

**IN THE COURT OF MANIPUR
AT IMPHAL
CRIL. PETITION No. 49 of 2019**

L. Deben Singh aged about 54 years,
S/o L. Tompok Singh of Khuyathong Polem Leikai,
P.O & P.S- Imphal, District- Imphal West, Manipur.

...Petitioner

-Versus-

CBI, SC-III, New Delhi, CGO Complex,
Lodhi Road, New Delhi- 110003 (SIT- MANIPUR).

....Respondent

WITH

CRIL. PETITION No. 50 of 2019

1. M. Anand Kumar Singh aged about 36 years,
S/o M. Sarat Singh of Thoubal Mayai Leikai,
P.O & P.S- Thoubal, District- Imphal West, Manipur.
2. W. Sanjoy Singh aged about 33 years,
S/o W. Ajit Singh resident of Wangkhei Yonglan Leirak,
P.O & P.S- Porompat, Imphal East, Manipur.
3. L. Robindro Singh aged about 37 years,
S/o (L) L. Ibomcha Singh resident of Ithai Laikhong,
P.O- Moirang & P.S.- Kumbi, Bishenpur District, Manipur.
4. T. Shitaljit Singh aged about 31 years,
S/o T. Nandababu Singh resident of Khurai Chiathabi Leirak,

P.O- Lamlong, P.S- Porompat, Imphal East District, Manipur.

5. P. Herojit Singh aged about 33 years,

S/o P. Shyam Singh resident of Kongpal Khaidem Leirak,

P.O & P.S.- Porompat, Imphal East District, Manipur.

6. W. Premjit Singh aged about 34 years,

S/o W. Budha Singh resident of Khabam Heibong Makhong.

P.O. Mantripukhri & P.S- Heingang. Imphal West District, Manipur.

....Petitioners

-Versus-

CBI, SC-III, New Delhi, CGO Complex,

Lodhi Road, New Delhi- 110003 (SIT- MANIPUR).

....Respondent

BEFORE

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioners :	Mr. A. Mohendro Adv, Mr. Lupenjit, Adv.
For the Respondents :	Mr. W. Darakishwor, Spl. PP
Date of Hearing :	09.05.2024/20.06.2024/17.12.2024
Date of Order :	27.12.2024

JUDGEMENT & ORDER [CAV]

[1] Heard Mr. A. Mohendro, learned counsel of the petitioner and Mr. W. Darakishwor, learned Spl. PP for CBI.

[2] By the instant two petitions under Section 482 of the Code of Criminal Procedure (in short, CrPC), the petitioners are praying to quash the Special Trial Case No. 10 of 2019 and discharge the petitioners from the Special Trial Case No. 10 of 2019 of the Ld. Sessions Judge, Imphal East and set aside the impugned order dated 21/09/2018 passed in Special Trial Case No. 2 of 2018 of the Ld. Sessions Judge, Manipur East and Order dated 30/07/2018 passed in the Cril. (P) Case No. 30 of 2018 of the CJM/IE; and quash the CBI Case No. RC-12(S)/2017SC-III/ND dated 08.11.2017 and CBI Case No. RC-DST/2018/S/0011 dated 27.02.2018; couple with an interim prayer to stay/suspend the Special Trial Case No. 10 of 2019 pending before the Ld. Session Judge, Imphal East during the pendency of the present Cril. Petitions. Petitioner in Cril. Petn. No. 49 of 2019 is the accused No.1 and petitioners in Cril. Petn. No. 50 of 2019 are accused Nos. 2 to 8 in the FIR lodged by the CBI.

Vide the impugned order dated 18.10.2019 in ST No. 10 of 2019, learned Sessions Judge, Imphal East took cognizance under Section 201 IPC against A-1 and under Sections 120B/302/201/34 IPC; 27 Arms Act; 5 Explosive Substance Act against A-2 to A-8 after fresh committal by the learned CJM/IE on submission of prosecution sanction order against the accused persons.

[3] Brief Fact of the case :

The petitioner (accused no.1) in Cril. Pet. No. 49/2019 was appointed as Sub – Inspector in the year 26-09-1986 and now presently serving as Dy. C.O 7th Bn. M.R in the Manipur Police Department vide Order dated 12/06/2018 of the Government of Manipur, Department of Personnel & Administrative Reforms (Personnel Division). M. Anand Kumar Singh, the then SI, CDO, Imphal East is the petitioner No.1; W. Sanjoy Singh, the then Head Constable, CDO, Imphal

East is the petitioner No.2; L. Robindro Singh, the then Constable, CDO, Imphal East, is the petitioner No.3; T. Shitaljit Singh, the then Constable, CDO, Imphal East is the petitioner No.4; P. Herojit Singh, the then Constable, CDO Imphal East, Manipur is the petitioner No.5; W. Premjit Singh, the then Constable, CDO Imphal East, Manipur is the petitioner No.6 in Cril. Pet. No. 50/2019.

[4] The petitioner in (Cril. Pet. No. 49/2019) was the investigating officer (I.O) of the FIR No. 14(1)2912 IBG PS-U/s 307/34 IPC, 25(1-C) Arms Act, 5 Explosive Substances Act and 17/20 UA (P) A Act. Further the petitioner was the investigating Officer of the FIR only for 2 days as the said FIR was lodged on 18.01.2012 and thereafter vide order dated 20.01.2012 issued by the Superintendent of Police, Imphal East ordered R.K. Khomdon Singh, MPS, Dy. Sp (Ops), Imphal East to take over and investigate the case FIR No. 14 (1) 2012 IBG Ps U/s 307/34 IPC, 17/20 UA (P) A. Act & 5 Expl. Subs Act from the petitioner with immediate effect and until further orders. And further the petitioners where make as an accused who is the investigating officer (I.O). The petitioners in (Cril. Pet. No. 50/2019) are the police personnel allegedly involved in the encounter wherein two persons were killed.

[5] As per the section 22 of the Police Act under Assam Police Manual it is clearly stated that Police Officers always on duty which is reproduced for reference as

"22. Police Officers always on duty and may be employed in any part of district.- Every police officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police officer in any part of the general police district."

As such the Ld. Chief Judicial Magistrate, Imphal East vide order dated 30.07.2018 thereby taking cognizance by giving a reason that "I am satisfied that even though the accused persons are police personnel of the State of Manipur, the offence charged against them is not official act nor done in discharge of their duty as such police personnel." Is totally against the act and law and further giving opinion before the commencement of trial is injustice and unfair and against the law.

[6] Further the Ld. Chief Judicial Magistrate, Imphal East taking cognizance of the public servant who is the official duty investigating as investigator officer (I.O) of the said FIR without taking the prosecution sanction under 197 of CrPC which mandatory as in the said section 197 CrPC it is clearly mentioned that no Court shall take cognizance of the offence without taking prosecution sanction in respect of public servant is totally against the law. Moreover, giving an opinion by the Ld. Chief Judicial Magistrate, Imphal East that the offence charged against the petitioners is not an official act nor done in discharge of their duty as such police personnel before the trial is unfair and prejudice. As the Hon'ble Supreme Court of India in catena of cases have held that a person is presumed to be innocent until proven guilty by a Court. So, in respect of the above referred case the trial is not yet started and just in the stage of accepting the Charge sheet and taking of cognizance and thereby giving opinion in respect of the said case before the starting of trial is prejudice as only the truth will come after trial and moreover following of the provisions of law is must for the Ld. Chief Judicial Magistrate, Imphal East also.

[7] Thereafter the Ld. Chief Judicial Magistrate, Imphal East passed an Order dated 21.08.2018 thereby committing the said case to the Ld. Session Judge, Imphal East.

[8] The petitioners therefore prayed before the Ld. CJM, Imphal East for discharging him from the case by appraising the mandatory provision of the section 197 CrPC that without the prosecution sanction no Court can take cognizance as the said allegation contained in the charge sheet is that the petitioner had done the said alleged crime in his official duties. The Ld. Chief Judicial Magistrate, Imphal East however passed order dated 30/07/2018 in the Cril. (P) Case No. 30 of 2018 thereby by giving his verdict that prosecution sanction against the accused persons is not required as the offence charged against them is not an official act nor done in discharging of their duty as police personnel which is totally in contravention with the Section 197 Cr PC.

[9] Being aggrieved by the said order dated 30.07.2018 passed in the Cril. (P) Case No. 30 of 2018 of the Ld. Chief Judicial Magistrate, Imphal East and Order dated 21.09.2018 passed in Special Trial No. 2 of 2018 of the Ld. Session Judge, Imphal East, the petitioners filed Cril. Misc. Case Nos. 140 & 141 of 2018 thereby praying for dropping the Special Trial Case No. 2 of 2018 and to discharge the accused persons from the said case.

[10] The said Cril. Misc. Case Nos. 140 & 141 of 2018 were heard and Order was passed on 27.02.2019 in which the Ld. Session Judge, Imphal East passed an order that the connected Special Trial can no longer survive and hence, be disposed of. Further in its order dated 27.02.2019 in which the Ld. Session Judge, Imphal East admitted that the Ld. CJM/IE had erred when taking

cognizance against the accused vide its Order dated 30.07.2018 in Cril. (P) Case No. 30 of 2018.

Under the circumstances, all the subsequent orders of the Id. CJMIE as well as what followed in this Court i.e., proceeding in Special Trial No. 2 of 2018 are non est in the eyes of law.

Further it is submitted that the Ld. Session Judge, Imphal East had also given a liberty to pray for restoring the said Special Trial Case No. 2 of 2018 in its Order dated 27.02.2019 passed in Special Trial Case No. 2 of 2018. It is pointed out that such an order is not maintainable in the eye of law as in the Ld. Session Judge, Imphal East has no reviewing power to restore the Special Trial Case No. 2 of 2018 under the CrPC.

[11] Thereafter as per Order dated 27.02.2019 passed by the Ld. Session Judge, Imphal East, the records of Cril (P) Case No. 30 of 2018 was send down to Ld. CJM/IE. While the case records were pending before the Ld. CJM/IE, the respondent had submitted a supplementary charge sheet thereby containing the sanction order U/s 197 Cr PC accorded by Special Secretary (Home), Government of Manipur as such the CJM/IE passed an Order dated 23.09.2019 thereby committing the case to the Hon'ble Sessions Court with a direction to appear before the Hon'ble Sessions Court, Imphal East.

It is further submitted that the Ld. CJM/IE in its order dated 23.09.2019 it is clearly mentioned that at the stage of committal, Magistrate can either take cognizance and commit the case or the same can be committed without taking cognizance and also not mandatory to take cognizance even if the earlier order taking cognizance is deemed to be quashed by order of the Hon'ble Session

Court. And further in case the same is not quashed, this court cannot take cognizance again.

In this regard it is submitted that the even the Ld. CJM/IE admitted that cognizance cannot be taken twice. And further beg to submit that the respondent cannot file supplementary charge sheet without taking prior permission from the Hon'ble Court.

[12] After receiving the case record from the Ld. CJM/IE on committal, the Ld. Sessions Judge, Imphal East vide its Order dated 18.10.2019 took cognizance against the petitioners despite objection from the petitioner that the Ld. Session Judge, Imphal East has no power to restore or review the same order of taking cognizance and registering the case as Session Trial Case as in earlier Order dated 27.02.2019 the Ld. Session Judge, Imphal East passed an order that the connected Special Trial can no longer survive and hence, be disposed of.

Further it is submitted that Ld. Session Judge, Imphal East has erred in passing the Order dated 18/10.2019 taking cognizance and registering the case Session Trial Case as the whole trial had not followed the mandatory provisions provided under Cr PC as such not maintainable in the eye of law.

That, there are also multiple FIR lodged by the respondent being (i) CBI Case No. RC-12(S)2017/SC-III/ND dated 08.11.2017 and (ii) CBI Case No. RC-DST/2018/S/0011 dated 27.2.2018 against the petitioner as there are having another F.I.R of the same incident, being F.I.R Case No. 14(01) 2012 Irilbung PS U/s 307,34 of IPC; 25(1-C) of Arms Act; 5 Explosive Substances Act and Section 17/20 of UAPA Act.

Further the subsequent FIRs are not covered under the exceptions to the rule laid down in T. T. Antony's case (supra), a fresh FIR for the same cognizable offences or transaction of offences is not permissible. Secondly, when the second FIR consists of alleged offences which are in the nature of the cross case/cross complaint or a counter complaint which presents a different version of events concerning the same incident, such cross complaint may be permitted.

That, being aggrieved by the said order dated 18.10.2018 passed in the Session Trial Case No. 10 of 2019 of the Ld. Session Judge, Imphal East and Order dated 21.09.2018 passed in Special Trial No. 2 of 2018 of the Ld. Session Judge, Imphal East, the Petitioner begs to file the present Cril Petition before the Hon'ble Court on the following inter alia grounds -

GROUND

(I) For that, Ld. Chief Judicial Magistrate, Imphal East order dated 30.07.2018 passed in the Cril. (P) Case No. 30 of 2018 by not properly appreciating the case of the petitioner but by committing an error in law thereby causing miscarriage of justice to the petitioner ;

II) For that, the Ld. Chief Judicial Magistrate, Imphal East order dated 30.07.2018 passed in the Cril. (P) Case No. 30 of 2018 failed to see that without taking the prosecution sanction, cognizance cannot be taken against the public servant;

(III) For that, the Ld. Chief Judicial Magistrate, Imphal East order dated 30.07.2018 passed in the Cril. (P) Case No. 30 of 2018 has passed in violation of the mandatory provision of Section 197 Cr PC for the public servant discharging in their official duties :

(IV) For that, taking cognizance of offence by Magistrate allegedly committed by the public servant without insisting for sanction not sustainable.

(V) For that. the Ld. Chief Judicial Magistrate, Imphal East order dated 30.07.2018 passed in the Cril. (P) Case No. 30 of 2018 failed to that a Judge is not a mere post office to frame charge or take cognizance at the behest of the prosecution but has to exercise his judicial mind to the facts of the case and follow the mandatory provisions i.e. taking of prosecution sanction prior to taking of the cognizance. The Ld. CJM. Imphal East however passed the order dated 30.07.2018 to somehow made the petitioner face a trial without exercising judicial mind and in violation of the Section 197 Cr PC;

(VI) For that, if the prosecution sanction is not taken the prior to the taking of cognizance then the whole proceeding should be set aside/dropped and the accused should be discharge;

(VII) For that, the Ld. CJM, Imphal East failed to followed the provision of law laid down in Section 197 Cr Pc in which it is clearly mentioned that “(1) When any person.....”

(VIII) For that, the Ld. Chief Judicial Magistrate, Imphal East order dated 30.07.2018 passed in the Cril. (P) Case No. 30 of 2018 is bad in law, perverse, abuse of law and opposed to the principles of justice

(IX) For that, taking cognizance of offence by Magistrate allegedly committed by the public servant is against the section 22 of Police Act, 1861.

(X) For that the order dated 21.09.2018 of the Ld. Session Judge, Imphal East passed in the Spl. Trial Case No. 30 of 2018 is bad in law and in violation of the mandatory provision of Section 197 Cr PC for the public servant discharging in their official duties.

(XI) For that the Order dated 27.02.2019 passed in Special Trial Case No. 2 of 2018 by the Ld. Session Judge, Imphal is not maintainable in the eye of law as in the Ld. Session Judge, Imphal East has reviewing power to restore the Special Trial Case No. 2 of 2018 under the CrPC.

(XII) For that the Ld. CJM/IE thereby committing the said without taking cognizance thereby admitting that this court cannot take cognizance again is bad in law and Ld. CJM/IE should be returned back the case record to the prosecution.

(XIII) For that the Ld. Session Judge in its Order dated 18.10.2019 thereby taking cognizance again and registering as Session Trial is bad in law as the Ld. Session Judge had no reviewing power to restore as in earlier Order dated 27.02.2019 the Ld. Session Judge, Imphal East passed that the connected Special Trial can no longer survive and hence, be disposed of. The Ld. Session Judge, Imphal East cannot review its own order and there is no power provided to do it in any of the provision.

(XIV) Because it is trite in law that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences.

(XV) Because the correct course of action in the Petitioner's case should have been to take note of the findings and the information gained from investigation from various quarters were to be collated and compiled and forwarded in the form a report under Section 173(2) or Section 173(8) Cr P.C. to the concerned Magistrate. The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident and making afresh investigation when investigation in the first FIR no. 145/2013 was pending is not permissible under the scheme of the provisions of the Cr P.C. as pointed out in T. T. Antony (supra), therefore, the investigation undertaken and the report thereof is invalid.

(XVI) Because unless the subsequent FIRS are not covered under the exceptions to the rule laid down in T. T. Antony's case (supra), a fresh FIR for the same cognizable offences or transaction of offences is not permissible. Secondly, when the second FIR consists of alleged offences which are in the nature of the cross case/cross complaint or a counter complaint which presents a different version of events concerning the same incident, such cross complaint may be permitted.

(XVII) Because the filing of the second FIR and a fresh charge sheet for the same is contrary to the provisions of the Code and stated that such investigation, prosecution and trial of the accused would not be 'in accordance with law'. A second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution.

PRAYERS

To quash the Special Trial Case No. 10 of 2019 and discharge the Petitioners from the said Spl. Trial Case.

[13] Stand of CBI: The main stand of the CBI is that there is no question of taking second cognizance by the learned Sessions Judge, Imphal East in the same FIR case, as the earlier cognizance taken by the learned CJM/IE was set aside due to absence of prosecution sanction under Section 197 CrPC and the case was remanded for taking up de novo committal process after complying all legal requirements.

[14] During the hearing Mr. A. Mohendro, learned counsel for the petitioners has raised the following points to emphasise that the impugned orders and criminal proceedings are perverse:

- a) Double cognizance;
- b) Double trial;
- c) Multiple trial/FIR;
- d) Many of the witnesses examined by the Executive Magistrate are not listed in the charge sheet.

[15] As per learned counsel for the petitioners, after the separate orders dated 27.02.2019 passed by the learned Special Judge, Imphal East in Spl Trial No. 2 of 2019 and Cril. Misc. Case Nos. 140 of 2018 and 141 of 2018 remanding the Cril. Petn. No. 30 of 2018 to the court of learned Chief Judicial Magistrate, Imphal East for proper de novo committal proceeding after compliance of all necessary processes as per law, taking cognizance by the learned Session Judge, Imphal East vide order dated 18.10.2019 in ST No. 10 of 2019 is illegal. It is submitted that it amounts to taking double cognizance by SJ/IE after cognizance

by learned CJM/IE vide order dated 30.07.2018 in Cril.(P) No.2018. It is also pointed out that in order dated 27.02.2019, learned Spl Judge/IE had already closed the whole proceedings of Spl. Trial Case No. 2 of 2018 and impugned order dated 18.10.2019 is nothing but review of the earlier order. It is highlighted that learned SJ/IE does not have such power of review of its earlier order. There are multiple FIRs for the same offence and the criminal proceedings on such FIRs are bad in law. Learned counsel also expresses his fear to the observations made in the prosecution sanction order may adversely affect the interest of the accused persons during the trial.

[16] Mr. A. Mohendro, learned counsel for the petitioners relies on the following case laws for quashing of the impugned orders and proceedings of ST No. 10 of 2019.

(i) **Balveer Singh v. State of Rajasthan: (2016) 6 SCC 680-** When the Magistrate has taken cognizance of the case, the Session Judge cannot take cognizance again under Section 193 CrPC.

(ii) **Monorama Tiwari v. Surendra Nath Rai: (2016) 1 SCC 594-** Prosecution sanction under Section 197 CrPC is required for prosecuting a doctor for criminal negligence under Section 304-A IPC for causing death during treatment in a government hospital.

(iii) **Army Headquarters v. CBI: (2012) 6 SCC 228-** Prosecution sanction is required for prosecuting armed forces for the offences committed during course of duty.

(iv) **Dharam Pal v. State of Haryana: (2014) 3 SCC 307-** Cognizance is taken only once, either by Magistrate or Sessions Court.

(v) **D. T. Virupakshappa v. C. Subash: (2015) 12 SCC 231-** Prosecution sanction under Section 197 CrPC is required for proceeding for offence of police excesses alleged during investigation.

(vi) **T. T. Antony v. State of Kerala: 2001 (5) Supreme 131-** Second FIR for the same offence is not permissible.

[17] Mr. W. Darakishwor, learned Spl. PP for the CBI submits that the present FIR is registered on the instruction of the Hon'ble Supreme Court and case is still monitored by the Apex Court. It is stated that there is no question of 2nd cognizance as the first cognizance taken by the learned CJM/IE was set aside for de-novo committal by the learned Spl. Judge/IE for absence of prosecution sanction and remanded back for de novo committal process after complying all legal requirements. It is explained that the so-called first cognizance was non-existent in the eye of the law and the so-called 2nd cognizance was taken after committal on submission of prosecution sanction as directed in the earlier order. It is also pointed out that the CBI is investigating in the new FIR lodged by it as directed by Hon'ble Supreme Court. It is prayed that the petitions be dismissed.

[18] This Court perused the materials on record, considers the submissions of the parties and examined the relevant law in this regard.

[19] The short questions involved in the present case are:

(I) Whether the cognizance taken by the learned Session Judge, Imphal East vide impugned order dated 18.10.2019 in ST No. 10 of 2019 amounts to taking second cognizance or not; keeping in mind that the first cognizance taken by learned Chief Judicial Magistrate, Imphal East vide order dated 30.07.2018 in

Cril. (P) Case No. 30 of 2018 had already been set aside by learned Spl. Judge, Imphal East vide order dated 27.02.2019 in ST No. 2 of 2018 and connected cases with a direction to conduct de novo committal process after compliance of legal requirements?

(II) Whether the impugned order dated 18.10.2019 by the learned Sessions Judge, Imphal East taking cognizance amounts to review of earlier order dated 27.02.2019 passed by the learned Special Judge, Imphal East setting aside cognizance?

[20] From analysis of a catena of case laws specially the Constitution Bench decision in the case of **Dharampal case (supra)**, it is the settled law that cognizance can be taken only once, either by Magistrate or by Sessions Judge (or in some cases, by Special Judge). It is an admitted fact that the first cognizance taken by the learned CJM, Imphal East vide order dated 30.07.2018 in Cril. (P) Case No. 30 of 2018 was set aside by the learned Special Judge, Imphal East due to non-furnishing of prosecution sanction order under Section 197 CrPC in the chargesheet submitted by CBI and directed to conduct de novo committal proceedings after complying all legal requirements. In the first cognizance taken by the learned Chief Judicial Magistrate, Imphal East, the procedure was held to be invalid as the mandatory prosecution sanction order under Section 197 CrPC was not submitted before the court and the cognizance was set aside with a direction for fresh initiation. Accordingly, Cril. (P) Case No. 30 of

2018 was remanded for fresh process as per law. When the prosecution sanction order dated 15.07.2019 was submitted to the court of learned CJM, the matter was committed to the court of learned Sessions Judge, Imphal East without taking cognizance by the learned CJM as the case being exclusively triable by Sessions Court. In the circumstances and vide impugned order dated 18.10.2019 in ST No. 10 of 2019, learned Sessions Judge took cognizance of the offences under Section 201 IPC against A-1 and under Sections 120B/302/201/34 IPC; 27 Arms Act & 5 Explosive Substance Act against A-2 to A-8. The petitioners are questioning this cognizance order dated 18.10.2019, inter-alia, on the grounds of double cognizance and review of earlier order dated 27.02.2019 passed while setting aside the earlier cognizance order dated 30.07.2018.

[21] On face of it, the submission of the petitioners about double cognizance seems to be very attractive, but on close scrutiny it lacks credence. The law with regard to taking cognizance is settled by a series of judgments of the Hon'ble Supreme Court and **Dharampal (supra)** is the leading case on this point. It is true that cognizance is to be taken only once specially in a session triable case; either by the Magistrate before committal or by the Sessions Judge after committal, if cognizance has not been taken by the Magistrate earlier. Within this legal prism, the questions involved in the present petitions are to be examined.

[22] It is the mandate of Section 197 CrPC that no court shall take cognizance against any public servant for any offence committed during the discharge of official duty without a previous sanction from the

competent authority. The crux of this provision is for any offence allegedly committed in discharge of official duty. No sanction as contemplated under Section 197 CrPC is required for any offence committed by a public servant not connected with his official duty. If cognizance is taken by a court for an offence alleged committed in discharge of official duty against a public servant without any previous sanction from competent authority as contemplated under Section 197 CrPC, such an order is non-est and void ab initio. In other word, such a cognizance order without previous sanction does not exist in the eye of law. It is immaterial whether such cognizance without prosecution sanction is set aside by higher court or not, as it has not legal standing from the very inception.

[23] In the present case, it is an admitted fact that the first cognizance order dated 30.07.2018 by learned CJM/IE in Cril. (P) Case No. 30 of 2018 was without prosecution sanction as stipulated under Section 197 CrPC. The said order was set aside by learned Special Judge, Imphal East vide order dated 27.02.2019 in ST No. 2 of 2018 and remanded the Cril. (P) Case No. 30 of 2018 to the court of learned CJM/IE for de novo committal procedure as per law. Upon submission of prosecution sanction and instead of taking cognizance itself, learned CJM/IE committed the case to the court of Sessions Judge, Imphal East being exclusively triable by a Sessions Court. Subsequently, learned SJ/IE registered the case as ST No. 10 of 2019 and took cognizance for the offences under Section 201 IPC against A-1 and under Sections 120B/302/201/34 IPC; 27 Arms Act & 5 Explosive Substance Act against A-2 to A-8.

[24] This Court is of the firmed opinion that there is no error in the impugned order dated 18.10.2019 taking so-called second cognizance by learned Session Judge, Imphal East, as the earlier first cognizance order dated 30.07.2018 of learned Chief Judicial Magistrate, Imphal East was void ab initio and non-existent in law. Since the learned CJM/IE did not take cognizance when the matter was committed after submission of the prosecution sanction, it is incumbent upon the leaned SJ/IE to take cognizance in exercise of power conferred under Section 193 CrPC. This is in consonance with the law laid down by the Hon'ble Apex Court.

[25] Since the first cognizance order dated 30.07.2018 by learned CJM/IE is non-est, there is no requirement of order dated 27.02.2019 passed by learned Spl. Judge, Imphal East to set aside first cognizance order. Hence, the plea of double cognizance and review of order dated 27.02.2019 has no substance. The ground of multiple FIRs is not convincing enough, as there is only one combined proceeding under ST No. 10 of 2019.

[26] In the circumstances, this Court has no hesitation to hold that there is no error apparent in the impugned order dated 18.10.2019 passed by the learned Sessions Judge of taking cognizance and the proceedings of ST No. 10 of 2019 do not suffer from any illegality. Accordingly, the Cril. Petn. Nos. 49 of 2019 and 50 of 2019 are dismissed being devoid of any merit. Two similar interim orders both dated 08.11.2019 passed by this Court in Cril. Petn. Nos. 49 of 2019 and 50 of 2019 staying further proceedings of ST No. 10 of 2019, are vacated and trial be proceeded as per law. Misc. applications, if any, stand disposed of.

[27] In order to allay the fear in the minds of the petitioners herein who are accused before the trial Court to the effect that the observations made by the competent authority in the prosecution sanction and by the learned Sessions Judge, Imphal East while taking cognizance will adversely affect their defence, it is clarified that the observations were made for the limited purpose of granting sanction and for taking cognizance. The guilt and innocence of the accused persons are to be established and proved during the trial on appreciation of evidence adduced by parties and documents exhibited. Such fear is misplaced.

[28] Send a copy of this order to the learned Sessions Judge, Imphal East for information and proceeding further. Parties are directed to appear before trial Court on **16.01.2025** for further proceedings.

JUDGE

FR/NFR

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RAJKUMAR
PRIYOJIT
SINGH

Digitally signed by
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SINGH
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