detailed reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind.

8. In **R.R. Chari V State of Uttar Pradesh,** 951CriLJ 775 the question before the Supreme Court was as to when cognizance of the offence could be said to have been taken by the Magistrate under Section 190 of the Code. It was observed as under:-

> **It is clear from the wording of the section that the initiation of the proceedings against a person commences on the cognizance of the offence by the Magistrate under one of the three contingencies mentioned in the section. The first contingency evidently is in respect of non-cognizable offences as defined in the Criminal Procedure Code on the complaint of an aggrieved person. The second is on a police report, which evidently is the case of a cognizable offence when the police have completed their**

investigation and come to the Magistrate for the issue of a process. The third is when the Magistrate himself takes notice of an offence and issues the process. It is important to remember that in respect of any cognizable offence, the police, at the initial stage when they are investigating the matter, can arrest a person without obtaining an order from the Magistrate. Under Section 167(b) of the Criminal Procedure Code the police have of course to put up the person so arrested before a Magistrate within 24 hours and obtain an order of remand to police custody for the purpose of further investigation, if they so desire. But they have the power to arrest a person for the purpose of investigation without approaching the Magistrate first. Therefore in cases of cognizable offence before proceedings are initiated and while the matter is under investigation by the police the suspected person is liable to be arrested by the police without an order by the Magistrate.

9. The Supreme Court in **Fakhruddin Ahmad V State of Uttaranchal**, (2008) 17 SCC 157 also held as under:-

Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.

10. The Supreme Court also observed in **S.K. Sinha, Chief Enforcement Officer V Videocon International Ltd.,** (2008) 2 SCC 492 held as under:-

The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or

mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a Court or a Judge, it connotes to take notice of 'judicially'. It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

'Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.

11. The impugned order dated 18.09.2018 is cryptic, non-speaking and is passed without application of judicial mind. The impugned order has passed in casual and cursory manner and even the offences regarding which the cognizance was taken are not mentioned. Accordingly the impugned order dated 18.09.2018 is set aside. The Trial Court is directed to re-consider the issue of taking the cognizance afresh and to pass the speaking order on the basis of charge sheet.

12. Copy of this order to be sent to the concerned Trial Court for information and compliance.

13. The petition along with pending applications, if any, stands disposed of.

SUDHIR KUMAR JAIN, J

MAY 19, 2022/j