A BHUSHAN KUMAR & ANR.

v.

STATE (NCT OF DELHI) & ANR.

(Criminal Appeal No. 612 of 2012)

APRIL 4, 2012

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[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

Code of Criminal Procedure, 1973:

C *ss.190, 204 - Cognizance of offence and summoning order - Distinction between - Held: Cognizance is taken of cases and not of persons - It is the condition precedent to the initiation of proceedings by the Magistrate or the Judge - A summon is a process issued by a Court calling upon a* D *person to appear before a Magistrate - It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law - s.204 states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for* E *proceeding, then the summons may be issued.*

s.204 - Requirement of assigning reasons for summoning a person - Held: Summoning order u/s.204 does not mandate the Magistrate to state reasons for issuance of summons since it is imperative that the Magistrate must have F *taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.*

Respondent No. 2 lodged FIR under Section 420 IPC G **against the appellants. The Magistrate summoned the appellants. The appellants challenged the summoning order before the High Court. By impugned order dated 30.07.2010, the High Court rejected the prayer for quashing the summoning order.**

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The questions which arise for consideration in these appeals were: whether taking cognizance of an offence by the Magistrate is same as summoning an accused to appear; and whether the Magistrate, while considering the question of summoning an accused, is required to assign reasons for the same.

Dismissing the appeals, the Court

HELD: 1. Under Section 190 of the Code of Criminal Procedure, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code. A summon is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in Court. A person who is summoned is legally bound to appear before the Court on the given date and time. Willful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court. 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

A **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. The**
B **order passed by the Magistrate could not be faulted with only on the ground that the summoning order was not a reasoned order. [Paras 8-10, 16] [703-E-H; 704-A-C;706-F]**

C *S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. & Ors.* **(2008) 2 SCC 492: 2008 (2) SCR 36;** *Kanti Bhadra Shah & Anr. v. State of West Bengal* **(2000) 1 SCC 722: 2000 (1) SCR 27;** *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors.* **(1976) 3 SCC 736: 1976 (0) Suppl. SCR 123;** *Dy. Chief Controller of Imports & Exports*
D *v. Roshanlal Agarwal & Ors.* **(2003) 4 SCC 139: 2003 (2) SCR 621 - relied on.**

2. It is inherent in Section 251 of the Code that when an accused appears before the trial court pursuant to
E **summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any**
F **offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code. The petition filed**
G **before the High Court under Section 482 of the Code was maintainable. However, on merits, the impugned order dated 30.07.2010 passed by the High Court of Delhi is confirmed. [Paras 17-19] [706-G-H; 707-A-D]**

U.P. Pollution Control Board v. Dr. Bhupendra Kumar
H *Modi & Anr.,* **(2009) 2 SCC 147: 2008 (17) SCR 349;** *Pepsi*

Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. **(1998) 5 SCC 749: 1997 (5) Suppl. SCR 12;** *Dhariwal Tobacco Products Ltd. & Ors. v. State of Maharashtra & Anr.* **(2009) 2 SCC 370: 2008 (17) SCR 844;** *M.A.A. Annamalai v. State of Karnataka & Anr.* **(2010) 8 SCC 524: 2010 (9) SCR 1124 - relied on.**

Case Law Reference:

2008 (2) SCR 36	**relied on**	**Para 7**
2000 (1) SCR 27	**relied on**	**Para 12**
1976 (0) Suppl. SCR 123	**relied on**	**Para 13**
2003 (2) SCR 621	**relied on**	**Para 14**
2008 (17) SCR 349	**relied on**	**Para 15**
1997 (5) Suppl. SCR 12	**relied on**	**Para 18**
2008 (17) SCR 844	**relied on**	**Para 18**
2010 (9) SCR 1124	**relied on**	**Para 18**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 612 of 2012.

From the Judgment & Order dated 30.07.2010 of the High Court of Delhi at New Delhi in Crl. M.C. No. 3376 of 2009.

WITH

Crl. A. No. 613 of 2012.

Ranjit Kumar, Mohit Mathur, S. Prasad, Atul Kumar, Subramonium Prasad for the Appellants.

Vljay Aggarwal, Dibyadyoti Banerjee, R.P. Wadhwani, Sadhna Snadhu, B.V. Balram Das, Asha G. Nair, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

A **P. SATHASIVAM, J.** 1. Leave granted.

2. These appeals are directed against the final judgment and order dated 30.07.2010 passed by the High Court of Delhi at New Delhi in Crl.M.C. Nos. 3376 & 3375 of 2009 whereby the High Court rejected the prayer of the appellants herein for B quashing the summoning order dated 16.01.2009 passed by the Metropolitan Magistrate in FIR No. 290 of 2002 registered at Police Station, Okhla Industrial Area, New Delhi under Section 420 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC"). C

3. Brief facts:

(a) The present cases pertain to a property dispute regarding distribution of the assets left behind by late Shri D Gulshan Kumar (of T-Series fame). On 19.02.1998, a handwritten note was executed between the appellants and Respondent No. 2 wherein distribution of certain assets and shares in different companies was provided for. Subsequently, on 21.02.1998, a fresh agreement was entered into between E the appellants and the Respondent No. 2 which superseded the handwritten note.

(b) However, disputes arose soon after the above said second agreement dated 21.02.1998, giving rise to multifarious litigations at the behest of Respondent No. 2 which are presently F pending adjudication before the High Court.

(c) However, after 4 years, due to non-materialization of the agreement dated 21.02.1998, the Respondent No. 2 got registered the present FIR under Section 420 IPC against all G the other signatories to the said agreement wherein only one of the signatory was a party to it. For quashing the said FIR, the appellants herein filed Crl.M.C. No. 59 of 2005 before the High Court.

(d) On being informed by the State that chargesheet has H been filed before the Magistrate, the High Court disposed of

the Crl.M.C. No. 59 of 2005 vide order dated 30.03.2009 giving liberty to the appellants to take appropriate steps in case they are summoned.

(e) By order dated 16.01.2009, the Magistrate summoned the appellants herein. Challenging the said summoning order, the appellants herein filed Criminal M.C. Nos. 3376 and 3375 of 2009 before the High Court.

(f) By the impugned order dated 30.07.2010, the High Court rejected the prayer of the appellants for quashing the summoning order passed by the Magistrate. Aggrieved by the said order, the appellants have filed these appeals by way of special leave before this Court.

4. Heard Mr. Ranjit Kumar, learned senior counsel for the appellants and Mr. Vijay Aggarwal, learned counsel for respondent No.2.

5. The questions which arise for consideration in these appeals are:

(a) Whether taking cognizance of an offence by the Magistrate is same as summoning an accused to appear?

(b) Whether the Magistrate, while considering the question of summoning an accused, is required to assign reasons for the same?

6. In this context, it is relevant to extract Sections 190 and 204 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") which read as under:

"190. Cognizance of offences by Magistrates. (1) 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 (a) upon receiving a complaint of facts which constitute such offence ;

(b) upon a police report of such facts;

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

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under
C sub-section (1) of such offences as are within his competence to inquire into or try."

"204. Issue of process. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to
D be-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

E (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

F (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in
G writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall
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be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint. A

(5) Nothing in this section shall be deemed to affect the provisions of section 87." B

7. In *S.K. Sinha, Chief Enforcement Officer vs. Videocon International Ltd. & Ors.*, (2008) 2 SCC 492, the expression "cognizance" was explained by this Court as 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 C 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. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by D the Magistrate or the Judge. Cognizance is taken of cases and not of persons.

8. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes E cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is F empowered for issuance of process under Section 204 of the Code.

9. A summon is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the G purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person H

A must appear in Court. A person who is summoned is legally bound to appear before the Court on the given date and time. Willful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

B 10. 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 C 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.

D 11. Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report E and the materials filed therewith.

12. In *Kanti Bhadra Shah & Anr. vs. State of West Bengal* (2000) 1 SCC 722, the following passage will be apposite in this context:

F "12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the G court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would H further be slowed down. We are coming across

interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. *But it is quite unnecessary to write detailed orders at other stages, such as issuing process,* remanding the accused to custody, framing of charges, passing over to next stages in the trial....." (emphasis supplied)

13. In *Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors.* (1976) 3 SCC 736, this Court held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that once the Magistrate has exercised his discretion, it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.

14. In *Dy. Chief Controller of Imports & Exports vs. Roshanlal Agarwal & Ors.* (2003) 4 SCC 139, this Court, in para 9, held as under:

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This

A question was considered recently in *U.P. Pollution Control Board v. Mohan Meakins Ltd.*(2000) 3 SCC 745 and after noticing the law laid down in *Kanti Bhadra Shah v. State of W.B.* (2000) 1 SCC 722, it was held as follows: (SCC p. 749, para 6)

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"The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

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15. In *U.P. Pollution Control Board vs. Dr. Bhupendra Kumar Modi & Anr.*, (2009) 2 SCC 147, this Court, in paragraph 23, held as under:

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"23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused."

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16. This being the settled legal position, the order passed by the Magistrate could not be faulted with only on the ground that the summoning order was not a reasoned order.

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17. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty

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otherwise, he is bound to discharge the accused as per Section 239 of the Code. A

18.The conclusion of the High Court that the petition filed under Section 482 of the Code is not maintainable cannot be accepted in view of various decisions of this Court. (vide *Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors.* (1998) 5 SCC 749, *Dhariwal Tobacco Products Ltd. & Ors. vs. State of Maharashtra & Anr.* (2009) 2 SCC 370 and *M.A.A. Annamalai vs. State of Karnataka & Anr.* (2010) 8 SCC 524). B

19. In the light of the above discussion, we conclude that the petition filed before the High Court under Section 482 of the Code was maintainable. However, on merits, the impugned order dated 30.07.2010 passed by the High Court of Delhi is confirmed, consequently, the appeals fail and the same are dismissed. In view of the dismissal of the appeals, MM/South East 02, Patiala House, New Delhi is free to proceed further in accordance with law, uninfluenced by any observation made in these appeals. C D

D.G. Appeals dismissed.