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

% ***Date of decision: October 10, 2022***

+ **CRL.M.C. 5118/2022, CRL.M.As. 20441/2022 & 20440/2022 (Stay)**

SHAHAM AZAD

..... Petitioner

Through: Mr. Niraj Kumar Mishra, Advocate.
versus

THE STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Hitesh Vali, APP for the State
with Ms. Akanksha Sharma,
Advocate alongwith SI Mohit Kumar,
P.S. Jamia Nagar.

CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

1. The present petition is filed under section 482 Cr.P.C for setting aside the order dated 01.10.2022 passed by the Court of Shri Anuj Agrawal, ASJ, District South East, Saket Court, New Delhi in criminal revision petition bearing no. 403/2022 titled as **Shaham Azad V State & Another** and the orders dated 24.03.2022, 13.04.2022 passed by the Successor Court of Shri Rajat Goyal, Metropolitan Magistrate-08, South East, Saket Courts and subsequent orders dated 01.07.2022, 03.08.2022 passed by the Successor Court of Shri Snehil Sharma, Metropolitan Magistrate-08, District, South East, Saket Courts, New Delhi, in criminal case bearing no. 2947/2022 titled as **State V Shaham Azad** arising out of FIR bearing no. 976/2015 registered under sections 323/451/506/34 IPC at P.S. Jamia Nagar.

2. Issue notice to respondent no. 1.

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3. Mr. Hitesh Vali, Additional Public Prosecutor assisted by Investigating Officer, SI Mohit Kumar appearing on behalf of the respondent no.1/State accepts notice.

4. The perusal of the record reflects that the FIR bearing no. 976/2015 was got registered under sections 323/506/451/34 IPC at P.S. Jamia Nagar on the basis of the complaint made by the respondent no. 2 pertaining to the incident happened on 05.07.2015.

5. After completion of investigation, the chargesheet was filed for the offences punishable under sections 323/506/451/34 IPC and the trial of which is stated to be pending in the Court of Mr. Snehil Sharma, MM-08, South East, Saket Courts. The concerned Trial Court after filing of the chargesheet vide order dated 24.03.2022 took the cognizance and ordered for summoning of the petitioner for 13.04.2022. The order dated 24.03.2022 is reproduced as under:

Heard. File perused.

Based on the contents of chargesheet and documents filed along with it, commission of certain offences is reflected against the accused. I hereby take cognizance of the offences alleged against the accused.

Accused is stated to be on anticipatory bail.

Issue summon against the accused and notice to his surety through IO/ SHO for 13.04.2022.

6. The concerned Trial Court vide order dated 13.04.2022 after observing that the petitioner is deliberately avoiding service ordered for issuance of NBW against the petitioner with the notice to surety and finally vide order dated 03.08.2022 due to non-execution of NBW issued against the petitioner, ordered for issuance of process of section 82 Cr.P.C. The petitioner being aggrieved by the orders dated 24.03.2022, 13.04.2022,

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01.07.2022 and 03.08.2022 filed a criminal revision petition bearing no. 403/2022 titled as **Shaham Azad V State & Another** which was dismissed by the Court of Shri Anuj Agrawal, ASJ, District South East, Saket Court, New Delhi vide judgment dated 01.10.2022. The relevant portion of the order dated 01.10.2022 passed by the Revisional Court is reproduced hereunder:

15. In my considered view, the said orders have been passed by Ld Trial Court in order to secure presence of revisionist in the pending criminal case. It appears that instead of submitting himself to the jurisdiction of Ld. Trial Court, the revisionist is trying to subvert the course of justice by filing the present revision petition. I may hasten to add here that the revisionist is not absolutely remediless. If the revisionist feels that he has a good case on merit, nothing deters him from appearing before concerned Court thereby submitting himself to its jurisdiction and seek appropriate remedy as per law including bail. Needless to say, in such a scenario, Ld Trial Court shall be well guided by the principles of law as laid down by Hon'ble Delhi High Court '*Court on its own motion Vs CBI, 109 (2003) DLT 494*'.

7. The counsel appearing on behalf of the petitioner argued that the order dated 24.03.2022 passed by the Court of Shri Rajat Goyal, MM-08 South East, Saket Courts, New Delhi, was passed in a cursory and casual manner and without due application of the judicial mind. He further argued that the offences for which the cognizance alleged to have been taken was not mentioned in the order dated 24.03.2022. He in support of arguments cited **Sanjit Bakshi V State of NCT of Delhi & Another** in CRL. M.C. 4177/2019 decided on 19.05.2022 and **Shri Bharat Bhushan V State and Another** in CRL.MC.11/2019 decided on 22.08.2022 by this Court.

8. Section 190 empowers a Magistrate to take cognizance of an offence

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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.

9. 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 the stage when a Magistrate applies his mind to the suspected commission of an offence. The cognizance of an offence is stated to be taken once the Magistrate applies his mind to the offence alleged and decides to initiate proceeding against the proposed accused. The Court before taking cognizance needs to be satisfied about existence of prima facie case on basis of material collected after conclusion of investigation. 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. It is not only against the settled judicial norms but also reflects lack of application of judicial mind to the facts of the case. It is equally important to note that 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. It is not necessary to pass a detail order giving detailed reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind.

10. 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.

11. 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.

12. 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.

13. This Court in cases titled as **Sanjit Bakshi V State of NCT of Delhi & Another** in CRL. M.C. 4177/2019 decided on 19.05.2022 and **Shri Bharat Bhushan V State and Another** in CRL.MC.11/2019 decided on 22.08.2022 by this Court also directed the concerned Trial Court to pass speaking order regarding the issue of cognizance on the basis of chargesheet.

14. The order dated 24.03.2022 was passed without application of judicial mind and is appearing to be the non-speaking order. The concerned Trial Court has not mentioned the offences regarding which the cognizance was taken. Accordingly, the order dated 24.03.2022 is set aside as a consequence of which the subsequent orders passed by the said Trial Court dated 13.04.2022, 01.07.2022, 03.08.2022 and the order dated 01.10.2022 passed by **Shri Anuj Agrawal, ASJ-05, District South East, Saket Courts, New Delhi** are set aside. The Trial Court of MM-08 South East, is directed to reconsider the issue of taking cognizance afresh and thereafter to pass the speaking order on the basis of the chargesheet regarding cognizance.

15. The copy of this order be sent to the concerned trial Court for information and compliance.

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

(SUDHIR KUMAR JAIN)
JUDGE

OCTOBER 10, 2022/sk/m

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