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Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1288 of 2021

Pradeep S. Wodeyar **… Appellant**

Versus

The State of Karnataka **…Respondent**

With

Criminal Appeal No. 1289 of 2021

And with

Criminal Appeal No. 1290 of 2021

LL 2021 SC 691

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J U D G M E N T

Dr. Dhananjaya Y Chandrachud,J.

Contents

A. The Facts 3

B. The Submissions..13

C. The Analysis 17

C.1 The power to take cognizance 17

C.2 Special Court's power to take cognizance...19

C.2.1 Section 465 CrPC and interlocutory orders...30

C 2.2 Section 465 CrPC and failure of Justice 35

C.3 Cognizance of the offence and not the offender 41

C.4 Cognizance by the Special Court of offences under the IPC.........................47

C.4.1 Joint trial and express repeal 51

C.4.2 Joint trial and implied repeal 54

C.5 Cognizance order and non-application of mind 58

C.6 'Authorised person' and Section 22 of MMDR Act 67

C.7 Vicarious liability and Section 23 of MMDR Act..74

D. The Conclusion 78

LL 2021 SC 691

WWW.LIVELAW.IN

A. The Facts

1. A Single Judge of the High Court of Karnataka dismissed two petitions instituted by the appellants for quashing the criminal proceedings initiated against them in Special CC No.599/2015 (arising out of Crime No.21/2014) for offences punishable under the provisions of Sections 409 and 420 read with Section 120B IPC, Sections 21 and 23 read with Sections 4(1) and 4(1)(A) of the Mines and Mineral (Development and Regulation) Act 1957[1] and Rule 165 read with Rule 144 of the Karnataka Forest Rules 1969.

2. Pradeep S. Wodeyar, who is the Managing Director of a Company by the name of Canara Overseas Limited is arraigned as the first accused[2] and is the appellant in the appeal arising out of SLP (Criminal) No138/2021. Lakshminarayan Gubba, who is a director of the said company has been arraigned as the second accused[3] and is the appellant in the appeal arising out of SLP (Criminal) No.1448/2021.

3. An overview of the criminal case needs to be noticed.

4. On 1 June 2009, Canara Overseas Limited, a Company dealing in exports and imports is alleged to have entered into an agreement with K. Ramappa, the third accused[4], who is the owner of Mineral Miners and Traders, Bellary for the purpose of exporting iron ore. In pursuance of the agreement, the company purchased 31,650.65 metric tons (MTs) of iron ore from A-3, of which 20,000 metric tons were

[1] **"MMDR Act"**
[2] **"A-1"**
[3] **"A-2"**
[4] **"A-3"**

LL 2021 SC 691

WWW.LIVELAW.IN

exported to China between the period of 1 January 2009 to 31 May 2010, while the remaining iron ore was sold to two other companies in India. These transactions are alleged to have been carried out through, or at Belekere Port in Karnataka. It has been alleged that the transportation and export of iron ore was carried out in the absence of permits from the Forest Department and the Department of Mines and Geology. The iron ore involved in the transactions is alleged to have been removed from the Mining Lease No.921/2553, Kallahari Village, Bellary. The fourth Accused[5] is allegedly the mine owner while the fifth accused[6] is their agent. The iron ore is alleged to have been stocked in an unauthorized stockyard without bulk permits from the department of Mines and Geology and to have been transported without an authorized forest way pass. Acting in conspiracy, the accused are alleged to have caused a loss of Rs.3,27,83,379/- to the state exchequer.

5. Persistent complaints were made on large-scale illegal mining and transportation of iron ore, and illegal encroachment in forest areas for the purpose of illegal mining. Samaj Parivartna Samudaya filed a Petition[7] under article 32 before this Court regarding illegal mining in the forest areas in Andhra Pradesh and Karnataka. The Central Empowered Committee[8], pursuant to an order of this Court dated 19 November 2010 submitted a report on 7 January, 2011 regarding six mining leases in the Bellary Reserve Forests, Ananthapur, Andhra Pradesh. This Court by an order dated 25 February 2011 directed the CEC to submit its report in

[5] **"A-4"**
[6] **"A-5"**
[7] Writ Petition (Civil) No. 562/2009
[8] **"CEC"**

LL 2021 SC 691

WWW.LIVELAW.IN

respect of the allegations of illegal mining in Karnataka. Pursuant to the order, the CEC filed five reports on illegal mining. Following the submission of the report of the CEC dated 3 February 2012 raising concerns over illegal mining, transportation, sale and export of iron ore in the districts of Bellary, Chitradurga and Tumkur, directions were issued by his Court on 16 September 2013 for an investigation by the CBI. The purport of the directions of this Court was as follows:

(i) CBI was permitted to register criminal cases against those exporters in respect of whom a preliminary enquiry had been conducted, involving export of more than 50,000 MTs of iron ore without valid permits;

(ii) CBI was permitted to refer the cases of exporters who had exported less than 50,000 MTs and had not been enquired in the preliminary enquiry (PE), to the Government of Karnataka for taking necessary action in accordance with relevant laws;

(iii) CBI was permitted to refer to the Government of Karnataka for initiating action against exporters who had been enquired into in the PE and had exported less than 50,000 MTs of iron ore without valid permits; and

(iv) The Government of Karnataka was directed to take action under relevant law as recommended by the CEC in its report dated 5 September 2012 with regard to those exporters who had exported less than 50,000 MTs and report compliance.

LL 2021 SC 691

WWW.LIVELAW.IN

6. On 22 November 2013, the Government of Karnataka entrusted the above cases in terms of the orders of this Court for further investigation and criminal proceedings to the Lokayukta Police. On 21 January 2014, the state government issued a notification authorizing several officers, including the Inspector of Police, as 'authorized persons' for the purpose of sub-sections (3) and (4) of Section 21 and Section 22 of the MMDR Act and Rules 43(3) and 46 of the Karnataka Minor Mineral Concession Rules, 1994. On 24 January 2014, the Government of Karnataka constituted a Special Investigation Team[9] in the Karnataka Lokayukta for investigation of illegal mining among other purposes. The SIT included the Inspector of Police. On 29 May 2014, the Home Department of the Government of the Karnataka declared, in pursuance of Section 2(s) of the Criminal Procedure Code,[10] that the office of the Inspector General of Police, SIT, Karnataka Lokayukta shall be a police station for the purpose of the said clause and, power and jurisdiction in respect of the offences of illegal mining of minerals/minor minerals as defined in Section 3 of the MMDR Act was conferred. The text of the notification is extracted below:

> "In exercise of the powers conferred by clause (s) of Section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Government of Karnataka hereby declare that with effect from the date of publication of this notification in the Official Gazette, the office of Inspector General of Police, Special Investigation Team, Karnataka Lokayuktha, Bangalore shall be a Police Station for the purpose of the said clause with jurisdiction throughout the State of Karnataka and shall have powers and jurisdiction in respect of the offences of illegal mining of "minerals" and "minor minerals" as defined

[9] **"SIT"**
[10] **"CrPC"**

LL 2021 SC 691

WWW.LIVELAW.IN

> under Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 6 7 of 1957) committed under the provisions of the following Acts and the corresponding rules, if any, made thereunder namely:-
> 1. Indian Penal Code, 1860
> 2. Prevention of Corruption Act, 1988
> 3. The Karnataka Forest Act, 1962
> 4. Any other offence under any other relevant Act committed either in furtherance of or in violation of the above mentioned Acts or to undertake illegal mining; and
> 5. Any other cases of illegal mining entrusted by State Government.
>
> The Notification shall remain in force for period of two years, co-terminus with the term of the Special Investigation Team (SIT)."

7. On 9 October 2014, an FIR was registered in the first case (Crime No.21/2014) against the following accused:

(i) G. Lakshminarayan Gubba, Managing Director, Canara Overseas Private Limited;

(ii) Canara Overseas Private Limited;

(iii) K. Ramappa, owner of M/s Mineral Miners and Traders; and

(iv) Unknown Government Officials and unknown private persons.

8. A final report under Section 173 of the CrPC was submitted on 17 December 2015 against:

(i) Canara Overseas Limited represented by Sri Pradeep S. Wodeyar, Managing Director (A-1);

(ii) Lakshminarayana Gubba (A-2);

(iii) K. Ramappa (A-3);

(iv) Smt. Shanthalakshmi Jayaram (A-4); and

LL 2021 SC 691

WWW.LIVELAW.IN

(v) J. Mithileshwar (A-5).

9. On 29 December 2015, the Deputy Registrar, City Civil Court, Bengaluru passed the following order noting that the charge-sheet was submitted on 17 December 2015:

> "The charge sheet is submitted by the Inspector of Police, S.I.T. Kamataka Lokayukta, Bengaluru, on 17.12.2015. The offences alleged against the above named accused punishable U/s 409, 420 r/w 120B IPC 21, 23 r/w 4(1), 4(l)(A) of MMDR Act 1957 and Sec. 165 r/w 144 Kamataka Forest Rules 1969. Prays that for the reasons stated therein this Hon'ble Court may be pleased to prosecute the above named accused for the aforesaid offences:
>
> 1. F.I.R. Complaint. Crime papers in Cr.No.21/2014 are enclosed.
> 2. Connected documents are produced.
> 3. Statements of witnesses are produced.
> 4. Accused copies are furnished.
> 5. Connected properties are not produced.
> 6. Al & A4 are not arrested as per charge sheet.
> A2, A3 & A5 are on court bail.
>
> Place it before the XXIII Addi. City Civil & Sessions Judge and Special Judge for Prevention of Corruption Act for kind orders.
>
> Sd/- 29/12/15
> Deputy Registrar
> City Civil Court
> Bengaluru."

10. On 30 December 2015, the 23rd Additional City Civil Sessions Judge and Special Judge for Prevention of Corruption Act at Bengaluru City took cognizance after perusing the final report. A direction was also issued for the registration of the case against the accused persons and for issuance of summons. The order reads as follows:

LL 2021 SC 691

WWW.LIVELAW.IN

> "Perused the final report. Cognizance is taken against Accused No. 1 to 5. Register the case against Accused No. 1 to 5. Register the case against Accused No. 1 to 5. Register the case and issue summons to accused No. 1 to 5 returnable by 16.01.2016.
> Sd/-30.12.2015
> Special Judge,
> Prevention of Corruption Act
> Bangalore Urban, Bangalore"

11. On 20 March 2017, proceedings were instituted before the High Court under Section 482 CrPC for quashing the criminal proceedings initiated against the appellants. The appellants sought the quashing of the criminal proceedings on the following grounds:

(i) A-1 was not involved in the alleged illegal transaction. He was residing in Indonesia at the relevant point of time. The affairs of the company were managed by A-2;

(ii) According to the agreement entered into for the transaction, the responsibility of obtaining the dispatch permit from the concerned Department of Mines and Geology and to transport the same was on the A-3. Therefore, A-2 could not be prosecuted for procuring iron ore without the permit;

(iii) The order of the Special Judge taking cognizance does not mention the offences for which cognizance was taken. Therefore, the cognizance order reflects non-application of mind; and

(iv) The Special Judge did not have the power to take cognizance of offences under the MMDR Act without a complaint by the authorized officer in view of Section 22 of the MMDR Act.

LL 2021 SC 691

WWW.LIVELAW.IN

12. The High Court by its judgment dated 12 November 2020 dismissed the quashing petitions filed by Pradeep S. Wodeyar (A-1) and Lakshminarayan Gubba (A-2) on the following grounds:

(i) A-1 is sought to be prosecuted in his capacity as a Managing Director of the company. Under Section 23 of the MMDR Act every person who at the time the offence was committed was responsible for the conduct of the business shall be guilty of the offence. Whether A-1 was personally involved in the relevant transaction could only be decided during the trial since A1 would have to prove that the commission of the alleged offence was not within his knowledge in terms of the proviso to Section 23;

(ii) Though according to the agreement, A-3 was given the responsibility of obtaining the mineral dispatch permit, A-2 transported the minerals without insisting on A-3 obtaining the permit;

(iii) The order taking cognizance was passed after considering the SIT report. It is sufficient if the order reflects application of mind. It is a settled position of law that an order taking cognizance need not be elaborate, with lengthy reasoning. It is sufficient if the Special Judge has satisfied himself that there is sufficient ground for proceeding against the accused person;

(iv) A complaint was filed by the authorized person as required under Section 22 of the MMDR Act based on the SIT report ;

(v) There are similar allegations in the complaint and the SIT report. If the Special Judge has looked into the SIT report and has satisfied himself that the

LL 2021 SC 691

WWW.LIVELAW.IN

allegations *prima facie disclose the* commission of the offence, the Special Judge has taken cognizance of the offence under Section 22 of the MMDR Act; and

(vi) When a complaint is filed under either Section 200 CrPC or under Section 22 of the MMDR Act, the Court could either take cognizance based on the facts on record or can refer the complaint for investigation under Section 156(3) of CrPC or order a fresh enquiry under Section 202 CrPC. Since a detailed investigation has already been undertaken by the SIT, the Special Court can consider the SIT report for the purpose of taking cognizance.

13. SLP (Criminal) No.138/2021 and SLP (Criminal) No.1448/2021 were instituted under Article 136 of the Constitution to challenge the judgment of the High Court. In the appeal arising out of the companion SLP[11], the appellant is the proprietor of a concern by the name of TBS Logistics which is involved in the business of buying, selling and exporting iron ore. The case of the prosecution is that the appellant entered into a criminal conspiracy with other accused persons, for purchasing and selling extracted iron ore illegally without mining dispatch permits and the payment of charges to the Mining and Geological Departments and the Forest Department. On 9 October 2014, Crime case No.23/2014 was registered with the police investigation team, Karnataka Lokayukta Bengaluru for offences punishable under Sections 409, 420 and 471 read with 120B of the IPC, Sections 21 and (4)(1)(A) of the MMDR Act, 1957 and Rules 144 and 165 of the Karnataka

[11] SLP (Criminal) No.1923/2021

LL 2021 SC 691

WWW.LIVELAW.IN

Forest Rules, 1959. A charge sheet was submitted on 24 November 2015. The Special Judge took cognizance on 30 December 2015. The appellant instituted a petition under Section 482 CrPC for quashing the criminal proceedings. The petition was dismissed by the High Court on 18 November 2020 for the following reasons:

(i) The argument that the SIT does not have the jurisdiction to investigate into mining offences is not *res integra* in view of the judgments of the High Court. It is a settled position that the SIT has the jurisdiction to register a FIR to investigate into mining offences;

(ii) An authorized officer filed the complaint before the Special Judge. Therefore, there is no infirmity in view of the bar contained in Section 22 of the MMDR Act;

(iii) The order taking cognizance makes it evident that the Special Judge referred to the FIR, charge-sheet, seizure mahazar and documents collected by the investigating officer for taking cognizance of the offences. The order reflects application of mind; and

(iv) The material produced by the SIT *prima facie* makes out the ingredients of the offences charged against the petitioner.

14. Since similar issues arise in all the three appeals, they have been heard together. As stated earlier, in the first two appeals, A-1 and A-2 are before the court. The companion appeal has been instituted by A-1 (out of 5 accused).

LL 2021 SC 691

WWW.LIVELAW.IN

B. The Submissions

15. It is in this backdrop that it becomes necessary to consider the submissions which have been urged on behalf of the appellants in support of the three appeals.

16. Mr. Siddharth Dave and Mr Pravin H Parekh, Senior Counsel have led the arguments on behalf of the appellants. Their submissions have proceeded along the following lines:

(i) The order of the Special Judge taking cognizance is contrary to law. Cognizance, it is well settled, has to be taken of the offences and not of the offender. Yet the Special Judge has acted illegally, without application of mind in taking cognizance of the accused;

(ii) A-1 (Pradeep S. Wodeyar) cannot be held vicariously liable since:

 (a) He was not in-charge of the affairs of the company at the relevant time during the allegedly illegal transactions;

 (b) He was in Indonesia and hence cannot be held personally responsible;

(iii) The Special Court constituted under Section 30(B) of the MMDR Act has jurisdiction only to try offences for contravention of Section (4)(1) or Section 4(1)(A) of the MMDR Act, punishable under Section 21(1). This power of the Special Court does not extend to taking cognizance (and conducting trial) of offences punishable under the IPC;

(iv) Section 193 CrPC bars the Court of Session from taking cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by the Magistrate under the Code. The only exception is if it has been

LL 2021 SC 691

WWW.LIVELAW.IN

otherwise expressly provided by the CrPC or by any other law for the time being in force. There is no specific provision in the MMDR Act or the Code empowering the Court of Session to take cognizance without an order of committal by the Magistrate; and

(v) Section 22 of the MMDR Act stipulates that no Court shall take cognizance of any offence punishable under the Act or any Rules made under it except upon a written complaint made by a person authorized in this behalf by the Central Government or the State Government. There was no authorization for the Inspector of the Lokayukta Police and hence there has been a violation of the provisions of Section 22.

17. The submissions urged on behalf of the appellants have been opposed by the State of Karnataka. Mr. Nikhil Goel has urged the following submissions before this Court:

(i) A-1 was undisputedly the Managing Director of Canara Overseas Private Limited during the period when the offences were committed. Section 23 of the MMDR Act incorporates the principle of criminal vicarious liability. The proviso to Section 23(1) carves out the exception that when it is proved that the offence was committed without the knowledge of the accused or that he had exercised all due diligence, he shall not be vicariously liable for the offences by the company. Establishing the conditions in the proviso, however, is a matter of trial. Moreover, it is a settled principle that the role of the Managing Director is distinct since by the very nature of the position, the

LL 2021 SC 691

WWW.LIVELAW.IN

person who occupies it is in-charge of, and responsible for, the conduct of the business;

(ii) The order of the Deputy Registrar indicates that the entire papers of the investigation were placed before the Special Judge. Moreover, the order of the Special Judge indicates that he had perused the charge sheet and thereafter had taken cognizance and proceeded to issue summons. Hence, there can be no grievance of non-application of mind. A distinction has to be drawn in law between cognizance based on complaints under Section 200 CrPC which are not proceeded by an investigation and a complaint proceeded by a police report. A well-reasoned cognizance order is not required when cognizance is taken pursuant to a police report since the Magistrate has enough material before the court to peruse. However, since there is a dearth of material in a Section 200 CrPC complaint, it is only in such cases that a cognizance order needs to be well-reasoned to prove application of mind. Moreover, in the present case, the High Court has after a detailed discussion come to the conclusion that the summons issued to the appellants contained details of the offences. Therefore, the accused were aware of the charges against them. Hence, it cannot be argued that the order issuing summons did not fulfil the requirement of Section 190 or that cognizance was not validly taken;

(iii) The mere fact that cognizance was directly taken by the Sessions Court, in itself, would not be sufficient to quash the entire criminal proceeding under

LL 2021 SC 691

WWW.LIVELAW.IN

Section 482 CrPC. In view of the constricted role of the Magistrate under Section 209 at the stage of committal of an offence exclusively triable by the Sessions Court, the absence of a committal order of the Magistrate is hardly of any significance unless a failure of justice is shown. In any event, in the present litigation, the appellants moved the High Court in 2017in order to challenge the cognizance order of 2015. In the meantime, submissions on the framing of charges were addressed before the Special Judge. There is absolutely no material to indicate that a failure of justice has been occasioned due to the Magistrate not passing an order of committal;

(iv) There is no merit in the submission that there was an absence of delegation of power under Section 22 of the MMDR Act to file a complaint under Section 21(i):

(a) The Government of Karnataka had issued a specific notification for the purpose of Section 22 on 21 January 2014, authorizing among others, the police inspector having jurisdiction over the place; and

(b) The High Court has recorded that a complaint was filed under Section 22 read with Section 21(i) of the MMDR Act and that it contains allegations identical to those contained in the charge sheet and SIT report pertaining to offences under the Act.

LL 2021 SC 691

WWW.LIVELAW.IN

C. The Analysis

18. Having adverted to the submissions of the parties, we shall now turn to the issues raised before this Court.

C.1 The power to take cognizance

19. Chapter XIV of the CrPC is titled "Conditions Requisite for Initiation of Proceeding". Section 190 empowers the Magistrate to take cognizance of any offence:

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

20. Clauses (a), (b) and (c) of sub-section (1) of Section 190 contemplate cognizance being taken by a Magistrate of an offence by any of the following three modes, namely upon:

(i) the Magistrate receiving a complaint of facts which constitute an offence;

(ii) a police report of such facts; and

LL 2021 SC 691

WWW.LIVELAW.IN

(iii) information received from any person other than a police officer or upon his own knowledge that an offence has been committed.

21. Section 193 reads as follows:

> "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."

Section 193 stipulates that unless the case has been committed by a Magistrate to the Sessions Court under the Code, no Court of Session shall take cognizance of any offence. But there are two exceptions to this formulation, namely, where:

(i) the CrPC has made an express provision to the contrary; and

(ii) an express provision to the contrary is contained in "any other law for the time being in force".

The bar in Section 193 is to the Sessions Court taking cognizance of an offence, as a court of original jurisdiction unless the case has been committed to it by the Magistrate under the Code.

22. Section 209 states that when a case is instituted either on a police report or otherwise, and it appears to the Magistrate that the offence is exclusively triable by the Sessions Court, he shall commit the case to the Court of Session. Section 209 reads as follows:

LL 2021 SC 691

WWW.LIVELAW.IN

"209. Commitment of case to Court of Session when offence is triable exclusively by it. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-
(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;]
(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

C.2 Special Court's power to take cognizance

23. The counsel for the appellant contended that the Special Court (which is a Sessions Court) is not empowered to take cognizance of offences without the case being committed to it, in view of Section 193 CrPC. Since the Magistrate did not commit the case to the Special Court before it took cognizance of the offences in the instant case, it has been contended that the order taking cognizance is vitiated. As stated in the earlier section of the judgment, Section 193 is subject to two exceptions- (a) provisions to the contrary under the CrPC; (b) provisions to the contrary under any other law.

24. Reference was made to Section 36A(1)(d) of the National Drugs and Psychotropic Substances Act 1985[12], Section 5 of the Prevention of Corruption Act

[12] **"NSPS Act"**

LL 2021 SC 691

WWW.LIVELAW.IN

1988[13] and Section 16(1) of the National Investigation Agency Act 2008[14] which specifically empower the Special Court to take cognizance of offences without the accused being committed to it for trial. It was contended that since neither the Code nor the statute specifically empower the Special Court to take cognizance of the offence without committal, the exercise of power by the Special Court to take cognizance is without jurisdiction.

25. Before we address the merits of this contention, we find it imperative to refer to the judgments of this Court on the interpretation of Section 193 CrPC. The decision of a two judge Bench in **Gangula Ashok** v. **State of AP**[15] arose out of a complaint lodged under the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989[16] against the appellants. The police filed a charge-sheet upon investigation directly before the Sessions Court. The Sessions Court is designated as a Special Court for trial of offences under the Act. Charges were framed by the Special Judge. The High Court was moved for quashing the charges and the charge-sheet. The Single Judge held that the Special Judge had no jurisdiction to take cognizance of the offence under the Act without the case being committed to it and accordingly set aside the proceedings. The High Court directed the charge-sheet and connected papers to be returned to the police officer who was directed to present it before the JMFC for the purpose of committal and the Special Court was directed on committal to frame appropriate charges. The order of the High Court was

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[13] **"PC Act"**
[14] **"NIA Act"**
[15] (2000) 2 SCC 504
[16] **"SC and ST Act"**

LL 2021 SC 691

WWW.LIVELAW.IN

questioned in appeal before this Court. The first issue which arose was whether the Special Judge could have taken cognizance 'straightway without the case being committed' by the Magistrate. The Special Court under the SC and ST Act was a Court of Sessions, having regard to Section 14 of the Act. After setting out the provision of Section 14[17], Justice KT Thomas observed that the Special Court under the Act was constituted only for the 'speedy trial' of offences which is different from an 'inquiry'. In this context, it was observed:

> "8…So it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word "trial" is not defined either in the Code or in the Act it is clearly distinguishable from inquiry. The word "inquiry" is defined in Section 2(*g*) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". So the trial is distinct from inquiry and inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. "Special Court" is defined in the Act as "a Court of Session specified as a Special Court in Section 14" [vide Section 2(1)(*d*)]."

After analyzing the provision of Sections 4(2) and 193 of the CrPC this Court observed that there is no express provision by which the Special Court can take cognizance of the offence without committal; nor can this be inferred. It was further observed that since the Sessions Court is placed higher in the hierarchical court structure, the legislature intentionally relieved it from performing preliminary formalities:

[17] "For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act".

LL 2021 SC 691

WWW.LIVELAW.IN

> "10 [..] The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate.
> 11. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session."

26. Consequently, it was held that a Special Court under the SC and ST Act is essentially a court of Sessions and it cannot take cognizance of the offence without the case being committed to it by the Magistrate in accordance with the provisions of the CrPC. In other words, the complaint or a chargesheet could not straightway be laid down before the Special Court. In this backdrop, this Court upheld the view of the High Court setting aside the proceedings initiated by the Special Court.

27. In **State of MP** v. **Bhooraji**[18], the appellant was convicted inter alia of an offence punishable under Section 302/149 of the IPC read with Section 3(2) of the SC and ST Act. Since the charge sheet was filed under Section 3(2) of the SC and St Act together with offences under the IPC, the appellants were tried by a Special

[18] (2001) 7 SCC 679

LL 2021 SC 691

WWW.LIVELAW.IN

Judge constituted under the SC and ST Act. The appellant was convicted. An appeal was filed before the High Court against the conviction. During the pendency of the appeal, this Court decided **Gangula Ashok** (supra). An interlocutory application was filed by the appellants seeking the trial proceedings to be quashed since the Special Court took cognizance without the case being committed to it by the Magistrate. The High Court allowed the application and directed the charge sheet and connected papers to be returned to the police who were directed to present it before the Magistrate for the purpose of committal. In appeal, this Court referred to Section 465(1) of the Code which states that no finding shall be reversed on account of irregularity unless there is a failure of justice. The Bench compared the provision on committal to the Sessions Court by the Magistrate[19], before and after the enactment of the Code of 1973. Before 1973, the committal Court could examine witnesses and records before deciding to commit the case to the Court of Sessions. However, after 1973, the only examination that the Magistrate has to undertake for the exercise of the committal power is to determine whether the case is exclusively triable by the Court of Sessions. Highlighting the change in the role of the committing court after 1973, the Bench observed that the accused would achieve no 'advantage' by sending the case back to the Magistrate for committal:

> "18. It is apposite to remember that during the period prior to the Code of Criminal Procedure, 1973, the committal court, in police charge-sheeted cases, could examine material witnesses, and such records also had to be sent over to the Court of Session along with the committal order. But after 1973, the committal court, in police charge-sheeted cases,

[19] Sections 207 and 207A of the Old Code, and Section 209 of the new Code

LL 2021 SC 691

WWW.LIVELAW.IN

> cannot examine any witness at all. The Magistrate in such cases has only to commit the cases involving offences exclusively triable by the Court of Session. Perhaps it would have been possible for an accused to raise a contention before 1973 that skipping committal proceedings had deprived him of the opportunity to cross-examine witnesses in the committal court and that had caused prejudice to his defence. But even that is not available to an accused after 1973 in cases charge-sheeted by the police. We repeatedly asked the learned counsel for the accused to tell us what advantage the accused would secure if the case is sent back to the Magistrate's Court merely for the purpose of retransmission of the records to the Sessions Court through a committal order. We did not get any satisfactory answer to the above query put to the counsel.

28. A contention was also raised on the ground that Section 465 would only be applicable where the order has been passed by a 'court of competent jurisdiction', and that the Court of Sessions is not a competent court before the case is committed to it. Rejecting this argument, it was observed that the phrase "court of competent jurisdiction" denotes a validly constituted court conferred with the jurisdiction to try the offence and an irregularity in the procedure would not denude the competence of the court. The Bench further distinguished the decision in **Gangula Ashok** (supra) on the ground that there the trial was yet to begin as opposed to this case where the challenge was after the accused was convicted. On these reasons, the appeal was allowed.

29. In **Moly** v. **State of Kerala**[20] and **Vidyadharan** v. **State of Kerala**[21], the accused was convicted under the SC and ST Act and provisions of the IPC. The appeal against the conviction was dismissed by the Kerala High Court. Before this

[20] (2004) 4 SCC 584
[21] (2004) 1 SCC 215

LL 2021 SC 691

WWW.LIVELAW.IN

Court, it was contended that the Sessions Court could not have taken cognizance without committal by the Magistrate. Relying on **Gangula Ashok** (supra), it was held that the Court of Sessions could not have taken cognizance and the order of conviction was set aside.

30. In **Rattiram** v. **State of Madhya Pradesh**[22], a three judge Bench of this Court dealt with a divergence of views, in **Moly** (supra) and **Vidhyadharan** (supra) on one hand, and **Bhooraji** (supra) on the another, on the effect of not committing an accused in terms of Section 193 of the CrPC, in cases where a chargesheet is filed under the SC and ST Act and cognizance is directly taken by the Special Judge. Justice Dipak Misra (as the learned Chief Justice then was) delivered the judgment of the three judge Bench to resolve the conflict of opinions. The Court was to decide on the issue of whether the cognizance order passed by the Special Court without committal of proceedings could be held to vitiate the proceedings after the trial is completed:

> "14. The demonstrable facet of the discord is that if cognizance is directly taken by the Special Judge under the Act and an accused without assailing the same at the inception **allows the trial to continue and invites a judgment of conviction**, would he be permitted in law to question the same and seek quashment of the conviction on the bedrock that the trial Judge had no jurisdiction or authority to take cognizance without the case being committed to it and thereby violated the mandate enshrined under Section 193 of the Code."
>
> **(emphasis supplied)**

[22] (2012) 4 SCC 516

LL 2021 SC 691

WWW.LIVELAW.IN

31. The Bench answered the question in the negative by holding that the trial will not be vitiated due to an irregularity in the cognizance order for the following reasons:

(i) Section 207 and Section 207A of the Code of 1898 enunciated an exhaustive procedure which was to be followed by the Magistrate before committing the case to the Court of Sessions. The CrPC of 1973 made a departure from the provisions of the erstwhile Code of 1898 under which "the accused enjoyed a substantial right prior to committal of the case" which is "indeed a vital stage". In marked contrast, under the CrPC of 1973 the Magistrate "is only required to see whether the offences are exclusively triable by the Court of Sessions". Noticing the clear distinction between the earlier Code of 1898 and the CrPC of 1973, the Court held that "there is sea of difference" between the two provisions and there was nothing in Section 209 of the CrPC of 1973 which would even remotely suggest that the protections as provided under the old Code have been telescoped to the existing one". In this backdrop, the Court held that in view of the restricted role of the Magistrate in committal proceedings, absence of committal would not lead to a failure of justice;

(ii) A criminal proceeding must endeavor to conform to the principles of a 'speedy trial' and 'protection of the victim of the crime'. Since the objection was not raised at the time of framing of charges but only after the conviction, the failure of justice must be proved to be overbearing compared to the right of the victim and right of speedy trial which was not proved in this case;

LL 2021 SC 691

WWW.LIVELAW.IN

(iii) **Moly** (supra) and **Vidhyadharan** (supra) are *per incuriam.* **Bhooraji** (supra) has been correctly decided; and

(iv) In **Gangula Ashok** (supra), the trial had not commenced as compared to the other cases where the trial had completed and the accused were convicted. The accused did not wait for the trial to commence before challenging the cognizance order.

32. It may be noted that Section 14 of the SC and ST Act has been substituted by Act 1 of 2016 with effect from 26 January 2016. The proviso to Section 14(1), following the amendment, stipulates that the Special Court shall have the power to directly take cognizance of offences under the Act. Recently, a Division Bench of this Court in **Shantaben Bhurabhai Bhuriya** v. **Anand Athabhai Chaudhari**[23] interpreted the proviso to Section 14 of the SC and ST Act. In that case, FIR was filed for offences punishable under the SC/ST Act and provisions of the Penal Code. The Judicial Magistrate took cognizance of the offences and issued process under Section 204 and then committed the case to the Special Court. An application was filed before the High Court seeking to quash the FIR and summons order. It was contended that in view of the proviso to Section 14 of the SC and ST Act, the Magistrate had no power to take cognizance of offences under the Act. The High Court allowed the application and quashed the proceedings on the ground that the proviso to Section 14 ousts the jurisdiction of the Magistrate to take cognizance. On appeal, a two judge bench of this Court set aside the judgment of the High Court by

[23] Criminal Appeal No.967 of 2021

LL 2021 SC 691

WWW.LIVELAW.IN

holding that the proviso to Section 14 of the SC and ST Act does not oust the power of the Magistrate to take cognizance, but it provides the power to take cognizance to the Special Court in addition to the Magistrate,. While reversing the judgment of the High Court, Justice M R Shah, speaking for the two judge Bench, observed:

(i) Section 14 does not take away the jurisdiction of the Magistrate to take cognizance and commit the case to the Special Court for trial. The words used in amended Section 14 are "*Court so established or specified shall have power to directly take cognizance of the offences under this Court".* The word, '*only´* is missing; and

(ii) In view of the provisions of Section 460 CrPC, the act of the Magistrate in taking cognizance could at the highest be held to be irregular and would not vitiate the proceedings.

33. The judgements on the interpretation of Section 193 CrPC may for the purpose of analysis be divided into two categories based on the time frame of challenge: (i) cases involving a challenge to the cognizance order before and after the commencement of trial, that is, before the completion of the trial; and (ii) cases involving a challenge to the cognizance order after the completion of the trial. **Gangula Ashok** (supra) and **Shantaben** (supra) fall within the first category, while **Rattiram** (supra), **Moly** (supra), **Bhooraji** (supra) and **Vidhyadharan** (supra) fall within the second category. In both **Bhooraji** (supra) and **Rattiram** (supra), though it was observed that the cognizance order is irregular, it was held not to vitiate the proceedings since there was no 'failure of justice' that could be proved in view of

LL 2021 SC 691

WWW.LIVELAW.IN

Section 465 CrPC. However, in **Gangula Ashok** (supra), the challenge to the cognizance order was made before the commencement of the trial.

34. Section 193 CrPC states that the Sessions Court shall not take cognizance of an offence as a Court of original jurisdiction unless the Magistrate commits the case to it. The only exception is if it is expressly provided otherwise by the Code or the statute. Neither the Code nor the MMDR Act provide that the Special Court could directly take cognizance of the offences. Therefore, the Sessions Court did not have the authority to take cognizance. Section 209 CrPC provides the Magistrate the power to commit the case. In **Dharam Pal** v. **State of Haryana, a** Constitution Bench [24] , while discussing whether the committing court was required under Section 209 to take cognizance of the offence before committing the case to the Court of Sessions, held that the Magistrate could either commit the case before or after taking cognizance. In this case, the Special Court has directly taken cognizance. It now needs to be determined if this irregularity in the cognizance order vitiates the entire proceedings for the order to be quashed and set aside.

35. Thus, the issue before us is two-fold: (i) whether the principle encompassed in Section 465 CrPC would be applicable to orders passed at the pre-trial stage; and (ii) If the answer to (i) is in the affirmative, whether order taking cognizance would lead to a 'failure of justice' if it were not to be quashed.

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[24] (2014) 3 SCC 306

LL 2021 SC 691

WWW.LIVELAW.IN

C.2.1 Section 465 CrPC and interlocutory orders

36. Section 465 CrPC reads as below:

> "**465. Finding or sentence when reversible by reason of error, omission or irregularity**.—(1) Subject to the provisions hereinbefore contained, no finding, sentence or **order** passed by a Court of competent jurisdiction shall be reversed or **altered by a Court of appeal**, confirmation of revision on account of any error, omission or **irregularity** in the complaint, summons, warrant, proclamation, order, judgment or **other proceedings before or during trial or in any inquiry or other proceedings under this Code**, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;
>
> (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error or irregularity in any sanction for the prosecution has occasioned a **failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."**
>
> **(emphasis supplied)**

The general principle which is embodied in Section 465 CrPC is that a finding or order is not reversible due to irregularities unless a 'failure of justice' is proved. Sub-section (2) of Section 465 provides that while determining whether there has been a failure of justice, the appellate Court shall have regard to whether the objection regarding the irregularity could and should have been raised at an earlier stage in the proceeding. The observation in **Rattiram** (supra) distinguishing **Gangula Ashok** (supra) on the basis of the stage of the trial thus takes its support from Section 465(2) of the Code where a classification is sought to be made on the basis of the challenge vis-à-vis the stage of the proceedings.

37. Section 465 stipulates that the order passed by a Court of competent jurisdiction shall not be reversed or altered by a Court of appeal on account of an

LL 2021 SC 691

WWW.LIVELAW.IN

irregularity of the proceedings before trial or any inquiry. It is settled law that cognizance is pre-trial or inquiry stage.[25] Therefore, irregularity of a cognizance order is covered by the provision. In order to determine if the provision applies to pre-trial orders like an irregular cognizance order or only applies to orders of conviction or acquittal, it is necessary that we interpret the provision contextually.

38. Chapter XXXV of the CrPC is titled Irregular Proceedings". Section 460[26] on the one hand provides for those irregularities if any, on the part of a Magistrate which do not vitiate proceedings. Section 461[27], on the other hand, contains a list of proceedings by the Magistrate who is not empowered by law in this behalf, which

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[25] Gangula Ashok v. State of A.P, (2000) 2 SCC 504; Hardeep Singh v. State of Punjab, (2014) 3 SCC 92, where a Constitution Bench held that trial begins after framing of charge

[26] 460. Irregularities which do not vitiate proceedings. If any Magistrate not empowered by law to do any of the following things, namely:-
(a) to issue a search- warrant under section 94;
(b) to order, under section 155, the police to investigate an offence;
(c) to hold an inquest under section 176;
(d) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;
(e) to take cognizance of an offence under clause (a) or clause (b) of sub- section (1) of section 190;
(f) to make over a case under sub- section (2) of section 192; (g) to tender a pardon under section 306;
(h) to recall a case and try it himself under section 410; or
(i) to sell property under section 458 or section 459, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

[27] 461. Irregularities which vitiate proceedings. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-
(a) attaches and sells property under section 83;
(b) issues a search- warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;
(c) demands security to keep the peace;
(d) demands security for good behaviour;
(e) discharges a person lawfully bound to be of good behaviour;
(f) cancels a bond to keep the peace;
(g) makes an order for maintenance;
(h) makes an order under section 133 as to a local nuisance;
(i) prohibits, under section 143, the repetition or continuance of a public nuisance;
(j) makes an order under Part C or Part D of Chapter X;
(k) takes cognizance of an offence under clause (c) of sub- section (1) of section 190
(l) tries an offender;
(m) tries an offender summarily;
(n) passes a sentence, under section 325, on proceedings recorded by another Magistrate;
(o) decides an appeal;
(p) calls, under section 397, for proceedings; or
(q) revises an order passed under section 446, his proceedings shall be void.

LL 2021 SC 691

WWW.LIVELAW.IN

would vitiate the proceedings. Clause (e) of Section 460 relates to the taking of cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190 CrPC. Clause (a) of section 190(1) refers to the receipt of a complaint of facts constituting an offence and clause (b) refers to a police report of the facts. Consequently, where a Magistrate who is not empowered by law takes cognizance of an offence either under clause (a) or clause (b) of Section 190(1) erroneously though in good faith, the proceedings will not be set aside merely on the ground that the Magistrate was not so empowered. In other words, for vitiating the proceedings, something more than a mere lack of authority has to be established. Clause (k) of Section 461 adverts to a situation where a Magistrate who is not empowered takes cognizance of an offence under clause (c) of Section 190(1). Section 190(1)(c) empowers the Magistrate to take cognizance upon information received from a person other than a police officer or upon his own knowledge. The taking of cognizance under Section 190(1)(c) by a Magistrate who is not empowered, renders the proceedings void.

39. Section 462 relates to proceedings being taken in a wrong place; Section 463 with the non-compliance of the provisions of Section 164[28] or Section 281[29] and Section 464 with the effect of an omission to frame, or absence of or error in a charge. Section 465 deals with irregularity of "the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial".

[28] Recording of confessions and statements
[29] Record of examination of accused

LL 2021 SC 691

WWW.LIVELAW.IN

40. The overarching purpose of Chapter XXXV CrPC, as is evident from a reading of Sections 460 to 466, is to prevent irregularities that do not go to the root of the case from delaying the proceedings. Sections 462-464 lay down specific irregularities which would not vitiate the proceedings. Section 465 on the other hand is a broad residuary provision that covers all irregularities that are not covered by the above provisions. This is evident from the initial words of Section 465, namely, "Subject to the provisions hereinabove contained". Therefore, irregular proceedings that are not covered under Sections 461-464 could be covered under Section 465. It is also evident that the theme of 'failure of justice', uniformly guides all the provisions in the Chapter. There is no indication in Section 465 and in Sections 462-464 that the provisions only apply to orders of conviction or acquittal. All the provisions use the words "finding, sentence or order". Though one of the major causes of judicial delay is the delay caused from the commencement of the trial to its conclusion, there is no denying that delay is also predominantly caused in the pre-trial stage. Every interlocutory order is challenged and is on appeal till the Supreme Court, on grounds of minor irregularities that do not go to the root of the case. The object of Chapter XXXV of the CrPC is not only to prevent the delay in the conclusion of proceedings after the trial has commenced or concluded, but also to curb the delay at the pre-trial stage. It has been recognized by a multitude of judgments of this Court that the accused often uses delaying tactics to prolong the proceedings and prevent the commencement or conclusion of the trial.[30] The object of Chapter XXXV

[30] AR Antulay v. RR Nayak, 1988 AIR 1531

LL 2021 SC 691

WWW.LIVELAW.IN

is to further the constitutionally recognized principle of speedy trial. This was highlighted by Justice Jeevan Reddy while writing for a two judge Bench in **Santhosh De** v. **Archana Guha** where the learned judge observed[31]:

> "15. The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory order is challenged in the superior Courts and the superior Courts, we are pained to say, are falling prey to their stratagems. We expect the superior Courts to resist all such attempts. Unless a grave illegality is committed, the superior Courts should not interfere. They should allow the Court which is seized of the matter to go on with it. There is always an appellate Court to correct the errors. One should keep in mind the principle behind Section 465 Cr. P.C. That any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior Court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself, because such frequent interference by superior Court at the interlocutory stages tends to defeat the ends of Justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system."

41. Section 465 would also be applicable to challenges to interlocutory orders such as a cognizance order or summons order on the ground of irregularity of procedure. This interpretation is supported by sub-section (2) to Section 465 which states that while determining if the irregularity has occasioned a failure of justice, the Court shall have regard to whether the objection could or should have been raised at an earlier stage in the proceeding. Therefore, the very fact that the statute provides that the Court is to consider if the objection could have been raised earlier, without

[31] AIR 1994 SC 1229

LL 2021 SC 691

WWW.LIVELAW.IN

any specific mention of the stage of the trial, indicates that the provision covers challenges raised at any stage. The Court according to sub-Section (2) is to determine if the objection was raised at the earliest.

C 2.2 Section 465 CrPC and failure of Justice

42. **Rattiram** (supra), had distinguished **Gangula Ashok**[32] (supra) on the basis of the stage of the proceedings since the trial had not begun in the latter but was completed in the former. **Rattiram** (supra) **does not hold** that Section 465 CrPC would not be applicable to pre-trial cases. The differentiation between trial and pre-trial cases was made only with reference to sub-Section (2) of Section 465. Since the cognizance order was challenged after the trial was over, the accused could not prove failure of justice in view of Section 465(2). However, Section 465(2) only provides one of the factors that shall be considered while determining if there has been a failure of justice. Section 465(2) by corollary does not mean that if the alleged irregularity is challenged at an earlier stage, the failure of justice is deemed to be proved. Even in such cases though, where the challenge is made before the trial begins, the party has the burden of proving a 'failure of justice'. Further, even if the challenge is made before the trial begins, the Court still needs to determine if the challenge could have been made earlier.

43. The test established for determining if there has been a failure of justice for the purpose of Section 465 is whether the irregularity has caused prejudice to the

[32] It is to be noted that no discussion on the applicability of Section 465 CrPC was made in **Gangula Ashok**

LL 2021 SC 691

WWW.LIVELAW.IN

accused.[33] No straitjacket formula can be applied. However, while determining if there was a failure of justice, the Courts could decide with reference to *inter alia* the stage of challenge, the seriousness of the offence charged, and apparent intention to prolong proceedings. It must be determined if the failure of justice would override the concern of delay in the conclusion of the proceedings and the objective of the provision to curb the menace of frivolous litigation.

44. It needs to be determined if condoning the irregularity of the cognizance order under Section 465 would lead to a 'failure of justice'. In our considered opinion, it would not lead to a failure of justice for the following reasons:

(i) The diminished role of the committing Court under Section 209 of the new Code while committing the case to the Court of Session. Both the decision in **Bhooraji** (supra) as well as the subsequent decision in **Ratiram** (supra) notice that under the Code of 1898, the Magistrate had a broad power at the stage of committal which included the power to examine witnesses and to allow cross-examination. Such a power is noticeably absent in the provisions of Section 209 of the CrPC. On the contrary, Section 209 makes it abundantly clear that when a case is instituted on the basis of a police report or otherwise and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, the Magistrate shall commit the case to the Court of Sessions after complying with the provisions of Section 207 or Section 208, as the case may be. The circumstance to which the Magistrate

[33] Anna Reddy Sambvisa Reddy v. State of A.P, AIR 2009 SC 2661

LL 2021 SC 691

WWW.LIVELAW.IN

has to apply their mind is solely whether the offence is triable exclusively by the Court of Sessions. Since the committing Magistrate does not have wide discretionary powers to exercise at this stage not exercising it would not cause any injustice to the parties;

(ii) Gradation in irregularity of cognizance order under Sections 460 and 461- Under Sections 460 and 461, the order taking cognizance based on a police report has been given a greater standing as compared to an order taking cognizance based on information received from any person other than a police officer or upon the own knowledge of the Magistrate, for the specific purpose of deciding on the irregularity of the order. The reason behind the gradation is because in the former case, the Magistrate has material based on an investigation by the police to ground his decision which may be absent when cognizance is taken based on information by any other person. In this case, cognizance was taken based on the SIT report. Therefore, the case squarely falls under Section 190(b) of CrPC which under Section 460, even if irregular would not vitiate the proceedings;

(iii) Objective of the MMDR Act: The appellants are accused of the commission of offences under the MMDR Act involving the export and transportation of minerals without permit. Offences under the MMDR Act are environmental crimes. These crimes impact upon society at large. These offences cause a detriment to and affect the well-being of the entire community. Environmental crime is not confined within geographical or state limits. The impact of

LL 2021 SC 691

WWW.LIVELAW.IN

environmental crime transcends borders and time. Environmental crime may or may not have an immediately identifiable human victim but there can be no mistaking its consequence for the entire bio-system of which human beings are an intrinsic, but not the only, element. Environmental crime is in essence a planetary crime – it affects every component of the natural systems with which the planet has been endowed. They constitute our heritage; a heritage which is held in trust by the present for the future. Illegal mining denudes the eco-system of valuable resources. The destruction of the natural environment has serious consequences for the present and the future. The MMDR Act must hence be construed in this perspective. At one level, illegal mining deprives the state of its revenues. But the law is not merely a revenue yielding or regulating measure. The essence of the law is to protect human kind and every species whose existence depends on natural resources from the destruction which is caused by rapacious and unregulated mining. The offences which have been taken into account by Parliament while enacting sub-sections (1) and (1A) of Section 4 intrinsically affect the environment which, in turn, affects the existence of communities who depend on the environment and of every species to whom it provides nurture and sustenance. It is because of the wide-ranging impact of such offences on the life of the community and on the well-being of not only the present, but of the succeeding generations, that principles such as the precautionary principle, the public trust doctrine and the concept of

LL 2021 SC 691

WWW.LIVELAW.IN

sustainable development have gained a sure jurisprudential foundation. In environmental crime, there may be no single, immediate victim. The act which predicates the offence is a crime against humanity. These crimes might not be perceived in the present to have immediate, foreseeable or quantifiable repercussions but there is no mistaking that they impact the life of future generations;

(iv) The Preamble of the Act at the time of its enactment indicated that it is an "Act for regulation of mines and the development of minerals". This was substituted by Act 38 of 1999 to emphasise that the "Act provides for the development and regulation of mines and minerals". The amendment to the Preamble is indicative of the intent of the legislature that development and regulation must proceed hand-in-hand, and in order to reduce the increasing magnitude of environmental crime, development needs to be regulated and sustainable. Thus, when Parliament amended the MMDR Act to include Section 30B in 2015 for the constitution of Special Courts which would be deemed to be Courts of Session conferred with all requisite powers, the object and purpose of the legislative provision must be borne in mind. The ultimate object of the provision is to ensure that violators are punished by a speedy process of trial before a court duly constituted in that behalf; and

(v) <u>The delay in the commencement of trial</u> - The First Information Report was registered on 9 October 2014 in the first of the batch of cases in the present set of cases. The charge-sheet was submitted on 29 December 2015.

LL 2021 SC 691

WWW.LIVELAW.IN

Between December 2015 and March 2017, the accused participated in the proceedings. On 30 December 2015, the Special Judge recorded that he had perused the final report and that he was taking cognizance. Summons were directed to be issued to the accused. After cognizance was taken on 30 December 2015, several proceedings took place before 23rd Additional City Civil and Sessions Judge/Special Judge, Bengaluru City including on 16 January 2016 when some of the accused were admitted to bail. On 17 March 2017, arguments were addressed before the Special Judge by the Special Public Prosecutor on the charges. The High Court was moved for quashing under Section 482 CrPC on 20 March 2017 at that stage. Significantly in the proceedings before the High Court, no ground of challenge was addressed on the basis of the submission (now urged before this Court) that in the absence of a committal order by the Magistrate, the proceedings before the Special Judge suffered for want of jurisdiction. The submission which has been urged before this Court for the first time, purportedly on the ground that a pure question of law is involved, cannot efface the factual position that from the date of the submission of the charge sheet in 2015 until the filing of the quashing petition on 20 March 2017, the accused participated in the proceedings before the Special Judge and raised no objection at any time either before the Special Judge or before the High Court. Therefore, the challenge to the irregularity in taking cognizance was not made at the earliest. Though it was made before the conclusion of the trial, the challenge

LL 2021 SC 691

WWW.LIVELAW.IN

after two years would still amount to a considerable delay, when there were opportunities for it to have been raised earlier.

C.3 Cognizance of the offence and not the offender

45. It is a well settled principle of law that cognizance as envisaged in Section 190 of the CrPC is of the offence and not of the offender. The expression "cognizance of any offence" is consistently used in the provisions of Sections 190, 191, 192 and 193[34].

46. Section 193 of the old CrPC Code (of 1898) stated that Court of Session shall not take cognizance of any offence unless the '*accused has been committed'* to it by the Magistrate. However, Section 193 of the CrPC 1973 states that cognizance of an offence shall be taken after the '*case has been committed'* to it by the Magistrate. A comparison of the provisions in the Old and New Code is tabulated below:

Old Code (1898)	New Code (1973)
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 t**he accused has been committed to** it by a Magistrate duly empowered in that behalf.	**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.

(emphasis supplied)

[34] "As a matter of fact, the expression "cognizance of any offence" is also used in Section 195, 196, 197, 198, 198A, 198B, 199. Chapter 15 of the CrPC which governs complaints of Magistrates also emphasises the principle that cognizance is of an offence. The same principle, as we have seen earlier, is emphasised in Chapter 16 in which Section 204(1) adverts to a Magistrate "taking cognizance of an offence".

LL 2021 SC 691

WWW.LIVELAW.IN

47. In **Kishun Singh** v. **State of Bihar**[35], the question before the Court was whether the Court of Sessions to which a case has been committed to for trial by the Magistrate, can without recording evidence, summon a person not named in the police report by exercise of its power under Section 319 CrPC. The two judge Bench held that when a case is committed to the Court of Sessions by the Magistrate under Section 209 on the ground that it is exclusively triable by it, the Sessions Court would have the power to take cognizance of the offence.[36] It was thus held that since cognizance is taken of the offence and not the accused, if any material suggests the complicity of other persons in the offence, the Court of Sessions can summon such other persons. The court, by drawing a comparison between Section 193 of the Code of 1973 and the Code of 1898, and on a reading of Section 209 CrPC held that both the committal and cognizance is of the offence and not the accused/offender.[37] Justice AM Ahmadi (as the learned Chief Justice then was) summarized the position in law in the following observations:

> "7. […] Section 190 of the Code sets out the different ways in which a Magistrate can take cognizance of an offence, that is to say, take notice of an allegation disclosing commission of a crime with a view to setting the law in motion to bring the offender to book. Under this provision cognizance can be taken in three ways enumerated in clauses (*a*), (*b*) and (*c*) of the *offence* alleged to have been committed. The object is to ensure the safety of a citizen against the vagaries of the police by giving him the right to approach the Magistrate directly if the police does not take action or he has reason to

[35] (1993) 2 SCC 16

[36] Also see, Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492 (at 499, paragraphs 19 and 20); Fakhruddin Ahmad v. State of Uttaranchal, (2008) 17 SCC 157 (at 163, paragraph 17)

[37] In arriving at the above conclusion, this Court in Kishun Singh affirmed the judgment of a Full Bench of the Punjab High Court in SK Lutfur Rahman v. State: 1985 PLJR 640: 1985 Cri LJ 1238(Pat HC) (FB)

LL 2021 SC 691

WWW.LIVELAW.IN

believe that no such action will be taken by the police. Even though the expression 'take cognizance' is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender.

[…]

It may immediately be noticed that under the old provision a Court of Session could not take cognizance of an offence as a court of original jurisdiction unless *the accused* was committed to it whereas under the recast section as it presently stands the expression *the accused* has been replaced by the words *the case*. As has been pointed out earlier, under Section 190 cognizance has to be taken for the offence and not the offender; so also under Section 193 the emphasis now is to the committal of *the case* and no more on *the offender*. So also Section 209 speaks of committing *the case* to the Court of Session. On a conjoint reading of these provisions it becomes clear that while under the old Code in view of the language of Section 193 unless an accused was committed to the Court of Session the said court could not take cognizance of an offence as a court of original jurisdiction; now under Section 193 as it presently stands once *the case* is committed the restriction disappears."

"16…Thus, on a plain reading of Section 193, as it presently stands once *the case* is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record."

LL 2021 SC 691

WWW.LIVELAW.IN

48. In other words, upon the committal by the Magistrate, the Court of Sessions is empowered to take cognizance of the whole of the incident constituting the offence. The Court of Sessions is thus invested with the complete jurisdiction to summon any individual accused of the crime. The above principles were reiterated in a two judge Bench decision in **State of W.B.** v. **Mohd. Khalid**[38]. Justice S Mohan speaking for the Court observed:

> "43.[…] Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

49. In **Dharam Pal** (supra), a Constitution Bench was deciding on whether the Court of Sessions has the power under Section 193 CrPC to take cognizance of the offence and then summon other persons not mentioned as accused in the police report. The issue was referred to a five-judge Bench in view of the conflicting decisions in **Kishun Singh** (supra) and **Ranjit Singh** v. **State of Punjab**[39]. As discussed above, while in **Kishun Singh** (supra), it was held that the Sessions Court held such a power under Section 193 CrPC, it was held in **Ranjit Singh** (supra) that from the stage of committal till the Sessions Court reaches the stage

[38] (1995) 1 SCC 684
[39] (1998) 7 SCC 149

LL 2021 SC 691

WWW.LIVELAW.IN

indicated in Section 230 CrPC, the Court could not arraign any other person as the accused. Chief Justice Altamas Kabir, speaking for the Constitution Bench affirmed the view in **Kishun Singh** (supra) on the ground that the Magistrate before whom the final report is submitted has ample powers to disagree with the report filed by the police under Section 173(2) and to proceed against the accused persons *de hors* the police report. However, if the interpretation in **Ranjit Singh** (supra) were to be followed, it would lead to an anomaly where the Sessions Court would not have this power till the Section 319 stage is reached, which the Magistrate would otherwise have. In that context, the Constitution Bench observed:

> "35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 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. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter."

50. In **RN Agarwal** v. **RC Bansal**[40], a Special Judge took cognizance of the offences punishable under Sections 120-B, 420, 468 and 471 IPC as well as Section 13(1)(d) of the Prevention of Corruption Act. The Special Judge however, summoned the prosecution witnesses. The prosecution witnesses approached the High Court under Section 482 CrPC seeking to quash the summons issued against them. The High Court quashed the summons order passed by the Special Judge.

[40] (2015) 1 SCC 48

LL 2021 SC 691

WWW.LIVELAW.IN

This Court allowed the appeal holding that the Special Judge in view of Sections 193 and 209, took cognizance of the offence and therefore had the power to arraign other accused in the case based on the material available before it at that stage.

51. It is evident from the discussion in **Kishun Singh** (supra) and **Dharam Pal** (supra) that in view of the provisions of Section 193 CrPC, cognizance is taken of the offence and not the offender. Thus, the Magistrate or the Special Judge does not have the power to take cognizance of the accused. The purpose of taking cognizance of the offence instead of the accused is because the crime is committed against the society at large. Therefore, the grievance of the State is against the commission of the offence and not the offender. The offender as an actor is targeted in the criminal procedure to provide punishments so as to prevent or reduce the crime through different methods such as reformation, retribution and deterrence. Cognizance is thus taken against the offence and not the accused since the legislative intent is to prevent crime. The accused is a means to reach the end of preventing and addressing the commission of crime.

52. In the factual matrix before us, the Special Judge by an order dated 30 December 2015 referred to all the relevant material before him, including the FIR and witness statements, before taking cognizance. The question that arises is whether merely because the cognizance order mentions that cognizance is taken against the 'accused', the entire proceedings would be vitiated. The order taking cognizance inadvertently mentioned that the Special Judge has taken cognizance against the accused instead of the offence. This would not vitiate the entire

LL 2021 SC 691

WWW.LIVELAW.IN

proceedings, particularly where material information on the commission of the offence had been brought to the notice of and had been perused by the Special Judge.

53. In order to prove that the irregularity vitiates the proceeding, the accused must prove a 'failure of justice' as prescribed under Section 465 CrPC. In view of the discussion in the previous section on the applicability of Section 465 CrPC (and the inability to prove failure of justice) to the cognizance order, the irregularity would not vitiate the proceedings. Moreover, bearing in mind the objective behind prescribing that cognizance has to be taken of the offence and not the offender, a mere change in the form of the cognizance order would not alter the effect of the order for any injustice to be meted out.

C.4 Cognizance by the Special Court of offences under the IPC

54. The appellant had raised a contention that even if the Special Judge had the power to take cognizance of the offence, he could only have taken cognizance of offences under the MMDR Act and could not have taken cognizance (and conduct trial) of the offences under the provisions of IPC. For this purpose, the counsel for the appellant referred to Section 30B(1) of the MMDR Act which states that the State Government may for providing speedy trial of offences under Sections 4(1) or Section 4(1A) of the MMDR Act constitute Special Courts. Section 30B(1) reads as follows:

> "30B. Constitution of Special Courts.—(1) The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1A) of section 4, constitute, by notification, as

LL 2021 SC 691

WWW.LIVELAW.IN

> many Special Courts as may be necessary for such area or areas, as may be specified in the notification."

Section 4(1) of the MMDR Act states that no person shall undertake any reconnaissance, prospecting or mining operations without any license or permit. Section 4(1A) states that no person can transport or store material otherwise than in accordance with the provisions of this Act. Section 4(1) and (1A) of the Act read as follows:

> "4. Prospecting or mining operations to be under licence or lease.—(1) [No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder]:
>
> Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:
>
> [Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, 6 [the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited., a Government company within the meaning of 7 [clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), and any such entity that may be notified for this purpose by the Central Government]:]
>
> [Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.]

LL 2021 SC 691

WWW.LIVELAW.IN

> [(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.]"

55. It is contended by the appellant that the Special Court established under a statute can try offences under the IPC (or any offence other than the offences under the statute) only if expressly provided. To buttress this argument, Section 4(3) of the PC Act, Section 14(1) of the NIA Act, and Section 28(2) of the Protection of Children from Sexual Offences Act 2012[41] were referred to. All the three provisions expressly provide the Special Court with the power to try offences other than those offences specified in the Act. Section 4(3) of the PC Act reads as follows:

> "(3) When trying any case, **a special Judge may also try any offence**, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), **be charged at the same trial**."
>
> **(emphasis supplied)**

Section 14 of the NIA Act read as follows:

> "14**. Powers of Special Courts with respect to other offences.—(**1) When trying any offence, a **Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.**
> (2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law."
>
> **(emphasis supplied)**

[41] **"POCSO Act"**

LL 2021 SC 691

WWW.LIVELAW.IN

Section 28(2) of the POCSO Act provides the following:

> "(2) While trying an offence under this Act**, a Special Court shall also try an offence** [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure,1973 (2 of 1974) be charged at the same trial."
>
> **(emphasis supplied)**

56. In the case before us, the Special Judge took cognizance and issued summons against the appellants for offences under Sections 409, 420 read with Section 120B IPC; Sections 21 and 23 read with Sections 4(1), 4(1A) of the MMDR Act; and Rule 165 read with Rule 144 of the Karnataka Forest Rules, 1969. According to the first schedule of the CrPC, the offences under Sections 409 and 420 are triable by the Magistrate of the First Class. Section 209 CrPC states that if it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, then he shall commit the case to the Court of Session. Section 2(hc) of the MMDR Act states that a Special Court constituted under Section 30 B(1) of the Act is deemed to be the Court of Sessions. A Special Court designated under the MMDR Act is a Court of Sessions which is exclusively vested with the power to try offences under the Act. While the offences under Sections 409 and 420 IPC are triable by the Judicial Magistrate First Class[42], the issue is whether the offences under the IPC can be tried jointly with the offences under the MMDR Act by the Special Court.

[42] **"JMFC"**

LL 2021 SC 691

WWW.LIVELAW.IN

C.4.1 Joint trial and express repeal

57. At this juncture, it is relevant to take note of Section 220 CrPC. Section 220 envisages situations when a person shall be tried for multiple offences at one trial which reads as follows:

> "220. Trial for more than one offence.—(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.
> (2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.
> (3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.
> (4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.
> (5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860)."

58. Section 409 IPC deals with the offence of Criminal breach of trust by a public servant, banker, or agent, while Section 420 IPC deals with cheating. Since both these offences are alleged to have been committed in the course of the same transaction as the offences under the MMDR Act, the situation is squarely covered

LL 2021 SC 691

WWW.LIVELAW.IN

by sub-section (1) of Section 220 of CrPC. It now needs to be determined if Section 220 CrPC can be applied to proceedings before the Special Court constituted under the MMDR Act.

59. Section 4(1) CrPC states that all offences under the IPC shall be investigated and tried according to the provisions contained in the CrPC. Section 4(2) states that all offences under any other law shall be investigated and tried according to the same provisions, subject to any other enactment that regulates the manner of investigation and trial. Section 5 states that nothing in the Code shall affect any special law that confers power, and jurisdiction, unless there is a specific provision to the contrary. Section 30C of the MMDR Act stipulates that unless otherwise provided by the Act, the CrPC shall apply to the proceedings before the Special Court. Section 30C reads as follows:

> "30C. Special Courts to have powers of Court of Session.—**Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to the proceedings before the Special Court** and for the purpose of the provisions of this Act, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a public prosecutor."
>
> **(emphasis supplied)**

60. Therefore, on a combined reading of Sections 4 and 5 of CrPC along with Section 30C of the MMDR Act, it is apparent that the procedure prescribed under the Code shall be applicable to proceedings before the Special Court unless the MMDR Act provides anything to the contrary. These provisions incorporate the principle of express repeal – i.e., unless any provision of the CrPC is expressly

LL 2021 SC 691

WWW.LIVELAW.IN

repealed by the provisions of the MMDR Act, the procedure prescribed under the CrPC would apply to the proceedings before the Special Court. Provisions of the PC Act, POCSO Act and NIA Act which expressly provide that the Special Court may try offences under the statute along with other offences is only clarificatory. It is settled law that while contextually interpreting a provision, reference to other statutes which are *pari materia* can be made.[43] However, since the provisions in the similar statute on combined trial are only clarificatory, the reference to external aids offer no support to the argument of the appellant.

61. It now needs to be determined if there is:

(i) an express provision in the MMDR Act that provides that Section 220 CrPC shall not be applicable; and

(ii) if (i) is in negative, then whether the MMDR Act by necessary implication excludes the application of Section 220 CrPC.

62. Since there is no express provision that excludes the application of Section 220 CrPC, it needs to be examined if the MMDR Act has by necessary implication excluded the application of Section 220 CrPC. In this context, it needs to be determined if Section 30B of the MMDR Act while establishing the Special Court for offences under Section 4 of the MMDR Act, by necessary implication excludes the application of Section 220 CrPC.

[43] Harshad Mehta v. State of Maharashtra, (2010) 8 SCC 257

LL 2021 SC 691

WWW.LIVELAW.IN

C.4.2 Joint trial and implied repeal

63. The general rule of construction is that there is a presumption against a repeal by implication because the legislature has full knowledge of the existing law on the subject matter while enacting a law. When a repealing provision is not specifically mentioned in the subsequent statute, there is a presumption that the intention of the legislature was not to repeal the provision. The burden to prove that the subsequent enactment has impliedly repealed the provision of an earlier enactment is on the party asserting the argument. This presumption against implied repeal is rebutted if the provision(s) of the subsequent Act are so inconsistent and repugnant with the provision(s) of the earlier statute that the two provisions cannot 'stand together'.[44] Therefore, the test to be applied for the construction of implied repeal is as follows: Whether the subsequent statute (or provision in the subsequent statute) is inconsistent and repugnant with the earlier statute (or provision in the earlier statute) such that both the statutes (or provisions) cannot stand together. [45] The test when applied in the context of this case is whether Section 30B of the MMDR Act is inconsistent and repugnant to Section 220 CrPC that both the provisions cannot go hand in hand.

64. This Court has in **Municipal Council, Palai** v. **T.J Joseph**[46] indicated that the test applied for determination of repugnancy under Article 254 of the Indian

[44] Harshad Mehta (n 40); Justice GP Singh, *Principles of Statutory Interpretation* (14th ed. LexisNexis 2016) 737-738
[45] Also see, State of Orissa v. M/s M.A. Tulloch, AIR 1964 SC 1284; Syndicate Bank v. Prabha D. Naik, (2001) 4 SCC 713; State of MP v. Kedia Leather & Liqour Limited, (2003) 7 SCC 389; Lal Shah Baba Dargah Trust v. Magnum Developers, (2015) 17 SCC 65;
[46] AIR 1963 SC 1561.

LL 2021 SC 691

WWW.LIVELAW.IN

Constitution maybe applied to determine repugnancy in the context of implied repeal as well. Justice Mudholkar writing for a three judge Bench, followed the test that was laid down in **Deep Chand** v. **State of Uttar Pradesh**[47]:

> "10. […] (i) Whether there is direct conflict between the two provisions;
> (ii) Whether the legislature intended to lay down an exhaustive code in respect of the subject-matter replacing the earlier law;
> (iii) Whether the two laws occupy the same field."

65. In the decision in **Harshad Mehta** v. **State of Maharashtra**[48], the issue before this Court was whether the Special Court established under the Special Court (Trial of Offences relating to Transactions in Securities) Act 1992 has the power to grant pardon as under Sections 306 and 307 CrPC[49]. Therefore, the question in essence was whether Sections 306 and 307 CrPC apply to the proceedings before the Special Court constituted under the Special Court Act 1992. Section 9(2) of the Special Court Act 1992 stated that the provisions of the CrPC would be applicable to the proceedings before the Special Court, unless the Special Court Act 1992 provides anything to the contrary. It was held by the three judge Bench of this Court that there was no express provision (or inference by necessary implication that can be made) excluding the applicability of Sections 306 and 307 CrPC to proceedings before the Special Court. One of the contentions raised by the counsel for the appellant was that similar earlier enactments have expressly granted the power to grant pardon to the Special Court constituted under the Act and that when the

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[47] (1959) 2 SCR 8
[48] (2010) 8 SCC 257
[49] Section 306 and 307 CrPC deal with the tendor of pardon by the Court to an accomplice on the condition of making a full and complete disclosure of the circumstances of the offence to the best of his/her knowledge

LL 2021 SC 691

WWW.LIVELAW.IN

legislature has deliberately omitted the inclusion of the provision, it would mean that the power was not intended to be granted. The counsel contended that the Special Court under the Act consists of a Judge of the High Court, while Section 306 for the purpose of the provision only enumerates categories of Magistrates. The Bench observed that an express provision needs to be made in the subsequent specific statute only when wider powers or no powers are intended to be given:

> "38. It is understandable that if powers wider than the one contemplated by the Code are intended to be conferred, a provision to that effect will have to be made. It does not follow therefrom that in an altogether different statute, **if no special provision is made, an inference can be drawn that even where the powers under the Code and not wide powers were intended to be conferred, save and except where it is so stated specifically, the effect of omission would be that the Special Court will not have even similar powers as are exercised by the ordinary criminal courts under the Code**."
>
> **(emphasis supplied)**

Addressing the contention of the appellant that Section 306 uses the term 'Magistrate', while the Special Court consists of High Court judges, it was held that the statute and the Code need to be harmoniously construed. On the argument that other statutes have an express provision providing the power to grant pardon, the court held that other statutes are an external aid of interpretation and can relied on only when it is shown that the scheme of the two Acts is similar. The court in this regard observed as follows:

> "51. The Code has been incorporated in the Act by application of the doctrine of legislation by incorporation. The power to grant pardon has not been denied expressly or by necessary implication. As earlier stated after decision in the case of *A.R. Antulay* [(1984) 2 SCC 500 (p. 527, para 27) : 1984 SCC (Cri) 277] it was not necessary to make specific

LL 2021 SC 691

WWW.LIVELAW.IN

> provision in the Act conferring power on the Special Court to grant pardon at trial or pre-trial stage. The Special Court is a court of original criminal jurisdiction and has all the powers of such a court under the Code, including those of Sections 306 to 308 of the Code, the same not having been excluded specifically or otherwise.
>
> 52. There is no provision in the Act which negates the power of the Special Court to grant pardon. The Special Court has power to grant pardon at any stage of the proceedings. The power under Section 307 cannot be denied merely because no commitment of the case is made to the Special Court. Learned Solicitor-General, in our view, rightly contends that the other statutes are only an external aid to the interpretation and to rely upon the omission of a provision which is contained in another different enactment, it has to be shown that the two Acts are similar which is not the position here. The scheme of the two Acts is substantially different as has been earlier noticed by us. It is also evident from *Fernandes case* [AIR 1968 SC 594: (1968) 1 SCR 695 : 1968 Cri LJ 550] as well."

C.4.2.1 Section 30B of the MMDR Act and Section 220 CrPC - The question of implied repeal

66. Section 30B of the MMDR Act provides for the constitution of the Special Court for 'speedy trial of offences for contravention of the provisions' of Section 4 of the Act. Does the fact that the Special Court has jurisdiction to try offences under the MMDR Act oust the jurisdiction of the Special Court to try offences under any other law (in this case the IPC). As has been noted above, the provisions of the Code may be held to be impliedly repealed, only if there is a 'direct conflict' between the provisions such that it is not possible to harmoniously interpret the provisions. It thus needs to be analysed whether Section 30B of the MMDR Act and Section 220 CrPC can be harmoniously construed.

LL 2021 SC 691

WWW.LIVELAW.IN

67. The Judicial Magistrate First Class is invested with the authority to try offences under Sections 409 and 420 IPC. On the other hand, the Sessions Judge is appointed as a Special Judge for the purposes of the MMDR Act. If the offences under the MMDR Act and the IPC are tried together by the Special Judge, there arises no anomaly, for it is not a case where a judge placed lower in the hierarchy has been artificially vested with the power to try the offences under both the MMDR Act and the Code. Additionally, if the offences are tried separately by different *fora* though they arise out of the same transaction, there would be a multiplicity of proceedings and wastage of judicial time, and may result in contradictory judgments. It is a settled principle of law that a construction that permits hardship, inconvenience, injustice, absurdity and anomaly must be avoided. Section 30B of the MMDR Act and Section 220 CrPC can be harmoniously construed and such a construction furthers justice. Therefore, Section 30B cannot be held to impliedly repeal the application of Section 220 CrPC to the proceedings before the Special Court.

C.5 Cognizance order and non-application of mind

68. The counsel for the appellant has contended that the order of the Special Judge taking cognizance has not sufficiently demonstrated application of mind to the material placed before him. To substantiate this contention, the appellant relied on the decisions in **Pepsi Foods Ltd.** v. **Special Judicial Magistrate**[50], **Fakhruddin**

[50] (1998) 5 SCC 749

LL 2021 SC 691

WWW.LIVELAW.IN

Ahmad v. **State of Uttaranchal**[51] **Mehmood Ul Rehman** v. **Khazir Mohammad Tunda**[52]**, Sunil Bharti Mittal** v. **CBI**[53] and **Ravindranatha Bajpe** v. **Bangalore Special Economic Zone Ltd.**[54]. The respondent argued that this Court has made a distinction on application of mind by the judge for the purpose of taking cognizance based on a police report on the one hand and a private complaint under Section 200 CrPC on the other, and that the requirement of a demonstrable application of mind in the latter case is higher. For this purpose, the counsel relied on this Court's decisions in **Bhushan Kumar** v. **State (NCT of Delhi)**[55] and **State of Gujarat** v. **Afroz Mohammed Hasanafatta**[56].

69. The decision of this Court in **Pepsi Foods Ltd.** (supra), arose out of the institution of a complaint filed against the appellants under Section 7 read with Section 16 of the Prevention of Food Adulteration Act 1964. The allegation in the complaint was that the appellants sold a bottle of beverage which was adulterated. After recording primary evidence, the Magistrate passed orders summoning the appellants. The appellants instituted proceedings before the High Court under Section 482 CrPC for quashing the summoning order and the proceedings. It was in this backdrop, that while adverting to the procedure envisaged in Chapter XV of the CrPC more particularly the provisions of Section 200, Justice DP Wadhwa speaking for a two judge Bench held:

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[51] (2008) 17 SCC 157
[52] (2015) 12 SCC 420
[53] (2015) 4 SCC 609
[54] Criminal Appeal Nos. 1047-1048/2021
[55] (2012) 5 SCC 424
[56] (2019) 20 SCC 539

LL 2021 SC 691

WWW.LIVELAW.IN

> "12. […] One of the modes by which a court can take cognizance of an offence is on filing of a complaint containing facts which constitutes such offence. A Magistrate taking cognizance of an 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 (Sections 190 and 200 of the Code)."

Having noticed that proceeding had been initiated on the basis of a complaint, this Court held:

> "28. 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."

On the facts, the Court held that the allegations against the appellants did not establish any offence under Section 7 of the Prevention of Food Adulteration Act and there was no basis in the complaint to make such allegation. Setting aside the order of the High Court, this Court accordingly quashed the complaint. The genesis of the decision in **Pepsi Foods Ltd** is founded on a complaint made to the

LL 2021 SC 691

WWW.LIVELAW.IN

Magistrate upon which steps had been initiated pursuant to the provision of Section 200 of the CrPC.

70. In **Sunil Bharti Mittal** (supra), the case before this Court arose out of alleged irregularities in the grant of an additional Spectrum in 2002. The case was being monitored by this Court. The CBI registered a case and after completion of the investigation filed a charge-sheet in the court of the Special Judge. The CBI, among others, mentioned three telecom companies as accused persons in respect of offences under Section 13(2) read with 13(1)(d) of the PC Act and allied offences. When the matter was taken up for the issuance of summons to the accused persons, the Special Judge while recording satisfaction that there was enough incriminating material to proceed against the accused named in the charge-sheet also found that three individuals, namely, the CMD, MD and Director of the three telecom companies were an alter ego of the respective companies. While taking cognizance of the cases, summons were issued not only to the accused in the charge-sheet but to the aforesaid three persons as well. Two of them moved this Court. Justice A K Sikri, while speaking for the three judge Bench, held that before taking cognizance of an offence, the Magistrate should have applied his mind to the case to satisfy himself that the allegations would constitute an offence:

> "48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to

LL 2021 SC 691

WWW.LIVELAW.IN

> have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not."

Justice Sikri observed that while the Magistrate is empowered to issue process against a person who has not been charge-sheeted, there has to be sufficient material in the police report showing his involvement. The Court held that no such exercise was carried out by the Special Judge and in its absence, the order summoning the appellants could not be sustained. The decision in **Sunil Bharti Mittal** (supra) arose out of a police report but clearly involved a situation where appellants had not been arraigned as accused in the charge-sheet. The Magistrate had issued summons to them merely treating them to be an alter ego of the company. This Court held that it was a wrong (and a 'reverse') application of the principle of alter ego and that the order summoning them could not be sustained.

71. In **Mehmood Ul Rehman** (supra), a complaint was filed by the Respondent under Section 500 of the Ranbir Penal Code (in *pari materia* to Section 500 of the IPC). The Magistrate passed the following order:

> "4. […] Perused the complaint, and the statements recorded. In the first instance of proceedings, let bail warrant to the tune of Rs 15,000 be issued against the alleged accused persons, with direction to the accused persons to cause their appearance before this Court on 22-4-2007, to answer the material questions."

The Respondent filed a petition before the High Court seeking to quash the proceedings initiated by the Magistrate. The High Court rejected the petition. Before this Court, a contention was raised that the Magistrate had not applied his mind to

LL 2021 SC 691

WWW.LIVELAW.IN

the complaint to form an opinion on whether the allegations would constitute an offence. Relying on **Pepsi Foods Ltd.** (supra)**,** it was observed that the Magistrate ought to have applied his mind to the allegations and must be satisfied that the facts alleged would constitute an offence. The order of the Magistrate was set aside by this Court on the ground that the order did not indicate an application of mind by the Magistrate. The facts in this case fall squarely within Section 190(1)(a) CrPC since the Magistrate was only guided by the complaint before him. Moreover, Justice Kurian Joseph, writing for the two-judge Bench has clearly taken note of the difference between Section 190(1)(a) and 190(1)(b):

> "21. Under Section 190(1)(*b*) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(*c*) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(*a*) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(*a*) CrPC. The complaint is simply to be rejected."

72. In **Fakruddin Ahmed** (supra), a complaint was lodged before the Judicial Magistrate alleging commission of offences under Sections 240, 467, 468 and 471 IPC. The Magistrate directed the police to register the case and investigate it. The Magistrate thus, instead of following the procedure laid down under Section 200 or 202 CrPC, ordered that the matter be investigated and a report be submitted under Section 173(2) of the Code. Based on the police report, cognizance was taken by the Magistrate. A two-judge Bench of this Court observed that the Magistrate must apply his mind before taking cognizance of the offence. However, no observation

LL 2021 SC 691

WWW.LIVELAW.IN

was made that the cognizance order based on a police report needs to be 'well-reasoned'. On the facts of the case, the Court held that since the cognizance order was not placed before the High Court, it did not have the opportunity to review if the Magistrate had applied his mind while taking cognizance. The matter was thus remanded back to the High Court for it to peruse the documents and then decide the Section 482 petition afresh.

73. It must be noted that the decisions in **Pepsi Foods Ltd.** (supra) and **Mehmood Ul Rehman** (supra) arose in the context of a private complaint. Though the decision in **Sunil Bharti Mittal** (supra) arose from a police report, it is evident from the narration of facts in the earlier part of this judgment that in that case, the charge-sheet had not named the Chief Executive Officers of the Telecom Companies as accused. The Magistrate, however, furnished the reason that the CEO was an alter ego of the Telecom Company which, as this Court noted in its judgment was a "reverse application" of the alter ego doctrine. Similarly, the cognizance order in **Fakruddin Ahmed** (supra) was based on a police report. However, this Court remanded the case back to the High Court for fresh consideration of the validity of the cognizance order and did not review the Magistrate's satisfaction before issuing the cognizance order. Therefore, none of the above judgments referred to support the contention of the appellant. Though all the above judgments mention that the Magistrate needs to apply his mind to the materials placed before him before taking cognizance, they have been differentiated on facts from the present case as unlike the present case where cognizance was

LL 2021 SC 691

WWW.LIVELAW.IN

taken based on the SIT report, in those cases cognizance was taken based on a complaint. The difference in the standard of proof for application of mind with reference to cognizance based on a complaint and police report has been briefly discussed in **Mehmood Ul Rehman** (supra) and **Fakruddin Ahmed** (supra). A two-judge Bench of this Court in **Afroz Mohammed Hasanfatta** (supra) laid down the law on the difference of the standard of review of the application of mind by the Judge while taking cognizance based on a police report and a private complaint.

74. In **Afroz Mohammed Hasanfatta** (supra), a complaint was filed by the Manager of a Bank against a Private Limited Company alleging that in pursuance of a conspiracy, the Company was importing rough and polished diamonds from the foreign market and selling them in the local market. On verification, the bills of entry were found to be bogus. Based on the complaint, an FIR was registered for offences under Sections 420, 465, 467, 468, 471, 477A and 120B of the Penal Code. A charge-sheet was submitted under Section 173 CrPC against two persons and the respondent was referred to as a suspect. A supplementary charge-sheet was submitted *inter alia* against the respondent and based on it, cognizance was taken by the Magistrate. The High Court set aside the order of the Chief Judicial Magistrate taking cognizance. Justice Banumathi speaking for the two judge Bench dealt with the issue as to whether while taking cognizance of an offence under Section 190(1)(b) CrPC, the Court has to record reasons for its satisfaction before the issuance of summons. Relying upon the decision in **Pepsi Foods Ltd.** (supra), it was urged by the accused that the order for the issuance of process without

LL 2021 SC 691

WWW.LIVELAW.IN

recording reasons was correctly set aside by the High Court. Moreover, it was urged that there was no application of mind by the Magistrate. While distinguishing the decision in **Pepsi Foods Ltd.** (supra) on the ground that it related to taking of cognizance in a complaint case, the court held since in a case of cognizance based on a police report, the Magistrate has the advantage of perusing the materials, he is not required to record reasons:

> "23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. **Under Section 190(1)(*b*) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused.** Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to

LL 2021 SC 691

WWW.LIVELAW.IN

record his reasons for rejection of the charge-sheet and for not taking it on file."

(emphasis supplied)

75. The Special Judge, it must be noted, took cognizance on the basis of a report submitted under Section 173 CrPC and not on the basis of a private complaint. Therefore, the case is squarely covered by the decision in **Afroz Mohammed Hasanfatta** (supra). The Special Judge took note of the FIR, the witness statements, and connected documents before taking cognizance of the offence. In this backdrop, it would be far-fetched to fault the order of the Special Judge on the ground that it does not adduce detailed reasons for taking cognizance or that it does not indicate that an application of mind. In the facts of this case, therefore, the order taking cognizance is not erroneous.

C.6 'Authorised person' and Section 22 of MMDR Act

76. Section 22 of the MMDR Act stipulates that no Court shall take cognizance of any offence punishable under this Act or Rules, except upon a complaint made in writing by a person authorised on that behalf by the Central or the State Government. It has been contended by the appellant that before the Special Court (Sessions Court) took cognizance of the offence, no complaint was filed by the authorised person.

77. In **State (NCT of Delhi)** v. **Sanjay**[57], the principal question which was formulated for the decision of a two judge Bench was whether the Magistrate has the power to take cognizance of the offence upon a police report without a complaint

[57] (2014) 9 SCC 772

LL 2021 SC 691

WWW.LIVELAW.IN

from the authorised person under Section 22 of the MMDR Act. Justice M Y Eqbal, delivering the judgment for the two-judge Bench, held that Section 22 only bars the prosecution and cognizance of offences for contravention of Section 4 of the MMDR Act without a written complaint and not for offences under the provisions of the IPC. The court also noted the object and policy underlying the MMDR Act in the context of environmental protection. The Court observed:

> "62. Sub-section (1-A) of Section 4 of the MMDR Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the provisions of the Act and the Rules made thereunder. In other words no person will do mining activity without a valid lease or licence. Section 21 is a penal provision according to which if a person contravenes the provisions of sub-section (1-A) of Section 4, he shall be prosecuted and punished in the manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable notwithstanding anything contained in the Code of Criminal Procedure, 1973. Section 22 of the Act puts a restriction on the court to take cognizance of any offence punishable under the Act or any Rule made thereunder except upon a complaint made by a person authorised in this behalf. It is very important to note that Section 21 does not begin with a non obstante clause. Instead of the words "notwithstanding anything contained in any law for the time being in force no court shall take cognizance….", the section begins with the words "no court shall take cognizance of any offence.
>
> […]
>
> 70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of

LL 2021 SC 691

WWW.LIVELAW.IN

> Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code."

In view of the above discussion, the Court held: -

(i) The ingredients constituting an offence under the MMDR Act and the ingredients of the offences under the IPC are distinct; and

(ii) For the commission of an offence under the IPC, on receipt of a police report, the Magistrate having jurisdiction can take cognizance without awaiting a complaint by the authorized officer. A complaint is required in terms of Section 22 only for taking cognizance in respect of a violation of the provisions of the MMDR Act.

78. In **Kanwar Pal Singh** v. **The State of Uttar Pradesh**[58], a two judge Bench has followed the earlier decision in **Sanjay** (supra). In **Jayant** v. **The State of Madhya Pradesh**[59], the appeal before this Court arose from a decision of the High Court rejecting the application under Section 482 CrPC for quashing FIRs alleging the commission of offences under Sections 379 and 414 IPC, Sections 4/21 of the MMDR Act and Rule 18 of the M.P. Minerals (Prevention of illegal Mining, Transportation and Storage) Rules, 2006. The JMFC, taking note of the information and the decision of this Court in **Sanjay** (supra) exercised powers under Section

[58] (2020) 14 SCC 331
[59] (2021) 2 SCC 670

LL 2021 SC 691

WWW.LIVELAW.IN

156(3) CrPC and directed the registration of a criminal case for investigation. FIRs were registered on the basis of the order passed by the Magistrate. The High Court was moved under Section 482 CrPC for quashing the FIRs on the basis of the bar contained in Section 22 of the MMDR Act. The petitions for quashing were dismissed on the basis of the decision in **Sanjay** (supra). After adverting to the decision in **Sanjay** (supra), Justice M R Shah, speaking for a two-judge Bench of this Court, noted that the prohibition contained in Section 22 of the MMDR Act against the prosecution of a person except on a written complaint of the authorised officer is attracted only when the prosecution is for contravention of Section 4 of the MMDR Act and would not apply in respect of an act or omission which constitutes an offence under Penal Code. The court observed that the bar under Section 22 of the Act kicks in with regard to the offence under Section 4 of the MMDR Act only when the Magistrate purports to take cognizance of the offence and not when the Magistrate orders further investigation under Section 156(3) CrPC. Referring a complaint for investigation under Section 156(3) would be at the pre-cognizance stage. Justice M R Shah observed: -

> "16…Therefore, when an order is passed by the Magistrate for investigation to be made by the police under Section 156(3) of the Code, which the learned Magistrate did in the instant case, when such an order is made the police is obliged to investigate the case and submit a report under Section 173(2) of the Code. That thereafter the investigating officer is required to send report to the authorised officer and thereafter as envisaged under Section 22 of the MMDR Act the authorised officer as mentioned in Section 22 of the MMDR Act may file the complaint before the learned Magistrate along with the report submitted by the investigating officer and at that stage the question with

LL 2021 SC 691

WWW.LIVELAW.IN

> respect to taking cognizance by the learned Magistrate would arise."

The conclusions which were arrived at by the Court were as follows:

> "21.1. That the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the In-charge/SHO of the police station concerned to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted.
>
> 21.2. The bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and the Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and the Rules made thereunder.
>
> 21.3. For commission of the offence under IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and the Rules made thereunder.
>
> 21.4. That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the In-charge/SHO of the police station concerned to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and the Rules made thereunder and thereafter after investigation the In-charge of the police station/investigating officer concerned submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and the Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

LL 2021 SC 691

WWW.LIVELAW.IN

> 21.5. In a case where the violator is permitted to compound the offences on payment of penalty as per sub-section (1) of Section 23-A, considering sub-section (2) of Section 23-A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any Rules made thereunder so compounded. However, the bar under sub-section (2) of Section 23-A shall not affect any proceedings for the offences under IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further."

79. The Government of Karnataka issued a notification on 21 January 2014 in exercise of powers under Sections 21(3), 21(4) and 22 of the MMDR Act 1957 and Rules 43(3) and 46 of the Karnataka Minor Mineral Concession Rules 1994. The notification authorized officers/authorities for the purpose of Section 22. The text of the authorization is extracted below:

Sl. No.	**Designation of Officers/Authorities**	**Jurisdiction**	**Department**
(1)	(2)	(3)	(4)
1	The Additional Director (mineral administration)	Whole of the State	Department of Mines and Geology
2	The Joint Director, South/North zones	Within their Jurisdiction	Department of Mines and Geology
3	Deputy Director (mineral administration)	Whole of the State	Department of Mines and Geology
4	The Deputy Commissioner	Respective Districts	Revenue Department
5	The Superintendent of Police/ Police Commissioner	Within their Jurisdiction	Police Department
6	The Deputy Conservator of Forest	Respective jurisdiction	Forest Department
7	The Deputy Superintendent of Police	Respective sub-division	Police Department
8	Deputy Director/Senior	Within their	Department of Mines

LL 2021 SC 691

WWW.LIVELAW.IN

	Geologist	jurisdiction	and Geology
9	The Asst. Commissioner	Respective sub-division	Revenue Department
10	Geologists	Within their jurisdiction	Department of Mines and Geology
11	The Tahasildhar	Respective Taluk	Revenue Department
12	The Circle Inspector/ Inspector of Police	Within their jurisdiction	Police Department
13	**Sub-Inspector of Police**	**Within their jurisdiction**	**Police Department**
14	The Revenue Inspector	Respective Hobilies	Revenue Department
15	The Range Forest Officers	Respective Range	Forest Department

(emphasis supplied)

80. The Government of Karnataka issued a notification on 29 May 2014 declaring that the Office of the Inspector General of Police, Special Investigation Team, Karnataka Lokayukta shall be a 'police station' for the purpose of Section 2(s) and shall have jurisdiction throughout the State of Karnataka for offences related to the illegal mining of minerals. The FIR was filed by the SIT, Lokayukta pursuant to the Order of this Court dated 16 September 2013 and was signed by the Sub-inspector of Police, Karnataka Lokayukta. On a reading of the notification dated 29 May 2014, it is evident that the SIT has the jurisdiction throughout Karnataka in relation to mining offences. S.No. 13 of the Notification dated 21 January 2014 authorizes the 'Sub-inspector of Police' within its jurisdiction for the purpose of Section 22 of the MMDR Act. Therefore, on a combined reading of both the notifications, it is clear as

LL 2021 SC 691

WWW.LIVELAW.IN

day light that the complaint filed by SIT and signed by the Sub-Inspector of Police has complied with Section 22 of the MMDR Act.

C.7 Vicarious liability and Section 23 of MMDR Act

81. A-1 submitted that the charge-sheet does not ascribe any role to A-1 and hence the process initiated against him must be quashed. The appellants in support of their argument relied on **Sunil Bharati Mittal** (supra), **Shiva Kumar Jatia** v. **NCT of Delhi**[60]**, Sunil Sethi** v. **State of Andhra Pradesh**[61] and **Ravindranatha Bajpe** v. **Mangalore Special Economic Zone Ltd.**[62] In **Sunil Bharati Mittal** (supra), a three-judge Bench of this Court observed that the general rule is that criminal intent of a group of people who undertake business can be imputed to the Company but not the other way around. Only two exceptions were provided to this general rule: (i) when the individual has perpetuated the commission of offence and there is sufficient evidence on the active role of the individual; and (ii) the statute expressly incorporates the principle of vicarious liability. Justice Sikri writing for a three-judge Bench observed:

> "43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.
> 44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence

[60] (2019) 17 SCC 193
[61] (2020) 3 SCC 240
[62] 2021 SCC OnLine 806

LL 2021 SC 691

WWW.LIVELAW.IN

> of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada* [*Aneeta Hada* v. *Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] , the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

Shiva Kumar Jatia (supra), **Sunil Sethi** (supra) and **Ravindranatha Bajpe** (supra) also rely on this observation made in **Sunil Bharati Mittal** (supra).

82. Section 23(1) of the MMDR Act stipulates that where the offence has been committed by a company, every person who at the time of the commission of the offence was in-charge of and responsible for the conduct of business shall be deemed to be guilty of the offence. The proviso stipulates that nothing contained in sub-section (1) shall render such a person liable to punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence of preventing the commission of the offence.

83. In **SMS Pharmaceuticals** v. **Neeta Bhalla**[63], a three-judge Bench while construing the provisions of Section 141 of the Negotiable Instruments Act 1881,

[63] (2005) 8 SCC 89

LL 2021 SC 691

WWW.LIVELAW.IN

which are in *pari materia* with Section 23 of the MMDR Act has noted that the position of a Managing Director or a Joint Managing Director of a company is distinct since persons occupying that position are in charge of and responsible for the conduct of the business. It was observed that though there is a general presumption that the Managing Director and Joint Managing Director are responsible for the criminal act of the company, the director will not be held liable if he was not responsible for the conduct of the company at the time of commission of the offence. The Court observed:

> "9. The position of a managing director or a joint managing director in a company may be different. These persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. In order to escape liability such persons may have to bring their case within the proviso to Section 141(1), that is, they will have to prove that when the offence was committed they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.
>
> […]
>
> Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. **The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company.** Conversely, a person not holding any office or designation in a company may be liable if he satisfies the

LL 2021 SC 691

WWW.LIVELAW.IN

> main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time."
>
> **(emphasis supplied)**

The same principle has been followed by a Bench of two judges in **Mainuddin Abdul Sattar Shaikh** v. **Vijay D Salvi**[64] :

> "12. The respondent has adduced the argument that in the complaint the appellant has not taken the averment that the accused was the person in charge of and responsible for the affairs of the Company. However, as the respondent was the Managing Director of M/s Salvi Infrastructure (P) Ltd. and sole proprietor of M/s Salvi Builders and Developers, there is no need of specific averment on the point. This Court has held in *National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal* [(2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] , as follows : (SCC p. 346, para 39)
>
> "*39*. (*v*) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with."

84. The test to determine if the Managing Director must be charged for the offence committed by the Company is to determine if the conditions in Section 23 of the MMDR Act have been fulfilled i.e., whether the individual was in-charge of and responsible for the affairs of the company during the commission of the offence. In view of the above decisions, the submissions which has been urged on behalf of the appellant cannot be acceded to. The determination of whether the conditions stipulated in Section 23 of the MMDR Act have been fulfilled is a matter of trial. Moreover, it is evident that the charge sheet, as a matter of fact, ascribes a role to A-1 and A-2 for the payment of transportation. Therefore, there is a *prima facie* case against A-1, which is sufficient to arraign him as an accused at this stage.

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[64] (2015) 9 SCC 622

LL 2021 SC 691

WWW.LIVELAW.IN

D. The Conclusion

85. In view of the discussion above, we summarise our findings below:

(i) The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209 CrPC. The order of the Special Judge dated 30 December 2015 taking cognizance is therefore irregular;

(ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465 CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 CrPC;

(iii) The decision in **Gangula Ashok** (supra) was distinguished in **Rattiram** (supra) based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2) CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides Section 465(2) CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the Courts ought to address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to prolong proceedings, among others;

LL 2021 SC 691

WWW.LIVELAW.IN

(iv) In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated;

(v) It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no 'failure of justice' under Section 465 CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465 CrPC;

(vi) The Special Court has the power to take cognizance of offences under MMDR Act and conduct a joint trial with other offences if permissible under Section 220 CrPC. There is no express provision in the MMDR Act which indicates that Section 220 CrPC does not apply to proceedings under the MMDR Act;

(vii) Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC. Both the provisions can be read harmoniously and such an interpretation

LL 2021 SC 691

WWW.LIVELAW.IN

furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

(viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;

(ix) A combined reading of the notifications dated 29 May 2014 and 21 January 2014 indicate that the Sub-Inspector of Lokayukta is an authorized person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22 CrPC; and

(x) The question of whether A-1 was in-charge of and responsible for the affairs of the company during the commission of the alleged offence as required under the proviso to Section 23(1) of the MMDR Act is a matter for trial. There appears to be a *prima facie* case against A-1, which is sufficient to arraign him as an accused at this stage.

LL 2021 SC 691

WWW.LIVELAW.IN

86. For the reasons above, we find no merit in the appeals. The appeals shall accordingly stand dismissed.

87. Pending application(s), if any, shall stand disposed of.

……..…………………………………………….J
[Dr Dhananjaya Y Chandrachud]

………..…………………………………………….J
[Vikram Nath]

………..…………………………………………….J
[B V Nagarathna]

New Delhi;
November 29, 2021

LL 2021 SC 691