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

CNR No. DLHC010221542026

+ **CRL.M.C. 3879/2026**

CHARAN BAI & ORS.

.....Petitioners

Through: Mr. Bhumit Solanki and Mr. Abhinav
Sharma, Advs.

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through:

Mr. Shailesh Chandra Jha, Adv.
(DHCLSC) with Mr. Anand D. Adv.
for R2.

SI Reena and HC Renuka (main IO),
PS Dwarka North. (Mb: 9873297272)
SI Mukesh Kumar, PS Mundka.

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

ORDER

21.08.2026

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1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') seeking setting aside of the order dated 24.02.2026 passed by the learned JMFC (Mahila Court-03), South-West District, Dwarka Courts, Delhi, in **Criminal Case No. 14489/2025**, arising out of **FIR No. 273/2025** registered at Police Station Dwarka North, District Dwarka, Delhi under Sections 498A/406/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').



3. Briefly stated, respondent No. 2 married Shishir Kayata, son of petitioner Nos. 1 and 2 and brother of petitioner No. 3, on 11.12.2020. Petitioner No. 4 is the husband of petitioner No. 3. Following matrimonial disputes, the aforesaid FIR was registered. Upon completion of the investigation, the charge-sheet was filed against the husband of respondent No. 2, while the present petitioners were placed in Column (*Khana*) No. 12.

4. *Vide* the impugned order dated 24.02.2026, the learned JMFC nevertheless directed issuance of summons to the petitioners. The impugned order reads as under:

“Charge-sheet perused. Cognizance taken.

Perusal of chargesheet shows that there is sufficient material prima facie for an offence under Section 498A/406 of IPC.

*In view of the same, I take cognizance of offence under Section **498A/406 of IPC.***

Further, there are specific allegations against suspect mentioned in column no. 12 i.e Charan Bai, Hari Singh Meena, Renu Katya @ Vinita and Vijay Pratap Singh and accordingly, there is sufficient material to proceed further against them as well.

*Let **summons** be issued to the accused Shishir Kataya, Charan Bai, Hari Singh Meena, Renu Kataya @ Vinita and Vijay Pratap Singh through IO/SHO concerned for NDOH.*

*Put up for appearance of accused and further proceedings on **22.05.2026**”*

5. Learned counsel for the petitioners submits that the name of all the petitioners in the present case appeared in *khana* no.12 of the concerned chargesheet when it was filed by the concerned Investigating Officer (IO) but the learned JMFC *vide* the impugned order has summoned the petitioners



without recording any reasons even though the petitioners were not even arrayed as accused persons in *Khana* No. 11.

6. Learned counsel for the petitioners has further placed reliance upon an order passed by the Coordinate bench of this court in ***Sanjit Bakshi v. State (NCT of Delhi), 2022 SCC OnLine Del 3614*** in support of his aforesaid submission.

7. Learned APP for the State on the other hand has handed over the status report in Court today. Let the same be taken on record.

8. Heard the learned counsel for the parties and perused the material placed on record.

9. A conjoint reading of Sections 210 and 227 of the BNSS that govern the passing of such an order by the Magistrates, makes it clear, that, even though cognizance is taken of an offence, issuance of process against a person requires the Magistrate to form an opinion that sufficient ground exists for proceeding against such a person. It is well settled that the Magistrate is not bound by the conclusion arrived at by the investigating agency and may, upon an independent consideration of the material collected during investigation, summon even a person who has not been arrayed as an accused in the charge-sheet. However, the exercise of such a power must reflect due application of judicial mind to the material placed on record.

10. In ***Sanjit Bakshi v. State (NCT of Delhi) (supra)***, the Court held that an order taking cognizance need not contain detailed reasons, but must reflect application of judicial mind. Since the impugned order did not even specify the offences of which cognizance had been taken, it was set aside and the matter was remitted to the Trial Court for fresh consideration.

11. In ***Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609***, the Supreme Court



held that the opinion that there is a sufficient basis for proceeding must be formed after due application of mind and stated in the order itself. Though detailed reasons are not necessary, an order giving no reason is liable to be set aside.

12. Further, a Coordinate Bench of this Court in ***Radesh Singh v. State, 2011 SCC OnLine Del 901*** dealt with the requirement of a speaking order where the Magistrate's view differs from that of the investigating agency. The relevant portion reads as under:

*“4. ... No doubt, a Magistrate takes cognizance of the offence and not of the offenders, but when he sends summons to an offender, he sends summons asking the offender to face trial. The Magistrate must be clear in her mind as to what were the offences made out against the offender and that there was prima facie evidence against him, more specifically when the police during investigation has not been able to find out evidence of involvement of the offender. Since the Magistrate disagreed with the report of the police and considered that there was evidence to summon the petitioners and asked them to face trial, she must have spelt out the reasons for summoning the petitioners placed in Column No. 2. If the police had collected sufficient evidence and forwarded challan in respect of the offenders, the Magistrate may take cognizance of the offence and summon all such offenders for facing trial as named by police on the basis of evidence collected by the police **but where the police has not found evidence and the Magistrate considered that there was sufficient evidence, then the Magistrate must pass a speaking order for summoning such offenders against whom, in the opinion of the police there was no evidence.**”(emphasis supplied)*



13. The legal position is thus clear. A Magistrate is not bound by the conclusion arrived at by the investigating agency and may summon even a person who has not been sent up for trial in the charge-sheet. However, the basis for forming an opinion that sufficient grounds exist for proceeding against such a person must be discernible from the order, at least briefly.

14. It becomes all the more important to state these reasons, in the order, even though briefly, when the view taken by the magistrate differs from that taken by the investigating agency for the order must indicate why the agency's conclusion is not being accepted and what material warrants issuance of process. In the present case, a perusal of the impugned order shows that, although the petitioners were placed in Column (*Khana*) No. 12 of the charge-sheet, the learned JMFC summoned them to face trial. The order neither indicates the nature of the allegations referred to nor to the material which led the learned JMFC to form such an opinion. The defect lies not in the use of any particular expression, but in the complete absence of discernible reasons and the consequent failure to reflect application of judicial mind.

15. Therefore, having regard to the facts and circumstances of the present case, it is clear that the impugned order passed by the learned JMFC is a non-speaking order where no such reason finds mention. In such circumstances, the impugned order dated 24.02.2026, insofar as it directs issuance of summons to the present petitioners is set aside.

16. The matter is remitted back to the learned JMFC for fresh consideration on the question of issuance of process qua the present petitioners. The learned JMFC shall pass an appropriate detailed order giving reasons therein for



taking cognizance and summoning the petitioners.

17. With these observations, the present petition is disposed of. Pending application(s), if any, also stand(s) disposed of.

18. Parties to appear before the learned JMFC on 07.09.2026.

19. A copy of this order be sent to the learned Trial Court for the necessary information and compliance.

20. The order be uploaded on the website *forthwith*.

MADHU JAIN, J

AUGUST 21, 2026/b/PG