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

Reserved on: August 08, 2022
Decided on: August 22, 2022

+ CRL.M.C. 11/2019

SHRI BHARAT BHUSHAN ..... Petitioner
Through: Mr. Vikram Dua, Advocate.
versus
STATE & ANR. ..... Respondents
Through: Mr. Hitesh Vali, APP for the State with ASI Ramesh Chand, P.S. Tilak Nagar.
Mr. Shashank Khurana, Advocate for R-2.

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CORAM:
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present petition is filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **"the Code"**) to set aside the orders dated 16.07.2018 and 26.09.2018 passed by the Court of Ms. Sonam Gupta, MM-02 (Mahila Court), West Tis Hazari Courts, Delhi in FIR bearing no.950/14, under sections 354/354D/392/120B/34 IPC registered at P.S. Tilak Nagar. The petitioner prayed as under:

> **a. Set aside the Orders dated 16.07.2018 & 26.09.2018, passed by Ms. Sonam Gupta, Ld. MM., West, Tis Hazari Courts, Delhi in FIR No.950/14, U/s. 354/354D/392/120B/34 IPC, P.S. Tilak Nagar titled as State V Bharat Bhushan Bharti.**
> **b. Pass such other further order as this Hon'ble Court deems fit in the interest of justice as per the facts and circumstances of this case.**

2. FIR bearing no. 950/14 dated, 26.08.2014 was got registered under sections 354/354D/392/120B/34 IPC at P.S. Tilak Nagar on the complaint made by the respondent no. 2 in pursuance of directions given by the Court of Ms. Colette Rashmi Kujur, M.M. (Mahila Court), West, Tis Hazari Courts vide order dated 04.08.2014 under section 156(3) of the Code in complaint bearing CC no. 104/1/14 titled as **Geeta V Bharat Bhushan Bharti.** The order dated 04.08.2014 reads as under:

> **Arguments have been heard on the application u/s 156 (3) CrPC. As per the report of the I.O./ SHO, P.S. Tilak Nagar no complaint was made by Ms.Geeta on the date of the incident about sexual harassment, therefore, no FIR has been registered.**
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> **However, the call is stated to be made by the father is law from U.P. at the 100 number. Copy of the Form I - Control Room received under RTI Act is placed on record.**
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> **SHO, PS concerned is directed to register an FIR in the present case and compliance report be file in the court on 27.08.2014 at 02:00 PM.**

3. The charge-sheet was filed after completion of the investigation. In the charge-sheet the petitioner along with Vinod Kumar Vaid was placed in column no. 12 as no sufficient incriminating material could be collected during the course of investigation them.

4. A cross FIR bearing no.499/2014 under sections 332/341/379/356/34 IPC was also registered on the complaint made by the petitioner against the husband of the respondent no. 2.

5. In FIR bearing no. 950/2014 after completion of investigation a Final Report under section 173(2) of the Code. The Court of

Ms.Sonam Gupta, MM-02, (Mahila Court), West, Tis Hazari, Delhi vide order dated 16.07.2018 ordered for issuance of bailable warrants in the sum of Rs. 5,000/- against the petitioner as the petitioner was not present before the court on that date and the case was adjourned for 26.09.2018. The order dated 16.07.2018 reads as under:

> **None for the accused.**
> **Bailable warrant in the sum of Rs.5000/- be issued against accused to be executed through IO / SHO concerned for the next date of hearing.**
> **Put up for appearance of accused on 26.09.2018.**

6. The court vide order dated 26.09.2018, after perusing the charge-sheet along with annexed documents took the cognizance of the offence committed and adjourned the case for arguments on charge on 17.12.2018. The order dated 26.09.2018 reads as under:

> **I have perused the chargesheet a/w documents annexed. I take cognizance of the offence committed.**
> **Put up for scrutiny of docs./arguments on charge on 17.12.18.**

7. The petitioner being aggrieved by the orders dated 16.07. 2018 and 26.09.2018 filed the present petition and challenged these orders on the grounds that the impugned orders were passed in haste and without application of law. The trial Court has failed to appreciate the factual position of the case and issued the process without taking cognizance of the offence. The trial Court has failed to appreciate that after investigation, the Investigating Officer has placed the petitioner and Mr. Vinod Kumar Vaid in column number 12 of the charge-sheet as there was no evidence in support of the allegations made by the

respondent no. 2. The impugned orders are liable to be set aside being contrary to the provisions of law. It is prayed that the impugned orders dated 16 .07.2018 and 26.09.2018 be set aside.

8. The counsel for the petitioner argued that the Trial Court should not have issued the bailable warrants against the petitioner vide order dated 16.07.2018 as at that time the cognizance of the alleged offence was not taken. The counsel for the petitioner also challenged the order dated 26.09.2018 on the ground that the Trial Court has taken the cognizance without specifying the offence for which the cognizance has been taken and as such the order dated 26.09.2018 was passed in a very casual and cursory manner and is liable to be set aside. The counsel for the petitioner referred the judgment dated 19.05.2022 passed by this Court in Crl. M.C. 4177/2019 titled as **Sanjit Bakshi V State of NCT of Delhi and Others.** The counsel for the respondent no. 2 argued that the present petition is liable to be dismissed.

9. The Additional Public Prosecutor for the respondent no. 1/State stated that the concerned Court was within the power to issue the bailable warrants against the petitioner before taking cognizance of the offence on the basis of the charge sheet. The Additional Public Prosecutor relied upon the judgments titled as **State of U.P. V Poosu and another (1976) 3 SCC1** and **Mona Panwar V High Court of Judicature of Allahabad (2011) 3 SCC 496 .** The Supreme Court in **State of U.P. V Poosu and another (1976) 3 SCC1** observed that whether in the circumstances of the case the attendance of the accused respondent can be best secured by issuing a bailable warrant or non-

bailable warrant, is a matter which rests entirely in discretion of the Court.

10. In the judgment titled as **Mona Panwar V. High Court of Judicature of Allahabad (2011) 3 SCC 496** the Supreme Court observed that a Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156(3) of taking cognizance. If after cognizance has been taken and the Magistrate want any investigation, it will be under section 202 of the Code.

11. A Magistrate is not empowered to summon or secure the attendance of the accused before taking cognizance as per the section 190 of the Code. The chapter XVI of the Code deals with commencement of proceedings before Magistrates. Section 204 of the Code deals with the issuance of process Sub section (1) provides that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceedings and the case appears to be a warrant trial, he may issue a warrant or summon for causing the appearance of the accused before the Magistrate. The combined reading of the section 190 and 204 of the code reflects that the magistrate is empowered to secure presence of the accused in warrant case only after taking cognizance of an offence. The order dated 16.07.2018 is liable to be set aside as the Court was not competent to issue bailable warrants against the petitioner before taking cognizance. Accordingly order dated 16.07.2018 is set aside.

12. Section 190 of the code 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.**

13. This Court in **Sanjit Bakshi V State of NCT of Delhi** passed in Crl.M.C.4177/2019 dated 19.05.2022 observed 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. The Court before taking cognizance needs to be satisfied about existence of prima facie case on basis of material collected after conclusion of investigation and 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. 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. The order taking cognizance should only reflect application of judicial mind.

14. 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.**

15. 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.

16. 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.

17. The order dated 26.09.2018 is cryptic, non-speaking and is passed without application of judicial mind. The order dated 26.09.2018 was passed in casual and cursory manner and even the offences regarding which the cognizance was taken are not mentioned. Accordingly the order dated 26.09.2018 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.

18. The present petition alongwith pending applications, if any, stands disposed of.

SUDHIR KUMAR JAIN
(JUDGE)

AUGUST 22, 2022
SK/SD