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

+ CRL.M.C. 6619/2023

VIKAS THAKUR

..... Petitioner

Through: Mr. Alok Bhachawat, Mr. S. Jeev  
Mandan and Ms. Saloni Jagga,  
Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sunil Kumar Gautam, APP for  
the State with SI Anu Pundir, PS.  
Shahdara

**CORAM:**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**ORDER**

% **14.09.2023**

**CRL.M.A. 24827/2023 (for exemption)**

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

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3. The petitioner 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 377/498A/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.

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**CRL.M.A. 24826/2023 (for stay)**

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

8. Learned counsel for the petitioner 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 emanates 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. Taking *cognizance* 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. ....”*

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10. Before dwelling into the merits of the issues involved, let first deal with the procedure to be followed by the Magistrates while issuing summons.

11. The procedure for issuance of summons is laid down in *Chapter XIV: CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS* of the Cr.P.C. 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 Cr.P.C. 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 and is also 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.”*

12. 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 are the contents of the FIR. 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.

13. In effect, it is the satisfaction of the Magistrate which plays a predominant role while taking *cognizance* coupled with the facts that there are enough materials to convince him/her for taking such cognizance. The order passed by the Magistrate taking *cognizance* has to be a speaking one justifying the steps taken by him/her which convinced him/her to take *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.

14. Any order by which the Magistrate is taking *cognizance* ought not to be a routine exercise. If there is such an order taking *cognizance* then the same would be perfunctory and not reflective of the Magistrate having applied his/her 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 as it inevitably involves their personal liberty and freedom. Therefore, the Magistrate must necessarily exercise due care and caution 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/she does not pass a blanket order without expressing his/her opinion or judicial mind.

15. 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 settled law as laid down by the Hon'ble Supreme 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. It is pertinent to note that the learned MM while issuing summons to the petitioner failed to consider the fact that the present complaint against the petitioner 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 Cr.P.C, the learned MM should not have taken the *cognizance* of the same. Even otherwise, the *cognizance* was taken in a cryptic way and without application of judicial mind.

16. 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 from a Magistrate.

17. In view thereof, the present application of the petitioner is allowed and the proceedings in Cr.Case No.5585/2022 pending against the petitioner before the learned MM(Shahdara), Karkardooma Courts, New



Delhi are stayed till the final outcome of the present petition.

18. 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.

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

**SAURABH BANERJEE, J**

**SEPTEMBER 14, 2023/akr**

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