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2025:DHC:7592

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:01.09.2025

\+ **CRL.M.C. 80/2025 & CRL.M.A. 499/2025**

MRS. AMRITA JAIN .....Petitioner

versus

STATE OF NCT, DELHI & ANR .....Respondents

\+ **CRL.M.C. 113/2025 & CRL.M.A. 638/2025**

MR. PRADIP KUMAR JAIN .....Petitioner

versus

STATE OF NCT, DELHI & ANR. .....Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Arunav Choudhary, Senior Advocate with Mr. Seraj Ahmad, Mr. Mobin Akhtar, Advocates.

For the Respondents : Mr. Sunil Kumar Gautam, APP for the State with SI Yogesh Poonia, PS Rajinder Nagar.
Mr. Peeyoosh Kalra, and Mr. Yashwant Singh Baghel, Advocates for R2.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

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1. The present petitions are filed challenging the common order dated 19.11.2024 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Central District, Tis Hazari Courts, Delhi, in Cr Rev Nos. 6042023 and 357/2024.

2. By the impugned order, the learned ASJ had dismissed the revision petitions filed by the petitioners and upheld the order dated 10.10.2023, in FIR No. 75/2019 ('**FIR**'), registered at Police Station Rajinder Nagar, whereby the learned Metropolitan Magistrate had taken cognizance of the offences under Sections 498A/406/34 of the Indian Penal Code, 1860 ('**IPC**') against the petitioners and their son, and issued summons to them.

3. The brief facts of the case are as follows:

3.1. On 18.05.2019, FIR was registered against the petitioners and their son for the offences under Sections 498A/406/34 of the IPC on a complaint made by Respondent No.2/ complainant. The petitioner Amrita is the mother-in-law of the complainant and the petitioner Pradip is the father-in-law of the complainant.

3.2. After investigation, on 25.02.2021, chargesheet was filed only against the son of the petitioners and the petitioners were placed in Column 12. It is mentioned in the chargesheet that no evidence or incriminating material was found against the petitioners and it did not appear that they were instigating their son to treat the complainant with cruelty.

3.3. The matter was taken up by the learned Metropolitan Magistrate on 21.06.2021 and notice was issued to the accused.

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3.4. Subsequently, protest petition was filed on behalf of the complainant alleging that the investigation was unfair and, *inter alia*, seeking that cognizance may be taken under Section 190(1)(c) of the Code of Criminal Procedure, 1973 ('**CrPC**').

3.5. In the reply filed by the Investigating Officer to the protest petition, it is mentioned that the complainant had stayed at her maternal home and with her husband for the most part and stayed with the petitioners on only specific occasions. It was further mentioned that the audio recordings provided by the complainant did not reflect that the petitioners were instigating their son to commit cruelty.

3.6. By order dated 10.10.2023, the learned Magistrate found that merely notice was issued by way of order dated 21.06.2021 and no formal order was passed for taking cognizance. It was observed that sufficient material was found to proceed further against the petitioners as specific allegations had been made against them, whereby, summons were issued to the petitioners as well as their son.

3.7. By the impugned order, the learned ASJ upheld the order dated 10.10.2023 and dismissed the revision petitions filed by the petitioners.

3.8. Aggrieved by the same, the petitioners have preferred the present petitions respectively.

4. The learned senior counsel for the petitioners submitted that the impugned order as well as the order dated 10.10.2023 are perverse and the Courts below have failed to appreciate that the said orders amount to recognizance of offence already taken on 2106.2021 whereof

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notice/ summon was issued only to accused mentioned in column no. 11, that is, the son of the petitioners who is the husband of the complainant.

5. He submitted that the learned Predecessor Magistrate had taken cognizance by order dated 21.06.2021 after going through the complete charge sheet and no cognizance was taken against the petitioners as no material evidence was found against them. He submitted that the protest petition was filed belatedly essentially seeking re-cognizance which is impermissible. Reliance was placed on the judgment of the Hon'ble Apex Court in the case of ***Ramakant Singh & Ors. v. State of Jharkhand & Ors.*** **: 2023 INSC 1002.**

6. He submitted that the protest petition can be entertained *before* taking cognizance and issuing notice/ summons and review/ modification of the order dated 21.06.2021 is impermissible in law. He submitted that the Courts below have been weighed by the email dated 07.03.2017, which was not a part of the original FIR or chargesheet, and if the learned Magistrate had to take cognizance on the same by treating the protest petition as a complaint, it was incumbent on the Court to follow the procedure prescribed under Section 200 of the CrPC.

7. He submitted that the complainant never resided with the petitioners, who live in Varanasi, and they are senior citizens who are being dragged in the present case to pressurize them for revenge.

8. The learned counsel for the complainant submitted that the impugned orders suffer from no infirmity and it is settled law that

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where there is sufficient material on record against some person not placed in Column 11 of the chargesheet, there is no bar under Section 190 of the CrPC to issue process against such a person.

9. He submitted that the Magistrate is not a mute spectator to the proceedings and can issue summons to a person who is not named in the police report as an accused without waiting for the stage of Section 358 of the BNSS (earlier Section 319 of the CrPC). He placed reliance on the judgments in the cases of ***Dharam Pal v. State of Haryana* : (2014) 3 SCC 306**, ***Raghubans Dubey v. State of Bihar* : 1967 SCC OnLine SC 3**, ***SWIL Ltd. v. State of Delhi* : (2001) 6 SCC 670** and ***Nahar Singh v. State of U.P.* : (2022) 5 SCC 295**.

ANALYSIS

10. At the outset, it is relevant to note that although the petitioners have already availed the remedy of revision and they cannot file a second revision, however, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. The Hon'ble Apex Court, in the case of ***Krishnan v. Krishnaveni* : (1997) 4 SCC 241**, had observed as under:

> *"**8.** The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice.* ***In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously***

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> ***exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.***"
>
> (emphasis supplied)

11. It is the case of the petitioners that the protest petition was in fact a protest against the order taking cognizance dated 21.06.2021, and the impugned orders therefore amount to recognizance, which is impermissible in law.

12. It is however contested that the prior order was not one by which the learned Magistrate had taken cognizance. This Court finds no merit in the said argument.

13. It is well settled that taking cognizance does not involve any formal action and the Magistrate is not even required to pass a speaking order at the stage of taking cognizance [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*

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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."*

(emphasis supplied)

14. 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****."*

(emphasis supplied)

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15. In the present case, in the opinion of this Court, merely because the predecessor Magistrate did not explicitly use the word "cognizance", the same cannot be deemed to mean that no cognizance was taken at all especially since notice was issued. When a Magistrate takes cognizance of an offence upon a police report, he does so of the offence, and the order of Court issuing notice signifies that the Court had perused the report and taken note of the same. While in a complaint case it is necessary to put a party to notice before taking cognizance, the present case stems from a police report and there was no cause for the Court to issue notice to the accused *prior* to cognizance.

16. Having found that the order dated 21.06.2021 was an order of cognizance, all that remains to be seen is whether the learned Magistrate could have subsequently taken cognizance against the petitioners after already taking cognizance of the offence.

17. It is argued that the case of the petitioners is squarely covered by the judgment in the case of ***Ramakant Singh & Ors. v. State of Jharkhand & Ors.*** (*supra*), where it was held that after taking cognizance of the chargesheet, it is not open to the Magistrate to entertain a protest petition against the order taking cognizance. The relevant portion of the said judgment is reproduced hereunder:

> *"…In the final report submitted by the CID, it was recorded that no material was found against the appellants.*
>
> *On 9th April, 2009, the learned Chief Judicial Magistrate took cognizance on the basis of the charge-sheet filed by the CID on 31st March, 2009 against accused-Gupteshwar Singh for the*

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offences punishable under Section 302 read with Section 34 of the IPC and Section 27 of the Arms Act.

… Thereafter, a further order was passed by the learned Chief Judicial Magistrate on 3rd November, 2009 taking cognizance against the present appellants. This is the order which was subjected to a challenge before the High Court.

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We have perused the order dated 9th April, 2009. The order was passed on the charge-sheet dated 31st March, 2009 filed by the CID. The order takes cognizance only as against Gupteshwar Singh. Surprisingly, a protest petition against the said order was entertained by the learned Chief Judicial Magistrate and he proceeded to pass the impugned order on 3rd November, 2009 taking cognizance against the present appellants. ***Such a course was not permissible as it was not open for the learned Chief Judicial Magistrate to entertain a protest petition against his earlier order of taking cognizance. The order dated 3rd November, 2009, amounts to modification of the earlier order dated 9th April, 2009, which was not permissible as there is no power conferred on the learned Judicial Magistrate to modify earlier order of taking cognizance.***

These legal aspects have been clearly overlooked by the High Court. By referring to the decision of this Court in the case of Nupur Talwar (supra), the High Court observed that it is well settled that once protest petition is filed, depending upon the facts of the case, the Court can proceed on the basis of that protest petition and follow the procedure prescribed under Sections 200 and 202 of the CrPC. ***In this case, the Court was dealing with a completely different case where protest petition was filed against an order taking cognizance."***

(emphasis supplied)

18. It is settled law that cognizance can only be taken once and the aforesaid judgment makes it clear that it is not open to the learned Magistrate to take re-cognizance upon filing of protest petition as the same would amount to review of the prior order.

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19. In the present case, the protest petition was filed almost an year after filing of the chargesheet and more than eight months after cognizance was taken. The order dated 10.10.2023 whereby summons were issued to the petitioners was passed more than two years after notice was issued to their son after filing of the chargesheet. As the learned Magistrate cannot review its own order, it could not have acted upon the protest petition in such circumstances, except by treating the petition as a complaint which has not been done in the present case.

20. Undoubtedly, Section 358 of the BNSS empowers the Court to proceed against persons not named as accused in the chargesheet even after taking cognizance, however, the same cannot be done in the manner as employed by the learned Magistrate herein after cognizance had already been taken on application of mind to the chargesheet. It is important to note that Section 358 of the BNSS which empowers the Court to issue summons to any person who is not an accused, but appears to be guilty of an offence from the evidence, only comes into play in the course of any inquiry into or trial of an offence.

21. In the present case, no inquiry was being held and the trial had not yet started, whereby, the stage for the same has not arisen yet. After taking cognizance, in a case such as this one where no further investigation was directed and no supplementary chargesheet came to be filed on any new material coming forth, the Court will have to wait till the stage of Section 358 of BNSS for summoning a person as an accused who has not been charge sheeted. Even then, the said

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discretion can only be exercised if any relevant material surfaces during course of trial.

22. The counsel for the complainant has relied upon a number of judgments to contest that the Court is not required to wait for the stage of Section 358 of the BNSS to summon a person not charge sheeted as an accused. The said proposition as canvassed in the cases of ***Dharam Pal v. State of Haryana*** (*supra*), ***Raghubans Dubey v. State of Bihar*** (*supra*), ***SWIL Ltd. v. State of Delhi*** (*supra*) and ***Nahar Singh v. State of U.P.*** (*supra*) is of no benefit to the case of the complainant.

23. In ***Dharam Pal v. State of Haryana*** (*supra*), the Hon'ble Apex Court had observed that if the Magistrate disagrees with a police report, he has the option of acting on the basis of any protest petition that may be filed, or while disagreeing with the police report, to summon the accused. In the present case, the predecessor Magistrate by issuing notice to the son of the petitioners, and implicitly taking cognizance of the offence, had proceeded on the basis of the police report. Merely because there is a change in the Judicial Officer who is presiding over the case, the police report cannot be revisited for proceeding against the petitioners belatedly after having taken cognizance.

24. In the case of ***Raghubans Dubey v. State of Bihar*** (*supra*), the Hon'ble Apex Court was dealing with the issue of summoning of a person, who had been named in the FIR and discharged as he was not charge sheeted, at the stage of prosecution evidence. It was thus observed that the cognizance is taken of an offence and it is the duty

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of the Court to find out who the offenders are and to proceed against such persons. The said case is clearly distinguishable on facts.

25. In ***SWIL Ltd. v. State of Delhi*** (*supra*), the Hon'ble Apex Court had observed that there is no bar on issuing process to some other person, against whom there is material on record, after process is issued against some accused. It is pertinent to note that in the said case, the Magistrate had issued summons against all accused shown in FIR and then also issued summons to the person placed in column 12 on the very next date of hearing. The reliance on the said case is misplaced. In the current case, the summons have been issued to the petitioners more than two years after cognizance was taken by the learned predecessor Magistrate by proceeding on a flawed assumption that no cognizance was taken earlier at all. The very basis of order dated 10.10.2023 renders it unsustainable in law.

26. The aforesaid judgments were relied upon in the case of ***Nahar Singh v. State of U.P.*** (*supra*) wherein the Hon'ble Apex Court was dealing with a challenge of summons to a person who is not named in the FIR. As noted above, the dispute in the present case is not in relation to summoning of persons who were not charge-sheeted.

27. There is no dispute that the Court is capable of summoning a person who is not named as an accused, however, the present case is one where the summons were issued to the petitioners on the filing of the protest petition by the complainant by proceeding under the erroneous assumption that cognizance had not already been taken.

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28. It is also relevant to note that insofar as the merits of the case are concerned, the Courts below have been weighed by the email dated 07.03.2017, which was not a part of the original FIR or chargesheet. If the learned Magistrate was to consider the protest petition as a complaint, the process under Section 200 of the CrPC should have been followed. The Courts have also been weighed heavily by email dated 07.08.2014 as well, even though, the same was present on record when the predecessor Magistrate took cognizance of the offence and issued notice to the son of the petitioners.

29. Even if the earlier order on cognizance was wrong, the complainant ought to have challenged the same and any infirmity could not be cured in a protest petition filed for taking re-cognizance.

30. In view of the aforesaid discussion, as the order dated 10.10.2023 amounts to taking re-cognizance, the impugned order as well as the order dated 10.10.2023 are set aside.

31. Needless to say, the complainant is at liberty to avail any appropriate remedies against the order on cognizance in accordance with law.

32. The present petitions are allowed in the aforesaid terms. Pending applications stand disposed of.

33. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

SEPTEMBER 01,2025