

Most Urgent/Out at once

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ): DELHI

No. 36616-36736/Genl./HCS/2023

Dated, Delhi the 15 SEP 2023

Sub : Circulation of copy of judgment/order dated 28.08.2023 passed by Hon'ble Mr. Justice Saurabh Banerjee in CrI.M.C. No. 6195/2023, titled "Omlata & Ors. Vs. State of NCT of Delhi & Anr."

A copy of the letter no. 49502/Crl. dated 14.09.2023 bearing this office diary no. 2292 dated 14.09.2023 alongwith copy of judgment/order dated 28.08.2023 passed by Hon'ble Mr. Justice Saurabh Banerjee in the abovesaid matter is being circulated for information and compliance to :-

1. All the Ld. Judicial Officers posted in Central District, Tis Hazari Courts, Delhi.
2. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.
3. PS to the Ld. Principal District & Sessions Judge (HQs), Tis Hazari Courts, Delhi for information.
4. The Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned official to upload the same on the Website of Delhi District Courts.
5. The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no. DJA/Dir.(Acd)/2019/4306 dated 06.08.2019.
6. Dealing Assistant, R&I Branch for uploading the same on LAYERS.
7. For uploading the same on Centralized Website through LAYERS.

(UPASANA SATIJA)
 Link Officer In-Charge, Genl. Branch, (C)
 Tis Hazari Courts, Delhi. (W)

Encls. As above.

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C/O

NDOH 14.12.2023

D-5 HIGH COURT OF DELHI AT NEW DELHI

No. 49502/Cr.

Dated 14/9/23

From :

The Registrar General,
Delhi High Court,
New Delhi.

To:



1. The Ld. Principal District & Sessions Judges, Headquarter Central District, Tis Hazari Courts Delhi.
2. The Ld. Principal District & Sessions Judges, South District, Saket Courts Delhi.
3. The Ld. Principal District & Sessions Judges, North West District, Rohini Courts
4. The Ld. Principal District & Sessions Judges, New Delhi District, Patiala House Courts, Delhi
5. The Ld. Principal District & Sessions Judges, East District, Karkardooma Courts, Delhi.

6. The Ld. Principal District & Sessions Judges, North East District, Rohini Courts Delhi.

7. The Ld. Principal District & Sessions Judges, South West District, Dworka Courts, Delhi.

Gen. Br.

8. The Ld. Principal District & Sessions Judges, CBI District, Rouse Avenue Courts, Delhi.

9. The Ld. Principal District & Sessions Judges, South East District, Saket Courts, Delhi.

10. The Ld. Principal District & Sessions Judges, North East District, Karkardooma Courts

11. The Ld. Principal District & Sessions Judges, West District, Tis Hazari Courts, Delhi.

12. The Ld. Principal District & Sessions Judges, Shahdara District, Karkardooma Courts Delhi.

13. Ms. Shruti Sharma, Ld. MM, Karkardooma Court, Delhi.

14. The SHO/I.O P.S Shahdara, Delhi.

Pr. DE's J (H-2) 07/09/23

14/9/23

CRL M.C. 6195/2023

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CRL M.C 6195/2023

Omlata & Ors

..... Petitioner's

Vs

State of NCT of Delhi & Anr

..... Respondents

Petition U/S 482 of CR.P.C 1973 Cr.P.C for quashing of FIR No 280/2021 registered U/S 498A/406/506/34IPC at P.S Shahdara, Delhi.

Sir/Madam

I am directed to forward herewith, for immediate compliance/necessary action, a copy of judgment/order dated 28.08.2023 passed in the above case by Hon'ble Mr. Justice Saurabh Banerjee, of this Court.

Other necessary directions are contained in the enclosed copy of order.

Yours faithfully,

AOJ (Cr-II)

For Registrar General

Encl : Copy of order dated: 28.08.2023
and Memo. of Party

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IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

Criminal Misc. (M) No. _____ of 2011

[For quashing of Charge Sheet dated 04.06.2022 REGISTERED 04.06.2022 filed in F.I.R. No. 280/2021 u/s 498A/406/506/34 IPC registered at P.S. Shahadra]

IN THE MATTER OF:

Omlata & Ors.

.... Petitioners

Versus

State of N.C.T. of Delhi & anr

.... Respondents

MEMO OF PARTIES

1. Omlata,
W/o. Late Sh. Dharampal Singh,
R/o. H. No. 56, Upper Ground Floor,
J & K Block,
Laxmi Nagar,
East Delhi – 110092

2. Rajkumar
S/o. Late Sh. Dharampal Singh,
R/o. H. No. 56, Upper Ground Floor,
J & K Block,
Laxmi Nagar,
East Delhi – 110092

3. Poonam
W/o. Sh. Rajkumar ,
R/o. H. No. 56, Upper Ground Floor,
J & K Block,
Laxmi Nagar,
East Delhi – 110092

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

+ **CRL.M.C. 6195/2023**

OMLATA & ORS.

..... Petitioners .

Through: Appearance not given

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP for State
with SI Anu Pundir, PS-Shahdara.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

28.08.2023

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CRL.M.A. 23208/2023.(for exemption)

1. Exemption allowed, subject to all just exceptions.
2. This application stands disposed of.

CRL.M.C. 6195/2023

3. The petitioners vide the present petition under Sections 482 of the Code of Criminal Procedure, 1973 seek quashing of the chargesheet dated 04.06.2022 in FIR No. 280/2021 dated 04.09.2021 registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 at PS.: Shahdara, Delhi and all proceedings emanating therefrom.
4. Issue notice. Learned APP for the State accepts notice.
5. On the petitioner taking requisite steps within one week, let notice be issued to respondent no.2, returnable on 14.12.2023.
6. List on 14.12.2023.

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CRL.M.A. 23207/2023 (for stay)

7. The petitioners vide the present application under Section 482 of the Code of Criminal Procedure, 1973 seek stay of the proceedings in Cr. Case No. 5585/2022 pending against the petitioners before the learned MM(Shahdara), Karkardooma Courts, New Delhi.

8. Learned counsel for the petitioners submits that the order dated 21.01.2023 passed by the learned MM (Mahila Court)-01, SHD/KKD/Delhi has been passed in a cryptic manner and without application of judicial mind.

9. The FIR No. 280/2021 dated 04.09.2021 registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 at PS.: Shahdara, Delhi was emanating from a marital discord between the respondent no.2 and her husband. The husband of the respondent no.2 filed a divorce petition before the Principle Family Court, Bangalore on 30.11.2022. Thereafter, allegedly, as a counterblast to the filing of the said divorce petition, respondent no.2 filed a complaint before the CWC, Shahdara District, Delhi, on the basis of which, the present FIR came to be registered. At the time of taking cognizance on the basis of the charge sheet, the learned Trial Court passed the following order:-

"Present: Ms. Amandeep Kaur, Ld. APP for the State."

Heard. Record Perused.

There is sufficient material available on record to proceed further against accused persons. Hence, I take cognizance of the alleged offences against accused.

Let summons be issued to accused (kept in column no.11) for 12.04.2023."

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10. Before dwelling into the merits of the issues involved, let me first deal with the procedure to be followed by the Magistrates while issuing summons. The procedure for issuance of summons is laid down in *Chapter XIV: CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS* of the CrPC. As this Court is concerned about the manner/ procedure to be followed by a Magistrate while taking *cognizance*, there is no requirement for moving ahead with the other provisions mentioned in the aforesaid *Chapter XIV* barring what is stated in Section 190 of the CrPC wherein it is provided that while issuing summons the Magistrate is free to take *cognizance* of any offence upon consideration of *three* basic factors, which as enumerated therein, is reproduced hereunder:-

“1.

(a) upon receiving a complaint of facts which constitute such offences;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.”

11. At the time of taking *cognizance* a Magistrate is required to judicially apply the mind and be satisfied on the basis of the facts what are borne out from the statement of the complainant as made in the complaint or what are borne out from the report of the Investigating Officer involved or what are the surrounding facts and circumstances based on the *prima facie* documents and materials in existence or what the contents of the FIR are. The Magistrate is to be aware of the situation/ position as it is at the time of

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taking *cognizance* because what is before him are mere allegations which are nothing but a bundle of facts made by a complainant at the preliminary stage which are yet to be tested.

12. In effect, it is the satisfaction of the magistrate which plays a predominant role while taking *cognizance* coupled with the fact that there are enough materials to convince him for taking such cognizance. The order passed by the Magistrate taking *cognizance* has to be a speaking one justifying the steps taken by him which convinced him of taking *cognizance*. Such order has to be expressive and reflective of the bare minimum reasons. The order taking such cognizance ought to reflect that the Magistrate is indeed aware of and has knowledge of the facts involved. The said order should sound convincing.

13. Any order by which the Magistrate is taking *cognizance* out not to be a routine exercise which is a mere knee-jerk reaction which is automated. If there is such an order taking *cognizance* then the same would be perfunctory and not reflective of the Magistrate having applied its mind. The Magistrate cannot be mechanical in his approach. More so, whence at the end of the day the Magistrate is setting into motion the judicial machinery against the alleged accused person which inevitably involve their personal liberty and freedom. Therefore, the Magistrate must necessarily exercise due care, caution and precaution while taking all the relevant factor(s) into consideration. However, it in no way means that the Magistrate has to give detailed reasons while taking *cognizance* as the Magistrate, while taking *cognizance*, has to only ensure that he does not pass a blanket order without expressing his opinion and judicial mind.

14. This Court finds able support in *Sanjit Bakshi vs State of NCT of*

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Delhi & Ors. (CrI.M.C. 4177/2019) wherein a co-ordinate bench of this Court has recently, while taking note of the position of law laid down by the Hon'ble Court in various pronouncements, held that *cognizance* implies application of judicial mind by the Magistrate to the facts as stated in a complaint or a police report or upon information received from any person that an offence has been committed and further that. He further submits that the learned MM while issuing summons to the petitioners failed to consider the fact that the present complaint against the petitioners has been filed by the respondent no.2 after almost 12 years and therefore, in view of the limitation period prescribed under Section 468 of the CrPC, the learned MM should not have taken the *cognizance* of the same. Even otherwise, he submits, that the said *cognizance* was taken in a cryptic way and without application of judicial mind.

15. On a wholistic reading of the aforesaid, this Court finds that the impugned order passed by the learned Trial Court taking cognizance is a very casual, mechanical and is containing no semblance of reasoning which *prima facie* reflects that it has been done in a perfunctory manner which is far from what was required of the Magistrate.

16. In view thereof, the present application of the petitioners namely *Omlata, Rajkumar, Poonam and Renu Kataria* is allowed and the proceedings in Cr.Case No.5585/2022 pending against the petitioners before the learned MM(Shahdara), Karkardooma Courts, New Delhi are stayed till the outcome of the present petition. Since the husband of the respondent no.2 namely *Vikas Thakur* is not arrayed as a party before this Court in the present petition even though he is named in the FIR as well as the chargesheet, therefore, the present order granting stay of the proceedings

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shall not operate against him.

17. The present application is accordingly disposed of in the above terms.

18. As the present order is of judicial importance, let a copy of the present order, though passed in an application, be sent to all the concerned Principal District & Sessions Judges through the Registrar General of this Court, for information and compliance for betterment of the justice delivery system.

AUGUST 28, 2023/vp

SAURABH K. NERJEE, J



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