

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No.1722 of 2018**

1. Hermon Kindo S/o Shree Poulus Kindo Aged About 65 Years R/o Village Ranpur, Police Station Narayanpur District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh
2. Joseph Tigga S/o Shree Somra Aged About 70 Years R/o Village Ukai-Ekamba, Police Station Sanna, District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Officer- In- Charge, Police Station Narayanpur, District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh
2. Madhsudan Bhagat S/o Late Santri Ram Bhagat Aged About 51 Years R/o Parshad, Ward No. 14, Nagar Panchayat Bagicha, Thana Bagicha, District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh
3. Peter Khes S/o Patras Khes Aged About 48 Years R/o Village Bachraon Police Station Narayanpur, District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh
4. Daud Kujur S/o Samvel Kujur Aged About 64 Years R/o Village Bachraon, Police Station Narayanpur, District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh
5. Million Minj S/o Nikolas Minj Aged About 28 Years R/o Village Bachraon, Police Station Narayanpur, District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh
6. Sudhir Ekka S/o Bandhna Ekka Aged About 28 Years R/o Sihardand, Police Station Bagicha, District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh

---- Respondents**PRESENT:-**

Shri Mahendra Dubey, counsel for petitioner/s.
Shri Ashish Shukla, Dy.AG for State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****27/09/2018**

1. The petitioner has filed this petition being aggrieved by the order dated 28-06-2018, by which, upon filing of the charge sheet, the Magistrate has taken cognizance of the offences alleged against the petitioner.

2. Learned counsel for the petitioner submits that in the present case, as no sanction was granted for prosecution by the petitioner's employer/State Government, no cognizance could be taken. He further submits that the manner, in which, cognizance has been taken, is not referable to any of the provisions of Cr.P.C.

3. On the other hand, learned State counsel submits that the order dated 28-06-2018 recording that the cognizance is taken, is only misnomer. He submits that after charge sheet is filed, cognizance can be taken, only upon framing of charges under the law. There is no cognizance taken, unless that stage is reached. He places reliance on a decision of the Supreme Court in the case of ***State of Karnataka and another v. Pastor P. Raju***. He further submits that after filing of charge sheet, sanction was not granted, but later on, government has granted sanction for prosecution of the petitioner.

4. Order dated 28-06-2018 to the extent it records taking of cognizance is not sustainable in the eye of law, in view of the decision of the Supreme Court in the case of ***State of Karnataka and another*** (supra), wherein it has been held thus:-

10. "Several provisions in Chapter XIV of the Code of Criminal Procedure use the word "cognizance". The very first Section in the said Chapter, viz., [Section 190](#) lays down how cognizance of offences will be taken by a Magistrate. However, the word "cognizance" has not been defined in [the Code](#) of Criminal Procedure. The dictionary meaning of the word "cognizance" is - 'judicial hearing of a matter'. The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is [R.R. Chari v. State of U.P.](#) AIR 1951 SC 207, wherein it was held :-

".....taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence."

11. In Darshan Singh Ram Kishan v. State of Maharashtra AIR 1971 SC 2372, while considering Section 190 of the Code of 1908, it was observed that:

"taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a magistrate first takes judicial notice of an offence. This is the position whether the magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer."

12. In Narayandas Bhagwandas Madhavdas v. The State of West Bengal AIR 1959 SC 1118 it was held that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. It was observed that there is no special charm or any magical formula in the expression "taking cognizance" which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. It was also observed that what Section 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations. The Court then referred to the three situations enumerated in sub-section (1) of Section 190 upon which a Magistrate could take cognizance. Similar view was expressed in Kishun Singh & Ors. v. State of Bihar (1993) 2 SCC 16 that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence, decides to initiate judicial proceedings against the alleged offender, he is said to have taken cognizance of the offence. In State of West Bengal v. Mohd. Khalid & Ors. (1995) 1 SCC 684 the Court after taking note of the fact that the expression had not been defined in the Code held :-

"..... In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence and taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

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

5. Upon filing of the charge sheet, learned Magistrate could only allow the charge sheet to be filed and criminal case to be registered, which does not by itself amounts to taking of cognizance. It is clear from the fact that after the authorities having granted sanction for prosecution, the trial Court has proceeded to list this case for hearing for arguments on framing of charges. Therefore, the impugned order dated 28-06-2018 to the extent it records taking of cognizance cannot be sustained in law and therefore, set aside.

6. Considering the submission of learned counsel for the State that the sanction has been granted, it would be open for the trial Court to examine by taking into consideration the arguments, which may be raised by the accused and by the prosecution, in the matter of framing of charges.

7. In view of above, this petition is finally disposed off.

SD/-
(**Manindra Mohan Shrivastava**)
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