

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.239 of 2016

Arising Out of PS.Case No. -8 Year- 2014 Thana -BHAPATIIYAHIDistrict- SUPAUL

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1. Ganpat Mehta @ Ganpat Prasad Mehta, S/o- Late Daurik Lal Mehta, Resident of
Village- Pipra Khurd, P.S.- Bhaptiyahi, District- Supaul

.... Petitioner/s

Versus

1. The State of Bihar.

2. Ram Nandan Mehta son of Late Sitaram Mehta, Resident of Village- Pipra
Khurd, P.S.- Bhaptiyahi, District- Supaul

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nafisuzzoha, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

5. **22-11-2018** Petitioner being aggrieved by and dissatisfied with the order dated 19.08.2015 passed by District & Sessions Judge- Supaul in Cr. Revision No. 96/2015 whereby and whereunder learned Sessions Judge has dismissed the revision petition confirming the order dated 27.03.2014 passed by Chief Judicial Magistrate, Supaul in connection with Bhaptiahi PS Case No. 08/2014 whereby and whereunder petitioner has been summoned, along with others, to face trial for an offence punishable under Sections 147, 148, 149, 323, 307, 379, 435, 448, 504 and 506 of the IPC.

2. Opposite Party No.2, Ramnandan Mehta filed a written report on 20.01.2014 with an allegation that in between night of 19/20.01.2014 while he along with his family members



were in deep slumber, at about 2:00 PM, the accused persons named therein including the petitioner armed variously made house trespass and began to ransack his house. On their protest, Satyanarayan Mehta gave Farsa blow over head of his younger brother, Deonandan Mehta causing injury upon him. He fell down. Jai Prakash Mehta ordered to kill. During midst thereof, he along with his brother was tied down. His son, Arun Kumar Mehta was assaulted with Dabia over his head by Ganpat Mehta as a result of which, he sustained injury, became unconscious and fell down. Thereafter, he was assaulted with Lathi. His cousin brother (phuphera bhai), Badri Mehta, his wife, Sushila Devi, his son, Sanjay Kumar Mehta, hearing the commotion came were also assaulted by Devendra Mehta, Hari Narayan Mehta, Bhagwat Mehta, Umesh Mehta with Dabia, Farsa and Lathi causing injuries over their persons, respectively. Anandi Mehta and Rajesh Mehta assaulted his younger son, Amrendra Kumar with butt of three-not as well as Dabia and further, took out Rs. 1200/- snatched away his spectacle and wrist watch. Then thereafter, on an order of Ganpat, Satya Narayan lit fire in his house. The villagers anyhow rescued them after extinguishing fire. Police was informed who came, lifted all the injured to the hospital where they are being treated. It has also been disclosed that his house stood over Survey



Plot No. 3335, Area 8 ½ Dhurs corresponding to Khata No. 294.

3. It is evident that at an earliest four accused persons were apprehended, namely, Satya Narayan Mehta, Bhola Mandal, Hari Narayan Mehta and Om Prakash Mehta, on account thereof, Investigating Officer has submitted charge-sheet against them on 15.02.2014 (Annexure-2) keeping the investigation pending against remaining. Then thereafter, the police has submitted supplementary charge-sheet on 30.05.2014 against Jai Prakash Mehta and Umesh Mehta. (Annexure-3) keeping the investigation pending against remaining, namely, Devendra Mehta, Anandi Mehta, Rajesh Mehta, Bhagwat Mehta and Ganpat Mehta. It is further evident that on 26.10.2014, police has submitted charge-sheet against Bhagwat, Devendra, Anandi and Rajesh while Ganpat, petitioner has not been sent up for trial (Annexure-4).

4. It is evident from the record that after submission of charge-sheet at an earliest dated 15.02.2014 (Annexure-2), the learned Chief Judicial Magistrate took cognizance of an offence as disclosed above vide order dated 27.03.2014 and summoned the charge sheeted accused including others and that happens to be the matter of controversy sailing up to the present stage.

5. Learned counsel for the petitioner has submitted



that learned Chief Judicial Magistrate, Supaul was not at all competent enough to take cognizance of an offence and summon the petitioner along with others who, till submission of charge-sheet (Annexure-2) were neither sent up nor exonerated rather, investigation was kept pending till then. Furthermore, it has been submitted that as investigation remains under exclusive domain of the police, so, the steps taken at the end of learned Chief Judicial Magistrate, would tantamount to inpreference in investigation which is impossible in law. It has also been submitted that police was under its competence to file charge-sheet against some of the accused, keeping investigation against remaining, that being so, the persons who was still to be investigated upon, regarding his complicity, were not to be summoned, otherwise, it will frustrated the mandate of law. It has further been submitted that even for a moment, considering that the order of the learned Chief Judicial Magistrate was legal, then what was the necessity for keeping the investigation pending against the remaining including petitioner, filing of supplementary charge-sheet in two stages i.e., by Annexure-3 as well as Annexure-4 because of the fact that the persons so summoned by the learned lower court till then, were already under process of investigation.

6. Furthermore, it has also been submitted that so far



petitioner is concerned, he has got an additional ground to challenge the finding recorded by the learned Chief Judicial Magistrate in the background of the fact that after completing investigation, petitioner has not been forwarded for trial. That being so, the order passed by the learned Chief Judicial Magistrate was pre-mature and further by such activity, the same has caused prejudice to the petitioner.

7. It has further been submitted that dismissal of revision petition by the learned District & Sessions Judge is equally illegal as the learned Sessions Judge failed to consider the legal aspect of prime importance whether an accused who is yet to be properly investigated upon could be summoned along with charge-sheeted co-accused. More particularly, so far facts of the present case is concerned, petitioner was not sent up. By such activity, the learned Chief Judicial Magistrate, had not only made the further investigation, a futile effort rather also made the materials so collected afterwards, showing the petitioner innocent meaningless. Apart from this, the revisional court also failed to appreciated that petitioner involvement was intentional on account of land dispute. In order to justify his submission, the learned counsel for the petitioner referred *Dharam Pal & Ors. Vs. State of Haryana & Anr* as reported in *AIR 2013 SC 3018* as well as also



referred judgment of Jharkhand High Court passed in connection with *Cr.M.P. No. 1539 of 2011* with others dated 15.01.2014. based thereupon.

8. In the aforesaid background, it has also been submitted that with regard to sessions triable case, the cognizance taking court was not at all competent enough to summon the accused otherwise than who has been charge-sheeted as held by the Constitution Bench *Dharam Pal* (supra) case wherein the Hon'ble Apex Court has held that as soon as case is committed to the court of sessions, the court of sessions replaces by way of exercising original jurisdiction in terms of Section 193 CrPC whereupon, the court of sessions has been properly identified to be the competent court to summon the accused though not charge-sheeted attracting Section 319 CrPC. That being so, the concurrent order being illegal, arbitrary, cryptic did not justify its sustenance in the eye of law whereupon, is fit to be set aside.

9. Learned APP while opposing the submissions made on behalf of petitioner has submitted that petitioner has got no leg to standby because of the fact that whatever been raised at the end of petitioner, is found duly answered by the revisional court and so, needs no interference. In spite of notice, O.P. No.2 failed to appear.



10. After hearing the rival submissions, two issues are found to be under controversy, the first one with regard to proper identification of the order of cognizance and secondly, activity of the cognizance taking court on a police report submitted by the Investigating Officer in accordance with Section 173 CrPC irrespective of its nomenclature. From the perusal of order dated 15.01.2014 passed by the Jharkhand High Court in ***Cr.M.P. No. 1539 of 2011***, whatever been conceived is that the principle so decided by the Constitution Bench in ***Dharam Pal*** case has not been properly conceived. Before coming to ***Dharam Pal*** case, the two events, so far sessions triable cases are concerned, are to be taken note of. The first one, the order in terms of Section 190 CrPC having been passed by the original court and secondly the identification of the power of the Sessions Court after commitment in pursuance of Sections 209 of the CrPC, under Section 193 CrPC. With regard to empowerment of original court while exercising power under Section 190 of the CrPC is concerned, there happens to be no infringement or curtailment that means to say, the original court is quite competent to exercise its power either, (a) accepting the finding of the Investigating Officer, (b) differ from the finding, (c) may direct further investigation. The barrier whatever been prescribed by catena of decisions is



with regard to intermediary activity under aegis of Section 209 of the CrPC, that means to say, during commitment procedure whereunder, the committing court is not at all legally acknowledged to deflect from the settled path, that means to say, to commit the case and then thereafter, as per Constitution Bench decision in *Dharam Pal* case (supra), the Sessions Court acts like an original court as provided under Section 193 CrPC and so, even on the basis of case diary, if so intends may summon the accused in order to face trial irrespective of the fact that trial has commenced or not.

11. The following questions have been formulated for deciding the controversy as enumerated under para-4 of the *Dharam Pal* (supra) case which is as follows:-

4. The questions which require the consideration of the Constitution Bench are as follows:

i) Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?

ii) If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?

iii) Having decided to issue summons against the Appellants, was the Magistrate required to follow the procedure of a complaint case and to take



evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?

iv) Can the Session Judge issue summons under [Section 193](#) Cr.P.C. as a Court of original jurisdiction?

v) Upon the case being committed to the Court of Session, could the Session Judge issue summons separately under [Section 193](#) of the Code or would he have to wait till the stage under [Section 319](#) of the Code was reached in order to take recourse thereto?

vi) Was Ranjit Singh's case (supra), which set aside the decision in Kishun Singh's case(supra), rightly decided or not?

12. And the matter under controversy has been conclusively dealt with under paras-22, 23 and 24, as follows:-

22. As far as the first question is concerned, we are unable to accept the submissions made by Mr. Chahar and Mr. Dave that on receipt of a police report seeing that the case was triable by Court of Session, the Magistrate had no other function, but to commit the case for trial to the Court of Session, which could only resort to [Section 319](#) of the Code to array any other person as accused in the trial. In other words, according to Mr. Dave, there could be no intermediary stage between taking of cognizance under [Section 190\(1\)\(b\)](#) and [Section 204](#) of the Code issuing summons to the accused. The effect of such an interpretation would lead to a situation where neither the Committing Magistrate would have any control over the persons named in column 2 of the police report nor the Session Judge, till the [Section 319](#) stage was reached in the trial. Furthermore, in the event, the Session Judge ultimately found material against the persons named in column 2 of the police report, the trial would have to be commenced de novo against such persons which would not only lead to duplication of the trial, but also prolong the same.

23. The view expressed in Kishun Singh's case,



in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the Final Report that may be filed by the police authorities under [Section 173\(3\)](#) of the Code and to proceed against the accused persons de hors the police report, which power the Session Court does not have till the [Section 319](#) stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under [Section 173\(3\)](#) of the Code, he was helpless in taking recourse to such a course of action while the Session Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.

24. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under [Section 173\(3\)](#) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

13. The aforesaid view has been reiterated in ***Balveer Singh v. State of Rajasthan*** reported in (2016) 6 SCC 680 wherein since para-13, ***Dharam Pal*** case has been subject to considering and so far present controversy is concerned, it has been dealt with under para-17, 18 and for better appreciation the



same is quoted below:-

“17. Interestingly, at the same time, the Court also held that it would not be correct to hold that on receipt of a police report and seeing that the case is triable by a Court of Session, the Magistrate has no other function but to commit the case trial to the Court of Session and the Sessions Judge has to wait till the stage under [Section 319](#) of the Code is reached before proceeding against the persons against whom a prima facie case is made out from the material contained in the case papers sent by the Magistrate while committing the case to the Court of Session. This is reflected in the following passage:

“33. As far as the first question is concerned, we are unable to accept the submissions made by Mr. Chahar and Mr Dave that on receipt of a police report seeing that the case was triable by Court of Session, the Magistrate has no other function, but to commit the case for trial to the Court of Session, which could only resort to [Section 319](#) of the Code to array any other person as accused in the trial. In other words, according to Mr Dave, there could be no intermediary stage between taking of cognizance under [Section 190\(1\)\(b\)](#) and [Section 204](#) of the Code issuing summons to the accused. The effect of such an interpretation would lead to a situation where neither the Committing Magistrate would have any control over the persons named in column 2 of the police report nor the Sessions Judge, till the [Section 319](#) stage was reached in the trial. Furthermore, in the event the Sessions Judge ultimately found material against the persons named in column 2 of the police report, the trial would have to be commenced de novo against such persons which would not only lead to duplication of the trial, but also prolong the same.” However, when we see the discussion in totality, it would be clear that the aforesaid observations were made in respect of the first question posed by the Constitution Bench in para 7.1, already reproduced above, as per which the powers of the Magistrate while committing the case to the Sessions Court were to be answered. This is so made clear in the very next para, i.e. para 34 of the judgment, wherein, while



approving the dicta laid down in Kishun Singh's case, the Constitution Bench held that 'the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under [Section 173\(2\)](#) of the Code and to proceed against the accused persons de hors the police report, which power the Sessions Court does not have till the [Section 319](#) stage is reached'. This was put beyond the pale of any controversy in para 35 of the judgment, which reads as under:

“35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under [Section 173\(2\)](#) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.”

18. Discussion up to this stage answers the powers of the Magistrate by laying down the principle that even if the case is triable by the Court of Session, the function of the Magistrate is not to act merely as a post office and commit the case to the Court of Session, but he is also empowered to take cognizance, issue process and summon the accused and thereafter commit the case to the Court of Session. The position with regard to that would become clearer once we find the answer that was given by the Constitution Bench to questions at paras 7.4 to 7.6 extracted above. We would like to reproduce paras 37 to 41 of the said judgment in this behalf, which are as follows:

“37. Questions 4, 5 and 6 are more or less interlinked. The answer to Question 4 must be in the affirmative, namely, that the Sessions Judge was entitled to issue summons under [Section 193](#) CrPC



upon the case being committed to him by the learned Magistrate.

38. [Section 193](#) of the Code speaks of cognizance of offences by the Court of Session and provides as follows:

“193.Cognizance of offences by Courts of Session.—Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.” The key words in the section are that “no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code”. The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr Dave to suggest that the cognizance indicated in [Section 193](#) deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of [Section 193](#) that the Court of Session may take cognizance of the offences under the said section.

39. This takes us to the next question as to whether under [Section 209](#), the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of [Section 193](#) of the Code very clearly indicates that once the case is committed



to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of [Section 209](#) will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.

40. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh case that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under [Section 209](#), the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

41. We are also unable to accept Mr Dave's submission that the Sessions Court would have no alternative, but to wait till the stage under [Section 319](#) CrPC was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session.”

14. Order of cognizance though, not defined under CrPC but, subject to consideration before the Apex Court times without number. The same plea came under consideration in *Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian & Ors* reported in (2014) 2 SCC 62,



wherein it has been held as follows:-

31. It is now necessary to see what the words 'taking cognizance' mean. Cognizance is an act of the court. The term 'cognizance' has not been defined in the [Cr.P.C.](#) To understand what this term means we will have to have a look at certain provisions of the [Cr.P.C.](#) Chapter XIV of the Code deals with 'Conditions requisite for initiation of proceedings'. [Section 190](#) thereof empowers a Magistrate to take cognizance upon (a) 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. Chapter XV relates to 'Complaints to Magistrates'. [Section 200](#) thereof provides for examination of the complainant and the witnesses on oath. [Section 201](#) provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. [Section 202](#) provides for postponement of issue of process. He may, if he thinks fit, 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 for the purpose of deciding whether there is sufficient ground for proceeding. Chapter XVI relates to commencement of proceedings before the Magistrate. [Section 204](#) provides for issue of process. Under this section if the Magistrate is of the opinion that there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue summons for the attendance of the accused. In a warrant case, he may issue a warrant. Thus, after initiation of proceedings detailed in Chapter XIV, comes the stage of commencement of proceedings covered by Chapter XVI.

32. [In Jamuna Singh & Ors. v. Bhadai Shah](#)[AIR 1964 SC 1541], relying on [R.R. Chari and Gopal Das Sindhi & Ors. v. State of Assam & Anr.](#), this Court held that it is well settled that when on a petition or complaint being filed before him, a



Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the [Cr.P.C.](#), he must be held to have taken cognizance of the offences mentioned in the complaint.

33. After referring to the provisions of the [Cr.P.C.](#) quoted by us hereinabove, in S.K. Sinha, Chief Enforcement Officer, this Court explained what is meant by the term 'taking cognizance'. The relevant observations of this Court could be quoted:

“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.” In several judgments, this view has been reiterated. It is not necessary to refer to all of them.

34. Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate.



Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons.

15. In *Bhushan Kumar v. State (NCT of Delhi)* as reported in (2012) 5 SCC 424, it has been held:-

“11. [In Chief Enforcement Officer vs. Videocon International Ltd. & Ors.](#), (2008) 2 SCC 492, 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 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.”

16. In *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi* as reported in (1976) 3 SCC 736, it has been held:-

“5. Mr. Bhandare laid great stress on the words "the truth or falsehood of the complaint" and



contended that in determining whether the complaint is false the Court can go into the question of the broad probabilities of the case or intrinsic infirmities appearing in the evidence. 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 this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under [s. 202](#) of the Code of Criminal Procedure which culminates into an order under [s. 204](#) of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .

(4) where the complaint suffers from



fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

17. In *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke* as reported in (2015) 3 SCC 123 wherein it has been as follows:-

“13. Cognizance is a process where the court takes judicial notice of an offence so as to initiate proceedings in respect of the alleged violation of law. The offence is investigated by the police. No doubt, the court is not bound by the report submitted by the police under [Section 173\(2\)](#) of Cr.PC. If the report is that no case is made out, the Magistrate is still free, nay, bound, if a case according to him is made out, to reject the report and take cognizance. It is also open to him to order further investigation under [Section 173\(8\)](#) of Cr.PC.”

18. How the court after receipt of police report in terms of Section 173 CrPC is to react. In *Sanjay Bansal v. Jawajarla Vats* as reported in 2008 CrLJ 428, it has been held:-

“ 8. When a report forwarded by the police to the Magistrate under [Section 173\(2\)\(i\)](#) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under [Section 156\(3\)](#) and require the police to make a



further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under [Section 156\(3\)](#). The position is, therefore, now well-settled that upon receipt of a police report under [Section 173\(2\)](#) a Magistrate is entitled to take cognizance of an offence under [Section 190\(1\)\(b\)](#) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. [Section 190\(1\)\(b\)](#) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers under [Section 190\(1\)\(b\)](#) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in [Sections 200](#) and [202](#) of the Code for taking cognizance of a case under [Section 190\(1\)\(a\)](#) though it is open to him to act under [Section 200](#) or [Section 202](#) also. [See [M/s. India Sarat Pvt. Ltd. v. State of Karnataka and another](#) (AIR 1989 SC 885)]. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the



informant would certainly be prejudiced as the First Information Report lodged becomes wholly or partially ineffective. Therefore, this Court indicated in Bhagwant Singh's case (supra) that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in [the Code](#) for issue of a notice in that regard.

19. *M/s Swill Ltd. Vs. State of Delhi* as reported in *AIR 2001 SC 2747*, it has been held as follows:-

“6. In our view, from the facts stated above it is clear that at the stage of taking cognizance of the offence, provisions of [Section 190](#) Cr.P.C. would be applicable. [Section 190](#) inter alia provides that 'the Magistrate may take cognizance of any offence upon a police report of such facts which constitute an offence.' As per this provision, Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under [Section 204](#) Cr.P.C. is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge sheet. Further, upon receipt of police report under [Section 173](#) (2) [Cr.P.C.](#), the Magistrate is entitled to take cognizance of an offence under [Section 190\(1\)\(b\)](#) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses



examined by the police. At this stage, there is no question of application of [Section 319](#) Cr.P.C. Similar contention was negated by this Court in [Raghubans Dubey vs. State of Bihar](#) [(1967) 2 SCR 423] by holding thus:

"In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence."

7. Further, in the present case there is no question of referring to the provisions of [section 319](#) Cr.P.C. That provision would come into operation in the course of any inquiry into or trial of an offence. In the present case, neither the Magistrate was holding inquiry as contemplated under [section 2\(g\)](#) Cr.P.C. nor the trial had started. He was exercising his jurisdiction under [section 190](#) of taking cognizance of an offence and issuing process. There is no bar under [section 190](#) Cr.P.C. that once the process is issued against some accused, on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge-sheet."

20. Considering the *Dharam Pal* case (supra) in *D.K. Basu v. State of West Bengal* as reported in (2015) 8 SCC 774, it has been held under paras-14, 15, 16, 17, 18 which are as follows:-

14. [In The Official Liquidator v. Dharti Dhan Pvt. Ltd.](#)[(1977)2 SCC 166] this Court summed up



the legal position thus :

“7. In fact it is quite accurate to say that the word "may" by itself, acquires the meaning' of "must" or "shall" sometimes. This word however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness.

8. Thus, the question to be determined in such cases always is, whether the power conferred by the use of the word "may" has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled: A power is exercised even when the Court rejects an application to exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word "may" indicates that annexes any obligation to its exercise but the legal and factual context of it.”

15. So also, this Court in [ND Jayal and Anr. v. Union of India and Ors.](#)[(2004) 9 SCC 362] interpreted the provisions of the Environmental Protection Act, 1986 to mean that the power conferred under the Act was not a power simpliciter, but, was power coupled with duty. Unless the Act was so interpreted sustainable development and protection of life under [Article 21](#) was not possible observed the Court. [In Manushkhlal Vithaldas](#)



[Chauhan v. State of Gujarat](#)[(1997) 7 SCC 622] this Court held that the scheme of the statute is determinative of the nature of duty or power conferred upon the authority while determining whether such power is obligatory, mandatory or directory and that even if that duty is not set out clearly and specifically in the statute, it may be implied as correlative to a right. Numerous other pronouncements of this Court have similarly addressed and answered the issue.

16. It is unnecessary to refer to all those decisions for we remain content with reference to the decision of this Court in [Bachahan Devi and Anr. v. Nagar Nigam, Gorakhpur and Anr.](#)[(2008) 12 SCC 372] in which the position was succinctly summarized as under:

“18. It is well settled that the use of word ‘may’ in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word ‘may’ as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word ‘may’, the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word ‘may’ involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word ‘may’ should be interpreted to convey a mandatory force. *As a general rule, the word ‘may’ is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word ‘shall’, which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words ‘may’ ‘shall’, and ‘must’ are used interchangeably. In order to find out whether these words are being used in a directory or*



in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances.

19. '17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment of power. Depending upon the context, 'may' does not always mean may. 'May' is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes his duty to exercise that power. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.

20. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word 'may' will not prevent the court from giving it the effect of Compulsion or obligation. Where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word 'may' that power must be construed as a statutory duty. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Although in general sense 'may' is enabling or discretionary and 'shall' is obligatory, the connotation is not inelastic and inviolate." Where to interpret the word 'may' as directory would render the very object of the Act as nugatory, the word 'may' must mean 'shall'.

21. The ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent; and the use of words 'may' and 'shall' is not decisive of its discretion or mandates. The use of the words 'may' and 'shall' may help the courts in ascertaining the legislative intent without giving to either a controlling or a determining



effect. The courts have further to consider the subject matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed.” (emphasis supplied)

The above decision also dispels the impression that if the Parliament has used the words “may” and “shall” at the places in the same provision, it means that the intention was to make a distinction in as much as one was intended to be discretionary while the other mandatory. This is obvious from the following passage where this Court declared that even when the two words are used in the same provision the Court’s power to discover the true intention of the legislature remains unaffected:

“22. ‘9.....Obviously where the legislature uses two words may and shall in two different parts of the same provision prima facie it would appear that the legislature manifested its intent on to make one part directory and another mandatory. But that by itself is not decisive. The power of court to find out whether the provision is directory or mandatory remains unimpaired.”

17. When we examine the scheme of the legislation and the provisions of [Section 21](#) (supra) in the light of the above principles, the following broad features emerge prominently:

17.1. That the Act is aimed at providing an efficacious and transparent mechanism for prevention of violation of human rights both at national level as also at the state level;

17.2. That the National Human Rights Commission is vested with the powers and functions set out in Chapter-III of comprising [Sections 12](#) to [16](#) of the Protection of Human Rights Act, 1963. While in relation to State Human Rights Commissions similar provisions of [Sections 9, 10, 10, 12, 13, 14, 15](#) to [18](#) apply mutatis mutandis subject to certain modifications referred to in clauses (a) to (d) of the said provision. This implies that the powers exercisable by the State Commissions under the said



provisions are pari materia with the powers exercisable by the National Human Rights Commission.

17.3. That while [Section 3](#) does use the word 'shall' in relation to the constitution of a National Human Rights Commission, the absence of a similar expression in Section and the use of the word 'may' as observed by this Court in Bachahan Devi (supra) case makes little difference as the scheme of the Act and the true intention underlying the legislation is to be determined by the Court depending upon whether the power was coupled with a duty to exercise the same or was conferment of power simpliciter.

18. Time now to refer to certain other provisions of the Act. In terms of [Section 13\(6\)](#) of the Act, the National Commission is empowered whenever considered necessary or expedient so to do, to transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises for disposal in accordance with the provisions of the Act, subject to the condition that the complaint is one respecting which the State Commission has jurisdiction to entertain the same. Upon such transfer the State Commission is competent to dispose of the matter as if complaint was initially filed before it. The power of the State Commission, it is noteworthy, is confined to matters enumerated in List-II and List-III of the Constitution in terms of [Section 21](#) sub-Section (5) extracted earlier.

21. Furthermore, it is evident that while identifying power of a Magistrate while taking cognizance, the novice perception being formed that only the accused who has been charge-sheeted is to be summoned, though repelled by way of explaining that cognizance of an offence is being taken and then



thereafter, the culprit is to be identified responsible therefor and the same has been properly explained in *R. N. Agarwal v. R.C. Bansal* as reported in (2015) 1 SCC 48 as follows:-

“25. In the case of [Raghubans Dubey vs. State of Bihar](#), (AIR 1967 SC 1167), this Court while dealing with the similar matter held that once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders and once he comes to the conclusion that apart from the persons sent by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.

26. In the case of [Kishun Singh vs. State of Bihar](#) (1993) 2 SCC 16, the scope and power of a Court under [Sections 193](#), [209](#) and [319](#) observed as:-

“16. We have already indicated earlier from the ratio of this Court’s decisions in the cases of Raghubans Dubey and Hareram that once the court takes cognizance of the offence (not the offender) it becomes the court’s duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the court’s duty to summon them to stand trial along with those already named, since summoning them would only be a part of the process of taking cognizance. We have also pointed out the difference in the language of [Section 193](#) of the two Codes; under the old [Code the](#) Court of Session was precluded from taking cognizance of any offence as a court of original jurisdiction unless the accused was committed to it whereas under the present [Code the](#) embargo is diluted by the replacement of the words the accused by the words the case. Thus, on a plain reading of [Section 193](#), as it presently stands once the case is committed to the Court of Session by a Magistrate under [the Code](#), the restriction placed on the power of the Court of Session to take cognizance



of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under [Section 209](#) to the Court of Session the bar of [Section 193](#) is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record. The Full Bench of the High Court of Patna rightly appreciated the shift in [Section 193](#) of the Code from that under the old Code in the case of Sk. Lutfur Rahman as under:

“12. Therefore, what the law under [Section 193](#) seeks to visualise and provide for now is that the whole of the incident constituting the offence is to be taken cognizance of by the Court of Session on commitment and not that every individual offender must be so committed or that in case it is not so done then the Court of Session would be powerless to proceed against persons regarding whom it may be fully convinced at the very threshold of the trial that they are prima facie guilty of the crime as well Once the case has been committed, the bar of [Section 193](#) is removed or, to put it in other words, the condition [pic]therefore stands satisfied vesting the Court of Session with the fullest jurisdiction to summon any individual accused of the crime.”

We are in respectful agreement with the distinction brought out between the old [Section 193](#) and the provision as it now stands.”

22. In *Fakhruddin Ahmad v. State of Uttaranchal*

reported in (2008) 17 SCC 157 , it has been held as follows:-

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.

23. In *Cref Finance Lts. V. Shree Shanthi Homes*

(P) Ltd. reported in (2005) 7 SCC 467, it has been held as follows:-

“10. In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of statement of the complainant on 01.06.2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. The cognizance is taken of the offence and not of the offender and, therefore, once the Court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later 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. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance



and examining the complainant on oath, the Court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the Court may consider it appropriate to send the complaint to police for investigation under [Section 156\(3\)](#) of the Code of Criminal Procedure. We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that Court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority etc. etc. These are cases where the Magistrate will refuse to take cognizance and return the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. We are, therefore, of the opinion that in the facts and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal.”

24. The ambit and scope of supplementary charge-sheet has been subject to consideration in *State of West Bengal v. Salap Service Station* as reported in *1994 Supp (3) SCC 318* whereunder it has been held under para-2 which is as follows:-

“ 2. We have heard both the counsel at length. The simple question that arises ultimately for consideration in this matter is whether the supplementary report filed by the investigating agency under Section 173(8) CrPC can be taken on file by the Magistrate or not? Section 173(8) CrPC lays down that nothing in Section 173 shall be



deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and whereupon such investigation the officer-in-charge of the police station obtains further evidence oral or documentary he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed. But the Special Judge instead of taking it on file rejected the same holding that “no cognizance of the offence on the basis of the supplementary charge-sheet can be taken”. It may be mentioned here that in the supplementary charge-sheet allegations or to the effect that there was violation of Direction 12 of the Control Order. The question of taking cognizance does not arise at this stage since cognizance had already been taken on the basis of the main charge-sheet. What all Section 173 (8) lays down is that the investigating agency can carry on further investigation in respect of the offence after a report under sub-section (2) has been filed. The further investigation may also disclose some fresh offences but connected with the transaction which is the subject-matter of the earlier report. In the instant case, the supplementary charge-sheet mentions that there was a contravention of Direction 12 and whether the same is substantiated or not by sufficient material would be a question which has to be considered at a later stage. At the stage of filing supplementary report itself the trial court which took cognizance cannot reject the same outright since it is only a supplementary report in support of the earlier report. Somehow, the Special Court rejected the report without taking it on record holding that no cognizance can be taken since facts do not support offence under Direction 12. There is no question of taking cognizance at this stage since cognizance has already been taken. The purpose of sub-section (8) of Section 173 CrPC is to enable the investigating agency to gather further evidence and that cannot be frustrated if the materials incorporated in the supplementary charge-sheet do not make out any offence, the question of framing any other charge on the basis of that may not arise but in case the court frames a charge it is open to the accused persons to



seek discharge in respect of that offence also as they have done already in respect of the offence disclosed in the main charge-sheet. The rejection of the report outright at that stage in our view is not correct.”

25. In *Shankar Ram Vs. The State (FB)* reported in 1986 CRI.L.J. 707, the full bench has held:-

“15. Once the extreme and doctrinaire stand taken on behalf of the petitioner is answered as above, the limited question whether the code permits a police report against only one or some of the many accused persons jointly charged with an offence fall into its proper place and perspective. The basic challenge on behalf of the petitioner herein is that the filing of the further police reports against the remaining accused persons would involve re-opening of the investigation which would be impermissible on existing materials. It would further detract from the investigation being complete against one or some of the many accused persons. Basic emphasis of the learned counsel for the petitioner was on the completion of investigation envisaged by sub-sections (1) and (2) of S.173. It was contended that completion of investigation and filing of police report even against one of the accused under the aforesaid provisions means the closing of the said chapter of investigation and, therefore, further investigation envisaged under Sub-section (8) of S. 173 must necessarily be termed as a re-opening of the same and permissible only upon altogether fresh and new materials which were earlier not available. It is not possible to accede or subscribe to this extreme stand. Where there are more than one accused persons, it is perfectly possible that the investigation may be totally complete against one of the accused whilst it is wholly in the embryo of incomplete against an absconding or unnamed or untraced accused person. In such a situation it is indeed the mandate of the law itself under S. 173 to complete the investigation without delay and as soon as it is completed, to file a police report to the magistrate empowered to take



cognizance. If later investigation is completed against the absconding or unnamed or untraced accused and a police report is filed against them, it in no way involves and reopening of the investigation against the first accused person or persons with regard to whom the police report has already been filed. To bring in the theory of reopening in this context is thus unwarranted. Yet again the law does not envisage a police report once filed as be all and the end all of the matter. There is no express and not even implied prohibition to file a supplementary or additional police report to an earlier one. Indeed the use of the terminology of reopening the investigation in the context of the express provision of Sub-Section (8) of S. 173 is somewhat unhappy. The statute does not imply any such terminology of reopening investigation thereunder. It expressly talks of further investigation or of further report or reports. Furtherance is not reopening. Consequently, such police reports under S. 173 (8) may be more aptly named either as further police reports or additional, supplementary or revised police reports. As already, noticed, they may not imply any semblance of any reopening of a completed investigation against some of the accused at all.

16. However, even carrying the argument to its logical extreme, if S. 173 (8) may involve any reopening of the investigation then the same is not only permissible but is expressly now sanctified by sub-section (8) of S. 173. The law in terms permits reopening of the investigation if necessary. There is no inflexible conclusiveness or finality about the same. What seems to necessarily follow from the language and in principle is equally well buttressed by precedents. In 1984 CriLJ 239 P.G. Periasamy v. Inspector of Police, Pennagaram the learned Single Judge of the Madras High Court expressly dissented from the Patna view in 1981 CriLJ 976, Reshamlal v. State of Bihar and observed as under:

“..... Section 173 of the Code does not say anything about the filing of one or more charge-sheets on the basis of the same investigation. There is not specific provision empowering an investigating officer to file a



revised charge-sheet on the basis of the same materials on which the first charge-sheet was filed nor does the Section prohibit the filing of a revised charge-sheet on the basis of the same materials. On the other hand, all that sub-section (2) (i) of S. 173 states is that as soon as the investigation is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. Section 173 (8) has been newly added in order to make it expressly clear that merely because an investigating officer has sent a police report to the Magistrate he will not stand precluded from making further investigation in the case and submitting a further report or reports to the Magistrate regarding the additional evidence gathered by him in the further investigation. Because of this express provision, it should not be taken that if a police officer had committed an error in giving full and proper particulars regarding the names of parties, the nature of information, the names of witnesses, etc. in his first report, he cannot correct the mistake by filing a second report. When the Code provides for even further investigation being done after a report is filed before a Magistrate, there can be no bar whatever for the police filing a second or revised report on the materials already gathered during the investigation, especially when the second report is intended to set right certain mistakes or omissions in the first report. The matter should, therefore, be viewed in its proper perspective. Otherwise, the interests of the State, which in other words, would mean the interests of society, would suffer. On the contrary, if the contention of Mr. Krishnan is accepted, the resultant position would be that even if there are adequate materials against a person, he can get away without even trial on account of a mistake or error committed by the investigating officer in laying a proper report before the Magistrate.”



Yet again by way of analogy reference may be made to Full Bench judgment of the Kerala High Court in 1984 CriLJ 324: (AIR 1984 NOC 143) Kesavan Natesan v. Madhavan Peethambharan wherein it has been held that even to committal proceedings one on police report and the other on subsequent private complaint are permissible under the Code.

26. In *State of Maharashtra v. Sharad Chandra Vinayak Dongre* as reported in *AIR 1995 SC 231*, it has been held as follows:-

6. [Section 173\(2\)](#) of the Code of Criminal Procedure provides that as soon as investigation is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating:

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of case;
- (d) whether any offence appears to have been communicated and, if so, by whom;
- (e) whether the accused has been arrested; whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under Section 170.

7. The purpose of the submission of the police report with the details as mentioned above, is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to



the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions [of the Code of Criminal Procedure. Section 190\(1\)\(b\)](#) CrPC provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the material filed therewith is sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under [Section 173\(2\)](#) CrPC. Merely, because the prosecution had filed an application, after submission of the charge-sheet, seeking permission to file "supplementary charge-sheet", it could not affect the jurisdiction of the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the charge-sheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the prosecution with the report (charge-sheet) was sufficient to take cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate.

8. In the instant case, the Chief Judicial Magistrate was obviously satisfied with the sufficiency of the material placed by the prosecution before him with the report for taking cognizance of the offence and he therefore proceeded further after taking cognizance and directed the issuance of process against the respondents. The prayer of the investigating agency seeking permission to further investigate and submit a "supplementary charge-sheet" could not vitiate the cognizance taken by the Chief Judicial Magistrate nor denude him of his jurisdiction to take cognizance of the offence. The High Court while quashing the order dated 21-11-1986, did not record any finding to the effect that the exercise of discretion by the Magistrate in taking



cognizance of the offence and issuing process was in any way improper or that the cognizance was taken on the basis of the material on which no reasonable person could have taken cognizance. The High Court quashed the order only because it was influenced by the application filed by the prosecution seeking permission to record additional evidence and file a "supplementary charge-sheet" and from that it inferred that the report filed by the prosecution was 'incomplete'. High Court even overlooked the fact that the application filed by the prosecution had not even been allowed by the Chief Judicial Magistrate and had been only adjourned for orders. We cannot persuade ourselves to accept the view of the High Court that if the investigating officer terms a police report as 'incomplete', it takes away the jurisdiction of the Magistrate to take cognizance of the offence, even if in the opinion of the Magistrate, the material is sufficient for him to be satisfied that it was a fit case for him to take cognizance of the offence. The Magistrate is not bound by the label given to the report or the charge-sheet by the investigating officer and it is for him to decide whether the report and the material on which it is based, is sufficient for him to take cognizance or not. It is pertinent to notice that the police report submitted before the Chief Judicial Magistrate, did not even say that it was an 'incomplete' charge-sheet or police report. The High Court was, therefore, not at all justified in opining that since the charge-sheet on the prosecution's own showing was 'incomplete', the Chief Judicial Magistrate could not have taken cognizance and quashed the order of the CJM taking cognizance of the offence. We may also record at this stage that Shri Dholakia, the learned Senior Counsel appearing for the appellant submitted before us that apart from the material already filed with the police report/charge-sheet, on the basis of which the Chief Judicial Magistrate took cognizance on 21-11-1986, the State does not intend to file any further material by way of any supplementary charge-sheet before the trial court. The statement of Shri Dholakia, adequately protects the interest of the respondents. In view of the statement of Mr Dholakia, we are relieved of the necessity to deal with the effect



of [Section 173\(8\)](#) CrPC in this case.

27. Thus, concluding the issue, it is evident that irrespective of finding recorded by the Investigating Officer submitted before the court in accordance with Section 173 of the CrPC, the cognizance taking magistrate not at all is under compulsion to accept the same rather, the magistrate has got an option available (a) to accept the same, (b) to differ therefrom, (c) to direct further investigation. Furthermore, as is evident the event of cognizance does not relate with an accused rather that relates with properly acknowledgement of commission of the offence so coming out from perusal of the materials having placed in accordance with Section 173 CrPC and then, to identify the accused responsible therefor. That means to say, the Magistrate acceding with conclusion arrived at by the Investigating Officer, took cognizance of an offence and then, during course of identification of accused found prima facie material against the petitioner, was fully competent to summon irrespective of the fact that investigation against remaining including the petitioner was kept pending at the end of the Investigating Officer. Furthermore, it is also evident that subsequent police report, if the same happens to be in accordance with Section 173(8) of the CrPC is also to be



considered but upon appropriate stage.

28. That being so, the status of the petitioner, having been not sent up for trial while submitting supplementary charge-sheet (Annexure-4) will have no adverse repercussion over the order impugned. Consequent thereupon, instant petition sans merit and is, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
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