Court No. - 92

Case :- APPLICATION U/S 482 No. - 18375 of 2021

Applicant :- Akhtar Khan And 2 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Mahesh Kumar
Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

Ref:- (Order on Crl. Misc. Impleadment Application No. Nil of 2022)

Application for impleadment is **allowed**.

Learned counsel for applicants is permitted to implead the opposite party No.3 in the array of parties during the course of the day.

(Order on Application)

Heard Sri Mahesh Kumar, learned counsel for the applicants and learned AGA for the State and perused the record.

This application under Section 482 Cr.P.C. has been filed for quashing of the charge sheet dated 29.1.2020 as well as cognizance order dated 15.6.2020 in Case No.5302 of 2020 (State of U.P. Vs. Akhtar Khan and Others) arising out of Case Crime No.53 of 2019, under Sections-498A, 323, 504, 506 I.P.C. and 3/4 D.P. Act, Police Station- Mahila Thana, District Jhansi, pending in the Court of Civil Judge (Junior Division)/ Judicial Magistrate, Jhansi. A further prayer has also been made to stay the further proceedings of the aforesaid case.

Learned counsel for applicants submitted that the entire prosecution story is false and applicants have been falsely implicated in the present case. He further submitted that charge sheet dated 29.1.2020 and cognizance taken on 15.6.2020 by the court below on the printed proforma, is without application of mind and the same is not sustainable in the eyes of law. He further submitted that the same controversy has been settled by this Court vide order dated 9.8.2021 passed in Application U/S No. 11334 of 2021 (Pankaj Jaiswal Vs. State of U.P. & Another).

Learned AGA opposed the prayer but could not dispute the aforesaid facts.

Fair and proper investigation is the primary duty of the Investigating Officer. No investigating agency can take unduly long time in completing investigation. There is implicit right under Article 21 for

speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. There is clear need for time line in completing investigation for having in-house oversight mechanism wherein accountability for adhering to lay down timeline, can be fixed at different levels in the hierarchy, vide **Dilawar vs. State of Haryana, (2018) 16 SCC 521, Menka Gandhi vs. Union of India, AIR 1978 SC 597, Hussainara Khatoon (I) vs. State of Bihar, (1980)1 SCC 81, Abdul Rehman Antulay vs. R.S. Nayak, (1992) 1 SCC 225 and P. Ramchandra Rao vs. State of Karnatka, (2002) 4 SCC 578**.

For the purposes of investigation, offences are divided into two categories "cognizable" and "non-cognizable". When information of a cognizable offence is received or such commission is suspected, the proper police officer has the authority to enter in the investigation of the same but where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate. Investigation includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person other than a Magistrate (who is authorised by a Magistrate in his behalf). Investigation consists of steps, namely (i) proceeding to spot, (ii) ascertainment of the facts and circumstances of the case, (iii) discovery and arrest of the suspected offender, (iv) collection of evidence relating to the commission of the offence and (v) formation of opinion as to whether on the material collected therein to place the accused before a Magistrate for trial and if so to take necessary steps for the same by filing a charge sheet under Section 173, Cr.P.C., vide **H.N. Rishbud vs. State of Delhi, AIR 1955 SC 196**. Thereafter, the learned Magistrate has to take cognizance after application of judicial mind and by reasoned order and not in mechanical manner.

In the case of **Bhushan Kumar and Anr. v. State (NCT of Delhi) and Anr., AIR 2012 SC 1747**, the Hon'ble Apex Court was pleased to observe that section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceedIn the case of **Basaruddin & others Vs. State of U.P. and others, 2011 (1) JIC 335 (All)(LB)**, the Hon'ble Court was pleased to observed as under:-

> *"From a perusal of the impugned order, it appears that the learned Magistrate on the complaint filed by the complainant has summoned the accused in a mechanical way filling the date in the typed proforma. Learned Magistrate while taking cognizance of the offence on complaint was expected to go through the allegations made in the complaint and to satisfy himself as to which offences were prima facies, being made out against the accused on basis of allegations made in the complaint. It appears that the learned Magistrate did not bother to go through the allegations made in the complaint and*

ascertain as to what offences were, prima facie, being made out against the accused on the basis of allegations made in the complaint. Apparently, the impugned order passed by the learned Magistrate suffers from non-application of mind while taking cognizance of the offence. The impugned order is not well reasoned order, therefore, the same is liable to be quashed and the petition deserves to be allowed and the matter may be remanded back to the learned Chief Judicial Magistrate, Lakhimpur Kheri with direction to him to go through the allegations made in the complaint and ascertain as to what offences against the accused were prima facie being made out against the accused on the basis of allegations made in the complaint and pass fresh order, thereafter, he will proceed according to law."

In the case of **Bhushan Kumar and Anr. v. State (NCT of Delhi) and Anr., AIR 2012 SC 1747**, the Hon'ble Apex Court was pleased to observe that section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued.

In the case of **Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923**, the Hon,ble Apex Court was pleased to observe in paragraph no.47 of the judgment as under:

"47. However, the words "sufficient grounds for proceeding" appearing in the Section 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.."

In the case of **Darshan Singh Ram Kishan v. State of Maharashtra , (1971) 2 SCC 654**, the Hon'ble Court was pleased to observe that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and, thereafter, takes judicial notice of the offence. 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."

In the case of **Ankit Vs. State of U.P. And another** passed in Application U/S 482 No.19647 of 2009 decided on 15.10.2009, this Court was pleased to observe in paragraph No.8 of the judgment as under:-

> *"8. In the beginning, the name of the court, case number, state vs. ..... under section ..... P.S. ..... District ..... case crime No. ..... / 2009 also have been printed and blanks have been filled up by mentioning the case number, name of the accused, section, P.S. District etc. by some employee. Below afore cited printed matter, the following sentence has been mentioned in handwriting "अभियुक्त अंकित की गिरफ्तारी मा0 उच्च न्यायायल द्वारा Crl. Writ No. 19559/08 अंकित बनाम राज्य में पारित आदेश दिनांक 5.11.08 द्वारा आरोप पत्र प्राप्त होने तक स्थगित थी।"*
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> *Below aforesaid sentence, the seal of the court containing name of Sri Talevar Singh, the then Judicial Magistrate-III, has been affixed and the learned magistrate has put his short signature (initial) over his name. The manner in which the impugned order has been prepared shows that the learned magistrate did not at all apply his judicial mind at the time of passing this order and after the blanks were filled up by some employee of the court, he has put his initial on the seal of the court. This method of passing judicial order is wholly illegal. If for the shake of argument, it is assumed that the blanks on the printed proforma were filled up in the handwriting of learned magistrate, even then the impugned order would be illegal and invalid, because order of taking cognizance of any other judicial order cannot be passed by filling up blanks on the printed proforma. Although as held by this Court in the case of **Megh Nath Guptas & Anr V State of U.P. And Anr**, 2008 (62) ACC 826, in which reference has been made to the cases of **Deputy Chief Controller Import and Export Vs Roshan Lal Agarwal, 2003 (4) ACC 686 (SC), UP Pollution Control Board Vs Mohan Meakins, 2000 (2) JIC 159 (SC): AIR 2000 SC 1456 and Kanti Bhadra Vs State of West Bengal, 2000 (1) JIC 751 (SC): 2000 (40) ACC 441 (SC)**, the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge sheet after applying judicial mind."*

In the case of **Kavi Ahmad Vs. State of U.P. and another passed in**

Criminal Revision No. 3209 of 2010, wherein order taking cognizance of offence by the Magistrate under Section 190(1)(b) on printed proforma without applying his judicial mind towards the material collected by the Investigating Officer has been held illegal.

In the case of **Abdul Rasheed and others Vs. State of U.P. and another 2010 (3) JIC 761 (All)**. The relevant observations and findings recorded in the said case are quoted below:-

> *"6. Whenever any police report or complaint is filed before the Magistrate, he has to apply his mind to the facts stated in the report or complaint before taking cognizance. If after applying his mind to the facts of the case, the Magistrate comes to the conclusion that there is sufficient material to proceed with the matter, he may take cognizance. In the present case, the summoning order has been passed by affixing a ready made seal of the summoning order on a plain paper and the learned Chief Judicial Magistrate had merely entered the next date fixed in the case in the blank portion of the ready made order. Apparently the learned Magistrate had not applied his mind to the facts of the case before passing the order dated 20.12.2018, therefore, the impugned order cannot be upheld.*
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> *7. Judicial orders cannot be allowed to be passed in a mechanical manner either by filling in blank on a printed proforma or by affixing a ready made seal etc. of the order on a plain paper. Such tendency must be deprecated and cannot be allowed to perpetuate. This reflects not only lack of application of mind to the facts of the case but is also against the settled judicial norms. Therefore, this practice must be stopped forthwith."*

In view of the above, this Court finds and observes that the conduct of the judicial officers concerned in passing orders on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be deprecated. The cognizance/summoning of an accused in a criminal case is a serious matter and the order must reflect that Magistrate had applied his mind to the facts as well as law applicable thereto, whereas the impugned cognizance order was passed in mechanical manner without application of judicial mind and without satisfying himself as to which offence were prima-facie being made out against the applicants on the basis of the allegations made by the complainant. the impugned cognizance order passed by the learned Magistrate is against the settled judicial norms.

I have considered the submissions made by the learned counsel for the parties and have gone through the entire record carefully.

In this matter, as is evident from record, the court below passed order in mechanical manner without applying the judicial mind. Since legal question is involved, I am dispensing with the notice against opposite party No.2 and decide the case in the light of the judgments of the Supreme Court.

In light of the judgments referred to above, it is explicitly clear that the cognizance taken on 15.6.2020 by the court below passed by the Civil Judge (Junior Division)/Judicial Magistrate, Jhansi is cryptic and does not stand the test of the law laid down by the Hon'ble Apex Court. Consequently, the cognizance order dated 15.6.2020 cannot be legally sustained, as the Magistrate failed to exercise the jurisdiction vested in him resulting in miscarriage of justice.

Accordingly, the present Criminal Misc. Application U/S 482 Cr.P.C succeeds and is **allowed**. The cognizance order dated 15.6.2020 passed by the Civil Judge (Junior Division)/Judicial Magistrate, Jhansi, is hereby **quashed** in Case No.5302 of 2020 (State of U.P. Vs. Akhtar Khan and Others) arising out of Case Crime No.53 of 2019, under Sections- 498A, 323, 504, 506 I.P.C. and 3/4 D.P. Act, Police Station- Mahila Thana, District Jhansi.

The Civil Judge (Junior Division)/Judicial Magistrate, is directed to decide afresh the issue for taking cognizance and summoning the applicants and pass appropriate orders in accordance with law keeping in view the observations made by this Court as well as the direction contained in the judgments referred to above within a period of two months from the date of production of a copy of this order.

Let a copy of this order be placed before the learned Registrar General of this Court within a week from today and the learned Registrar General is directed to issue a circular/ memorandum in accordance with law to all the District Judges in the State of Uttar Pradesh intimating them to inform all the Judicial Officer not to use **"Printed Proforma"** in passing the Judicial Orders in view of the observations made herein above.

Order Date :- 3.3.2022
Md Faisal