AFR

Court No. - 15

Case :- APPLICATION U/S 482 No. - 677 of 2023

Applicant :- Krishna Kumar (As Per Fir And The Charge Sheet Krishna Kumar Naayi) And Others

Opposite Party :- State Of U.P. Thru.Prin.Secy.Home And 3 Others

Counsel for Applicant :- Siddharth Shankar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Sri Siddharth Shanker Dubey, learned counsel for the applicants as well as Smt Jan Laxmi Tiwari Senanai, learned A.G.A. for the State and perused the record.

The instant application under Section 482 Cr.P.C. has been filed by the applicants with a prayer to quash the entire criminal proceedings of Case No. 21 of 2019: State of U.P. Versus Krishna Kumar and other under Section 363, 366 I.P.C. and Sections 16 and 17 of Protection of Children from Sexual Offences Act, 2012, pending before the court of ASJ/POCSO-II Raibareli and also for quashing of the charge-sheet No.101/2019 dated 05.02.2019 and quashing of summoning order dated 08.02.2019.

As per the prosecution version of the F.I.R., on 13.11.2018 at 08.40 A.M. the complainant went to drop off his daughter to her school and after the end of school hours, the complainant found out that his daughter did not attend the school that day. The complainant went home and checked his household trunk and found that the daughter had fled with Rs.20,000/- along with her. That complainant’s house is nearby to one neighbour Krishna Kumar Nayi’s house who lives with his son Avinash alias Shivam wife Shrimati, daughter Shivani and second son Abhishek as a family. The complainant states that Avinash alias Shivam was living in some city for purpose of earning his livlihood. Furthermore, as per the allegations levelled by

complainant on 13.11.2018 at about 8.40 AM in the morning Shivani and Abhishek dropped off the victim from school to station where accused Avinash alias Shivam was already present, who manipulated the victim in running away with him. Also, it is alleged in the F.I.R. that Krishna Kumar Nayi was connected throughout on the phone and hence Krishna Kumar Nayi mother Shrimati sister Shivani and brother Abhishek all are involved in the said crime.

Learned counsel for the applicants further submits that the entire prosecution story is false. No such incident took place and the applicants have been falsely implicated in the present case.

Learned counsel for the applicants further submits that before arguing the case on merits, he wants to draw attention of this Court on the charge-sheet dated 05.02.2019 submitted by the Investigating Officer in mechanical manner under Sections 363, 366 I.P.C. and Section 16 and 17 of Protection of Children from Sexual Offences Act, 2012, copy of the same is filed as Annexure No.1 to the affidavit, whereas he further submits that on the charge-sheet, the learned Magistrate had taken cognizance and passed the summoning order on 08.02.2019. The cognizance was taken on the printed proforma by filling the sections of IPC, dates and number and in the said proforma the learned Magistrate without assigning any reason has summoned the applicants for facing trial. Copy of the cognizance order is also annexed as Annexure No.2 to the affidavit.

Learned counsel for the applicants further submits that by the order dated 08.02.2019 cognizance taken by the learned Magistrate on printed proforma without assigning any reason is abuse of process of law and the same was without application of mind and was in a routine manner.

Learned counsel for the applicants further submits that after submission of charge sheet and cognizance order on printed proforma, the applicants have been summoned mechanically by order dated

08.02.2019 and the court below while summoning the applicants has materially erred and did not follow the dictum of law as propounded by the Hon'ble Supreme Court in various cases that summoning in criminal case is a serious matter and the court below without dwelling into material and visualizing the case on the touch stone of probability should not summon accused person to face criminal trial. It is further submitted that the court below has not taken into consideration the material placed before the trial court along with charge sheet and, therefore, the trial court has materially erred in summoning the applicant. The court below has summoned the applicant through a printed order, which is wholly illegal.

It is vehemently urged by learned counsel for the applicants that the impugned cognizance/summoning order dated 08.02.2019 is not sustainable in the eye of law, as the same has been passed in mechanical manner without applying the judicial mind, because on the face of record itself it is apparent that impugned cognizance/summoning order dated 08.02.2019 has been passed by the Magistrate concerned on printed proforma by filling up the gaps, therefore the same is liable to be quashed by this Court.

Learned counsel for the applicants has given much emphasis that if the cognizance has been taken on the printed proforma, the same is not sustainable.

Per contra, learned A.G.A. for the State submitted that considering the material evidences and allegations against the applicants on record, as on date, as per prosecution case, the cognizable offence against the applicants is made out, therefore, application is liable to be dismissed but has not denied that the leaned Magistrate has taken cognizance on the printed proforma. Accordingly, this case is being finally decided at this stage without issuing notice to opposite party no.2 and without calling for a counter affidavit.

I have heard the learned counsel for the parties and perused the record.

The main issue for consideration before this Court is that whether the learned Magistrate may summon the accused person on a printed proforma without assigning any reason and take cognizance on police report filed under Sections 173 of Cr.P.C. In this regard, it is relevant to mention here that a Court can take cognizance of an offence only when condition requisite for initiation of proceedings before it as set out in Chapter XIV of the Code are fulfilled. Otherwise, the Court does not obtain jurisdiction to try the offences under section 190 (1) of the Cr.P.C. provided that "subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

> (a) upon receiving a complaint of facts which constitute such offence,
>
> (b) upon a police report of such facts;
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> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
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> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

At this juncture, it is fruitful to have a look so far as the law pertaining to summoning of the accused persons, by taking cognizance on a police report filed under section 173 of the Cr.P.C., is concerned and the perusal of the case law mentioned herein below would clearly reveal that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since, it is a process of taking judicial notice of certain facts which constitute an

offence, there has to be application of mind as to whether the material collected by the Investigating Officer results in sufficient grounds to proceed further and would constitute violation of law so as to call a person to appear before the criminal court to face trial. This discretion puts a responsibility on the magistrate concerned to act judiciously keeping in view the facts of the particular case as well as the law on the subject and the orders of Magistrate does not suffers from non-application of judicial mind while taking cognizance of the offence.

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।"

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 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 summoning 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.

In light of the judgments referred to above, it is explicitly clear that the order dated 08.02.2019 passed by the ASJ/POCSO-II,Raibareli is cryptic and does not stand the test of the law laid down by the Hon'ble Apex Court. Consequently, the cognizance/summoning order dated 08.02.2019 **c**annot 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 impugned summoning order dated 08.02.2019 passed in Case No. 21 of 2019: State of U.P. Versus Krishna Kumar and others under Section 363, 366 I.P.C. and Sections 16 and 17 of Protection of Children from Sexual Offences Act, 2012, pending before the ASJ/POCSO-II Raibareli is hereby quashed.

The matter is remitted back to ASJ/POCSO-II Raibareli directing him 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.

The party shall file certified copy or computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 24.01.2023

Arvind