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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 546 of 2020

Order reserved on 08/10/2020

Order delivered on 23/11/2020

Dipak Diwan S/o Late Shri N.K. Diwan, Aged about 49 years, R/o Hanuman Nagar, P.S. Lakhe Nagar, Distt. Raipur, Chhattisgarh.

---Petitioner

Versus

1. Shri Amir Khan S/o Late Shri Tahir Hussain, R/o 2, Hill View Apartment, In front of Mehboob Studio, Hill Road, Bandra (west) Mumbai – 12.
2. State of Chhattisgarh Through Collector, Raipur, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Amiyakant Tiwari, Advocate
For Respondent 1 :- Mr. D.K. Gwalre, Advocate
For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
C.A.V. Order

1. Proceedings of this matter have been taken up for final hearing through video conferencing.
2. The petitioner/complainant calls in question the legality, validity and correctness of the impugned order dated 13/11/2019 passed by learned Additional Session Judge, Raipur dismissing his

revision petition filed under Section 397 of CrPC affirming the order dated 16/05/2016 passed by learned Judicial Magistrate First Class whereby the complaint filed by the petitioner against respondent No. 1 for offences punishable under Sections 153-A and 153-B of IPC has been dismissed for want of sanction by competent authority as required under Sections 196(1)(a) and 196(1-A)(a) of CrPC.

3. The following twin question involved in this petition are :-

(i) Whether learned trial Magistrate is justified in dismissing the complaint preferred by the petitioner/complainant for offences under Section 153-A and 153-B of IPC after examination of complainant and witnesses and after calling for the police report for want of sanction by the competent authority under Sections 196(1)(a) and 196(1-A)(a) of CrPC ?

(ii) Whether learned Additional Session Judge is justified in affirming the order passed by learned trial Magistrate ?

4. The above-stated questions arise for consideration on the following factual score :-

(4.1) The petitioner/complainant, who is a practicing Advocate, laid a complaint under Section 200 of CrPC before the trial Magistrate against the respondent No. 1, who is a renowned film actor, for commission of offence of promoting enmity between classes which is punishable under Section 153-A of IPC and for imputations and assertions which are prejudicial to the national integrity punishable under section 153-B of IPC.

(4.2) The said complaint was filed before the trial Magistrate under Section 200 of CrPC on 26/11/2015 and the date of 01/12/2015 was fixed for recording evidence of the complainant and his witnesses. On that day, the complainant was examined and again on 05/01/2016, his other witnesses namely Shri Alok Jha and Devendra Singh Saluja were examined and after their examination, on that very day, learned trial Magistrate also considered the matter and found it expedient to call for the police report from the Police Station – P.S. Purani Basti, Raipur by sending a copy of the complaint, which was ultimately received on 28/04/2016 and then the matter was

fixed for argument on question of registration of the said criminal case.

(4.3) On 16/05/2016, learned trial Magistrate considered the evidence led by the complainant as well as the issue involved therein and dismissed the complaint holding that previous sanction of competent authority is required as per the provisions contained in Sections 196(1)(a) and 196(1-A)(a) of the CrPC for taking cognizance of offences under Sections 153-A and 153-B of IPC, and since no sanction has been obtained/granted by the competent authority, therefore, it cannot proceed further. On revision petition being filed against the order of learned trial Magistrate, learned Additional Session Judge, finding no reason to differ with the view taken by learned trial Magistrate, agreed with the said order dismissing the complaint and proceeded further to dismiss the revision petition vide the order impugned and thereby affirmed the order passed by learned trial Magistrate which led to the filing of the instant petition under Section 482 of CrPC.

5. This petition has been filed principally on the premises that both the Courts below have legally

erred in rejecting the complaint filed by the petitioner on wholly untenable ground of want of sanction by the competant authority under Sections 196(1)(a) and 196(1-A)(a) of CrPC, rather the learned trial Magistrate could have directed the concerned police station to register FIR for the above-stated offences, as such, the impugned order deserves to be set aside.

6. Return has been filed by respondent No. 1 stating that the petition, as framed and filed under Section 482 of CrPC in the shape of second revision, is expressly barred by Sections 397(2) and 399(2) of the CrPC. It has also been pleaded that the complaint and the offences committed by the respondent No. 1 herein were taken cognizance of by the learned trial Magistrate and thereafter, he proceeded to examine the complainant and his witnesses under Section 200 of CrPC and called for the police report, as such, the entire enquiry is concluded under Section 202 of CrPC as the trial Magistrate is said to have taken cognizance of the complaint and the offences, that too, without prior permission of the competent authority and he choose to proceed under Sections 200/202 of CrPC,

therefore, bar under Sections 196(1)(a) and 196(1-A)(a) of CrPC is squarely attracted and consequently, the complaint has rightly been dismissed and the order of the trial Magistrate has rightly been affirmed by learned Session Judge.

7. No rejoinder has been filed by the petitioner in reply of the return filed by respondent No. 1.

8. Mr. Amiyakant Tiwari, learned counsel appearing for the petitioner, would submit that learned trial Magistrate did not consider the issue whether the case for taking cognizance is made out or not and straightway dismissed the complaint for want of previous sanction by the competant authority under Sections 196(1)(a) and 196(1-A)(a) of CrPC, thereby, committed an illegality which warrants interference by this Court under Section 482 of CrPC. He would further submit that the impugned order deserves to be set aside and to buttress his submission, he would rely upon the judgment of the Supreme Court reported in the matter of **State of Karnataka v. Pastor P. Raja**[1].

1 (2006) 6 SCC 728

9. Mr. D.K. Gwalre, learned counsel appearing for respondent No. 1, would make the following submissions :-

(i) That, learned trial Magistrate chose to hold an enquiry under Sections 200/202 of CrPC and consequently, after having examined the complainant and his witnesses, he is said to have taken cognizance of the complaint and the offences as stated, as on 01/12/2015, the complainant was examined and then on 05/01/2016, his witnesses were examined and the cognizance of offences are said to have been taken on the same date i.e. on 05/01/2016, though he failed to consider his jurisdiction in terms of Section 190(1)(a) read with Section 196(1)(a) and 196(1-A)(a) of CrPC.

(ii) That, Section 190 of CrPC is subject to restrictions provided under Sections 195 to 199 of CrPC (Chapter XIV of CrPC) as Section 190 does not have an over-riding effect over the provisions contained in Sections 195 to 199. Sections 196(1)(a) and 196(1-A)(a) carves out an exception that for offence under Sections 153-A and 153-B of IPC, no Court shall take cognizance without the previous sanction of competent

authority mentioned therein, as such, learned trial Magistrate is justified in dismissing the complaint for the above-stated offence for want of previous sanction in terms of Sections 196(1)(a) and 196(1-A)(a) of CrPC and learned Additional Session Judge has rightly affirmed the order of the trial Magistrate, therefore, the instant petition deserves to be dismissed.

10. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

11. In order to consider the plea raised at the Bar, it would be expedient to notice the provisions contained under Sections 153-A and 153-B of IPC for which the complaint under Section 200 of CrPC was filed by the petitioner herein against the respondent No. 1.

Section 153-A of IPC states as under :-

> "**153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. -** (1) Whoever -
>
> (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or

community or any other ground whatsoever, disharmony o feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc. - (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

Section 153-B of IPC states as under :-

"**153B. Imputations, assertions prejudicial to national-integration. -** (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise, -

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the

obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship of religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

12. Sections 195 to 199 of the CrPC are exceptions to the general rule that any person, having knowledge of the commission of an offence, may set the law in motion by complaint even though he is not personally interested or affected by the offence. (see: **Lalji Haridas v. State of Maharashtra**[2] and **Daulatram v. State of Punjab**[3])

13. Section 196 of CrPC makes a provision for obtaining previous sanction of the Government before cognizance is taken for offences under Sections 153-A/153-B of the IPC. It states as under :-

"196. Prosecution for offences against the State and for criminal conspiracy to commit

2 AIR 1964 SC 1154
3 AIR 1962 SC 1206

such offence. - (1) No Court shall take cognizance of -

(a) any offence punishable under Chapter VI or under Section 153A, [Section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or

(b) XXX XXX XXX

(c) XXX XXX XXX

except with the previous sanction of the Central Government or of the State Government.

[(1A) No Court shall take cognizance of -

(a) any offence punishable under Section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 or 1860), or

(b) XXX XXX XXX

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]"

14. The object of Section 196(1) of CrPC is to prevent unauthorized persons from intruding in matters of State by instituting prosecutions and to secure such prosecutions, for reasons of policy, shall be instituted under the authority of the Government. Since the offences enumerated under the above provision are of extremely serious nature relating to public peace and tranquility, with which State Government is concerned, the provision has been made for obtaining prior sanction of the Government mandatorily before cognizance is taken of the offences therein. Further, under Section 196(3)

of the CrPC, it has been provided that before sanction is accorded, the State Government or the District Magistrate may order a preliminary investigation by a police officer to decide on the course to be adopted by the competent authority in respect of an incident.

15. Section 190(1) of CrPC provides 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 -
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> (a) upon receiving a complaint of facts which constitute such offence;
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> (b) upon a police report of such facts;
>
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

16. A careful perusal of the above-stated provision (section 190 of CrPC) would show that it is the only provision enabling a Magistrate to take cognizance of offences, subject to restrictions contained under Sections 195 to 199 or CrPC (Chapter XIV). It is well-settled that Section 190 of CrPC does not has on over-riding effect over the restricting provisions that are Sections 195 to 199 of CrPC and not any of these restricting provisions carve out an exception in

respect of Section 190 of CrPC and the cognizance taken under Section 190 of CrPC shall have to confirm with the requirement of restrictive provisions contained under Sections 195 to 199 of CrPC.

17. The Supreme Court, in the matter of **M.L. Sethi v. R.P. Kapur and Another**[4], while dealing with the bar contained under Section 195 of CrPC, has held that Section 195 of CrPC is in fact, a limitation on the unfettered power of a Magistrate to take cognizance under Section 190 of CrPC. It has further been held that power of taking cognizance by a Magistrate is subject to subsequent provisions contained in subsequent provisions including Section 195 of CrPC.

18. The principle of law laid down in the matter of **M.L. Sethi** (supra) has been followed by the Supreme Court in the matter of **Govind Mehta v. State of Bihar**[5].

19. Similarly, in the matter of **Manoj Rai v. State of Madhya Pradesh**[6], Their Lordships of the Supreme Court quashed the entire criminal proceedings for

4 AIR 1967 SC 528
5 AIR 1971 SC 1708
6 AIR 1999 SC 300

want of sanction under Section 196(1) of CrPC and held as under :-

> "2. Since the learned counsel for the State fairly states, on instructions, that no sanction was given in accordance with Section 196(1) of the Criminal Procedure Code to prosecute the appellants for the offence under Section 295-A of the Indian Penal Code, we allow this appeal and quash the impugned proceedings. Let the written instructions received by the learned counsel for the respondent-State in this regard be kept on record as desired by him."

20. The Supreme Court, in the matter of **CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.**[7], dealing with the issue of taking cognizance without sanction, has held as under :-

> "10. ...We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that Court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority etc. etc. These are cases where the Magistrate will refuse to take cognizance and return the complaint to the complainant."

21. The Jharkhand High Court, in the matter of **Swaraj Thackeray alias Raj Thackeray v. State of Jharkhand**[8]; the Karnataka High Court in the matter of **State of Karnataka v. K. Rajashekara**[9];

7 (2005) 7 SCC 467
8 2008 CrLJ 3780
9 2010 CrLJ 611

the Allahabad High Court in the matter of **Arun Jaitley v. State of U.P.**[10]; and the Bombay High Court in the matter of **Pawan Kamalakar Deshpande v. State of Maharashtra**[11] have clearly held that Section 196(1)(a) of CrPC does not permit the Magistrate to take cognizance of offences under Sections 295-A/153-A and 153-B of IPC without previous sanction of the competent authority.

22. From the principles of law laid down in the above-stated judgments rendered by Their Lordships of the Supreme Court and various High Courts, it is quite vivid that a Magistrate has the power and jurisdiction to take cognizance of an offence(s) under Section 190(1)(a) of CrPC upon receiving a complaint of facts constituting offence, while taking cognizance, he must apply his mind whether his jurisdiction to take cognizance is circumscribed by any of the provisions contained under Sections 195 to 199 of CrPC and he must examine the facts of the complaint/documents filed and if there is non-compliance of any of the provisions including Section 196 of CrPC, then the Magistrate has no jurisdiction to take cognizance of any of the

10 (2015) 3 ILR (Allahabad) 1521
11 (2019) 2 AIR Bomb.R.(Cri.) 546

offences enumerated therein as prior sanction under Section 196 of CrPC of the competent authority is sine-qua-non for taking cognizance of the offence, as in the present case, offences are punishable under Sections 153-A and 153-B of IPC.

23. At this stage, it would be appropriate to consider the submission of learned counsel for respondent No. 1 that learned Magistrate chose to hold an enquiry on presentation of complaint by the complainant by examining the complainant and his witnesses, therefore, the cognizance of the complaint and offences under Sections 153-A and 153-B of IPC are taken in view of the provision contained under Section 200 of the CrPC.

24. Chapter XV of the CrPC i.e. Complaints to Magistrates includes Sections 200 to 203.

Section 200 of the CrPC states as under :-

> "**200. Examination of complainant. -** A Magistrate taking cognizance of any offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
>
> Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

Section 201 of the CrPC states as under :-

"**201. Procedure by Magistrate not competent to take cognizance of the case. -** If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, -

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court."

Section 202 of the CrPC states as under :-

"**202. Postponement of issue of process. -** (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Providing that no such direction for investigation shall be made -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

Section 203 of the CrPC states as under :-

"**203. Dismissal of complaint. -** If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of inquiry or investigation (if any) under Section 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

25. Section 200 of CrPC opens with "A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any,". The term 'taking cognizance' has not been defined by the Code, but it has been defined by Their Lordships of the

Supreme Court in various authoritative pronouncements to this effect that whenever a Magistrate applies his judicial mind to the contents of the complaint for the purpose of proceeding in a particular way as provided in the subsequent provisions of Chapter XV of the Code and holds inquiry under Section 202 of CrPC, the Magistrate is said to have taken cognizance of an offence on complaint, thus, taking cognizance of the offence(s) on complaint is a condition precedent to examine the complainant and his witnesses, if any.

26. In the matter of **Narayandas Bhagwandas Madhavdas v. State of West Bengal**[12], Their Lordships of the Supreme Court considered the expression "take cognizance of an offence" with reference to Sections 190(1)(a), 200 and 202 of CrPC and held as under :-

> "8.... AS to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuing of a search warrant for th purpose of an investigation or of a warrant of arrest for that purpose cannot be themselves be regarded as acts by which cognizance was taken of an offence. Obviously, it is only when a Magistrate applies his mind for the purpose of proceeding under Section 200 and

12 AIR 1959 SC 1118

> subsequent sections of Chapter XVI of the Code of Criminal Procedure or under Section 204 of Chapter XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance."

27. The supreme Court, in the matter of **Gopal Das Sindhi v. State of Assam**[13], making the legal position clear, has held as under :-

> "7. ...It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Chapter XVI of the Code. It is clear, however, that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because Section 200 states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. If the Magistrate had not taken cognizance of the offence on the com-plaint filed before him, he was not obliged 'to examine the complainant on oath and the witnesses present at the time of the filing of the complaint."

28. Similar is the proposition laid down by the Supreme Court in the matter of **Jamuna Singh v. Bhadai Sah**[14] which states as under :-

> "2. The prosecution case was that on November 15, 1956 when Bhadai Sah, a businessman belonging to Teotith, within police station, Baikunthpur, was passing along the village road on his way to purchase patua, the seven appellants armed with lathis surrounded him and demanded that he should hand over the monies he had with him. Bhadai had Rs. 250 with him but

13 AIR 1961 SC 986
14 AIR 1964 SC 1541

he refused to part with them. Kesho Singh, one of the appellants tried to take away forcibly the currency notes from his pocket but Bhadai caught hold of his arm and raised an alarm. On this all the appellants assaulted him with their lathis and as he fell injured Kesho Singh took away the money from his pocket. Bhadai thereupon filed a petition of complaint in the Court of the Sub-Divisional Magistrate, Gopalgunj, on November 22, 1956. The Magistrate after examining him on solemn affirmation made an order asking the Sub-Inspector of police, Baikunthpur, to institute a case and report by December 12, 1956. Ultimately, a charge-sheet was submitted by the Police and the accused persons were committed to the Court of Sessions. The Sessions Trial ended, as already stated, in the acquittal of all the appellants.

8.To decide whether the case in which the appellants were first acquitted and thereafter convicted was instituted on a complaint or not, it is necessary to find out whether the Sub-Divisional Magistrate, Gopalgunj, in whose Court the case was instituted, took cognizance of the offences in question on the complaint of Bhadai Sah filed in his Court on November 22, 1956 or on the report of the Sub-Inspector of Police dated 13th December, 1956. It is well settled now that when a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint. When however he applies his mind not for such purpose but for purposes of ordering investigation under s. 156(3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence. It was so held by this Court in R.R. Chari v. State of U. P.[15] and again in Gopal Das v. State of Assam[16].

15 AIR 1951 SC 207
16 AIR 1961 SC 986

> 9. In the case before us the Magistrate after receipt of Bhadai Sah's complaint proceeded to examine him under s. 200 of the Code of Criminal Procedure. That section itself states that the Magistrate taking cognizance of an offence on a complaint shall at once examine the complainant and the witnesses present, if any, upon oath. This examination by the Magistrate under s. 200 of the Code of Criminal Procedure puts it beyond doubt that the Magistrate did take cognizance of the offences mentioned in the complaint. After completing such examination and recording the substance of it to writing as required by s. 200 the Magistrate could have issued process at once under s. 204 of the Code of Criminal Procedure or could have dismissed the complaint under s. 203 of the Code of Criminal Procedure. It was also open to him, before taking either of these courses, to take action under s. 202 of the Code of Criminal Procedure. That section empowers the Magistrate to "postpone the issue of process for compelling the attendance of persons complained against, and either enquire into the case himself or if he is a Magistrate other than a Magistrate of the third class, direct an enquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint". If and when such investigation or inquiry is ordered the result of the investigation or inquiry has to be taken into consideration before the Magistrate takes any action under s. 203 of the Code of Criminal Procedure."

29. The Supreme Court, in the matter of **Devarapalll Lakshminarayana v. Narayana Reddy**[17], has held that when Magistrate elects to proceed under Section 200 or 202 of CrPC, he is said to have

17 AIR 1976 SC 1672

taken cognizance of complaint and offences mentioned therein. Paragraph 14 of the report states as under :-

> “14. The expression 'taking cognizance of an offence by the Magistrate' has not been defined n the Code. The way in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the particular case will depend on the circumstances of the particular case including that made in which the case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purpose of proceeding under Section 200 and succeeding sections in Chapter XV of the Code, he is said to have taken cognizance of the offences within the meaning of Section 190(1)(a).”

30. In the matter of **CREF Finance Ltd. (supra)**, Their Lordships of the Supreme Court have held that one should not confuse taking cognizance of offence with issuance of process. Paragraph 10 of the Report states as under :-

> “10. In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of the statement of the complainant on 01-06-2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. The cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint is satisfied that the

complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the Court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the Court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the Court may consider it appropriate to send the complaint to police for investigation under Section 156(3) of the Code of Criminal Procedure. We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that Court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority etc. These are cases where the Magistrate will refuse to take cognizance and return the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. We are, therefore, of the opinion that in the facts and circumstances of this case, the

> High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal."

31. In the matter of **State of West Bengal v. Bejoy Kumar Bose**[18], Their Lordships of the Supreme Court have held that Section 200 of CrPC in terms, comes into play after taking cognizance of an offence by Magistrate relying upon its earlier judgment rendered in the matter of **Gopaldas Sindhi (supra).**

32. Their Lordships of the Supreme Court, in the matter of **S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd.**[19], posed the following question for consideration :-

> "2. In the present appeal, we are called upon to decide the correctness or otherwise of the proposition of law by the High Court of Judicature at Bombay whether issuance of process in a criminal case is one and the same thing or can be equated with taking cognizance by a Criminal Court? And if the period of initiation of criminal proceedings has elapsed at the time of issue of process by a court, the proceedings should be quashed as barred by limitation? "

Then Their Lordships proceeded to answer the question so posed in paragraphs 19 to 22 of the judgment which state as under :-

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18 AIR 1978 SC 188
19 (2008) 2 SCC 492

"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.

21. Chapter XIV (Sections 190-199) of the Code deals with "Conditions requisite for initiation of proceedings". Section 190 empowers a Magistrate to take cognizance of an offence in certain circumstances. Sub-section (1) thereof is material and may be quoted in extenso :

> "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) 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 a police officer, or upon his own knowledge, that such offence has been committed."

22. Chapter XV (Sections 200-203) relates to "Complaints to Magistrates" and covers cases before actual commencement of proceedings in a court or before a Magistrate. Section 200 of the Code requires a Magistrate taking cognizance of an offence to examine the complainant and his witnesses on oath. Section 202, however, enacts that a Magistrate is not bound to issue process against the accused as a matter of course. It enables him before the issue of process either to inquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether there is sufficient ground for proceeding further. The underlying object of the inquiry under Section 202 is to ascertain whether there is *prima facie* case against the accused. It thus allows a Magistrate to form an opinion whether the process should or should not be issued. The scope of inquiry under Section 202 is, no doubt, extremely limited. At that stage, what a Magistrate is called upon to see is whether there is *sufficient ground for proceeding with the matter* and not whether there is *sufficient ground for conviction of the accused*."

33. In the matter of **Manharibai Muljibhai Kakadia v. Shaileshbhai Manharbhai**[20], it was held by the Supreme Court that although the expression "taking cognizance of an offence" is not defined in the Code, but it has acquired definite meaning

20 (2012) 10 SCC 517

for the purpose of the Code. Reviewing its earlier jdugment it was held as under :-

> "34. The word "cognizance" occurring in various sections in the Code is a word of wide import. It embraces within itself all powers and authority in exercise of jurisdiction and taking of authoritative notice of the allegations made in the complaint or a police report or any information received that an offence has been committed. In the context of Sections 200, 202 and 203, the expression "taking cognizance" has been used in the sense of taking notice of the complaint or the first information report or the information that an offence has been committed on application of judicial mind. It does not necessarily mean issuance of process."

34. Similarly, in the matter of **Pastor P. Raju** (supra), Their Lordships of the Supreme Court laid down the distinction between "taking cognizance of an offence" and issuance of process by holding as under :-

> "13. … Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made out."

35. From the principles of law laid down by Their Lordships of the Supreme Court in the above-stated judgments (supra), the crystallized legal view is that once the Magistrate elects to

proceed under Section 200 or 202 of CrPC by taking judicial notice of allegations made in the complaint that offence(s) has been committed by applying his judicial mind, he is said to have taken cognizance of an offence on complaint so filed by the complainant and taking cognizance of the offence(s) on complaint is a condition precedent for examining the complainant and his witnesses present on that day.

36. Reverting to the facts of the present case in light of the meaning and import of the phrase employed in section 200 of CrPC "A Magistrate taking cognizance of an offence on complaint shall examine upon oath, the complainant and his witnesses present", it is quite vivid that the criminal complaint under Section 200 of CrPC for offences punishable under Sections 153-A and 153-B of IPC was filed by the petitioner/complainant on 26/11/2015, on which learned trial Magistrate, on consideration by applying his judicial mind decided to proceed under Section 200 of CrPC and thereby proceeded to record the statement of the complainant as well as his witnesses and posted the case for recording evidence on 21/12/2015. On that day,

the complainant recorded his statement and thereafter, again on 05/01/2016, the statements of his two witnesses namely Mr. Allok Dutt and Mr. Devendra Singh Saluja were recorded and simultaneously, the trial Magistrate also called for the police report from the Police Station Purani Basti, Raipur. As held by Their Lordships of the Supreme Court in the above-referred judgments, learned trial Magistrate not only chose to proceed under Section 200 of CrPC by examining the allegations made in the complaint, but after choosing so, he has examined the complainant on 01/12/2015 and thereafter on 05/01/2016, also examined his witnesses, thus, the trial Magistrate had already taken cognizance of the offences under Sections 153-A and 153-B on a complaint filed by the petitioner/complainant contrary to the provisions contained under Sections 196(1)(a) and 196(1-A)(a) of CrPC which mandates that cognizance of offences under Sections 153-A and 153-B shall not be taken by the Magistrate without previous sanction by the competent authority. Thus, it is established on record that learned trial Magistrate took cognizance of offences under Sections 153-A and

153-B of IPC without previous sanction of the competent authority as provided under Sections 196(1)(a) and 196(1-A)(a) of CrPC. The provisions contained under Sections 196(1)(a) and 196(1-A)(a) of CrPC are mandatory and the violation of the said provisions renders the entire criminal proceedings without jurisdiction and without authority of law.

37. The Supreme Court, in the matter of **Nagawwa v. Veeranna Shivalingappa Konjalgi**[21], laid down the parameters as to when an order of the Magistrate issuing process can be quashed. It was held as under :-

> "5. … Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:
>
> (1) XXX XXX XXX
>
> (2) XXX XXX XXX
>
> (3) XXX XXX XXX
>
> (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

38. In the considered opinion of this Court sub-para (4) of **Nagawwa** (supra) as noticed herein-above squarely applies to the facts of the present case as the complaint in question, on the basis of

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21 AIR 1976 SC 1947

which cognizance of offence under Section 153-A and 153-B of the IPC was taken without the previous sanction of the competent authority as mandated under Section 196(1)(a) and 196(1-A)(a) of CrPC. Accordingly, the complaint, as framed and filed, suffers from fundamental defect of want of sanction by the competent authority under the above-stated provision.

39. As a fallout and consequence of the above-stated discussion, I am of the considered opinion that learned Additional Session Judge is absolutely justified in affirming the order by which learned trial Magistrate dismissed the complaint filed by the petitioner/complainant against the respondent No. 1 for offences punishable under Sections 153-A and 153-B of the IPC. I do not find any merit in the instant petition. It deserves to be and is accordingly dismissed, being substance-less and merit-less as well. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

HIGH COURT OF CHHATTISGARH, BILASPUR
CRMP No. 546 of 2020

Petitioner Dipak Diwan

Versus

Respondents Shri Amir Khan & Anr.

(English)

Cognizance of offences by Jurisdictional Magistrate under Sections 153-A and 153-B of IPC cannot be taken without previous sanction of the competent authority under Sections 196(1)(a) and 196(1-A)(a) of CrPC.

(Hindi)

न्यायिक मजिस्ट्रेट द्वारा भारतीय दंड संहिता के तहत धारा 153 - क एवं 153 - ख के तहत अपराध का संज्ञान, दंड प्रक्रिया संहिता के धारा 196(1)(अ) एवं 196(1-अ)(अ) के तहत सक्षम प्राधिकारी के पूर्व अनुमति के बिना नहीं लिया जा सकता |