

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1347 OF 2010

Mehmood Ul Rehman

... Appellant (s)

Versus

Khazir Mohammad Tunda and others

... Respondent (s)

WITH

CRIMINAL APPEAL NO. 1348 OF 2010

Safaraz Pathan and another

... Appellant (s)

Versus

Khazir Mohammad Tunda and others

... Respondent (s)

J U D G M E N T

KURIAN, J.:

1. Cognizance of an offence is taken by the Magistrate under Chapter XIV Section 190 of The Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'). The Chapter deals with "Conditions Requisite For Initiation of Proceedings". The Magistrate is empowered to take cognizance of an offence under Section 190(1)(a) of CrPC upon receiving a complaint of facts which constitute such offence. Chapter XV CrPC deals with

the further procedure for dealing with “Complaints to Magistrate”. Under Section 200 of CrPC, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the complainant, the witnesses and the Magistrate. Under Section 202 of CrPC, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person “for the purpose of deciding whether or not there is sufficient ground for proceeding”. If, after considering the statements recorded under Section 200 of CrPC and the result of the inquiry or investigation under Section 202 of CrPC, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so. Chapter XVI CrPC deals with “Commencement of Proceedings before Magistrate”. If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) of CrPC for attendance of the accused.

2. In the instant case, we are called upon to decide the scope of the ‘opinion of Magistrate’ on sufficient ground for

proceeding to issue process to the accused. The question has arisen in the background of an order passed by the Judicial Magistrate First Class, Srinagar on 03.04.2007 on a complaint filed by the first respondent herein under Section 500 of Ranbir Penal Code, 1932 [Section 500 the Indian Penal Code (45 of 1860)]. The operative portion of the order reads as follows:

“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 accused persons to cause their appearance before this court on 22.4.07, to answer the material questions.”

3. According to the appellants, the complaint filed by the first respondent did not constitute an offence and hence they were not liable to be called by the Magistrate to defend the criminal proceedings. Thus, aggrieved, the appellants filed a petition to quash the proceedings initiated by the Magistrate by order dated 03.04.2007.

4. The High Court, by the impugned order, rejected the petition holding that the veracity of allegations made in the complaint filed by the first respondent before the Magistrate “is a question of evidence and can be settled only when the evidence is adduced”.

5. Heard Shri Soli J. Sorabjee, learned Senior Counsel appearing for the appellants in Criminal Appeal No. 1347 of 2010 and appearing for the respondents in Criminal Appeal No. 1348 of 2010. Ms. Vibha Datta Makhija, learned Senior Counsel appeared for the respondents in Criminal Appeal No. 1347 of 2010 and for the appellants in Criminal Appeal No. 1348 of 2010. Ms. S. Janani, learned Counsel appeared for the complainant/respondent(s) in both Criminal Appeal Nos. 1347 of 2010 and 1348 of 2010.

6. Though the learned Senior Counsel made an attempt to canvas on the merits of the matter as well, we do not find it necessary and it is not proper also at this stage to deal with the same. However, the contention that the Magistrate has not even formed an opinion as to whether the allegations in the complaint would constitute an offence, when considered along with the statements recorded under Section 200 of CrPC, requires consideration.

7. The question is: how does a Magistrate, while taking cognizance of an offence on complaint, indicate his satisfaction regarding the ground for proceeding against the accused.

8. In **Pepsi Foods Limited and another v. Special Judicial Magistrate and others**¹, this Court has held that exercise under Section 204 of CrPC of summoning an accused in a criminal case is a serious matter and that the process of criminal law cannot be set into motion in a mechanical manner. It was also held that 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 governing the issue. To quote:

“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 scrutinise 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.”

¹ (1998) 5 SCC 749

9. In taking recourse to such a serious process, this Court has consistently held that the Magistrate must apply his mind on the allegations on commission of the offence. In **Darshan Singh Ram Kishan v. State of Maharashtra**², it was held that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and thereafter takes judicial notice of the offence. To quote:

“8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, *prima facie* he does so of the offence or offences disclosed in such report.”

² (1971) 2 SCC 654

10. In one of the early decisions, **Emperor v. Sourindra Mohan Chuckerbutty**³, a Division Bench of the Calcutta High Court has taken the same view ... “taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence”.

11. In **Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others**⁴, this Court took the view that in the process of taking cognizance and issue of process to the accused, Magistrate has to form an opinion that a *prima facie* case is made out against the accused. At that stage, the Magistrate is also competent to consider whether there are inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant. To quote:

“5. ... It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a *prima facie* case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even

³ (1910) I.L.R. Vol.XXXVII, Cal. 412

⁴ (1976) 3 SCC 736

this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. ...”

12. In **Kishun Singh and Others v. State of Bihar**⁵, this Court reiterated the position that where, on application of mind, the allegations in the complaint, according to the Magistrate, if proved, would constitute an offence, cognizance is to be taken of the offence so as to proceed further against the accused. To quote:

“**7.** ... 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. Mere application of mind does not amount to taking cognizance unless the Magistrate does so for proceeding under Sections 200/204 of the Code ...”

13. In **State of W.B. and another v. Mohd. Khalid and others**⁶, it has been held by this Court that while exercising the power to take cognizance, a Magistrate has to see whether

⁵ (1993) 2 SCC 16

⁶ (1995) 1 SCC 684

there is any basis for initiating judicial proceedings. At paragraph-43, it has been held as follows:

“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.”

14. In **Kanti Bhadra Shah and another v. State of W.B.**⁷, this Court has taken the view that it is quite unnecessary to write detailed orders at the stage of issuing process.

15. In **U.P. Pollution Control Board v. Mohan Meakins Limited and others**⁸, the position was further clarified that it was not necessary to pass a speaking order at the stage of taking cognizance.

⁷ (2000) 1 SCC 722

⁸ (2000) 3 SCC 745

16. In **Deputy Chief Controller of Imports and Exports v. Roshanlal Agarwal and others**⁹, this Court considered the situation where the impugned order passed by the Magistrate read as follows: “Cognizance taken. Register the case. Issue summons to the accused”. It was held that “at the stage of issuing the process to the accused, Magistrate is not required to record reasons”. **Kanti Bhadra Shah** (supra) and **U.P. Pollution Control Board** (supra) were also referred to in the said decision.

17. In **Jagdish Ram v. State of Rajasthan and another**¹⁰, the law was restated holding that at the stage of issuing process to the accused, the Magistrate is not required to record reasons. However, he has to be satisfied that there is sufficient ground for proceeding and such satisfaction is not whether there is sufficient ground for conviction. To quote:

“10. ... The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.”

⁹ (2003) 4 SCC 139

¹⁰ (2004) 4 SCC 432

18. In **S.K. Sinha, Chief Enforcement Officer v. Videocon International Limited and others**¹¹, this Court held that taking cognizance has no esoteric or mystic significance in criminal law and it connotes that a judicial notice is taken of an offence, after application of mind. To quote:

“19. The expression “cognizance” has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means “become aware of” and when used with reference to a court or a Judge, it connotes “to take notice of judicially”. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. “Taking cognizance” does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.”

¹¹ (2008) 2 SCC 492

19. In **U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi and another**¹², at paragraph-23, the position has been discussed as follows:

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

20. In **Bhushan Kumar and another v. State (NCT of Delhi) and another**¹³, the requirement of application of mind in the process of taking cognizance was reiterated. It was further held that summons is issued to notify an individual of his legal obligation to appear before the Magistrate as a response to the alleged violation of law. It was further held that in the process thus issued, the Magistrate need not explicitly state the reasons. Paragraphs-11 to 13 contain the relevant discussion, which read as follows:

“11. In *Chief Enforcement Officer v. Videocon International Ltd.*³ (SCC p. 499, para 19) the expression “cognizance” was explained by this Court as “it merely means ‘become aware of’ and when used with reference to a court or a Judge, it connotes ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes judicial notice of an offence

¹² (2009) 2 SCC 147

¹³ (2012) 5 SCC 424

with a view to initiating proceedings in respect of such offence said to have been committed by someone.” It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A “summons” is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to

be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued.”

21. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in **Pepsi Foods Limited** (supra), to set in motion the process of criminal law against a person is a serious matter.

22. Under Section 190(1)(b) of CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) of CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) of 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) of CrPC. The complaint is simply to be rejected.

23. The steps taken by the Magistrate under Section 190(1) (a) of CrPC followed by Section 204 of CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, *prima facie*, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 of CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of

course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 of CrPC, the High Court under Section 482 of CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.

24. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred

cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Section 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 of CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. Question is not about veracity of the allegations; but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate. We, hence, set aside the order dated 03.04.2007 passed by the Judicial Magistrate First Class, Srinagar and the impugned order passed by the High Court. The matter is remitted to the Magistrate for fresh consideration and further action, if required to be taken in accordance with law.

25. The appeals are allowed as above.

.....J.
(KURIAN JOSEPH)

.....J.
(ADARSH KUMAR GOEL)

**New Delhi;
March 31, 2015.**

ITEM NO.1A
(For Judgment)

COURT NO.12

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1347/2010

MEHMOOD UL REHMAN

Appellant(s)

VERSUS

KHAZIR MOHAMMAD TUNDA & ORS.
Respondent(s)

WITH
Crl.A. No. 1348/2010

Date : 31/03/2015 These appeals were called on for
pronouncement of judgment today.

For Appellant(s) Mr. Sarad Kumar Singhania,Adv.

Mr. Praveen Chaturvedi,Adv.

For Respondent(s) Mr. Praveen Chaturvedi,Adv.

Ms. S. Janani,Adv.

Hon'ble Mr. Justice Kurian Joseph pronounced
the reportable Judgment of the Bench comprising
His Lordship and Hon'ble Mr. Justice Adarsh Kumar
Goel.

The appeals are allowed in terms of the signed
reportable Judgment.

(Rajni Mukhi)
Sr. P.A.

(Renu Diwan)
Court Master

(Signed Reportable Judgment is placed on the file)