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NEUTRAL CITATION NUMBER: 2022/DHC/004335

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

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Date of decision: October 14, 2022

+ **CRL.M.C. 5265/2022 CRL.M.A. 20956/2022 (exemption)**
CRL.M.A. 20957/2022 (stay)

TABISH KHAN & ORS.

..... Petitioners

Through: Mr. Imran Ali, Advocate with Mr.
Manish Saxena, Ms. Dhriti Chhabra,
Advocates

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. Hitesh Vali, APP for State with
SI Manish Tyagi, P.S. Jamia Nagar

CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present petition is filed under section 482 Cr.P.C. to set aside the order dated 12.09.2019 passed by the Court of MM-03 (Mahila Court), Saket Courts, New Delhi in CR.C. No.23158/2019 titled as **State V. Danish Khan** and order 12.04.2022 passed by the Court of ADJ-04, Special Judge (NDPS), South East District, Saket Courts, New Delhi in CR No.40/2020 titled as **Tabish Khan Etc. V. State**.
2. Issue notice. Mr. Hitesh Vali, Additional Public Prosecutor assisted by Investigating Officer, SI Manish Tyagi, P.S. Jamia Nagar accepts notice on behalf of the respondent/State.
3. The perusal of record reflects that FIR bearing no.0959/2016 dated

12.09.2016 was got registered under sections 498A/406 IPC at P.S. Jamia Nagar at the instance of the complainant/Sadaf Khan. After investigation, the charge-sheet was filed wherein Danish Khan who is the husband of the complainant was placed in column no.11 but the petitioners, namely, Tabish Khan, Kashif Khan, Rashida Khan and Ishtiyaq Ahmed were placed in column no.12. The concerned Investigating Officer in the charge-sheet also mentioned that no incriminating material could be collected against the petitioners.

4. The Court of Ms. Archana Beniwal, MM-03(Mahila Court) South East District, New Delhi vide order dated 12.09.2019 took the cognizance against the petitioners beside the Danish Khan, who is the husband of the complainant. The order dated 12.09.2019 is reproduced as under:-

Heard and perused the record.

On the basis of charge-sheet and documents, I take cognizance of the offence u/s 498-A/406/34 IPC against accused Danish Khan, Kasib Khan, Tabish Khan, Ishtiyaq Ahmed and Rashida Khan.

Issue summons to the accused person through IO for the NDOH.

Put up for appearance of accused person on 13.11.2019.

5. The petitioner being aggrieved filed a Criminal Revision bearing no.40/2020 titled as **Tabish Khan & Ors. V. State** which was dismissed vide order dated 12.04.2022 passed by the Court of Shri Mohinder Virat, ASJ-04, Special Judge (NDPS) South East District, Saket Court, New Delhi. The relevant para number 6 of the said order is reproduced as under:-

It is well settled that the Magistrate may not give reasons for taking cognizance. In a case the order taking cognizance by itself may amount to application of mind.

The cognizance has been taken by the Ld. MM against the accused persons after going through the entire material placed before him. Non-mentioning of the report u/s 173 CrPC and statements u/s 161 CrPC in the impugned order dated 12.09.2022 cannot be said to be a non-application of mind as contended by Ld. Counsel for the revisionists.

6. The counsel for the petitioners argued that the impugned order dated 12.09.2019 passed by the Court of Ms. Archana Beniwal, MM-03(Mahila Court) South East District, New Delhi and order dated 12.04.2022 passed by the Revisional Court, were passed without application of judicial mind. The Trial Court has not mentioned the reasons why the petitioners were summoned particularly when they were placed in column no.12 of the charge-sheet.

7. It is apparent from the record that the petitioners were placed in column no.12 of the charge-sheet after conclusion of investigation as no incriminating material could be collected against them. The concerned Trial Court ordered for the summoning of the petitioners without any application of mind. Even no reason is assigned by the concerned Trial Court for taking the cognizance against the petitioners and thereafter summoning them particularly when they were placed on column no.12 of the charge-sheet.

8. It is correct that the concerned Court at the time of cognizance is not required to pass the detailed order but the order whereby the cognizance is taken must reflect the application of mind and should not pass in casual or cursory manner.

9. After considering all facts, the impugned order dated 12.09.2019 passed by the Court of Ms. Archana Beniwal, MM-03(Mahila Court) South

East District, New Delhi and order dated 12.04.2022 passed by the Revisional Court are set aside. The concerned Trial Court of MM-03 (Mahila Court) Saket Courts, New Delhi is directed to reconsider the issue of summoning of the petitioners on the basis of the charge-sheet afresh after giving suitable reasons.

10. The present petition alongwith pending applications, if any, stand disposed of.

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



(SUDHIR KUMAR JAIN)
JUDGE

OCTOBER 14, 2022/j/ms