Cognizance of Offences

(With Special Reference to P.C. Act,1988 as Amended in 2018)

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S.S. Upadhyay
Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to three Hon'ble Governors of Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in

1. **Cognizance: Meaning of ?:** Taking cognizance of an offence is not the same thing as issuance of process. 'Cognizance' means when the Magistrate or the court applies his/its judicial mind to the facts mentioned in a complaint or a police report or upon information received from any person that an offence has been committed. See: **State of Karnataka Vs. Pastor P. Raju, (2006) 6 SCC 728.**

2. **Cognizance': Meaning of ?** : Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence. Once the Magistrate applies his mind to the offence alleged and decides to initiate proceeding against the alleged offender, it can be stated that he has taken cognizance of the offence and cognizance is in regard to the offence and not the offender. Cognizance would take place at a point when a Magistrate first takes judicial notice of the offence either on a complaint or on a police report or upon information of a person other than the police officer taking judicial notice is nothing but perusing the report of the police officer, proceeding further on that report by opening the file and thereafter taking further steps to ensure the presence of the accused and all other consequential steps including at a later stage and depending upon the nature of offence alleged to pass a necessary order of committal to a court of session. See : **Prasad Shrikant Purohit Vs. State of Maharashtra, (2015) 7 SCC 440.**

3. **Meaning of " Cognizance":**The word "cognizance" is not defined in the Code of Criminal Procedure. 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 cannot ' 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.See: **S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd., (2008) 2 SCC 492(Para 19)**

3.1 Cognizance of offences by Special Judge under P.C.Act,1988 as amended in 2018: Section 5 of the Prevention of Corruption Act , 1988 empowers the Special Judge to take cognizance of the offences under the said Act directly without the case being committed to him by the Magistrate. In trying the offences under the said Act, the Special Judge shall follow the procedure prescribed by the CrPC for trial of the warrant cases by Magistrate.

4. **Recording of reasons by courts in support of conclusion arrived at in their judgments and orders mandatory :** Recording of reasons in support of the conclusions arrived at in a judgment or order by the Courts in our judicial system has been recognized since the very inception of the system. Right to know the reasons for the decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of the words or the language of a provision in an order or judgment without any mention of the relevant facts and the evidence available thereon has always been treated by the superior courts as an order incapable of withstanding the test of an order passed judicially. Ours is a judicial system inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play as has been declared by the Apex Court in the matter of Andhra Bank v. Official Liquidator, 2005 (3) SCJ 762. For a qualitative decision arrived at judicially by the courts, it is immaterial in how many pages a judgment or order has been written by the Judge as has been declared by the

Apex Court in the matter of **Union of India v. Essel Mining & Industries Ltd., (2005) 6 SCC 675.**

5. **Meaning of " speaking and reasoned order" passed by application of mind ?:** An order can be said to be speaking, reasoned and passed after application of mind when it discloses:
   (i). facts constituting the offence alleged in the complaint or FIR/ case of the prosecution
   (ii). discussion of evidence led in support of such offence,
   (iii) discussion of the ingredients constituting particular offences
   (iv) conclusion arrived at by the court

6. **Long judgments not necessarily great :** Brevity in judgment writing has not lost its virtue. All long judgments or orders are not great nor are brief orders always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves. See : **Board of Trustees of Martyrs Memorial Trust and Another Vs. Union of India and Others, (2012) 10 SCC 734 (Para 22)**

7. **Passing lengthy orders should be avoided:** The time has reached to adopt all possible measures to expedite the 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 further be slowed down. It can be appreciated 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. 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. See: **Kanti Bhadra Shah Vs. State of West Bengal, 2000 CrLJ 746 (SC)**

8. **Number of pages covered in a judgment not material: :** Writing unnecessarily lengthy judgments than required should be avoided. It is not the number of pages in a judgment but sufficiency of reasons in support of the

conclusions arrived at by the judge that is relevant. Judgments or orders must be reasoned and speaking to justify the conclusion. See : **Union of India vs. Essel Mining & Industries Ltd., 2005 (6) SCC 675**

9. **Laboured judgment:** Writing unnecessarily lengthy judgments than required should be avoided. It is not the number of pages in a judgment but sufficiency of reasons in support of the conclusions arrived at by the judge that is relevant. Judgments or orders must be reasoned and speaking to justify the conclusion. See : **Union of India vs. Essel Mining & Industries Ltd., 2005 (6) SCC 675**

10. **Brief judgment when valid?:** Where a finding is arrived at cursorily, the judgment based on such a finding is not vitiated if the finding is supported by evidence. See: **Satya Pal Vs. Ved Prakash, AIR 1980 All 268.**

    2.5.Brief judgment when invalid?: A judgment may be brief, but not so brief as not to disclose the points for determination or to discuss the evidence led thereon . See: **Kuldip Oil Industries Vs. Pratap Singh, AIR 1959 All 505.**

11. **Summoning order passed by Magistrate must be reasoned :** Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. See:**Pepsi Foods Ltd. vs. Special Judicial Magistrate, 1998 SCC (Criminal) 1400.**

12. **Passing detailed order by giving detailed reasons not necessary for taking cognizance:** It is not necessary to pass a detail order giving detailed reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind. If the Magistrate after going through the complaint

petition and the statements of the witnesses or after going through the FIR, case diary and charge sheet or the complaint, as the case may be, comes to a conclusion that the offence is made out, he is bound to take cognizance of the offence. The order should reflect application of judicial mind to the extent that from the FIR, the case diary or complaint, offence is made out. See: **S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd., (2008) 2 SCC 492**

13. **Court not required to give detailed reasons for passing an order summoning the accused:** Where the court took cognizance of the offences u/s 120-B, 420, 467, 468, 471 IPC and u/s 13(2)(d) of the Prevention of Corruption Act, 1988 on the basis of the charge-sheet submitted by the investigating officer, it has been held that the court is not required to give detailed reasons for passing an order summoning the accused. See:
    (i) **Deputy Chief Controller Vs. Roshanlal, 2003 (36) ACC 686 (SC)**
    (ii) **Diwakar Singh Vs. CBI, Lucknow, 2008 (61) ACC 755 (Allahabad)**

14. **Magistrate not bound by the report of the police:**Magistrate is not bound by the report or opinion of the police. Inspite of contrary report from the police, the Magistrate can, on the basis of material contained in the case diary as compiled by the investigating officer during investigation, take cognizance of the offence. See:
    (i).**ChittaranjanMirdha Vs. Dulal Ghosh, 2010 (70) ACC 365 (SC)**
    (ii).Arshad Vs. State of UP, 2008 (61) ACC 863 (Allahabad)
    (iii).MinuKumari Vs. State of Bihar, AIR 2006 SC 1937
    (v).HemandDhasmana Vs. CBI, AIR 2001 SC 2721
    (iv).M/S India Carat Pvt. Ltd. Vs. State of Karnataka, AIR 1989 SC 885
    (vi).H.S. Bains Vs. State, AIR 1980 SC 1883
    (vii).AbhinandanJha Vs. Dinesh Mishra, AIR 1968 SC 11
    (viii).India Carat Pvt. Ltd. Vs. State of Karnataka, AIR 1989 SC 885.

15. **Mere mention by Magistrate in the order that he went through the FIR, documents and statements of witnesses in the case diary not sufficient**: Reason or an opinion to proceed further against the accused is to be stated in the order itself. Hon'ble Supreme Court while dealing with the scope of Section 156(3) CrPC has held that the application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. The order is liable to be set aside if no reason is

given therein while coming to the conclusion that there is prima facie case against the accused, though detailed reasons need not to be given. The proper satisfaction should be recorded by the Judge. See:

(i**) Anil Kumar Vs. M.K. Aiyappa, (2013) 10 SCC 705**(Para 11)

(ii). Sunil Bharti Mittal Vs. CBI, (2015) 4 SCC 609

(iii). Amresh Kumar Dhiraj Vs. State of Jharkhand , 2019 SCC OnLine Jhar 2775, (Paras 10, 14 &22).

(iv). Judgment dated 08.03.2021 of Jharkhand High Court passed in Cr. M. P. No. 2275 of 2020,Mithilesh Prasad Singh Vs. The State of Jharkhand through A.C.B.

16. **Only prima facie case has to be seen at the stage of cognizance:** Before taking cognizance, the court has to be satisfied that there is a prima facie evidence which means the evidence that is sufficient to establish a fact or to raise a presumption of truth of facts unless controverted. At the stage of taking cognizance only prima facie case is to be seen. Cognizance is taken of the offence and not of the accused. See: Kishun Singh Vs. State of Bihar, (1993) 2 SCC 16

17. **" Prima facie case" and its meaning?**: The Latin expression " prima facie" means: 'at first sight', 'at first view' or 'based on first impression'. See:

State of MP VS. Balveer Singh, (2025) 8 SCC 545 (Para 91)

18. **Filling in blanks and passing mechanical and cryptic summoning order deprecated:** 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 come to the conclusion that there is sufficient material to proceed with the matter, he may take cognizance. 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 readymade 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. See:Order dated 06.9.2010 passed by Allahabad High Court in Criminal Misc. Application No.7279/2006, Abdul Rasheed Vs. State of UP & Circulated amongst the judicial officers of the state of UP vide High Court's Letter. No 19096/2010 dated 30.11.2010

19. **Summoning of accused for additional offence not mentioned in charge-sheet:** In the cases noted below where a charge-sheet was submitted by the

investigating officer for some offences mentioned in the FIR but had not included in the charge-sheet the offence u/s 395 IPC and upon the application of the complainant Magistrate found that the offence of Section 395 IPC was also made out and committed the case to the Sessions, the Supreme Court upheld the order of the Magistrate. See:

(i) Rajendra Prasad Vs. Bashir, (2002) SCC Criminal 21

(ii) Rakesh Prasad Singh Vs. State of UP, 2010 (71) ACC 438 (Allahabad).

18.2 When can a summons triable complaint case be dismissed by Magistrate u/s 256 CrPC (now u/s 279 of BNSS) on non-appearance of complainant ?: If in a sommons triable case, date is fixed by the Magistrate for bringing an order from a superior court or for showing cause why an order of dismissal should not be passed for continuous absence of the complainant or for producing any material, which is not intrinsically connected with any steps towards progress of the lis, and the complainant is found to be absent, a dismissal of the complaint can be ordered but provision for acquitting the accused may not be attracted unless it happens to be the date appointed foe appearance of the accused and they do appear personally or through an advocate, also, without the Magistrate recording a acquittal along with the order of dismissal of the complaint, acquittal need not be read into every such order of dismissal of a complaint u/s 279 of BNSS owing to absence of the complainant. See: Ranjit Sarkar Vs. Ravi Ganesh Bharadwaj, (2025) 7 SCC 234 (Para 23)

18.3 Cognizance offence and commitment of case to Sessions by Magistrate on receiving final report from police u/s 173(2) CrPC: In the case noted below, a police report was submitted by the police, under Section 173(2) of the Code sending up one accused for trial, while including the names of the other accused in column 2 of the report. Magistrate did not straight away proceed to commit the

case to the Court of Session but, on an objection taken on behalf of the complainant, treated as a protest petition, issued summons to those accused who had been named in column 2 of the charge-sheet, without holding any further inquiry, as contemplated under Sections 190, 200 or even 202 of the Code, but proceeded to issue summons on the basis of the police report only. The learned Magistrate did not accept the Final Report filed by the Investigating Officer against the accused, whose names were included in column 2, as he was convinced that a prima facie case to go to trial had been made out against them as well, and issued summons to them to stand trial with the other accused, Nafe Singh. Magistrate has a role to play while committing the case to the court of sessions upon taking cognizance on the police report submitted before him u/s 173(2) CrPC. In the event the Magistrate disagrees with the police report he has two choices. He may act on the basis of a Protest Petition that may be filed or he may while disagreeing with the police report issue process and summon the accused but he would have to proceed on the basis of the police report itself and either enquire into the matter or commit it to the court of session if the same was found to be triable by the sessions court if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decides to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Session Court. See: Dharam Pal Vs. State of Haryana, AIR 2013 SC 3018 (Five-Judge Bench) (Paras 21, 24, 25)

18.4 If cognizance is to be taken of the offence on receiving police report u/s 173 (2) CrPC, it can be taken either by the Magistrate or by the Court of Sessions u/s 193 CrPC: Sessions Judge is entitled to issue summons under Section 193 CrPC upon the case being committed to him by the Magistrate. Section 193 of the Code speaks of cognizance of offences by Court of Sessions and provides as follows :- Section 193: Cognizance of offences by Courts of Session: Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code. Question arises as to whether under Section 209, the Magistrate is required to take cognizance of the offence before committing the case to the Court of Session? It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge. Sessions Courts has jurisdiction on committal of a

case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein. Session Judge, acting as a Court of original jurisdiction, could issue summons under Section 193 CrPC on the basis of the records transmitted to him as a result of the committal order passed by the Magistrate. See: Dharam Pal Vs. State of Haryana, AIR 2013 SC 3018 (Five-Judge Bench) (Paras 26-29)

18.5 **Magistrate has ample power to disagree with the police report received u/s 173(2) CrPC and take cognizance of offences against non-charge sheeted accused as well:** Magistrate has ample powers to disagree with the Final Report that may be filed by the police authorities under Section 173(2) CrPC and to proceed against the accused persons dehors the police report, which power the Session Court does not have till the Section 319 stage is reached. See: Dharam Pal Vs. State of Haryana, AIR 2013 SC 3018 (Five-Judge Bench) (Para 23)

19 **Duty of Magistrate when cognizance on police report received under 173(2) CrPC already taken but on further investigation u/s 173(8) CrPC police submits final report** : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.

Note *: The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii)*

supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time cognizance of the offences on receipt of supplementary police report u/s 173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences.

20 **Defence evidence or defence argument not to be considered by Magistrate at the time of cognizance and summoning:** At the stage of summoning the accused, Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. See: **Sonu Gupta Vs. Deepak Gupta & Others, (2015) 3 SCC (424) (Para 8).**

21 **Hearing accused before ordering further investigation u/s 173(8) CrPC not necessary:** There is no inhibition for court to direct further investigation u/s 173(8) CrPC. Hearing of accused or co-accused before ordering further investigation u/s 173(8) CrPC is not necessary. **See: Satishkumar Nyalchand Shah Vs. State of Gujarat, (2020) 4 SCC 22**

22 **Primary police report u/s 173(2) and supplementary police report u/s 173(8) to be read conjointly** : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

23 **Two case diaries submitted by two different investigating agencies after two investigations to be read conjointly** : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his

mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

Note : *The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii) supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time cognizance of the offences on receipt of supplementary police report u/s 173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences***.**

24 **Second time cognizance of offences under added Sections in supplementary charge-sheet submitted u/s 173(8) CrPC :** Where supplementary charge-sheet was filed u/s 173(8) CrPC for offences other than those in the main charge-sheet, it has been held by the Hon'ble Allahabad High Court that the same does not require re-cognizance of matter as cognizance had already been taken and if re-cognizance is taken regarding added sections, then at the most, it may be called irregularity but it is not such irregularity which may vitiate trial and is very well covered by the provisions of Section 460(c) of the CrPC. See : **Nawal Kishore Vs. the State of UP & Another, 2015 CrLJ (NOC) 95 (Allahabad)**.

25 **Person not charge sheeted can be summoned at the stage of taking cognizance:** A person not charge sheeted can be summoned as accused at the stage of taking cognizance of the offences u/s 190 (1)(b) CrPC. The question of applicability of Section 319 CrPC does not arise at this stage. See: Swil Limited Vs. State of Delhi, AIR 2001 SC 2747.

26 **Magistrate can take cognizance of offences against a person not charge sheeted by police:** Once cognizance has been taken by the Magistrate, he takes cognizance of the offence and not of the offenders. Once he takes such cognizance, it becomes his duty to find out who the offenders really are. If he comes to the conclusion that apart from the persons sent up by the police some other persons are also involved, it is his duty to proceed against those persons. Therefore, when a Magistrate takes cognizance of offences u/s 190(1)(b) CrPC upon police report, he is not restricted to issue process only to the persons challaned by the police. See: Hareram Vs. Cikaram, AIR 1978 SC 1568.

27 **person though named in FIR but not charge sheeted cannot be summoned by Magistrate at the stage of taking cognizance of the offence:** Magistrate cannot issue process against those persons who may have been named in the FIR as accused persons but not charge sheeted in the charge sheet submitted by the police u/s 173 CrPC. Such persons can be arrayed as accused persons in the exercise of powers u/s 319 CrPC on the basis of material or evidence brought on record in the course of trial. See: Kishori Singh Vs. State of Bihar, 2001 Criminal Law Journal 123 (SC).

28 Magistrate can summon some other person as accused not named in FIR or charge-sheeted u/s 173(2) CrPC : Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under S. 190. Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer. See : **Sunil Bharti Mittal Vs. CBI, AIR 2015 SC 923 (Three-Judge Bench)**

29 Cognizance by Magistrate u/s 190 CrPC in a sessions tribal case can be taken only once : Cognizance by Magistrate u/s 190 CrPC in a sessions tribal case can be taken only once. After commitment of the case u/s 209 CrPC to the sessions, the sessions court can take cognizance of further offences in exercise of its powers u/s 193 CrPC. See : **Balveer Singh Vs. State of Rajasthan, (2016) 6 SCC 680.**

30 **Prosecution of a person on complaint case, a serious matter**: In the case not below,the Director of a company who had not issued the cheque and had resigned from the company much before the date of issue of the cheque but even then he was prosecuted by the complainant for offences u/s 138 read with 141 of the Negotiable Instruments Act, 1881 by filing a complaint before the magistrate, quashing the criminal proceedings initiated against the Director/ accused, the Hon'ble Supreme Court has held that criminal prosecution is a serious matter. It affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. See: **Harshendra Kumar D. Vs. Rebatilata Koley, 2011 CrLJ 1626 (SC).**

31 **Duty of Magistrate in passing summoning order in complaint cases :** In the case noted below, the duty of Magistrate while passing summoning order in a complaint case has been clarified by the Hon'ble Supreme Court thus : "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."See: **Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749**

32 **Duty of Magistrate while issuing summons to accused u/s 204 CrPC :** While issuing summons to accused u/s 204 CrPC, Magistrate has only to see whether allegations made in complaint or prima facie sufficient to proceed against the accused. Magistrate need not enquire into merits or demerits of case. See : **Fiona Shrikhande Vs. State of Maharashtra, AIR 2014 SC 957.**

33 **Applying mind to the accusations in the FIR and material in the case diary mandatory before taking cognizance:** it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender. Bearing in mind the above legal position, we are convinced that the High

Court was not justified in dismissing the petition on the aforestated ground. In our opinion, in order to arrive at a conclusion, whether or not the appellant had made out a case for quashing of the charge-sheet against him, the High Court ought to have taken into consideration the material which was placed before the Magistrate. For dismissal of the petition, the High Court had to record a finding that the uncontroverted allegations, as made, establish a prima facie case against the appellant. In our judgment, the decision of the High Court dismissing the petition filed by the appellant on the ground that it is not permissible for it to look into the materials placed before the Magistrate is not in consonance with the broad parameters, enumerated in a series of decisions of this Court and as briefly noted above to be applied while dealing with a petition under Section 482 of the CrPC for discharge and, therefore, the impugned order is unsustainable. See:

(i) **Fakhruddin Ahmad Vs. State of Uttaranchal , (2008) 17 SCC 157 (Paras 17 & 21).**

(ii)Judgment dated 08.03.2021 of the Jharkhand High Court passed in Cr. M.P. No.2755 of 2020, Mithilesh Prasad Singh Vs. The State of Jharkhand through A.C.B., High Court of Jharkhand at Ranchi.

34 **Summoning order passed by Magistrate in complaint case must reflect application of mind :** Summoning order passed by Magistrate in complaint case must reflect application of mind. **See: M/S GHCL Employees Stock Option Trust Vs. M/S India Infoline Ltd., AIR 2013 SC 1433.**

35 **Recording of reasons by Magistrate in summoning order u/s 204 CrPC mandatory otherwise order to be set aside :** Recording of reasons by Magistrate in summoning order u/s 204 CrPC is mandatory otherwise the summoning order would be set aside. See **: Sunil Bharti Mittal Vs. CBI, AIR 2015 SC 923 (Three-Judge Bench).**

36 **Assigning reasons must even when complaint is dismissed in part in respect of some of many accused or in respect of some of many offences:** In the cases of while dismissing complaint u/s 203 Cr PC, Magistrate is required to assign reasons even when the dismissal is in part in respect of some of many accused or in respect of some of many offences.See:

(i). Dr. Mathew Abraham Vs. V. Gopal Krishnan, 2008 CrLJ 2686 (Kerala)

(ii). Prakasan Vijaya Nivas Vs. State of Kerala, 2008 CrLJ 1272 (Kerala)

37 **Truth of allegations in complaint not to be gone into at the stage of cognizance:** At the stage of taking cognizance of offences in a complaint case, it is impermissible to go into the truthfulness or otherwise of the allegations made in the complaint and one has to proceed on a footing that the allegations made are true. See.. **Gambhirsinh R.Dekare Vs. Fhalgunbhai Chimanbhai Patel, AIR 2013 SC 1590.**

(*In this case Editor of the news paper and the journalist both were held guilty in complaint case for publishing defamatory matter and provisions of Press and Registration of Books Act, 1867 were involved therein*).

38 **Extent of scrutiny of evidence at the stage of passing summoning order in complaint cases:** 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. It is not the province of the magistrate to enter into a detailed discussion of the merits or the demerits of the case. In other words, the scope of enquiry u/s 202 is limited to finding out the truth or false hood of the complaint in order to determine the question of the issue of the process. The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint i.e. for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does no say that a regular trial for adjudging the guilt or otherwise, of the person complained against should take place at the stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. It will be clear from the above that the scope of enquiry u/s 202 of the Cr PC is extremely limited—limited only to the ascertainment of the truth of falsehood of the allegations made complaint_(i) on the material placed by the complaint before the court, (ii) for the limited purpose of finding out whether prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complaint without at all adverting to any defence that the accused may have. In fact is well settled that in proceeding u/s 202 the accused has got absolutely no locus-standi and is not entitled to be heard on the question whether the process should be issued against him or not. Therefore, at the stage of Sec. Cr PC as the accused has no locus-standi the magistrate has absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused, who may be present only to watch the proceedings and not to

participate in them. Indeed, if the documents or the evidence produced by the accused are allowed to be taken by the magistrate, then an inquiry u/s 202 convert into a full dress trial defeating the very object for which this section has been engrafted. See: **Nagawwa Vs. Veeranna Shivalingappa Nonjalgi, 1976 SCCr R 313 (SC)**

39 **No meticulous evaluation of evidence by Magistrate at the time of passing summoning order in complaint case--** 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. It is not the province of the magistrate to enter into a detailed discussion of the merits or the de_merits of the case. In other words, the scope of enquiry u/s 202 is limited to finding out the truth or false hood of the complaint in order to determine the question of the issue of the process. The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint i.e. for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does no say that a regular trial for adjudging the guilt or otherwise, of the person complained against should take place at the stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. It will be clear from the above that the scope of enquiry u/s 202 of the Cr PC is extremely limited—limited only to the ascertainment of the truth of falsehood of the allegations made complaint_(i) on the material placed by the complaint before the court, (ii) for the limited purpose of finding out whether prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complaint without at all adverting to any defence that the accused may have. In fact is well settled that in proceeding u/s 202 the accused has got absolutely no locus-standi and is not entitled to be heard on the question whether the process should be issued against him or not. Therefore at the stage of Sec. Cr PC as the accused has no locus-standi the magistrate has absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused, who may be present only to watch the proceedings and not to participate in them. Indeed, if the documents or the evidence produced by the accused are allowed to be taken by the magistrate, then an inquiry u/s 202 convert into a full dress trial defeating the very object for which this section has been engrafted. See: **Nagawwa Vs. Veeranna Shivalingappa Nonjalgi, 1976 SCCr R 313 (SC)**

Sanction for Prosecution

41. **Sanction Case of Shri Rang Nath Mishra, Ex-Minister, UP :** Relying upon its Constitution Bench decisions rendered in the cases of **M. Karunanidhi Vs. Union of India, AIR 1979 SC 898** and **M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC 788,** the Hon'ble Supreme Court in the case of **R. Balakrishna Pillai Vs. State of Kerala, AIR 1996 SC 901 (***para 5***)** has held that a Minister is covered within the definition of the words "public servant" as defined by Section 2(c) of the Prevention of Corruption Act, 1988 and the Governor, being the appointing and removing authority of a Minister of the State from his office under Article 164 of the Constitution, is competent to grant sanction u/s 19 of the Prevention of Corruption Act, 1988 for prosecution of such Minister for an offence u/s 13 of the said Act.

42. Shri Rang Nath Mishra is now not a "Public Servant" as he has already demitted his office of Minister of Intermediate Education of UP much earlier as is disclosed from the case diary. The question, therefore, arises whether the necessity of sanction u/s 19 of the said Act for prosecution of a public servant remains even when such public servant has already retired or completed his term of office and no more remains a public servant**?** The observations in this regard of the Hon'ble Supreme Court in **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh & Another, AIR 2012 SC 1185** *(para 16)* are thus : *"Clauses (a) and (b) of sub-section (1) of Section 19 of the Prevention of Corruption Act, 1988 specifically provide that in case of a person who is employed and is not removable from his office by the Central Government or the State Government, as the case may be, sanction to prosecute is required to be obtained either from the Central Government or the State Government. The emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government. If he is not employed, then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In case, where the person is not holding the said office as he might have retired, superannuated, been discharged or dismissed then the question of removing would not arise. Admittedly, when the alleged offence was committed, the petitioner was appointed by the Central Government. He demitted his office after*

completion of five years' tenure. Therefore, at the relevant time when the charge-sheet was filed, the petitioner was not holding the office of the Chairman of Goa Ship-yard Ltd. Hence, there is no question of obtaining any previous sanction of the Central Government." Similarly, in the cases noted below, it has been repeatedly ruled by the Hon'ble Supreme Court that sanction against a retired public servant u/s 19 of the P.C. Act, 1988 or u/s 197 of the CrPC on the date of filing of the charge-sheet before the Court for taking cognizance of the offences and for his prosecution under the P.C. Act, 1988 and the IPC is not required. Kindly see :

(i) M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC 788 (Five-Judge Bench)
(ii) R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench)
(iii) Balakrishnanan Ravi Menon Vs. Union of India, (2007) 1 SCC 45
(iv) Prakash Singh Badal Vs. State of Punjab, AIR 2007 SC 1274
(v) Habibulla Khan Vs. State of Orissa, AIR 1995 SC 1124

43. But there are conflicting laws in different decisions of the Hon'ble Supreme Court regarding the necessity of sanction for prosecution of a retired public servant. In one such case reported in **State of Himachal Pradesh Vs. M.P. Gupta, AIR 2004 SC 730** ***(para 19)*** the Hon'ble Supreme Court has observed thus : *"We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed "it appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harboring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant." It was in pursuance of this observation that the expression 'was' came to be employed after the expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted."*

44. In the present case of ex-Minister of UP Shri Rang Nath Mishra, sanction u/s 19 of the said Act has been sought for his prosecution for offences u/s 13(1)(e)/13(2) of the said Act. In the case reported in **M. Krishna Reddy Vs. State, Deputy Superintendent of Police, Hyderabad, AIR 1993 SC**

313, the Hon'ble Supreme Court has enumerated following ingredients of an offence u/s 13(1)(e) of the said Act :

(i) that the accused is a public servant;

(ii) the nature and extent of the pecuniary resources or property which are found in the possession of the accused.

(iii) what were his known sources of income i.e. known to the prosecution

(iv) it must be shown quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income.

45. As regards the duty of the sanctioning authority while considering the question of grant or refusal of sanction for prosecution u/s 197 of the CrPC and/or u/s 19 of the Prevention of Corruption Act, 1988, the Hon'ble Supreme Court, in the cases reported in **Dr. Subramaniam Swamy Vs. Dr. Manmohan Singh & Another, AIR 2012 SC 1185** *(para 27)* and **State of Maharashtra Vs. Mahesh G. Jain, (2013) 8 SCC 119 (***paras 14 & 18***)** has ruled thus : "*Grant of sanction for prosecution by the sanctioning authority is not mere an empty formality. The same requires application of mind to the material collected by the sanctioning authority before reaching his satisfaction as to whether any case (prima facie) is made out for the grant or refusal of sanction. Grant or refusal of sanction is not a quasi judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the competent authority before it takes a decision in the matter. What is required to be seen by the competent authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investing agency, prima facie disclose commission of an offence by a public servant. If the Competent Authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the competent authority is otherwise, then it can refuse sanction."*

46. Truthfulness of the contents of documents collected and the statements of the witnesses recorded by the investigating officer against the accused u/s 161 of the CrPC as contained in the police report u/s 173(2) of the CrPC/case diary cannot be questioned at the stage of grant or refusal of sanction by the sanctioning authority and also by the court at the stages of remand, bail, cognizance and framing of charges etc. Such an opportunity to the accused person would be available only during the trial when he would

have right to put questions to the prosecution witness in terms of Sections 145 or 157 of the Evidence Act to contradict or corroborate him with reference to his previous statement made by him to the investigating officer during investigation and by producing his defence witnesses/documents u/s 233 of the CrPC in rebuttal of the testimony of prosecution witnesses and its documents. In the case of State of Maharashtra Vs. Mahesh G. Jain, (2013) 8 SCC 119, the Hon'ble Supreme Court has ruled thus : *"Only prima facie satisfaction of sanctioning authority is needed for granting sanction u/s 19(1) of the P.C. Act, 1988 and/or u/s 197 of the CrPC. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order. An order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity. When there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused."* No detailed or in-depth enquiry and assessment of the material contained in the police report/case diary has to be made at the said stages of the proceedings. Kindly see :

(i) Palwinder Singh vs. Balwinder Singh, 2009(65) ACC 399 (SC)

(ii) State of Delhi v. Gyan Devi & others, 2001 (42) ACC 39 (SC)

(iii) **Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunja, AIR 1980 SC 52**

(iv) State of Orissa vs. Debendra Nath Padhi, 2005 (51) ACC 209 (Supreme Court– Three-Judge Bench)

(v) Sajjan Kumar Vs. CBI, (2010) 9 SCC 368

(vi) Liyaqat vs. State of U.P., 2008 (62) ACC 453 (Allahabad)

(vii) Para 12 of State of Maharashtra vs. Salman Salim Khan, 2004 Cr.L.J. 920 (SC)

47. Defence plea or defence evidence of the accused cannot be considered by the sanctioning authority at the stage of passing sanction order and the merits of the case and the culpability of the accused cannot be looked into at that stage as has been ruled by two different Division Benches in the cases reported in **(i) Pancham Lal Vs. State of UP, 1999 CrLJ 4111 (Allahabad) (DB)** and **(ii) Yogendra Kumar Jain Vs. State of UP, 2007 CrLJ 198 (Allahabad) (DB).** Any plea or statement of defence made by the accused to the investigating officer during investigation cannot be given primacy over the statements of the prosecution witnesses and the documents collected by the investigating officer during investigation showing involvement of the accused in the commission of the offences.

48. As has already been discussed in detail in the comments dated 26.09.2013 of the undersigned (from pages 1 to 8 of the file), there is sufficient material in the case diary submitted by the investigating officer which constitutes a prima facie case for offences u/s 13(1)(e) of the Prevention of Corruption Act, 1988 and as such there are sufficient grounds for grant of sanction u/s 19 of the said Act for prosecution of the accused Shri Rang Nath Mishra for the said offence.

49. The matter of investment/expenditure to the tune of nearly Rs. 2.5 crores by the said accused towards purchasing land for the society and construction of building of school and the ultimate probative value of the documents like receipts etc concerning the said transactions can be tested only during the trial before the court and not at the present stage of grant or refusal of sanction for prosecution of the said accused. The investigating agency has concluded that the total value of unexplained and unaccounted for properties acquired by Shri Rang Nath Mishra & his family during the relevant period is worth Rs. 5,92,04,597/- and as such even if the statement made by Shri Rang Nath Mishra to the investigating agency that he had received approximately Rs. 2.5 crores from different donors for raising his school run by a Society and also for raising other constructions, is accepted even then the remaining disproportionate property worth Rs. 5,92,04,597---2,50,00,000 = Rs. 3,42,04,597/- remains unaccounted for and, therefore, an offence u/s 13(1)(e) of the said Act is still constituted. The point raised in the said query dated 27.09.2013 regarding the said investment/expenditure of approximately Rs. 2.5 crores, therefore, does not make any difference as regards the question of grant of sanction against the said accused as already concluded by the undersigned at pages 7 and 8 of the file.

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