

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.649 OF 2015

1. Cheemangala Ramachar Ramesh
(C.R. Ramesh), Age major,
Occu. Service as General Manager,
Tilak Nagar Industries Limited,
Tilak Nagar, Taluka Shrirampur,
District Ahmednagar
2. Mukund Tanaji Ahire (M T Ahire),
Age major, Occu. Service as
Manager, Electrical Department,
Tilak Nagar Industries Limited,
Tilak Nagar, Taluka Shrirampur,
District Ahmednagar
3. Satish Ramchandra Girme,
Age major, Occu. Service as
Draughtsman, Civil Department,
Tilak Nagar Industries Limited,
Tilak Nagar, Taluka Shrirampur,
District Ahmednagar

.. Applicants
(Original Accused)

Versus

1. The State of Maharashtra,
through Police Inspector,
Shrirampur City Police Station,
Shrirampur, Taluka Shrirampur,
District Ahmednagar
2. Sow. Kanchana Suresh Kanase,
Age 41 years, Occu. Household
R/o Qtr. No.5/59/01,
Tilak Nagar Industries,
Tilak Nagar, Taluka Shrirampur,
District Ahmednagar

.. Respondents
(Resp.No.2 – original
Complainant)

Mr N.S. Choudhary, Advocate for applicants
Mrs B.B. Gunjal, A.P.P. for respondent No.1
Mr V.S. Badakh, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 30th September 2015

PER COURT

1. Having perused the impugned order dated 8th November 2014, which is though revisable, in my opinion, it will be appropriate to exercise the jurisdiction vested in this Court to set aside the same, as the order impugned is not speaking order and reasons thereof are conspicuously absent.

2. The least that was expected of the learned Judicial Magistrate, First Class, Shrirampur to reflect the reasons which transpired in his mind while ordering issuance of process. I am fortified in my view, in view of the judgment of Apex Court in the matter of **Sunil Bharti Mittal Vs. Central Bureau of Investigation**, reported in **2015 AIR SCW 642**, wherein the Apex Court in paragraphs 42 to 45 observed thus :

"42. This Section which is the starting section of Chapter XIV is subject to the provisions of the said Chapter. The expression "taking cognizance" has not been defined in the Code. However, when the Magistrate applies his mind for proceeding under Sections 200-203 of the Code, he is said to have taken cognizance of an offence. This legal position is explained by this Court in *S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd & Ors.* [20] in the following words:

"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 connoted "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...."

Sine Qua Non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the Court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

43. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be

taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

44. Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (See *SWIL Ltd. v. State of Delhi* [21]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See *Union of India v. Prakash P. Hinduja and another* [22]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.

45. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the

Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.”

3. In view thereof, the order dated 8th November 2014 passed by the Judicial Magistrate, First Class, Shrirampur in R.T.C. No.206 of 2013 below Exh.1 ordering issuance of process is hereby quashed and set aside and the proceedings are restored to the file of learned Judicial Magistrate, First Class, Shrirampur, who is directed to pass order after taking into account the law laid down by the Apex Court in the matter of Sunil Bharti Mittal Vs. Central Bureau of Investigation (cited supra).

4. In view of the fact that the learned Judicial Magistrate, First Class, Shrirampur has not recorded any reasons, the bar of alternate remedy, i.e. the order impugned is revisable one will not be attracted in the present case.

5. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)