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

+ CRL.REV.P. 1218/2023 & CRL.M.A. 30919/2023,  
CRL.M.A. 30920/2023

STATE

.....Petitioner

Through: Mr. Raj Kumar, APP for  
the State with WSI  
Pavitra, PS IGI Airport,  
WSI Jyoti, PS Sector-23  
Dwarka.

versus

KARAN SINGH

.....Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

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**15.10.2025**

1. The present petition is filed against the order dated 16.02.2021 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('ASJ'), Dwarka Courts, New Delhi in SC NO. 158/2019 whereby the learned ASJ declined to take cognizance of the offence in FIR No. 75/2017 registered at Police Station Dwarka Sector 23.

2. Briefly stated, FIR No. 75/2017 dated 25.03.2017 was registered for the offence under Section 363 of the Indian Penal Code, 1860 ('**IPC**') on a complaint given by the father of the victim/'B'. It is alleged that on 25.03.2017, 'B' dropped his daughter aged 16 years to Rajkiya Sarvodaya Vidayala for her exam, however, she did not return. It is alleged that upon confirming from the principal of the school, 'B' learnt that the victim was marked absent in the school on the said date. The FIR



was registered on a complaint that some unknown person had lured the daughter of 'B'. Subsequently, 'B' alleged that he had suspicion that his daughter had been lured away by the respondent who was complainant's nephew.

3. Thereafter, on 06.11.2017, the victim returned to her house post which on 09.11.2017, the victim was medically examined. Thereafter, in her statement under Section 164 of the Code of Criminal Procedure, 1973 ('**CrPC**') recorded on 13.11.2017, the victim stated that on 25.03.2017, her father had dropped her to school to give the examination. She stated that when she went outside the school to take a pen, her *bua* took her to some distance and thereafter offered her a cold drink. She stated that upon drinking the same, she became unconscious and that thereafter her *bua* and the respondent took her in a car to some place. It is alleged that thereafter, the respondent forcefully established physical relations with her. Thereafter, one day, the victim managed to run away from the said place. As per the statement of the victim, Sections 376D/344 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**') were added in the case.

4. During the course of investigation, the call details of the phone number of the victim and that of the respondent were retrieved but the mobile phone of the victim was found to be switched off from the date of the incident and the location of the respondent from the day of the incident was found to be in village Tigaon, Ballabgarh, Faridabad, Haryana.

5. Further, during the course of investigation, it was found that on 01.01.2018, the victim had again gone away with



somebody without informing her father 'B'. The statement of 'B' was recorded under Section 161 of the CrPC wherein he stated that he had come to know that his daughter had ran away with some person with whom she had also gone earlier and in order to save the person, the respondent was falsely implicated. He further stated that the respondent is innocent. In his statement under Section 164 of the CrPC recorded on 16.01.2019, 'B' reiterated his statement given under Section 161 of the CrPC.

6. The charge sheet was filed without arrest for the offences under Sections 363/376D/344 of the IPC and Section 6 of the POCSO Act.

7. By the impugned order, the learned ASJ declined to take cognizance and issue summons to the respondent. It was noted that the respondent had been chargesheeted without arrest and upon enquiry from the Investigating Officer as to why the chargesheet was filed without arresting the accused, it was contended by the Investigating Officer that post the conduction of a detailed investigation, the allegations levelled by the prosecutrix could not be substantiated. It was noted that there were several gaps in the version narrated by the victim inasmuch as the same did not mention the approximate time at which she was taken away by the accused persons. It was noted that as per the school record the victim was marked absent on 25.03.2017, however, as per the statement of the victim under Section 164 of the CrPC, the victim stated that she had gone outside the school to buy a pen.

8. It was also noted that there existed several discrepancies in the statement of the victim under Section 161 and 164 of the



CrPC. It was noted that while in her statement under Section 164 of the CrPC, the victim stated that her *bua* gave her a cold drink post which the victim fell unconscious, no such fact was mentioned in the statement under Section 161 of the CrPC. Consequently considering such gaps and contradictions, the learned ASJ declined to take cognizance of the offence under Sections 363/376D/344 of the IPC and Section 6 of the POCSO Act and refused to issue summons to the respondent.

9. The State is essentially aggrieved that at the stage of cognizance, the learned ASJ ought not to have ventured into the exercise of considering the material on record which was a subject matter of trial. It has been submitted that the sifting of the material at the stage of cognizance ought not to be meticulous and the learned ASJ was only required to apply its mind to the suspected commission of offence.

10. It is well settled that taking cognizance does not involve any formal action. [Ref. ***U.P. Pollution Control Board v. Mohan Meakins Limited and Ors. : (2000) 3 SCC 745***]. Cognizance is taken when the Magistrate first takes judicial notice of an offence. In the case of ***Darshan Singh Ram Kishan v. State of Maharashtra : (1971) 2 SCC 654***, the Hon'ble Apex Court had held as under:

*“8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point*



*when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report.”*

11. In the case of **Chief Enforcement Officer v. Videocon International Ltd. : (2008) 2 SCC 492**, it was observed that no universal rule can be laid for when a Magistrate is stated to have taken cognizance and observed as under:

*“19. The expression “cognizance” has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means “become aware of” and when used with reference to a court or a Judge, it connotes “to take notice of judicially”. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.*

*20. “Taking cognizance” does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.”*

12. At the same time, it is pertinent to note that the exercise of cognizance constitutes the application of judicial mind and cannot be carried out mechanically. Consequently, if upon a perusal of the chargesheet, the Magistrate is of the opinion that the facts do not disclose the commission of offence, it is open to the Magistrate to not take cognizance.

13. In the present case, from a perusal of the material on



record as well as the impugned order, it is apparent that different versions were narrated by the father and the victim in relation to the manner in which the victim was kidnapped. In addition to the same, it is pertinent to note that upon the subsequent disappearance of the victim on 01.01.2018, the father of the victim in his statement under Section 161 as well as 164 of the CrPC stated that he had come to know that his daughter had ran away with some person with whom she had gone earlier also and that in order to save the person, the respondent was falsely implicated. The investigation further revealed that the location of the respondent was found to be in village Tigaon, Faridabad, Ballabgarh, Haryana during the relevant period and was nowhere near the alleged place of incident.

14. It is settled law that taking cognizance and issuance of summons is a serious issue. The same entails judicial application of mind and cannot be carried out in a perfunctory manner. The Court is required to make a thorough assessment of the factual matrix of the case and the applicable legal provisions to ascertain whether the same mandates taking cognizance of the offence or the issuance of the summons to the accused. For this reason, merely because serious allegations are made, the same does not *ipso facto* warrant the setting in motion of the criminal law machinery. In the case of ***Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others : (1998) 5 SCC 749***, the Hon'ble Apex Court had 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 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.*

(emphasis supplied)

15. In the present case, the learned ASJ rightly declined to take cognizance and issue summons to the respondent. From a bare perusal of the material on record, it is apparent that the allegations levelled against the respondent are far-fetched. Further, from a perusal of the chargesheet, it is borne out that the allegations against the respondent could not be substantiated during the course of the investigation. As observed by the Hon'ble Apex Court in **Abhinandan Jha v. Dinesh Mishra : 1967 SCC OnLine SC 107**, if upon a perusal of the chargesheet, the Magistrate is of the opinion that the facts do not disclose the commission of offence or the presented evidence do not justify putting the accused on trial, it is open to the Magistrate to not take cognizance.

16. In such circumstances, when the allegations against the respondent could not be substantiated, the wheels of the criminal machinery ought not to be put in motion merely because serious allegations were made by the prosecutrix.

17. Upon a consideration of the totality of facts and circumstances, this Court does not find any infirmity in the



impugned order and the same cannot be faulted with.

18. The present petition is accordingly dismissed. Pending applications also stand disposed of.

**AMIT MAHAJAN, J**

**OCTOBER 15, 2025**

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