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

+ **CRL.M.C. 5716/2025 & CRL.M.A. 24511/2025 STAY**

ABHA AGNIHOTRI

.....Petitioner

Through: Mr. Ravinder Kumar Yadav, Mr. Kartikey, Ms. Arti Anupriya, Mr. Paras Juneja, Ms. Kritika Yadav, Mr. Kanishk Yadav & Mr. Baljeet Singh, Adv.

versus

STATE THROUGH SHO, P.S. RAJOURI GARDEN, NEW DELHI & ANR.

.....Respondents

Through: Mr. Hitesh Vali, APP for the State with SI Rohit, PS Rajouri Garden.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

20.08.2025

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1. This is a petition under Article 227 of the Constitution of India read with Section 528 BNSS for setting aside the summoning order dated 11.02.2025 qua the petitioner passed by Ld. JMFC (Mahila Court-04), West, THC, Delhi in criminal case bearing no. 14361/2024 arising out of FIR no. 131/2023, under Sections 498A/406/34 IPC, registered at PS Rajouri Garden.

2. Mr. Ravinder Kumar Yadav, Id. Counsel appearing for the petitioner submits that the name of the petitioner has been kept in column no. 12 of the chargesheet but despite the same he has been summoned by impugned order dated 11.02.2025 without assigning any reason by passing a cryptic order.



3. Ld. APP appearing for the State has defended the impugned order stating that there is sufficient material on record against all the accused persons including the petitioner herein. He submits that there is specific allegation in the chargesheet that petitioner advised respondent no. 2 to abort the fetus on flimsy grounds including her being too young and the family being under-prepared to bear the expenses of the child. According to him, there are sufficient allegations against the present petitioner.

4. A perusal of the chargesheet would show that it has been specifically mentioned therein that due to lack of sufficient evidence against the present petitioner, she has been placed in column no. 12.

5. So far as the law is concerned, it is well-settled that if the Court is of the opinion that some of the accused who are not sent for trial are to be summoned, such order has to be detailed and specific reasons have to be assigned, considering the role of such person. The impugned order passed by the Ld. MM is a silent order and does not specify any reason whatsoever for summoning the petitioner. The Supreme Court in the case of ***Pepsi Food v. Special Judicial Magistrate (1998) 5 SCC 749*** observed as 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.

6. Similarly in the case of ***Sunil Bharti Mittal v. Central Bureau of***



Investigation, reported as (2015) 4 SCC 609, it has been held as under:

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.

7. In the case of ***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.

8. Undisputedly, the Court has the power to summon a person as an accused not sent for trial and kept in column no. 12 but such power has to be exercised showing due application of mind and the same must be visible in the order which should be a reasoned order.

9. The perusal of the impugned order reveals that the same is cryptic and does not provide any reasoning whatsoever for summoning the petitioner



who has been kept in column no. 12 of the chargesheet. The impugned order does not reflect any application of judicial mind. That being so, the impugned order is set aside and the matter is remanded back to the Trial Court for fresh consideration and for passing the reasoned order.

10. The petition is accordingly disposed of with the applications, if any.

RAVINDER DUDEJA, J

AUGUST 20, 2025/gs/sk