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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: August 29 , 2022

Decided on: September 06, 2022

+ CRL.M.C. 2855/2019 & CRL.M.A. 11527/2019
RICHA ARYA Petitioner

Through: Ms. Gunjan Sinha Jain,
 DHCLSC with Ms.
 Sabah Iqbal Siddiqui,
 Advocates.

versus

PAWAN ARYA Respondent

Through: Mr. Ajit Rajput,
 Advocate with
 Mr. Pawan Arya in
 person.

+ CRL.M.C. 2209/2021
TRIPTI GUAR Petitioner

Through: Mr. Aman Gaur,
 Ms. Nidhi Gaur, and
 Mr. Abhinav, Advocates.

versus

PAWAN ARYA Respondent

Through: Ms. Gunjan Sinha Jain,
 DHCLSC with
 Ms. Sabah Iqbal
 Siddiqui, Advocates for
 R-2.

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CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. This common judgment shall decide two petitions bearing no
 CrI.M.C. 2855/2019 and CrI.M.C. 2209/2021 titled as **Richa**



Arya V Pawan Arya and Tripti Gaur V Pawan Arya respectively filed under section 482 Code of Criminal Procedure, 1973 (hereinafter referred to as **“the Code”**) for quashing the summoning order dated 21.08.2018 (hereinafter referred to as **“the impugned order”**) passed by the court of Ms. Mahima Rai Singh, M.M-02 (East), Karkardooma Courts, Delhi against the petitioners in CC bearing no. 57839/2016 titled as **Pawan Arya V Richa Arya and others.**

2. The petitioner Richa Arya (**petitioner in CRL.M.C. 2855/2019**) and the respondent were married with each other and due to matrimonial differences various matrimonial cases are pending between them at Karkardooma and Ghaziabad Courts.

3. The respondent in complaint stated that the petitioner Richa Arya on 22.07.2014 filed a Bank statement pertaining to a statement of account maintained by the respondent with Axis Bank which was stated to be obtained by the petitioner Richa Arya by forging the signature of the respondent either by herself or through her family members and friends.

3.1 The petitioner Tripti Gaur (**the petitioner in CRL.M.C. 2209/2021**) issued the said bank statement while she was posted in Krishna Nagar Branch without verifying the photograph and signature of the respondent which can only be issued through Customer Request Form. Thereafter, the respondent sent an email to the bank and was informed by the bank regarding disparity in the signature and appearance of someone else as an imposter before the petitioner Tripti Guar. The respondent obtained his



Account Opening Form and Customer Request Form and was shocked to know that someone else has impersonated him and had forged his signature on Customer Application Form by cheating and defrauding the respondent.

3.2 The petitioner Richa Arya admitted her involvement in the abovementioned transaction which reflects that the petitioner Richa Arya either herself or through any other family members got the signature of the respondent forged on the Customer Request Form. The respondent also filed a complaint before the SHO, P.S. Krishna Nagar on 28.11.2015 vide DD bearing no 20-B but despite the directions given by the constitution Bench of the Supreme Court in **Lalita Kumari V Govt. of U.P.**, W.P.(Crl) No. 68/2008 case no action was taken on the said complaint. The respondent being aggrieved filed the present complaint under section 200 of the Code for taking the cognizance for the offences punishable under Sections 420/467/468/471/34/ IPC read with section 120B IPC and a prayer under section 156(3) of the Code was also made for the registration of FIR at P.S. Krishna Nagar.

4. The application under section 156(3) of the Code was dismissed vide order dated 25.10.2016 and thereafter, the respondent led the pre-summoning evidence under section 200 of the Code and examined himself as CW-1, S.I. Abhijeet Singh as CW-2 and Shri Sandeep Chaudhary, Deputy Manager, Axis Bank, Krishna Nagar as CW-3.

5. The Court of Ms. Mahima Rai Singh, M.M-02 (East), Karkardooma Courts, Delhi, after going through the complaint,



annexures and the pre-summoning evidence, ordered to summon the petitioners Richa Arya and Tripti Gaur for the offence punishable under 471/34 IPC. The relevant portion of the order dated 21.08.2018 is reproduced as under:

I have perused the record including the pre summoning evidence. It is settled proposition of law that at the time of summoning the court has to see whether there is sufficient material on record to summon the accused. From the material on record including the evidence of the CW-1, CW-2, CW-3 the court is of the considered opinion that prima facie is sufficient material on record to summon the respondent/accused no.1 Richa arya and respondent/respondent no. 2 Tripti Gaur for the offence of under section Under sections 471/34/IPC.

6. The petitioners Richa Arya and Tripti Gaur being aggrieved challenged the impugned order and filed separate petition bearing nos. Crl.M.C. 2855/2019 & Crl.M.C. 2209/2021.

7. The petitioner Richa Arya challenged the impugned order on the grounds that the impugned order reflects that the present complaint is absolutely a case of no evidence against the petitioner. The trial court while passing the impugned order did not observe and follow the guidelines issued by the Reserve Bank of India. The CCTV footage from Axis Bank has not been proved. The bank officials were not made as a necessary party besides other grounds it was prayed that the summoning order dated 21.08.2018 be set aside.

8. The petitioner Tripti Gaur challenged the impugned order on the ground that the impugned order is improper, incorrect and



unjustified and is against the settled principles of law. The respondent has made a false complaint against her. The impugned order was passed without considering the facts and circumstances of the case. The Trial Court has not appreciated that despite pre-summoning evidence, no material was brought against the petitioner as there is no allegation of dishonest or fraudulent intention to attract Section 471 IPC qua the petitioner Tripti Gaur. The respondent has not alleged that the petitioner has forged the signature on the Customer Request Form and the only allegation is that the petitioner did not verify the signatures of the respondent. The petitioner Tripti Gaur also challenged impugned order on other grounds, it was prayed that the impugned order be set aside.

9. The respective counsel for the petitioners argued that the present complaint has been filed on the basis of false allegations of forgery, cheating and conspiracy and thereafter, the impugned summoning order was passed by the Trial Court without proper application of judicial mind and in mechanical manner. The pre-summoning evidence led by the respondent does not satisfy the ingredients of section 471/34 of IPC to incriminate the petitioners in forging the signatures of the respondent on the Customer Request Form dated 26.06.2014. The counsels for the petitioners relied on **Pepsi Food & others V Special Judicial Magistrate & others**, (1998)5 SCC 749; **Dr. Vimla V Delhi Administration**, AIR 1963 SC 1572; **Akanksha Sharma V State Govt. of NCT of Delhi**, 2022 SCC OnLine Del 1110 and **Haryana and others**



V Ch. Bhajan Lal and others, 1992 Supp (1) SCC 335.

10. The counsel for the respondent argued that the trial Court has passed a detailed speaking and reasoned order whereby the petitioners were summoned for the offence punishable under section 471/34 IPC. The impugned order does not suffer from any infirmity, illegality and is justified legal and was passed in accordance with the settled established principle of law.

11. 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.**

12. Cognizance is a stage when a Magistrate applies his mind to the suspected commission of an offence. The Court before taking cognizance needs to be satisfied about existence of prima facie case on basis of material collected after conclusion of investigation. Taking of cognizance is a judicial function and judicial orders cannot be passed in a mechanical or cryptic manner. It is equally important to note that at time of taking cognizance a Magistrate is not required to consider the defense of the proposed accused or to evaluate the merits of the material



collected during investigation. It is not necessary to pass a detailed order giving detailed reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind.

13. 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 the 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.

14. 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.

15. 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.

16. The Supreme Court in **Pepsi Food & others V Special Judicial Magistrate & others**, (1998) 5 SCC 749 regarding summoning observed as under:-

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.



17. Section 471 of IPC deals with using of a forged document as a genuine document which provides that whoever fraudulently or dishonestly uses any document which he knows or has reason to believe to be forged as genuine document is stated to be commit an offence of forgery as defined under Section 471 of IPC. The perusal of Customer Request Form reflects that the respondent was the holder of bank account in Axis Bank and it was appearing to be signed by the respondent, the fact that is disputed and complained of by the respondent but it does not reflect and there is no evidence that the said signature was put by the petitioner Richa Arya in connivance with the petitioner Tripti Gaur. The respondent in deposition at pre-summoning evidence only stated that the statement of account operational in Axis Bank on the basis of Customer Request Form was obtained by the petitioner Richa Arya or any of her family members by forging his signatures and which was issued by the petitioner Tripti Gaur without proper verification of the signatures and photographs of the respondent. There is no evidence that the either of the petitioners with dishonest or fraudulent intention used the forged document as genuine document. The genuineness of Bank Statement submitted by the petitioner is not disputed and only dispute is about manner in which it was procured by the petitioner Richa Arya. The testimony of the remaining witnesses examined by the respondent in pre-summoning evidence does not provide much help to the case of the respondent. The evidence led by the respondent at pre-summoning evidence is not sufficient



to constitute the offence under section 471 of IPC against the petitioners Richa Arya and Tripti Guar. There is no evidence to infer common intention on the part of the petitioners in commission of alleged offence and to prove that there was pre-oriented plan executed by the petitioners Richa Arya and Tripti Gaur and common intention was existing prior to the commission of the alleged offence.

18. The perusal of the impugned order is appearing to be passed by the trial court without considering the relevant facts and by observing only that there is sufficient material to summon the petitioners Richa Arya and Tripti Guar for the offence punishable under Section 471 of IPC. The trial court has not appreciated the actual legal position pertaining to the offence under section 471 of IPC. The arguments advanced by the counsel for the respondent do not provide any help to the case of the respondent. Accordingly, the petition is allowed and the impugned order is set aside and a consequence of which complaint filed by the respondent CC bearing no. 57839/2016 titled as **Pawan Arya V Richa Arya and others** is dismissed.

19. The pending applications, if any, also stands disposed of. Copy of this order be sent to the trial court for information.

SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 06, 2022/sk/mys