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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 10109/2024 CRL.M.A. 38786/2024 CRL.M.A.**
38787/2024

ASM ENTERPRISES & ORS.

.....Petitioner

Through: Mr. Madhav Khurana Sr. Adv., Mr.
Jaiveer Bains Adv., Ms. Shaurya
Singh Adv., Ms. Kashvi Bansal Adv.

versus

DRUGS CONTROL DEPARTMENT

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
23.12.2024

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1. This petition has been filed seeking quashing of the summoning order dated 23rd August 2024, passed in CT Case no. 1283/2024 registered at P.S Narela Industrial Area under Section 18/27 of the Drugs and Cosmetics Act. By the said summoning order, petitioner was summoned in the complaint filed under Section 200 Cr.P.C.
2. Senior Counsel for petitioner states that the complaint itself would bear out that there are various offences for which allegations have been made by the prosecution. However, by the summoning order, there is no application of mind as to which specific offences the petitioner has been summoned for.
3. As per Senior Counsel, this assumes critical importance as there are aspects of limitation that have to be argued by the accused, aside from other



issues, specific to each of these offences for which they have been implicated.

4. In support of this, he relies upon the decision of High Court of Karnataka in *M/S Emcure Pharmaceuticals Ltd v. State of Karnataka* 2022:KHC: 32214.

5. Senior Counsel for the petitioner also relies upon the decision of the Supreme Court in *Mehmood UL Rehman v Khazir Mohammad Tunda and Ors.*, 2015 12 SCC 420, which elaborates on the scope of a Magistrate's satisfaction and application of mind under Sections 190 and 204 CrPC while issuing process to the accused. Relevant paragraphs are extracted as under:

“4. In the instant case, we are called upon to decide the scope of the “opinion of Magistrate” on sufficient ground for proceeding to issue process to the accused. The question has arisen in the background of an order passed by the Judicial Magistrate, First Class, Srinagar on 3-4-2007 on a complaint filed by the first respondent herein under Section 500 of the Ranbir Penal Code, 1932 [Section 500 of the Penal Code, 1860 (45 of 1860)]. The operative portion of the order reads as follows:

“Perused the complaint, and the statements recorded. In the first instance of proceedings, let bail warrant to the tune of Rs 15,000 be issued against the alleged accused persons, with direction to the accused persons to cause their appearance before this Court on 22-4-2007, to answer the material questions.”

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8. The question is: how does a Magistrate, while taking cognizance of an offence on complaint, indicate his satisfaction regarding the ground for proceeding against the accused?

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21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under



Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that “a complaint of facts which constitute such offence”. Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected.

22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for



proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.

23. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. The question is not about veracity of the allegations, but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate.

24. We, hence, set aside the order dated 3-4-2007 passed by the Judicial Magistrate, First Class, Srinagar and the impugned order passed by the High Court. The matter is remitted to the Magistrate for



*fresh consideration and further action, if required,
to be taken in accordance with law.”*

(emphasis added)

6. In view of the same, the petition is disposed of, remanding the matter back to the JMFC, North Rohini, to re-consider for fresh consideration.
7. Accordingly petition is disposed of. Pending applications are rendered as infructuous.
8. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 23, 2024/RK/tk