



2024:DHC:7693



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 1st October, 2024.**
+ CRL.M.C. 5127/2023 & CRL.M.A. 19490/2023
SATINDER SINGH BHASINPetitioner
Through: Mr. Vishal Gosain, and Ms. Rudrani
Tyagi, Advocates.
versus
STATE OF NCT OF DELHI & ANR.Respondents
Through: Mr. Satish Kumar, APP along with SI
Lalit Kumar, EOW.
Mr. Sugandh Agrawal, Advocate for
R-2 (Through VC).

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") / Section 528 of the Bharatiya Nagarik Suraksha Sanhita has been filed on behalf of the petitioner seeking the following reliefs:

- "(i). Pass necessary orders and directions, thereby quashing and setting aside the impugned summoning order dated 23.01.2021 passed by the court of Ms. Chhavi Kapoor, Chief Metropolitan Magistrate, West District, Tis Hazari Court, Delhi in Cr. Case No. 7572/2020 titled 'State vs. Satinder Singh Bhasin', whereby, the petitioner has been summoned to face trial for the offence punishable u/s 420/120B IPC;*
(ii). Pass necessary orders and directions, thereby quashing and setting aside the impugned order dated 01.02.2023 passed



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by the court of Ms. Shivali Sharma, Ld. Additional Sessions Judge-03 (West), Tis Hazari Court, Delhi in criminal revision having Cr. Rev. No. 179/2022 titled as 'Satinder Singh Bhasin vs State of NCT of Delhi', whereby, the Ld. ASJ dismissed the Revision Petition preferred by the Petitioner against the impugned summoning order dated 23.01.2021;

(iii). Pass any order(s) as this Hon'ble Court may deem fit and proper in the present case."

2. Learned counsel appearing on behalf of the petitioner/accused submitted that the instant petition has been filed under Section 482 of the Cr.P.C. seeking quashing of the order dated 23rd January, 2021 (hereinafter "1st impugned order") passed by the learned Chief Metropolitan Magistrate, West District, Tis Hazari Court, Delhi in Cr. Case No. 7572/2020 ("CMM" hereinafter) by virtue of which the learned CMM has taken the cognizance of the offence allegedly committed by the petitioner herein and in pursuant thereto, has issued summons to the petitioner herein.

3. It is submitted that after passing of the impugned order dated 23rd January, 2021, the petitioner herein had filed a revision petition bearing Cr. Rev. No. 179/2022, under Section 397 of the Cr.P.C. before the learned Additional Sessions Judge – 03, West District, Tis Hazari Courts, Delhi (hereinafter "ASJ"), thereby, seeking revision of the said impugned order. It is also submitted that the said revision petition was dismissed by the learned ASJ vide order dated 1st February, 2023 (hereinafter "2nd impugned order"). It is further submitted that both the orders, i.e., the 1st impugned order as well as the 2nd impugned order have been challenged by the petitioner before this Court in the captioned petition.



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4. It is submitted that while issuing the 1st impugned order, the learned CMM admittedly and clearly not applied the judicial mind and has further failed to mention the sections under which the petitioner/accused was summoned.

5. It is submitted that it is a settled position of law that while issuing summons and taking cognizance of an offence, the Court Concerned shall pass a reasoned order showing the judicial application of mind. However, in the present case, the learned CMM has passed a mechanical order without mentioning the reason and discussion on merits that led to the issuance of summons.

6. It is further submitted that the 1st impugned order was challenged by the petitioner herein by way of filing a revision application under Section 397 of the Cr.P.C., and the learned ASJ dismissed the said revision application while erroneously holding that no infirmity or illegality is found in the first impugned order .

7. It is submitted that the learned ASJ has also wrongly observed that only pursuing the charge sheet by any Court for purpose of issuing of summon/taking cognizance is sufficient or satisfactory. It is submitted that the learned ASJ, whilst dismissing the revision application, held that the learned CMM has applied the judicial mind for passing the first impugned order wherein summons have been issued and cognizance has been taken, and the said submission is erroneous and without any legal basis.

8. Learned counsel appearing on behalf of the petitioner relied upon paragraphs no. 38 and 39 of the judgment passed by the Hon'ble Supreme



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Court in *Lalankumar Singh v. State of Maharashtra, 2022 SCC OnLine SC 1383*, submitting to the effect that as per the settled position of law, for issuance of summons or for taking cognizance of the offence, the Court Concerned is duty bound to peruse the material on record and then to reach to a conclusion wherein it has to be *prima facie* satisfied that there is sufficient material on record to summon the accused. Relevant paragraphs of the said judgment are as under:

“..38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:...

39. A similar view has been taken by this Court in the case of Ashoke Mal Bafna (supra)...”

9. It is submitted that both the impugned orders are contrary to the settled position of law and the same warrants the interference of this Court. Learned counsel appearing on behalf of the petitioner at last submitted that while setting aside both the impugned orders, this Court may remand back the instant matter to the learned CMM to adjudicate the matter afresh, at the stage of summoning/cognizance, and to pass a detailed order after recording the reasons in accordance with the law.



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10. *Per contra*, learned counsel appearing on behalf of the respondent no. 2/complainant vehemently opposed the instant petition submitting to the effect that there is no illegality in the impugned orders.

11. It is submitted that in paragraph nos. 20 and 22 of the 2nd impugned order, the learned ASJ, has clearly observed that while issuing the summons and taking cognizance of the offence, the learned CMM has perused the charge sheet and other materials collected by the Investigation Officer, and has rightly reached to the conclusion that a *prima facie* case is made out against the accused/petitioner.

12. It is submitted that the learned ASJ did not find any error in the first impugned order and it has been duly observed in the second impugned order that sufficient materials are available on record which are against the accused/petitioner and the case for issuance of summons and taking into cognizance the offence alleged against the accused/petitioner is duly made out. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed being devoid of any merits.

13. Heard learned counsel appearing on behalf of the parties and perused both the impugned orders dated 23rd January, 2021 and 1st February, 2023 passed by the learned CMM and the learned ASJ, respectively. This Court has also perused the paragraph nos. 20 and 22 of the 2nd impugned order, relied upon by the learned counsel appearing on behalf of the respondent no. 2/complainant. The said paragraphs have been reproduced hereunder for reference:



“..20. The law relating to taking of cognizance and summoning of the accused persons has been discussed and considered at length by the Apex Court in **Sunil Bharti Mittal Vs CBI(2015) 4 SCC 609** In the said case, cognizance was taken by Ld Special Magistrate, four accused persons chargesheeted in the final report were summoned and in addition, three additional accused persons were directed to be summoned. Two of these three additional accused persons summoned by Ld Special Magistrate had challenged the order of summoning which was dealt with and decided by the Apex Court in the above decision. The relevant paragraphs of the judgment are reproduced herein under for the sake of clarity...

22. The impugned order categorically records that Ld. CMM had gone through the chargesheet filed before the Court and thereafter took cognizance of the offences committed Once, the chargesheet was perused by Ld. CMM, it implies that the complete chargesheet including the copy of FIR, statement of the witnesses and documents on record were duly perused and only thereafter, Ld Trial Court took cognizance of the alleged offences. Having perused the complete chargesheet, Ld. Trial court was satisfied that there was enough incriminating material on record to proceed against the chargesheeted accused persons and accordingly, it was directed that they be summoned through IO. It is not a case where certain additional accused persons were being summoned who were not chargesheeted and for summoning of whom, special reasons were required to be given by Ld Trial court In my opinion, for summoning of the accused persons who are chargesheeted, perusal of the chargesheet itself is sufficient and no special reasons are required to be recorded. However, this might not be a case where some accused persons who are not chargesheeted are sought to be summoned or certain accused persons who are chargesheeted are sought to be dropped by Ld. Magistrate. In such situation, clear reasons for such orders are



required to be given which have to be something more than mere perusal of the chargesheet and documents annexed therewith. Although, it is correct that the impugned order does not mention the reasons for summoning the accused or the offences for which the cognizance has been taken but since Ld. Trial Court had not deviated from the contents of the chargesheet while passing the impugned order, mere mention of perusal of the chargesheet before taking of cognizance and summoning of accused was sufficient...”

14. Before delving into the merits of the instant petition, this Court deems it appropriate to look into the scope of revisional powers under Section 397 of the Cr.P.C.

15. In ***Malkeet Singh Gill v. State of Chhattisgarh***, (2022) 8 SCC 204, the Hon’ble Supreme Court held that under the revisional jurisdiction, the scope of interference is limited to the extent that the Court is only empowered to look into the correctness and legality of the order under challenge before it, and while exercising its power under Section 397 of the Cr.P.C., the revisional Court does not dwell into the facts and evidence of the case. The relevant paragraphs of the said judgment is as under:

“..10. Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or



order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings...”

16. The petitioner herein had challenged the first impugned order passed by the learned CMM before the learned ASJ (revisional Court) on the ground that the learned CMM has passed a non-speaking order, in a mechanical manner, without giving any reasoning for issuance of summons/taking cognizance of the offence. It was further argued that the learned CMM also ignored the directions passed by the Hon’ble Supreme Court wherein it has been specifically held that ‘*sufficient grounds*’ have to be opined by the Court concerned, after due application of mind, and formation of such an opinion is to be stated in the order of summoning itself.

17. After hearing arguments advanced on behalf of both the parties, the learned ASJ dismissed the petitioner’s application seeking revision of the first impugned order and held that there is a delay in filing the revision application, and that the commission of offences are reflected from the charge sheet filed on record and thus, cognizance has been rightly taken.

18. This Court is of the view that in order to issue summons and taking cognizance of an offence, the Court concerned must record its reasons behind taking such cognizance followed by issuance of summons. The same has also been held by the Hon’ble Supreme Court in ***Sunil Bharti Mittal v.***



CBI, (2015) 4 SCC 609, relevant paragraphs of which are as under:

“..51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.....”

19. The aforesaid judicial *dicta* has also been asserted by the petitioner herein while arguing that the learned CMM was obligated to apply judicial mind to determine whether sufficient grounds for proceeding against the petitioner/accused exists or not. The judgment namely **Lalankumar Singh (Supra)** which has been relied upon by the petitioner follows the observations made by the Hon’ble Supreme Court in **Sunil Bharti Mittal v.**



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CBI (Supra) which has been referred to by this Court.

20. This Court has perused both the impugned orders and is of the considered view that the order passed by the learned CMM does not reflect the application of judicial mind and the said order also does not record the reasons as to why the learned CMM took the cognizance of the offence followed by issuance of summons. It is also observed by this Court that when the said order of the learned CMM was challenged under revision jurisdiction, i.e., before the learned ASJ, the concerned revisional Court made an error of law by holding that the learned CMM was not required to record the reasons in detail and the same amounts to error of law. Further, the learned ASJ went on to peruse the charge sheet, thereby, holding that the same is sufficient and the learned CMM has rightly passed the first impugned order.

21. Taking into consideration the aforesaid facts and circumstances, this Court is of the considered view that the observations made by the learned ASJ in the revision application is not sufficient and is in contravention to the settled law. The learned ASJ has merely perused the charge sheet and in terms of the settled position of law, merely considering the contents of the charge sheet is not sufficient to take cognizance of the offence and for issuance of summons.

22. It is observed by this Court that while taking cognizance of the offence and issuance of summons, the learned CMM failed to apply its judicial mind. Furthermore, the reliance placed by the respondent no. 2/complainant upon paragraph no. 22 of the second impugned order is



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misplaced for the reason that the scope of a revisional Court is limited to the contents of the order challenged before it. Under no circumstance, the learned ASJ was required to peruse the documents and other material available on record while exercising revisional jurisdiction under Section 397 of the Cr.P.C., as the scope of interference under the said provision is limited. As discussed herein above, under the revisional jurisdiction, the Courts are empowered to merely look into the errors of law or illegality committed by the Court concerned in the order which has been assailed before the revisional Court.

23. Summarily stated, the 1st impugned order of summoning/taking cognizance of offence is liable to be set aside as no reason is given therein while coming to the conclusion that there is a *prime facie* case against the petitioner/accused. Furthermore, in the 2nd impugned order as well, the learned ASJ has taken into consideration the charge sheet etc. and despite recording the observations of the Hon'ble Supreme Court made in ***Sunil Bharti Mittal v. CBI (Supra)***, the learned ASJ has failed to acknowledge the law that application of judicial mind and satisfaction of allegations are *sine qua non* for taking cognizance of the offence and issuance of summons.

24. Thus, the learned CMM erred by failing to record reasons for issuing summons/taking cognizance of offence and the learned ASJ erred as well by failing to consider the errors of law committed by the learned CMM.

25. In light of the observations made by this Court in the preceding paragraphs, this Court is inclined to allow the instant petition and set aside the impugned orders dated 23rd January, 2021 and 1st February, 2023 passed



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by the learned CMM and the learned ASJ, respectively, and to remand back the matter to the learned CMM to pass an order after taking into consideration the observations made by this Court hereinabove.

26. Accordingly, the impugned order dated 23rd January, 2021 passed by the learned CMM, West District, Tis Hazari Court, delhi in Cr. Case No. 7572/2020 is set aside. The impugned order dated 1st February, 2023 passed by the learned ASJ-03 (West), Tis Hazari Court, Delhi in Cr. Rev. No. 179/2022 is also set aside.

27. In view of the above, the instant matter is remanded back to the Court of learned CMM, West District, Tis Hazari Court, Delhi in Cr. Case No. 7572/2020 with the direction to pass an appropriate and reasoned order with regard to taking cognizance of the offence and issuance of summons against the petitioner herein, in accordance with law, preferably within a week from the date of receipt of this order.

28. In view of the above said directions, the instant petition is disposed of along with the pending applications, if any.

CHANDRA DHARI SINGH, J

OCTOBER 1, 2024
rk/ryp/av

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