THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Petn. No.19 of 2006

Shri Bijay Sankar Saha,
S/O. Lt. Binodlal Saha,
Resident of Santipara,
P.S. – East Agartala,
District – West Tripura.

……..…. *Petitioner*

- Vs. –

1. The State of Tripura.

2. Shri Rupak Barman,
   S/O. Lt. Chitta Ranjan Barman,
   Resident of Sankar Chowmuhani,
   P.S. – West Agartala,
   District – West Tripura/

3. Shri Kanai Deb,
   S/o. Lt. Manindra Chandra Deb,
   Resident of Dashamighat (Ramsundar Nagar),
   P.S. – West Agartala.
   District – West Tripura.

……..…. *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioner	:	Mr. B.N. Majumder, Advocate. Mr. Somik Deb, Advocate.
For the respondents	:	Mr. S. Lodh, Advocate.
Date of hearing	:	17.01.2015.
Delivery of Judgment & order	:	30.04.2015.
Whether fit for reporting	:	Yes.

JUDGMENT & ORDER

An important issue arises in this case as to how private complaints filed by the complainants should be dealt with by the criminal Courts.

2. The brief facts leading to the present petition are that the petitioner Shri Bijay Sankar Saha alleged that he was an executive committee member of the Tripura Truck Owners Syndicate and according to him the accused persons Rupak Barman and Kanai Deb were also members of the executive committee and assumed office of Secretary and Treasurer of the Syndicate respectively. The petitioner has leveled serious allegations against these accused persons alleging that they have misappropriated the funds of the Syndicate etc. I am not dealing with allegations in detail because it would not be appropriate to express any opinion on the merits of the case. However, basically, the allegations were that the accused have committed offences of corruption, malpractice, criminal misappropriation, defalcation and misused their authority and also misused the funds of the Syndicate.

3. This complaint was filed on 07.03.2006 and was transferred to the file of the Additional Chief Judicial Magistrate, West Tripura, who took up the matter on 08.03.2006 and passed the following order:-

"Received the case record on transfer from the Court of Ld. C.J.M., Tripura (W), Agartala for disposal according to law.

Register it in my file.

To 9-3-06 for adduce evidence u/S 200 CrPC."

4. The case was then taken up on 09.03.2006 when the evidence of the complainant was to be recorded under Section 200 Cr.P.C. On this date, the counsel for the complainant submitted that the matter related to financial corruption and prayed that a report be obtained from the police. The Court was also informed that the complainant had already lodged a complaint to the police, but no action on the same was taken. On 09.03.2006, the following order was passed:-

"Complainant is present. Learned counsel of the complainant submits that the matter relating to a financial corruption in respect of Truck Owners' Syndicate by Shri Rupak Barman and Kanai Deb and prays to obtain report from police. She submits that the informant already lodged a complaint to the police at West Agartala P/S. But police did not take any action.

In view of the submission of the learned Advocate send the complaint to the O/C West Agartala P/S with a direction to resubmit the same before the court along with his comments in respect of the submission of learned counsel of the complainant by the next date.

To 31-3-06 for report of O/C West Agartala P/S."

5. On 31.03.2006, no report was received. Finally, the report was received as is reflected in the order dated 27.04.2006. On 15.05.2006, the matter was adjourned to 16.06.2006, when the following order was passed:-

"Complainant is present.
Report from O/C has been received.
Inform Ld. Counsel of opp. Party for taking step (sic)
Fix 16-6-06 for step (sic) by petitioner."

This order makes no sense because no steps were required to be taken by the petitioner. On 16.06.2006 the following order was passed:-

> ***"Record shows that on 15.5.06 the case was fixed for step by the O/Ps-petitioner and it was ordered to inform learned counsel of the O/Ps. It is a pen mistake. Cognizance of this case is not taken. Accordingly date should be fixed for taking step by the complainant side in view of the report of O/C of West Agartala P/S.***
> ***A copy of the report of the O/C West Agartala P/S be handed over to the complainant and the complainant is to bear its expenditure.***
> ***Fix 19-06-06 for hearing on that report."***

6. On 25.08.2006, the Chief Judicial Magistrate withdrew the file from the Additional Chief Judicial Magistrate and the case was transferred to the Judicial Magistrate, 1st Class, Court No.4. The file was taken up by the new Court on 04.09.2006. On this date the statement of the complainant was recorded under Section 200 Cr.P.C. and thereafter the Magistrate passed an order, relevant portion of which reads as follows:-

> ***"I am of the opinion that such averments supported by photo copies of the said A/C's statements and also the statement of the complainant recorded U/S.200 Cr.P.C. can not be made a basis for issuance of summons as in the report submitted by the O/C it has been categorically mentioned that upon inquiry nothing was revealed regarding defalcation of money against the accused persons. The report also reveals that there are numerous cases filed by the complainant as well as the accused persons against each other.***
> ***Considering the aforesaid circumstances I am of the opinion that there is no sufficient ground for proceeding and as such the complaint is hereby dismissed."***

7. This order has been challenged by the complainant in this Court and the main ground of challenge is that the learned

Court below has not followed the proper procedure as prescribed by law for taking cognizance of a complaint case.

8. Under Section 154 of the Cr.P.C., every information relating to the commission of a cognizable offence if given orally to an Officer-in-Charge of police station must be recorded in writing by him or under his direction and read over to the informant. This writing should be signed by the informant and where the complaint is in writing the same should also be signed by the informant. A copy of the information as recorded under sub-Section (1) is to be given free of cost to the informant. When the information given relates to the commission of a non-cognizable offence, the police officer must refer the information to the Magistrate and no police officer can investigate a non-cognizable offence without an order of a Magistrate. Section 156 of the Cr.P.C. provides that any Officer-in-Charge of a police station can investigate a cognizable offence even without the order of a Magistrate.

9. Section 156(3) of Cr.P.C. reads as follows:-

> ***"156.(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."***

A Magistrate empowered under Section 190 can order investigation under Section 156 also.

10. Section 157 Cr.P.C. lays down the procedure to be followed for investigation and a report is to be submitted to the Magistrate in terms of Section 158 of the Cr.P.C. On receipt of the

report the Magistrate may direct an investigation or may himself or depute any Magistrate subordinate to him to proceed to hold preliminary inquiry or dispose of the case as per the Code of Criminal Procedure.

11. Section 170 Cr.P.C. provides that if upon an investigation it appears to the police officer that there is sufficient evidence or reasonable ground the case can be sent to the Magistrate. Under Section 173 Cr.P.C. investigation has to be completed as early as possible and as soon as the investigation is complete the Officer-in-charge of the police station is required to forward to the Magistrate empowered to take cognizance of the offence a report in proper form.

12. To decide the issues in hand it would be necessary to refer in detail to certain provisions of the Cr.P.C. Section 190 Cr.P.C. deals with the cognizance of offences by Magistrate and reads as follows:-

> ***"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."***

13. Chapter XV of the Cr.P.C. deals with complaint to the Magistrates and Sections 200, 202, 203 reads as follows:-

> ***"200. Examination of complainant. - 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:***
>
> ***Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-***
>
> ***(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or***
>
> ***(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:***
>
> ***Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them.***
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> ***202. Postponement of issue of process.- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, (Ins. By Act 25 of 2005, sec. 19 (w.e.f. 23-6-2006)[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:***
>
> ***Provided that no such direction for investigation shall be made,--***
>
> ***(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or***
>
> ***(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.***
>
> ***(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:***
>
> ***Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of***

Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

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

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

14. Before dealing with the provisions let me first cite certain judgments referred to by learned counsel for the parties. In ***(2006) 1 SCC 627, Mohd. Yousuf vs. Afaqjahan (Smt) and another***, the Apex Court discussed the provisions of Section 154, 156 and 202 Cr.P.C. and held that there is no particular format for filing a complaint and that the nomenclature is also inconsequential. A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprits be suitably dealt with in accordance with law, is sufficient. The Court held as follows:-

"6. Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Code.

7. Chapter XII of the Code contains provisions relating to "information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a

person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code.

8. The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

9. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e.

> ***"or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding".***

10. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him.

11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can

> ***order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."***

15. A perusal of the judgment clearly shows that the Apex Court held that even when a criminal complaint is filed under Chapter XV of the Code, the Magistrate is entitled to send the matter to the police in terms of Chapter XII under Section 156(3) of the Cr.P.C. However, the most important point is that a Magistrate can order investigation under Chapter XII before he takes cognizance of the case. Once he has taken cognizance of offence in a complaint filed before him under Section 200 Cr.P.C. then he must record the statement of the complainant and his witnesses if any and thereafter, only he can refer the matter to the police under Section 202 Cr.P.C. In this case, it is apparent that the Magistrate was not clear what procedure he was following. In case, the order of investigation under 156(3) Cr.P.C. then the report of police has to be treated to be one under Section 173 Cr.P.C. This only means that it will have to now decide whether a cognizance has taken or not.

16. Though the law is clear that a Magistrate is entitled to send the matter to the police in terms of Chapter XII under Section 156(3) Cr.P.C., but then also the Magistrate must apply his mind even though he may not have taken cognizance of the case. Reference in this behalf may be made to the judgment of the Apex Court in Criminal Appeal No.781 of 2012 decided on March 19, 2015, which has been circulated to all the Courts in country. The relevant observations of the Apex Court are as follows:-

> ***"24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.***
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> ***25. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate.***
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> ***26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate.***
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> ***27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations."***

17. What is the meaning of the word 'cognizance' has been discussed in the case of ***(2006) 6 SCC 728, State of Karnataka and another vs. Pastor P. Raju,*** wherein dealing

with the words 'cognizance' and 'issuance of process', the Court held as follows:-

> ***"10. Several provisions in Chapter XIV of the Code of Criminal Procedure use the word "cognizance". The very first Section in the said Chapter, viz. Section 190 lays down how cognizance of offences will be taken by a Magistrate. However, the word "cognizance" has not been defined in the Code of Criminal Procedure. The dictionary meaning of the word "cognizance" is – "judicial hearing of a matter". The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is R.R. Chari v. State of U.P., 1951 SCR 312, wherein it was held : (SCR p. 320)***
>
> > ***"...'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 Darshan Singh Ram Kishan v. State of Maharashtra, AIR 1971 SC 2372, while considering Section 190 of the Code of 1908, it was observed that: (SCC p. 656, para 8)***
>
> ***"[T]aking 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."***
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> ***12. In Narayandas Bhagwandas Madhavdas v. State of W.B., AIR 1959 SC 1118 it was held that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter - proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. It was observed that there is no special charm or any magical formula in the expression "taking cognizance" which merely means judicial application of the mind of the Magistrate to the facts***

mentioned in the complaint with a view to taking further action. It was also observed that what Section 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations. The Court then referred to the three situations enumerated in sub-section (1) of Section 190 upon which a Magistrate could take cognizance. Similar view was expressed in Kishun Singh v. State of Bihar (1993) 2 SCC 16 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. In State of W.B. v. Mohd. Khalid (1995) 1 SCC 684 this Court after taking note of the fact that the expression had not been defined in the Code held : (SCC p.696, para 43)

> ***"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."***

13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out."

18. In ***Fakhruddin Ahmad vs. State of Uttaranchal and another, (2008) 17 SCC 157*** dealing with Chapter XV of the code, the Apex Court held as follows:-

"10. Chapter XV containing Sections 200 to 203 deals with "Complaints to Magistrates" and lays down the procedure which is required to be followed by the Magistrate taking cognizance of an offence on complaint. Similarly, Chapter XVI deals with "Commencement of Proceedings before Magistrates". Since admittedly, in the present case, the Magistrate has taken cognizance of the complaint in terms of Section 190 of the Code, we shall confine our discussion only to the said provision. We may, however, note that on receipt of a complaint, the Magistrate has more than one course open to him to determine the procedure and the manner to be adopted for taking cognizance of the offence.

11. One of the courses open to the Magistrate is that instead of exercising his discretion and taking cognizance of a cognizable offence and following the procedure laid down under Section 200 or Section 202 of the Code, he may order an 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. On receiving the police report, if the Magistrate is satisfied that on the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence, he may take cognizance of the offence under Section 190 (1) (b) of the Code and issue process straightaway to the accused. However, Section 190(1)(b) of the Code does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation makes out a case against the accused. Undoubtedly, the Magistrate can ignore the conclusion(s) arrived at by the investigating officer.

12.Thus, it is trite that the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion in this behalf, irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. This is because the purpose of the police report under Section 173(2) of the Code, which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material referred therein, a case for cognizance is made out or not."

19. Dealing with the issue as to what is meant taking by the cognizance, the Court held as follows:-

14.The expression "cognizance" is not defined in the Code but is a word of indefinite import. As observed by this Court in Ajit Kumar Palit Vs. State of West Bengal, AIR 1963 SC 765 (AIR p. 770 para 19)

> ***"19. …The word `cognizance' has no esoteric or mystic significance in criminal law or procedure. It merely means-become aware of and when used with reference to a Court or Judge, to take notice of judicially."***

Approving the observations of the Calcutta High Court in Emperor v. Sourindra Mohan Chuckerbutty, ILR (1910) 37 Cal 412 (at ILR p. 416), the Court said that

> ***"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."***

16. From the aforenoted judicial pronouncements, it is clear that being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by "taking cognizance". Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action.

17. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender."

20. A three Judge Bench of the Supreme Court in ***Manharibhai Muljibhai Kakadia and another vs. Shaileshbhai Mohanbhai Patel and others, (2012) 10 SCC 517*** has again discussed this issue in detail and held as follows:-

"20. Section 202 of the Code has twin objects; one, to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate himself may hold an inquiry under Section 202 of the Code or direct an investigation to be made by a police officer. The dismissal of the complaint under Section 203 is without doubt a pre-issuance of process stage. The Code does not permit an accused person to intervene in the course of inquiry by the Magistrate under Section 202. The legal position is no more res integra in this regard. More than five decades back, this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker (AIR 1960 SC 1113) with reference to Section 202 of the Criminal Procedure Code, 1898 (corresponding to Section 202 of the present Code) held that the inquiry under Section 202 was for the purpose of ascertaining the truth or falsehood of the complaint, i.e., for ascertaining whether there was evidence in support of the complaint so as to justify the issuance of process and commencement of proceedings against the person concerned.

24. The procedural scheme in respect of the complaints made to Magistrates is provided in Chapter XV of the Code. On a complaint being made to a Magistrate taking cognizance of an offence, he is required to examine the complainant on oath and the witnesses, if any, and then on considering the complaint and the statements on oath, if he is of the opinion that there is no sufficient ground for proceeding, the complaint shall be dismissed after recording brief reasons. The Magistrate may also on receipt of a complaint of which he is authorised to take cognizance proceed with further inquiry into the allegations made in the complaint either himself or direct an investigation into the allegations in the complaint to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. In that event, the Magistrate in fact postpones the issue of process. On conclusion of the inquiry by himself or on receipt of report from the police officer or from such other person who has been directed to investigate into the allegations, if, in the opinion of Magistrate taking cognizance of an offence there is no sufficient ground for proceeding, the complaint is

dismissed under Section 203 or where the Magistrate is of the opinion that there is sufficient ground for proceeding, then a process is issued. In a summons case, summons for the attendance of the accused is issued and in a warrant case the Magistrate may either issue a warrant or a summons for causing the accused to be brought or to appear before him.

25. Pertinently, Chapter XV uses the expression, "taking cognizance of an offence" at various places. Although the expression is not defined in the Code, but it has acquired definite meaning for the purposes of the Code.

26. In R.R. Chari v. The State of U.P. (AIR 1951 SC 207), this Court stated that taking cognizance did not involve any formal action or indeed action of any kind but it takes place no sooner a Magistrate applies his mind to the suspected commission of an offence.

27. In Narayandas Bhagwandas Madhavdas v. The State of W.B. (AIR 1959 SC 1118), this Court considered the expression, "take cognizance of offence" with reference to Sections 190(1)(a), 200 and 202 and held as under : (AIR pp. 1123-24, para 8)

> ***"8. ...As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuing of a search warrant for the purpose of an investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance was taken of an offence. Obviously, it is only when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Ch. XVI of the Code of Criminal Procedure or under Section 204 of Chpter XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance."***

28. In Darshan Singh Ram Kishan v. State of Maharashtra (1971) 2 SCC 654, the Court reiterated what was stated in R.R. Chari R.R. Chari v. State of U.P., AIR 1951 SC 207. It was further explained that cognizance takes place at a point when a Magistrate first takes judicial notice of an offence on a complaint, or a police report, or upon information of a person other than a police officer.

29. In Kishun Singh Kishan Singh v. State of Bihar, (1993) 2 SCC 16, while dealing with the expression "taking

cognizance of an offence" the Court said that cognizance can be said to be taken by a Magistrate when he 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.

30. In State of W.B. v. Mohd. Khalid (1995) 1 SCC 684, the expression, "taking cognizance of an offence" has been explained in paragraph 43 of the Report which reads as follows: (SCC p. 696)

> ***"43. Similarly, when Section 20-A(2) of TADA makes sanction necessary for taking cognizance — it is only to prevent abuse of power by authorities concerned. It requires to be noted that this provision of Section 20-A came to be inserted by Act 43 of 1993. Then, the question is as to the meaning of taking cognizance. 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."***

31. The above cases where the expression, "taking cognizance of an offence" for the purposes of the Code (old as well as new) has been explained have been noted by a two-Judge Bench of this Court in Pastor P. Raju State of Karnataka v. Pastor P. Raju, (2006) 6 SCC 728. The Court in para 13 of the Report referred to the distinction between "taking cognizance of an offence" and "issuance of process" and observed as under: (SCC p. 734)

> ***"13. ...Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court***

> ***decides to proceed against the offenders against whom a prima facie case is made out."***
>
> ***32. On behalf of the appellants, it was submitted that the direction by the CJM to the police officer to investigate into the allegations made in the complaint amounts to taking cognizance of an offence and the dismissal of the complaint by the CJM under Section 203 of the Code was after he had taken cognizance of the offence. On the other hand, on behalf of Respondent 1, it was vehemently contended that dismissal of complaint by the CJM under Section 203 of the Code was at a pre-cognizance stage. The submission on behalf of the Respondent 1 is that no cognizance has been taken by the CJM while directing the Police Officer to investigate into the allegations of the complaint.***
>
> ***34. The word, "cognizance" occurring in various Sections in the Code is a word of wide import. It embraces within itself all powers and authority in exercise of jurisdiction and taking of authoritative notice of the allegations made in the complaint or a police report or any information received that an offence has been committed. In the context of Sections 200, 202 and 203, the expression "taking cognizance" has been used in the sense of taking notice of the complaint or the first information report or the information that an offence has been committed on application of judicial mind. It does not necessarily mean issuance of process.***

21. From a careful analysis of the aforesaid judgments, it is absolutely clear that cognizance of a case is taken by a Magistrate when he notices the complaint or the First Information Report and applies his judicial mind to the said case. Taking cognizance and issuance of process are totally different things. The Magistrate may take cognizance of the case, but may postpone issuance of process till he satisfies that a case is made out for issuance of process. After taking cognizance, the Magistrate can also dismiss the complaint by holding that no cognizable offence is made out. At the same time, any mechanical order passed in a

routine manner by the Court does not amount to taking cognizance of the offence. Such cognizance is only taken when the Court applies its judicial mind. If the order passed shows that the Court has in fact applied its judicial mind then it amounts to taking cognizance of the case.

22. In the present case, the Presiding Officers were unfortunately not even aware of what procedure they were required to follow and how they were to proceed with the case. The Presiding Officer was not clear whether he was dealing with matter under Section 190 or under Section 200 Cr.P.C. At this stage, reference may be made to the fact that the first order was passed by the Chief Judicial Magistrate transferring the case to the file of the Additional Chief Judicial Magistrate on 07.03.2006. This is a mechanical order of transfer of the case and cognizance of the offence has not taken place. The order passed on 08.03.2006 only records the fact that the case has been received on transfer from the Court of the Chief Judicial Magistrate for disposal in accordance with law. It has been ordered that the case be registered and listed for adducing evidence under Section 200 Cr.P.C. The question is whether this order amounts to taking cognizance of the offence or not. In my view, the cognizance was not taken on this date. The order does not disclose any application of judicial mind because the magistrate has not indicated in the order anything to show that he applied his judicial mind to the case. It has just been listed in

routine on the next date for adducing evidence. It may be true that normally an order even for recording evidence must be passed after the Court records the complaint and is satisfied that the complaint discloses some offence. Therefore, the Magistrate could have been better advised to pass an order stating that a complaint has been filed which prima facie alleges the commission of certain offences and therefore to satisfy itself further the Court wants evidence to be recorded under Section 200 Cr.P.C. Sometimes the Courts record the statement of the complainant and/or his witnesses on the same date when the complaint is presented. That will amount to taking cognizance. The order of 08.03.2006 could well have been passed by the clerk and signed by the Magistrate because it shows no application of mind. Therefore, I do not agree that cognizance of the offence was taken on 8th March, 2006.

23. The order dated 09.03.2006 further strengthens this view. On this date, the Court applied its mind and the counsel for the complainant submitted that a complaint with regard to the allegations made in the complaint filed in Court had already been lodged with the West Agartala Police Station, but the police had taken no action. The counsel for the petitioner requested that the complaint be sent to the police with a direction to resubmit the same before the Court along with his comments. The Court only on the basis of such contention and without application of mind sent the matter to the police and asked for a report from the police.

24. There can be no doubt that the Court on 09.03.2006 discussed the facts and stated something about the offence allegedly committed. This reference to the police is, however, not in terms of Section 202 of the Cr.P.C. The order specifically makes reference to a previous complaint filed by the complainant to the police. Under Section 202 Cr.P.C., the Magistrate may postpone the issuance of process and either inquire into the case himself or direct an investigation to be made by the police officer. There is no doubt that there is some confusion in this case because the Magistrate has not made reference to any provision of law while sending the matter to the police. Furthermore, under Section 202 Cr.P.C., no direction for investigation can be made unless the complainant and the witnesses if any produced by him have been examined on oath under Section 200 Cr.P.C. An investigation contemplated under Section 202 Cr.P.C. can therefore be sent to the police or inquired by the Magistrate only after the examination of the complainant and/or his witnesses.

25. It appears to me that though the complaint was filed in terms of Chapter XV when the matter was taken up on 9th March, 2006, the counsel for the complainant only made a request that the matter be got investigated by the police because the original complaint of the complainant was not being investigated properly by the police and this would effectively be an order falling within the ambit of Section 156 (3) Cr.P.C.

26. On 09.03.2006, the Magistrate had no power to send the matter to the police for inquiry in terms of Section 202 Cr.P.C. Furthermore, from the statement of the counsel of the complainant, it is obvious that the Court was requested to send the complaint to the Officer-in-Charge, West Agartala Police Station with a direction to resubmit the same before the Court along with his comments. This according to me was an order under Section 156(3) Cr.P.C.

27. No doubt, the order dated 08.03.2006 and 09.03.2006 are conflicting in nature. The order dated 08.03.2006 clearly fixes the case on 09.03.2006 for recording evidence under Section 200 Cr.P.C. Unfortunately, no evidence was recorded on 09.03.2006, but on the request of the complainant, the Magistrate sent the matter to the police for submitting his report.

28. Time and again this Court has been emphasizing that Courts should be careful while passing orders. The Presiding Officers must study the Bare Acts in each and every case and clearly indicate the power which they are exercising. This case has been unnecessarily delayed for many years because of the fact that the Magistrate himself was not clear of what he was doing. It is obviously that he did not care to read the Code of Criminal Procedure. The Magistrate was not even sure under which Section he is sending the matter to the police. The matter is further made worse by the order dated 16.06.2006 in which the Magistrate has

stated that he has not taken cognizance of the case. This would indicate that he had passed the order under Chapter XII and not under Chapter XV. However, as notice above, after the case was transferred the Magistrate recorded the statement of the complainant under Section 200 Cr.P.C. The orders are totally contradictory to each other. Thus the Presiding Officers were not clear what power they were exercising.

29. In view of the discussion held above, I am of the considered view that the report of the police is in respect of a complaint filed before a Magistrate and sent to the police for inquiry/investigation in terms of Section 156(3) Cr.P.C. and not under Section 202 Cr.P.C. Therefore, the report submitted by the police is to be treated as a report in terms of Section 173 Cr.P.C. and not as a report under Section 202 Cr.P.C.

30. Having held so, I am clearly of the opinion that the impugned order is totally incorrect. The procedure followed by the Court was highly irregular. After the case was transferred to the Magistrate, he examined the complainant under Section 200 Cr.P.C. This could not have been done in view of the fact that this stage was over and the complaint had been sent to the police for investigation in terms of Section 156 Cr.P.C. The finding of the learned Court that the averments made in the photocopies of the accounts and the statement of the complainant recorded under Section 200 Cr.P.C. cannot be made issuance for basis of

summons is totally incorrect. Even under Section 173 Cr.P.C., a complainant can satisfy the Court that there are grounds to order further investigation in the matter. At this stage, the complainant cannot have the original documents and the photocopies can be made the basis of ordering further investigation. I am not purposely going into the facts in detail because this is the job of the Magistrate. The Court below committed a serious jurisdictional error by following a totally illegal procedure by mixing and combining the procedure under Section 156(3) Cr.P.C. with that under Sections 200 and 202 Cr.P.C.

31. I may candidly state that as far as this case is concerned, it appears to me that on 09.03.2006 the Magistrate may have taken cognizance of the matter. Normally when cognizance is taken matter should not be referred to the police under Section 156(3) Cr.P.C. because under Chapter XII, the reference is made before taking cognizance of the offence. However, I find that even on 09.03.2006, the Court had not really applied its judicial mind to the case. In any event, if he had taken cognizance he could not have sent the matter to the police without first recording the statement of the complainant and as such the confusion has arisen. Therefore, I have tried to resolve the matter in a manner whereby justice is done to all. Hence, I have treated the order dated 09.03.2006 as a reference to the police under

Section 156(3) Cr.P.C. and not an order taking cognizance in terms of Section 200 Cr.P.C.

32. I, therefore, set aside the impugned order and direct the Court below to treat the report of the police as a report filed under Section 173 of the Cr.P.C., hear the complainant and thereafter, decide whether further investigation in the matter should be ordered or not.

33. Copy of this judgment shall be circulated to all the Judicial Officers in the State, who must ensure that they read the Bare Acts and follow the basic principles of law while taking cognizance of cases and issuing a process. Their orders should be carefully worded so that unnecessary confusion is avoided.

CHIEF JUSTICE

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