

IN THE HIGH COURT OF ORISSA : CUTTACK.

CRLMC No. 3828 of 2015

(An Application under Section 482 of
the Code of Criminal Procedure, 1973)

Dibakar Sahani
Mahadeipur Village
Gurandi P.S.
Gajapati District

... Petitioner

VERSUS

State of Odisha
& Another

... Opposite parties

Advocates appeared in the case:

For Petitioner : Mr. Soubhagya Kumar Dash,
Advocate

For Opposite Party No.1 : Mr. Ishwar Mohanty,
Additional Standing Counsel

For Opposite Party No.2 : None

CORAM:

JUSTICE MURAHARI SRI RAMAN

JUDGMENT

23.12.2022

Murahari Sri Raman, J.

1. The petitioner, aggrieved by Order dated 13th May, 2015
passed by the learned Sub-Divisional Judicial Magistrate,

Paralakhemundi (herein after be referred to as “SDJM”) in I.C.C. No.47 of 2014 taking cognizance of offence under Sections 294/420/406/506, Indian Penal Code, 1860 (for brevity, “IPC”), approached this Court with the petition under Section 482 of the Code of Criminal Procedure, 1973 (for short referred to as “CrPC”) with the following prayer(s):

*“*** to admit this CrlMC, call for the record issue notice to the opposite parties and upon hearing be further pleased to allow this application and set aside the impugned Order dated 13.05.2015 passed by the learned Sub-Divisional Judicial Magistrate, Paralakhemundi in I.C.C. No.47 of 2014.”*

Facts of the case:

2. The opposite party No.2-Smt. Gurubari Kuntia of Basundhara, Meliaputti Mandalam, Meliaputti P.S. in the District of Srikakulam (Andhra Pradesh), mother-in-law, lodged complaint against the petitioner before the learned SDJM, registered as ICC No.47/2014, to the effect that though her daughter-Sunita led conjugal life after solemnization of marriage, the petitioner demanding more dowry tortured her and ultimately Sunita succumbed to mental and physical torture and died on 29.08.2008. It is alleged by her that the petitioner has murdered Sunita. On complaint being made and charge framed, the petitioner stood trial for offence under Sections 498A/302/304B, IPC read with Section 4 of the Dowry Prohibition Act, 1961. After the Judgment dated 17.07.2010 rendered by the learned Additional Sessions Judge, Parlakhemundi, with conclusion that the prosecution could not

establish the charge under neither Sections 498A/304B/302, IPC nor Section 4 of the Dowry Prohibition Act, and the petitioner-accused was found “not guilty” of any of the aforesaid offences alleged, the mother-in-law, Smt. Gurubari Kuntia, lodged complaint before the learned SDJM, Parlakhemundi under Section 200, CrPC that the petitioner was approached on 02.09.2014 to return utensils and other articles, which were presented by her, but to no avail. Hence, the complaint petition has been filed on 18th September, 2014 before said SDJM with a prayer to take cognizance of offences under Sections 294/323/420/406, IPC against the petitioner.

2.1. After taking initial statement of complainant on 18.09.2014, and conducting further inquiry under Section 202 of CrPC, the learned SDJM recorded statement of a cousin of the complainant on 28.10.2014. Accordingly, on 13th May, 2015, cognizance of offences has been taken under Sections 292/420/406/506, IPC against the accused-petitioner-Dibakar Sahani.

The contentions of the petitioner in the present case:

3. Except household articles, the petitioner had never demanded dowry, rather he led happy marital life being married to Sunita, the daughter of the opposite party No.2, but to his misfortune his wife succumbed to burn injury. A false case was foisted by his mother-in-law out of frustration. However, in trial before the learned Additional Sessions Judge, Paralakhemundi, Gajapati in ST No.41/2008 (arising out of G.R. Case No.113/2008

in connection with Paralakhemundi P.S. Case No.59/2008), vide Judgment dated 17.07.2010 he was acquitted with the following observation:

“15. Now taking note of the entire scenario and the evidence of both side witnesses it is seen that there is a strong possibility that the deceased committed suicide when her husband suspected her fidelity. She was a young house wife and she was in carrying condition. Parents were then very old and the brothers got married. So she became very sensitive looking to the conduct of her husband and under such circumstances she took such a harsh decision to finish her life and she done it. The relations when rushed to the spot on hearing the incident from the accused got extremely annoyed to see the charred body and so out of vengeance and hatredness they made allegation of bride burning for dowry. The police officer believed their statements and instead of following the strict procedure of honest investigation did the investigation in biased manner. So whatever the circumstances may be a charge of homicidal murder is found not established beyond reasonable doubt.

16. Hence in conclusion after careful consideration of the evidence given by the prosecution and the defence plea and the arguments made by both sides lawyers I found that the prosecution has not established any of the charges under Section 498A/304B/302, IPC or the charge under Section 4 of the D.P. Act. So the accused is found not guilty of any of the aforesaid charges and so he is acquitted of all these charges. He be set at liberty forth with from the jail if there is no other case pending against him.”

3.1. The petitioner also contended that during course of investigation of aforesaid G.R. Case No.113/2008 arising out of Paralakhemundi P.S. Case No.59/2008, when the I.O. visited the spot and examined the witnesses, seizure of articles were effected and consequent thereto statement of Sri Balaram Khuntia in

vernacular (Odia) was recorded on 12.05.2008 (Annexure-6).
Translated version in English of such statement reads thus:

“Statement of Balaram Khuntia (30) son of Damodar Khuntia of Village Basundhara, P.S.: Meliaputty, District: Srikakulam, recorded under Section 161, Cr.P.C. in PKL P.S. Case No.59/2008 under Section 302/304B, IPC

My name is Balaram Khuntia (30) years, son of Damodar Khuntia, Village: Basundhara, District: Srikakulam. This is my oral statement before the S.I. of Gurandi Police Station that on being furnished, said S.I. has seized a photograph of Sunita and Dibakar from Murali Khuntia and a list of dowry articles. The seizure is effected at around 9 a.m. in the morning. Knowing that the list of seizure is correct, I have put my signature.”

3.2. It is fact on record that after the Judgment in the trial before the learned Additional Sessions Judge being concluded and Judgment being pronounced in the year 2010 acquitting the petitioner, the opposite party No.2 took another four years to foist another case wherein the learned SDJM has taken cognizance of offences under Sections 292/420/406/506, IPC against the petitioner-Dibakar Sahani, which is abuse of process of law.

3.3. On the face of the record when the statement of Balaram Khuntia is clear and loud to the effect that the articles claimed to be given as dowry to the petitioner were seized by the S.I. of Guranda Police Station, the learned SDJM has mechanically exercised his power by taking cognizance of offence under Sections 292/420/406/506, IPC against the accused-Dibakar Sahani.

Contention of the Additional Standing Counsel for the State-opposite party No.1:

4. Save and except stating that the learned SDJM after conducting due enquiry had taken cognizance of offence under Sections 292/420/406/506, IPC against the petitioner and cognizance being taken after due application of mind with reference to material available on record, he is required to face the trial.

Discussion:

5. This Court while issuing notice in the matter, *vide* Order dated 01.09.2015 passed the following interim order:

“As an interim measure, the further proceeding in ICC Case No.47 of 2014 pending before the learned Sub-Divisional Judicial Magistrate, Paralakhemundi shall remain stayed till next listing.

Put up this matter on 05.10.2015.”

5.1. It is noticed that notice for admission being issued to the opposite party No.2 by registered post with acknowledgement due, the same got served on “Gurubari Kuntia” on 15.09.2015. However, none appeared for the said party as on date.

5.2. Going through the Judgment dated 17.07.2010 of the learned Additional Sessions Judge reveals that the trial in ST Case No.41/2008 (arising out of commitment of G.R. Case No.113/2008 made by the learned SDJM on 01.10.2008) was under Section 4 of the Dowry Prohibition Act, 1961 apart from

offences under Sections under 498A/302/304B, IPC, wherein the following was the observation:

*“6. On the allegation under Section 4 of the D.P. Act in the body of the FIR which is proved as Ext.3 nothing has been mentioned. The informant Murali as P.W. 7 in the cross-examination denied that he omitted to speak about dowry demand and its acceptance by the accused but on plain reading of the Ext.3 it is seen that actually such fact is not at all mentioned and for this initially the police had not registered any case under Section 498A, IPC. The P.W.1 is the wife of the informant whereas the P.W.2 is the old mother of the informant and the deceased and the P.W.8 is the brother in law of the informant who deposed in the court that the accused on demand received Rupees 75,000 at the time of marriage but after some months of the marriage they came to know from the deceased that her husband such as the accused was again demanding Rupees 20,000 as dowry. They also deposed that when they could not able to give such additional dowry the deceased was subjected to torture and assault by the accused husband. All of them are confronted with their previous statements before the IO that they have not stated about such allegation. The IO such as the P.W. 16 when subjected to cross-examination is not confronted with the court statements of these witnesses with their 161 Cr.P.C. statements recorded by him. **But the IO deposed in the cross-examination that he had not seized any dowry articles except a list vide Ext.4/4.** On this aspect it is seen that the said list was handed over to the I.O. by the complainant on 12.05.2008 after 13 days of filing of the FIR and there is no explanation that as to why such a delay was there in producing such document had been there with the informant right from the beginning. It creates doubt that such a document might have been created for the case later on to heighten a case under Section 4 of*

D.P. Act. This apprehension is quite reasonable that no independent witnesses deposed in the court including the priest such as P.W.13 that there was dowry demand and acceptance before him when he performed the marriage. The mediator of the marriage is not examined by the prosecution. There is no evidence that on the point of dowry demand there was ever any caste or village meeting. So the evidence of the relation witnesses in the court which is found to be developed by them in course of the trial brands them as tainted witnesses on this aspect of the prosecution case. On this aspect I am following the settled position of law as decided by the Hon'ble Supreme Court in the matter between Baladin and others Vrs. State of U.P., reported in AIR 1956 SC at page 181 which is followed by the Hon'ble Division Bench of Orissa High Court in the matter between Premananda Sahu and others Vrs. State of Odisha. Here a case under Section 4 of D.P. Act is found not established beyond reasonable doubt."

5.3. When the said Judgment was passed way back in the year 2010 holding that the opposite parties failed to prove the case under the provisions of the Dowry Prohibition Act, after about 4 years therefrom at the behest of mother-in-law of the petitioner, the ICC No.47/2014 has been launched under Sections 294/420/406/506, IPC, as the petitioner refused to return the articles of dowry and he turned down the request of the complainant by using abusive words. It is noteworthy to refer to orders dated 18.09.2014 and 16.12.2014 as passed by the learned SDJM in said ICC No. 47/2014 prior to taking cognizance:

"Sl. No.1 dtd. 18.09.2014

Complaint petition under Section 200, Cr.P.C. is filed by the above named complaint against the accused persons

cited in her complaint petition through her advocate Sri R. Babu Rao who filed power for the complainant. Vakalatnama is accepted. Verified and Register. Statement of complainant is recorded in the opposite side of complaint petition. Case is posted to 25.09.2014 for enquiring under Section 202, Cr.P.C.

Sl. No.7 dtd. 16.12.2014

Advocate for complainant files hazira. The record is put up today for order on cognizance. Perused the case record, the complaint petition initial statement of the complaint, statement of witness under Section 202, Cr.P.C. the documents submitted by the complainant etc. The complainant has filed this case on the allegation of misappropriation of dowry articles by the accused persons, which were given to her daughter during her marriage. Some photographs of the marriage of the victim have also been filed.

Subsequently, the daughter of the complainant was murdered, as alleged by the complainant and a case was filed against the accused persons. However, charge sheet was submitted by police against accused Dibakar Sahani under Section 302/498A/304B, IPC / 4 D.P. Act.

The Xerox copy of charge sheet filed by the complainant shows that the I.O. did not seize the dowry articles during submission of the charge sheet and mentioned in the charge sheet that he will seize the same later on. So, it is not clear, whether he has seized the dowry articles in this case or not.

Hence, call for the record from the J/C, Record Room, Parlakhemundi in G.R. 113/08, if available, along with the concerned Session case record, after which order on cognizance can be passed. Put on 03.01.2015 awaiting for the record.”

5.4. After perusal of documents available on record and taking into consideration the statements recorded in the matter in course of enquiry under Section 202 of the Cr.P.C. on complaint under Section 200, the learned SDJM recorded his *prima facie* satisfaction with respect to offences under Sections 294/420/406/506, IPC against Dibakar Sahani and accordingly, cognizance was taken on 13.05.2015. It cannot be stated that there was mechanical application or non-application of mind while taking cognizance.

5.5. Under the aforesaid premise, it is found that cognizance in ICC No.47/2014 has been taken by the SDJM with due consideration to the material record.

Provisions of CrPC and reference to case laws:

6. Section 482 of the Cr.P.C provides for “Saving of inherent powers of High Court”. Said provision lays down that

“Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

6.1. It has been well-settled that even though, the inherent power of the High Court under Section 482 of the Cr.P.C., to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 of the Cr.P.C is not to be exercised for the asking.

The Hon'ble Supreme Court of India in the case of *Lakhwant Singh Vrs. Jasbir Singh and Others* (2008) 14 SCC 661 laid down that:

“9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See : *The Janata Dal etc. Vrs. H.S. Chowdhary and others, etc.* (AIR 1993 SC 892), *Dr. Raghubir Saran Vrs. State of Bihar and another*, AIR 1964 SC 1]. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out

whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding. [See : Mrs. Dhanalakshmi Vrs. R. Prasanna Kumar and others, AIR 1990 SC 494; State of Bihar and another Vrs. P. P. Sharma, I.A.S. and another, (1992 Suppl (1) SCC 222); Rupan Deol Bajaj (Mrs.) and another Vrs. Kanwar Pal Singh Gill and another, (1995) 6 SCC 194; State of Kerala and others Vrs. O.C. Kuttan and others, (1999) 2 SCC 651; State of U.P. Vrs. O. P. Sharma, (1996) 7 SCC 705; Rashmi Kumar (Smt.) Vrs. Mahesh Kumar Bhada, (1997) 2 SCC 397; Satvinder Kaur Vrs. State (Govt. of NCT of Delhi) and another, (1999) 8 SCC 728; Rajesh Bajaj Vrs. State NCT of Delhi and others, AIR 1999 SC 1216].”

6.2. In exceptional cases, to prevent abuse of the process of Court, the High Court might in exercise of its inherent powers under Section 482 quash criminal proceedings. However, interference would only be justified when complaint did not disclose any offence, or was patently frivolous, vexatious or oppressive, as held by this Court in *Mrs. Dhanalakshmi Vrs. R. Prasanna Kumar*, AIR 1990 SC 494.

6.3. In *Madhavrao Jiwajirao Scindia Vrs. Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 6929, a three-Judge Bench of Supreme Court summarized the law with regard to quashing of criminal proceedings under Section 482 of the Cr.P.C. The Court held:

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

6.4. In *Inder Mohan Goswami Vrs. State of Uttaranchal*, (2007) 12 SCC 1, the Supreme Court observed:

“46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

6.5. In *Kapil Agarwal & Ors. Vrs. Sanjay Sharma & Others*, (2021) 5 SCC 524, the Supreme Court observed that Section 482 of the Cr.P.C. is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

6.6. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. Reference may be had to *Ramveer Upadhyay and Anr. Vrs. State of U.P.*, 2022 SCC OnLine SC 484.

Cognizance under Section 190:

7. As per Section 2(c) of the Code of Criminal Procedure, 1973, ‘cognizable offence’ means an offence for which, and ‘cognizable case’ means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant; and per Section 2(l) ‘non-cognizable offence’ means an offence for which, and ‘non-cognizable case’ means a case in which, a police officer has no authority to arrest without warrant. A complaint referred to under sub-section (1)(a) of Section 190 is defined under Section 2 (d) of the Code of Criminal Procedure, which is as follows:

“(d) ‘complaint’ means any allegation made orally or in writing to a Magistrate, with a view to his taking

action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—

A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.”

7.1. Chapter XIV which deals with Conditions requisite for initiation of proceedings contains Section 190 of the CrPC to deal with “Cognizance of offences by Magistrates”. Said section reads as follows:

“(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

7.2. The word ‘Cognizance’ roots from an old French word ‘Conoissance’ based on Latin word ‘Cognoscere’. The word

‘cognizance’ has not been deciphered and defined in procedural law being the Code of Criminal Procedure 1973.

7.3. The Hon’ble Apex Court in the case of *R.R. Chari Vrs. State of Uttar Pradesh*, AIR 1951 SC 207 has held 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’.

7.4. Said Hon’ble Court in the case of *Ajit Kumat Palit Vrs. State of West Bengal and Others* AIR 1963 SC 765 has held as under:

“19. The provisions of Section 190(1) being obviously, and on its own terms, inapplicable, the next question to be considered is whether it is the requirement of any principle of general jurisprudence that there should be some additional material to entitle the Court to take cognizance of the offence. The word ‘cognizance’ has no esoteric or mystic significance in criminal law or procedure. It merely means, become aware of and when used with reference to a Court or judge, to take notice of judicially. It was stated in *Gopal Marwari v. Emperor* A.I.R. (1943) Pat. 245 by the learned judges of the Patna High Court in a passage quoted with approval by this Court in *R. R. Chari Vrs. State of Uttar Pradesh* [1951] S.C.R. 312, 320 that the word, ‘cognizance’ was used in the Code to indicate the point when the Magistrate or judge takes judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense. As observed in *Emperor Vrs. Sourindra Mohan Chuckerbutty* I.L.R. 37 Cal. 412, 416 ‘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.’ Where the statute prescribes the materials on

which alone the judicial mind shall operate before any step is taken, obviously the statutory requirement must be fulfilled. Thus, a sessions judge cannot exercise that original jurisdiction which magistrates specified in s. 190(1) can, but the material on which alone he can apply his judicial mind and proceed under the Code is an order of commitment. But statutory provision apart, there is no set material which must exist before the judicial mind can operate. It appears to us therefore that as soon as a special judge receives the orders of allotment of the case passed by the State Government it becomes vested with jurisdiction to try the case and when it receives the record from the Government it can apply its mind and issue notice to the accused and thus start the trial of the proceedings assigned to it by the State Government.”

7.5. In the case of *Tularam and Others Vrs. Kishore Singh*, (1977) 4 SCC 459 it has been observed as under:

“7. The question as to what is meant by taking cognizance is no longer res integra as it has been decided by several decisions of this Court. As far back as 1951 this Court in the case of R. R. Chari v. State of Uttar Pradesh [1951] S.C.R. 312 observed as follows:

‘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.’

While considering the question in greater detail this Court endorsed the observations of Justice Das Gupta in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal Vrs. Abani Kumar Banerjee A.I.R. 1950 Cal. 347 which was to the following effect.

‘It seems to me clear however 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 he must have done so far the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter-proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.'

**** It seems to us 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. Thus 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 prescribes several modes in which a complaint can be disposed of after taking cognizance.*

In the first place, cognizance can be taken on the basis of three circumstances:

- (a) upon receiving a complaint of facts which constitute such offence;*
- (b) upon a police report of such facts; and*
- (c) upon information received from any person other than the police officer or upon his own knowledge, that an offence has been committed. These are the three grounds on the basis of which a Magistrate can take cognizance and decide to act accordingly.*

It would further appear that this Court in the case of Narayandas Bhagwandas Madhavdas Vrs. The State of West

Bengal, [1951] S.C.R. 312, observed the mode in which a Magistrate could take cognizance of an offence and observed as follows:

'It seems to me clear however 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 this Chapter-proceeding under-Section 200 and thereafter sending it for inquiry and report under Section 202.'

7.6. In the case of *Hareram Satpathy Vrs. Tikaram Agarwala And Others*, (1978) 4 SCC 58, the Hon'ble Supreme Court of India has observed as under:

"6. To the same effect is the decision of this court in Chandra Deo Singh Vrs. Prokar Chandra Bose, AIR 1963 SC 1430 where after a full discussion of the matter it was held that at the time of taking a decision whether a process should issue against the accused or not what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant so as to justify the issue of process and commencement of proceedings against the accused, and not whether the evidence is sufficient to warrant his conviction."

7.7. In *Fiona Shrikhande Vrs. State of Maharashtra and Anr.*, AIR 2014 SC 957 while referring to an earlier decision of the Hon'ble Apex Court reported in (1976) 3 SCC 736 (*Smt. Nagawwa Vrs. Veeranna Shivlingappa Kanjalgi & Ors.*) it was observed as follows:

"Once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is

not for the Higher courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all advert to any defence that the accused may have.”

7.8. In the case of *Sushmita Das @ Patnaik Vrs. Soumya Ranjan Tripathy*, 2018 (II) ILR-CUT 578 this Court held as follows:

*“6. The position of law is undisputed that at the time of taking cognizance and issuing process against the accused persons, the Magistrate is merely concerned with the allegations made out in the complaint and has only to be prima-facie satisfied whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enter into a detailed discussion on the merits and demerits of the case. ***”*

7.9. Thus, ‘taking cognizance’ means cognizance of an offence and not of offender. Once, the Magistrate takes the cognizance of an offence then it is the duty to find out the real offender. The aforesaid process itself personifies taking cognizance is a serious matter which presupposes a condition whereby the Magistrate has to apply his judicious mind. Any Magistrate of the first class, any Magistrate of the second class specially empowered in that behalf under sub-section (2) of Section 190 may take cognizance of an offence upon receiving the complaint of facts which constitute the offence, upon a police report of said facts, upon information received from any person other than the police officer or upon his own knowledge that said offence has been committed. Sub-Section (2) itself authorises Chief Judicial Magistrate to empower any Magistrate of second class to take cognizance under sub-section (1) of said offence as are within his competence to enquire

into or trial. Under Section 190, discretion has been casted upon the Magistrate concerned to act judicially keeping in account the facts of a particular case as well as law on the said subject. Section 190 is a starting point for taking appropriate judicial action as the Magistrate under said section has to apply his mind on the motion so set up in sub-clauses (a)/(b)/(c) of sub-section (1) of Section 190 of the CrPC.

7.10. It would, therefore, be seen that cognizance of offence is the first and foremost step towards trial. The CrPC has not defined or specifically explained the expression ‘taking cognizance of an offence’. The meaning of the expression, however, has been considered in various judicial authorities as discussed above.

7.11. In case of *Pradeep S. Wodeyar Vrs. The State of Karnataka*, 2021 SCC OnLine SC 1140 scope of Section 465 Cr.P.C. was considered and it has been observed as:

“53. In order to prove that the irregularity vitiates the proceeding, the accused must prove a ‘failure of justice’ as prescribed under Section 465 Code of Criminal Procedure. In view of the discussion in the previous section on the applicability of Section 465 Code of Criminal Procedure (and the inability to prove failure of justice) to the cognizance order, the irregularity would not vitiate the proceedings. Moreover, bearing in mind the objective behind prescribing that cognizance has to be taken of the offence and not the offender, a mere change in the form of the cognizance order would not alter the effect of the order for any injustice to be meted out.

85(ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465 Code of Criminal Procedure is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 Code of Criminal Procedure;”

7.12. Therefore, as per *Pradeep S. Wodeyar (supra)*, even if there is an irregularity in cognizance order then also on that ground proceedings in view of Section 465 Cr.P.C. cannot be vitiated.

Conclusion and decision:

8. In the instant case the learned SDJM took cognizance of the offence after causing due enquiry under Chapter XV of the Code of Criminal Procedure. On perusal of the record and considering the statement of witness, he appears to have been satisfied himself that there was *prima facie* ground for issuing process against the petitioner-Dibakar Sahani. In so doing, the learned SDJM did not exceed the power vested in him under law. In the Order dated 13.05.2015 while taking cognizance, the learned SDJM perused the documents available on record, complaint petition and statements of the complainant as also the witness.

8.1. Therefore, from the above discussion, it is clear that although there is no illegality in the cognizance order dated 13.05.2015, as before taking cognizance the learned SDJM perused the relevant material on record. Nonetheless, even if there was an irregularity in the cognizance order, then also on the basis

of it proceedings of the present case cannot be quashed as order of taking cognizance are interlocutory in nature and as per Section 465 Cr.P.C. proceedings on the basis of that irregularity cannot be vitiated.

9. Since the interim order dated 01.09.2015 has not been extended at any point of time thereafter even though the matter was on board. In view of authoritative pronouncement of the Hon'ble Supreme Court of India in the cases of *Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vrs. Central Bureau of Investigation, 2018 (I) ILR-CUT 659 (SC) = (2018) 16 SCC 299* and *Asian Resurfacing of Road Agency Pvt. Ltd. and Another Vrs. Central Bureau of Investigation, 2020 SCC OnLine SC 1046*; read with Standing Order No.1 of 2019, dated 09.01.2019 issued by this Court, said interim order appears to have been expired.

9.1. In *Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vrs. Central Bureau of Investigation, 2018 (I) ILR-CUT 659 (SC) = (2018) 16 SCC 299* the Supreme Court observed:

“36. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional

case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial court where order of stay of civil or criminal proceedings is produced may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Section 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court, i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other Courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by speaking order on the above parameters. Same course may also be adopted by civil and

criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.”

9.2. In the said case by order dated 15th October, 2020 (2020 SCC OnLine SC 1046) the Supreme Court has further observed that,

“whatever stay has been granted by any court including the High Court automatically expires within a period of six months, and unless extension is granted for good reason, as per our judgment, within the next six months, the trial Court is, on the expiry of the first period of six months, to set a date for the trial and go ahead with the same.”

9.3. The interim order dated 01.09.2015 passed by this Court in the instant case was operative “till next listing”. The matter was listed on 23.08.2022, on which date none appeared for the petitioner. Thereafter on 16.09.2022 when the matter was listed, this Court directed as follows:

“Learned counsel for the petitioner in the course of hearing the CRLMC application prays for one week time to apprise the Court about the present status of the case.”

9.4. On 28.10.2022 this Court passed further order to the following effect:

“As undertaken by the learned counsel on 16th September, 2022 for furnishing the current status of the case, the same could not be furnished today.

Due to the aforesaid reason, the matter stands adjourned to 25th November, 2022 on which date counsel

for the petitioner is directed to place the present status of the case.”

9.5. On 25th November, 2022, current status of the case has not been furnished, but the counsel for the petitioner argued the matter on merit.

9.6. It is hoped that by virtue of *Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vrs. Central Bureau of Investigation, 2018 (I) ILR-CUT 659 (SC) = (2018) 16 SCC 299* and *2020 (2020 SCC online SC 1046)*, since the interim order dated 01.09.2015 did lapse on the date of listing, *i.e.*, 23.08.2022 and the same being not extended on subsequent occasions when the matter was listed, the learned SDJM would have proceeded with the case being ICC No. 47/2014.

10. From the above discussion, this Court is not inclined to interfere with the impugned order of cognizance. Accordingly, the CRLMC is dismissed. However, since the case is of the year 2014, the trial of the same be expedited.

11. A copy of this judgment be communicated to the Court concerned Court by the Registry forthwith.

(MURAHARI SRI RAMAN)
JUDGE