Neutral Citation No. - 2023:AHC:219800

Court No. - 88

Case :- APPLICATION U/S 482 No. - 24586 of 2023

Applicant :- Baldhari And 11 Others
Opposite Party :- State Of U.P. And Another
Counsel for Applicant :- Sukhendu Pal Singh
Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

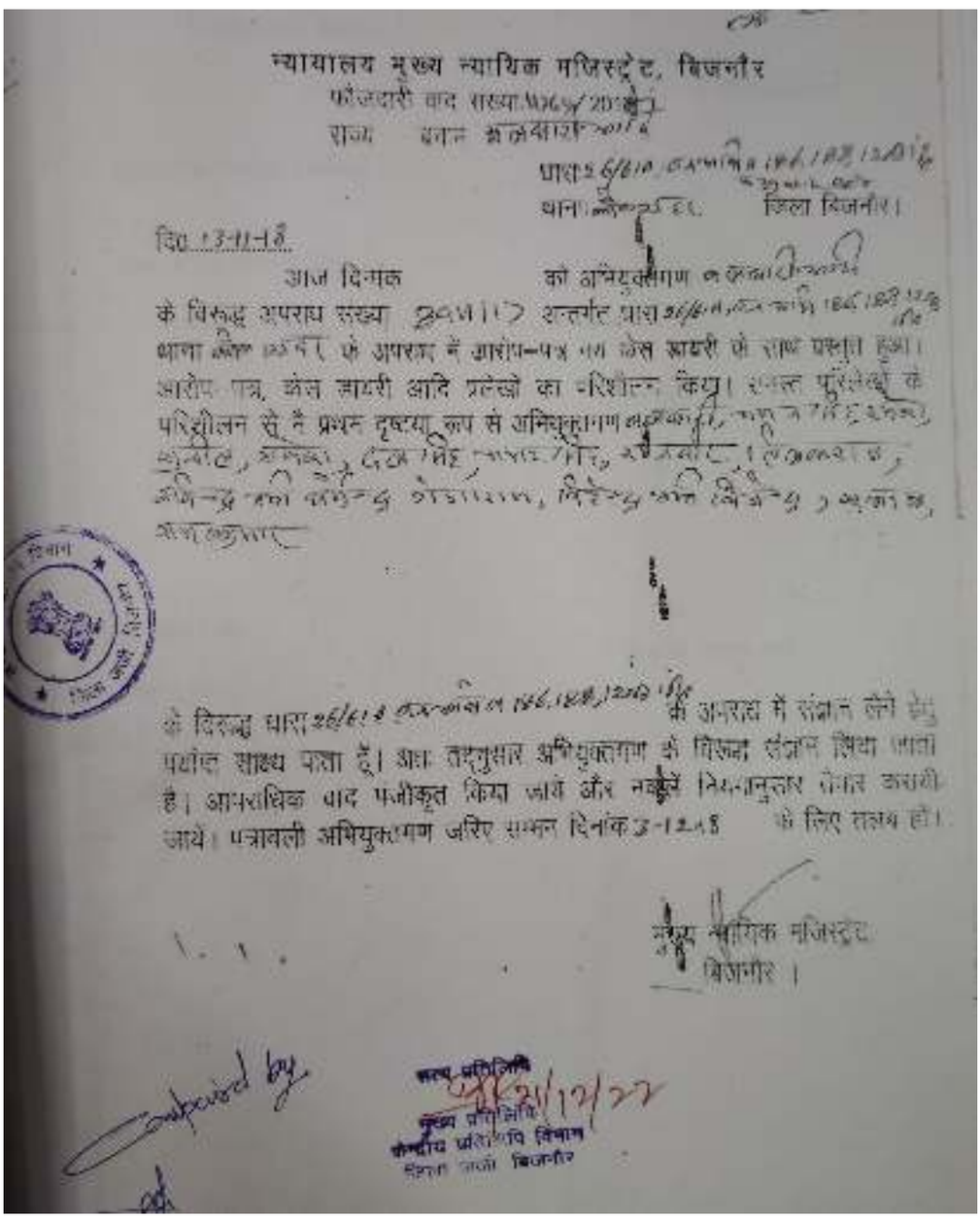
1- Heard learned counsel for the applicants, learned Additional Government Advocate for the State of U.P./opposite party no. 1 and perused the record.

2- The instant application has been preferred by the applicants with a prayer to quash the summoning order dated 13.11.2018 and proceeding of Criminal Case No. 4760 of 2018 (State Vs. Baldhari and others) arising out of Case Crime No. 0894 of 2017, under Sections 26, 61-A of Indian Forest Act, 1927, Section 39 of Wild Life (Protection) Act, 1972 and Sections 186, 188, 120-B IPC, Police Station Kotwali City, District Bijnor pending in the court of Chief Judicial Magistrate, Bijnor.

3- Brief facts of the case which are required to be stated are that opposite party no. 2/Hukam Deen lodged first information report on 23.09.2017 under Sections 26, 61-A of Indian Forest Act, 1927, Section 29 of Wild Life (Protection) Act, 1972 and Sections 186, 188, 120-B IPC against 48 accused persons including the applicants, in which after culmination of investigation, two police reports/charge-sheets dated 29.12.2017 and 15.02.2018 were submitted. The second police report/charge-sheet dated 15.02.2018 was submitted against 14 accused persons, namely, Amar Singh s/o Mangal Singh, Chaman s/o Jaiprakash, Tilakram s/o Jaiprakash, Rajveer s/o Khachedhu, Subhash s/o Phool Singh, Gangaram s/o Ramchandra, Baljeet s/o Baldhari, Ravindra s/o Ramesh, Virendra s/o Mahaveer, Dalsingh s/o Dayaram, Rakesh s/o Dayaram, Ramesh s/o Sitaram, Suneel s/o Ram Singh and Ram Kumar s/o Teja, on which, Magistrate concerned took cognizance and summoned the applicants, namely, Baldhari, Chaman Singh, Ramesh, Sunil, Rakesh, Dal Singh, Amar Singh, Rajveer, Dharmendra, Gangaram, Virendra @ Vijendra and Tilakram on 13.11.2018, which is the subject matter of challenge in the present application.

4- The main substratum of argument of learned counsel for the applicants is that the learned Magistrate, without applying his judicial

mind, has taken cognizance in the matter on printed proforma and summoned the applicants, which is not sustainable in the eyes of law and is liable to be quashed. It is also argued that on the second charge-sheet dated 15.02.2018, learned Magistrate took cognizance on 13.11.2018 whereas on the first charge-sheet dated 29.12.2017, he took cognizance subsequently on 10.04.2019, which also shows his non-application of mind. The said cognizance/summoning order is extracted hereinbelow:-



न्यायालय मुख्य न्यायिक मजिस्ट्रेट, बिजनौर

फौजदारी वाद संख्या [illegible]

राज्य बनाम [illegible]

धारा [illegible]

थाना [illegible] जिला बिजनौर।

दि० 13-11-18

आज दिनांक को अभियुक्तगण [illegible] के विरुद्ध अपराध संख्या [illegible] अन्तर्गत धारा [illegible] थाना [illegible] के अपराध में आरोप-पत्र तथा केस डायरी के साथ प्रस्तुत हुआ। आरोप पत्र, केस डायरी आदि प्रलेखों का परिशीलन किया। समस्त प्रलेखों के परिशीलन से मैं प्रथम दृष्टया रूप से अभियुक्तगण [illegible]

के विरुद्ध धारा [illegible] के अपराध में संज्ञान लेने हेतु पर्याप्त साक्ष्य पाता हूँ। अतः तद्नुसार अभियुक्तगण के विरुद्ध संज्ञान लिया जाता है। आपराधिक वाद पंजीकृत किया जाये और नकलें नियमानुसार तैयार करायी जायें। पत्रावली अभियुक्तगण जरिए सम्मन दिनांक 3-12-18 के लिए तलब हो।

मुख्य न्यायिक मजिस्ट्रेट
बिजनौर।

Compared by

सत्य प्रतिलिपि
21/12/22
मुख्य प्रतिलिपि
केन्द्रीय प्रतिलिपि विभाग
जिला जज बिजनौर

5- Learned A.G.A. representing the State has also conceded by submitting that the impugned cognizance/summoning order dated 13.11.2018 has been passed on a printed proforma by filling up the blanks, which has been prepared for summoning the accused after filing

charge-sheet, hence the matter may be remanded to the concerned Chief Judicial Magistrate with a direction to pass the order afresh.

6- Having heard the arguments of learned counsel for the parties, it is relevant to mention that 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 F.I.R. and the material filed along with charge-sheet. 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.

7- It is very strange that despite there being a series of decisions of the Apex Court and this Court disapproving such practice of passing orders on printed proforma by the judicial officers, it is very painful and unfortunate to see that applicants in the present case have been summoned by the Magistrate by an order in which blanks have been filled-up on a printed proforma without applying judicial mind. This type of order has already been held unsustainable by this Court in the case of **Ankit Vs. State of U.P. and another, JIC 2010 (1) 432** relying on in a number of decisions of the Apex Court. The relevant portion of the said decision, is extracted herein below:

> *"Although as held by this Court in the case of Megh Nath Guptas & Anr Vs. State of U.P. And Anr, 2008 (62) ACC 826, in which reference has been made to the cases of Deputy Chief Controller Import and Export Vs. Roshan Lal Agarwal, 2003 (4) ACC 686 (SC), UP Pollution Control Board Vs. Mohan Meakins, 2000 (2) JIC 159 (SC): AIR 2000 SC 1456 and Kanti Bhadra Vs. State of West Bengal, 2000 (1) JIC 751 (SC): 2000 (40) ACC 441 (SC), the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge-sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge-sheet after applying judicial mind."*
>
> *(Emphasis supplied)*

8- In view of the above, the conduct of the judicial officer concerned in passing orders on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be deprecated. The summoning of an accused in a criminal case is a serious matter and the order must reflect that Magistrate had applied his mind to the facts as well as law governing the issue.

9- In view of what has been stated above, the impugned cognizance/summoning order dated 13.11.2018 is hereby quashed.

10- Accordingly, the present application is ***allowed*** with a direction to the concerned Magistrate to pass fresh order after applying the judicial mind within four weeks from the date a certified copy of this order is produced before it.

11- Office is directed to place a copy of this order before the Registrar General of this Court, who shall place the same before Hon'ble Administrative Judge concerned where the officer is presently posted.

12- Copy of this order be also sent to the District Judge, Bijnor for information.

Order Date :- 20.11.2023
Shubham

Digitally signed by :-
SHUBHAM KUMAR AGRAHARI
High Court of Judicature at Allahabad