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

Date of Decision: 07th February 2025

+ **CRL.M.C. 817/2025 & CRL.M.A. 3815/2025, CRL.M.A. 3816/2025**

HITESH KUMAR AND ORS.Petitioners

Through: **Mr. Dhruva Bhagat, Advocate.**

versus

STATE OF NCT OF DELHI AND ANR.Respondents

Through: **Mr. Digam Singh Dagar, APP for the
State with SI Kriti Sikarwar, P.S.:
Amar Colony.**

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

CRL.M.A. 3814/2025

Exemption granted, subject to just exceptions.

The application stands disposed-of.

CRL.M.C. 817/2025

By way of the present petition filed under section 528 of the
Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioners



impugn order dated 02.12.2024 passed by the learned JMFC, Saket District Courts, New Delhi, whereby the petitioners have been summonsed in complaint case bearing Ct. Case No. 1597/2023.

2. Mr. Dhruva Bhagat, learned counsel appearing for the petitioners submits, that the petitioners are the in-laws of respondent No.2, being the brother, mother, sister, uncle and aunt of the deceased – Raj Kumar. Learned counsel submits that the petitioners are sought to be implicated by respondent No.2 in the death of Raj Kumar only because they are his relatives.
3. Mr. Bhagat explains, that the deceased died by suicide on 01.08.2023, pursuant to which, having failed to register an FIR with the police, respondent No.2 filed an application under section 156(3) of the Code of Criminal Procedure 1973 ('Cr.P.C.') before the learned Magistrate. The section 156(3) Cr.P.C. application filed by respondent No. 2 was dismissed by the learned Magistrate *vide* order dated 08.08.2024, a copy of which order has been appended to the present petition.
4. Thereafter, the pre-summoning evidence led by respondent No. 2, has now culminated in the issuance of the impugned 'summoning order' dated 02.12.2024.
5. Mr. Bhagat clarifies, that upon a careful inspection of the record, it is found that no detailed summoning order has been passed by the learned Magistrate; and the only so-called 'summoning order' is the one appended as Annexure-A to the present petition, which reads as follows :



“Statement of complainant in PSE recorded, no other witness is intended to be examined.

“Issue notice to the proposed accused qua the present complainant (on filing of PF within 15 days) through all permissible modes including speed post, WhatsApp and e-mail, returnable on 05.02.2025.”

(bold in original)

6. Learned counsel argues, that before summoning a person, a trial court must consider the pre-summoning evidence and a summoning order must disclose application of judicial mind, and must set-out what offences, if any, are made-out against which of the proposed accused.
7. Mr. Bhagat states that this principle has been laid-down by the Supreme Court in ***Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors.***,¹ as recently cited with approval by the Supreme Court in its recent judgment in ***M/s. JM Laboratories & Ors. vs. State of Andhra Pradesh & Anr.***,² where the Supreme Court has held as under:

“6. However, we do not find it necessary to consider the submissions made by the appellants on various grounds inasmuch as the present appeal is liable to be allowed on the short ground that the learned Magistrate has issued the process without assigning any reasons.”

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“8. In the judgment and order of even date in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled “INOX Air Products Limited Now Known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh”, we have observed thus:

¹ (1998) 5 SCC 749

² 2025 SCC OnLine SC 208



“33. It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons are recorded for issuing the process against the accused persons.

34. In this respect, it will be relevant to refer to the following observations of this Court in the case of Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others (1998) 5 SCC 749 (supra):

“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 scrutinise 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.”

35. This Court has clearly held that summoning of an accused in a criminal case is a serious matter. It has been held that 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. This Court held that the Magistrate is required to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. It has been held that the Magistrate is not a silent spectator



at the time of recording of preliminary evidence before summoning the accused.

36. The said law would be consistently following by this Court in a catena of judgments including in the cases of *Sunil Bharti Mittal v. Central Bureau of Investigation* (2015) 4 SCC 609, *Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others* (2015) 12 SCC 420 and *Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another* (2021) 5 SCC 435.

37. Recently, a Bench of this Court to which one of us (Gavai, J.) was a Member, in the case of *Lalankumar Singh and Others v. State of Maharashtra* 2022 SCC OnLine SC 1383 (*supra*), has observed thus:

“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* [(2015) 4 SCC 609], which reads thus:

“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.**



52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

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.”

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

40. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed.”

9. In the present case also, no reasons even for the namesake have been assigned by the learned Magistrate. The summoning order is totally a non-speaking one”

(emphasis supplied)



8. Upon a *prima-facie* view of the matter, issue notice.
9. Mr. Digam Singh Dagar, learned APP appears on behalf of the State on advance copy; accepts notice; and submits that considering the text of the order passed, as extracted above, the matter may be remanded to the learned Magistrate for re-considering the issue of summoning of the petitioners, in accordance with law.
10. Since the summoning order has proceeded without any reference to any material or evidence on record, nor does it reflect what considerations may have crossed the learned Magistrate's mind before she decided to summons *all* the petitioners for *all* the offences, this court is of the view that no purpose would be served in even issuing notice to respondent No.2, since there is no argument to made in defence of the impugned order, which is utterly bereft of any discernible application of mind or any reasoning.
11. Accordingly, the impugned summoning order dated 02.12.2024 passed by the learned Magistrate in Ct Case No. 1597/2023 is set-aside and the matter is remanded back to the learned Magistrate for re-consideration, in accordance with law.
12. The learned Magistrate is directed to not only *apply* their mind to what has come-forth in the pre-summoning evidence recorded in the matter but to also *disclose* the considerations that persuade them to pass the order, one way or the other. That is the only way an appellate/revisional court would be able to understand the *reasons* behind the order that comes to be passed.



13. The matter is directed to be placed before the learned Magistrate for re-consideration on the next date of hearing, which is stated to be 04th April 2025.
14. The learned Magistrate is reminded, that as articulated by the Supreme Court in several judgments, some of which have been extracted above, summoning of a person in a criminal case is not a trifling matter, but is an extremely serious step which must be addressed with requisite caution.
15. The petition stands disposed-of, in the above terms.
16. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 7, 2025

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