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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 6215/2023, CRL.M.A. 23261/2023
KUMARI RIVA & ANR.Petitioners
Through: Mr. Atul Kumar, Adv.

versus

STATE & ANR.Respondents
Through: Mr.Sanjeev Sabharwal, APP for State
with SI Nitesh Singh, PS Mukherjee
Nagar.
Mr. Jaideep Malik and Mr. Nitesh
Dhankhar, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

% **ORDER**
23.09.2024

1. By way of the present petition, the petitioners who are the sister-in-law and father-in-law of the complainant, seek to assail order dated 01.11.2022, passed by the learned Judicial Magistrate, North, Mahila Court-02, in FIR No. 0158/2021, under Sections 498A/406/34 IPC registered at P.S. Mukherjee Nagar, Delhi, whereby they have been summoned.
2. Learned counsel for the petitioners submits that the summoning order is cryptic and assigns no reason for summoning the petitioners despite their names being sent in column no.12 in the chargesheet.
3. Learned APP for the State, duly assisted by Mr. Jaideep Malik, Advocate appearing for respondent No.2 has defended the impugned order by stating that the chargesheet in the concluding paragraph, states that sufficient material has been found against all the accused persons. He submits that even otherwise, the statement recorded in the investigation



specifies the role played by the present petitioners and thus, sufficient allegations are present against the petitioners.

4. A perusal of the copy of the chargesheet would show that it has been specifically mentioned therein that during investigation, no serious allegations were found against the present petitioners and thus, both of them were accordingly kept in column no. 12. However, towards the end, it is stated that the chargesheet has been prepared under the relevant sections against all the accused persons.

5. The law on this issue is well settled that in case the Court is of the opinion that some accused, who are not sent for trial, are to be summoned, then the order has to be detailed and specific reasons have to be assigned considering the role of the such persons. However, the impugned order shows that no reason whatsoever has been specified. In this regard, it is apposite to refer to the judgement passed by the Supreme Court in the case of Pepsi Food v. Special Judicial Magistrate reported as **(1998) 5 SCC 749** regarding summoning has 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.

6. More recently, the issue of summoning persons who are not arrayed as an accused in the Chargesheet was discussed by the Supreme Court in Sunil Bharti Mittal v. Central Bureau of Investigation, reported as **(2015) 4 SCC 609**, where it was held that:-

50. Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (see SWIL Ltd. v. State of Delhi [(2001) 6 SCC 670 : 2001 SCC (Cri) 1205]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (see Union of India v. Prakash P. Hinduja [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.

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.

7. This Court while dealing with a case where an accused who had been kept in Column No.12 and was summoned vide a non-speaking order in Shambhu Singh Khetasar v. State (NCT of Delhi), reported as **2021 SCC OnLine Del 4427** held as under:-

20. From the foregoing, it can be culled that the judicial dicta are consistent on the aspect that a summoning order must reflect application of mind by the Magistrate to the facts of the case and the law applicable thereto. It is not essential for a Court to pass a lengthy order but it must demonstrate that there was due application of judicial mind. The words 'opinion' and 'sufficient ground' mentioned under Section 204 Cr.P.C. leave no doubt that before issuing process, the Magistrate shall indicate on what material he has adjudged the case as fit for issuance of process. In the present case, the learned Magistrate failed to discharge this responsibility and passed the impugned order in a mechanical manner without showing application of judicial mind to the facts of the case. The same calls for interference. Consequently, the petition is allowed and the summoning order is set aside qua the present petitioner only with a direction that the matter be remanded back to the Court of concerned ACMM to pass the order afresh after due application of mind in accordance with law.

Thus, it is within the power of the Court to summon an accused who is not charge sheeted or kept in column 12, however the same has to be pursuant



to him applying his judicial mind independently and that has to be reflected in the order which should be a reasoned one.

8. A perusal of the impugned order would reveal that the same is cryptic and does not provide any reasoning for summoning the accused mentioned in Column 12. The impugned order fails to reflect application of judicial mind and is in teeth of the catena of judgements discussed hereinabove. Accordingly, the order is set aside and the matter is remanded back to the Trial Court for fresh consideration.

9. Consequently, the present petition is disposed of along with the pending application.

MANOJ KUMAR OHRI, J

SEPTEMBER 23, 2024

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