

4.07.2023
SL No. 53

(RD)

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

Criminal Revisional Jurisdiction

CRR 169 of 2021

**Sandip Kumar Seghal @ Sandeep Seghal
Vs
State of West Bengal & Ors.**

**Mr. Sayan De
Ms. Esha Acharya**

- Petitioner.

**Mr. Aditi Shankar Chakraborty
Mr. Sourav Ganguly**

For the State.

Quashing of the proceeding and also the Order No. 7 dt. 08.10.2021 passed in connection with CR 23/2021 is challenged. By the order impugned Ld. Chief Judicial Magistrate, Kalimpong took cognizance of the offence on submission of prosecution report being no. 1/UNR-15-2020-21 dated 07.07.21 in connection with offence under Section 52(A)/42(1), (2)/42 of I.F. Act, r/w Sec. 4 of the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Rules 2007, r/w Sec. 3(2)e of P.D.P.P Act, 1984.

Mr. Sayan De, Ld. Advocate appearing on behalf of the petitioner, has drawn my attention to the complaint lodged

by the Range Officer, Upper Neora Range, Gorumara Wildlife Division, before the Ld. Chief Judicial Magistrate, Kalimpong and submitted, *inter alia*, that there was no allegation to constitute any offence mentioned hereinabove.

It is further submitted by Mr. Dey, that Ld. Chief Judicial Magistrate, Kalimpong took cognizance of the offence alleged in the report without applying his mind.

In support of his contention he relied upon a case of ***State of Chhattisgarh Vs. Ishan Yavad and others*** reported in **2019 SCC Online Chh 55** wherein Hon'ble Court dealt with an investigation and submission of charge sheet by the forest officer instead of filing complaint under Section 200 of the Code of Criminal Procedure, unlike the case in our hand.

Mr. De also relied on ***Chandi Charan Garani and others Vs State of West Bengal*** reported in **2021 SCC Online Cal 3788** wherein Co-ordinate Bench of this Court dealt with a written complaint lodged by one Station Manager, Kolaghat Group Electric Supply Office under W.B.S.E.B before Tamluk Police Station alleging an offence under Section 135 of the Electricity Act, 2003 read with Section 379 of the Indian Penal Code, 1860. In that case, Hon'ble Co-ordinate Bench discussed the judicial import of 'cognizance' in terms of Rule 183 of Calcutta High Court, Criminal (subordinate courts) Rules, 1985.

In terms of order dated 8.10.21 taking cognizance of the offence Ld. Advocate, Mr. Sourav Ganguly, appearing on behalf of the State, left the matter to the discretion of this court.

At the very outset, I would like to reproduce Rule 183 of Calcutta High Court, Criminal (subordinate courts) Rules, 1985, herein under :-

“ Orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand or typed by him, others may be recorded under his direction by the Bench Clerk.”

I would also like to reproduce Section 190 of the Code of Criminal Procedure, 1973 as follows:-

*“190. Cognizance of offences by Magistrates.
(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.”*

But, the meaning of ‘cognizance’ has not been defined in the code of Criminal Procedure. In terms of literal meaning cognizance is ‘to become aware of’ i.e. ‘judicial notice of an offence’. It is trite law that taking cognizance is not at all a formal action by the Judge or Magistrate. After application of mind and cognizance of suspected commission of an offence is taken for the purpose of taking subsequent steps under Criminal Procedure Code. At the time of taking

cognizance it is the duty of the Judge or Magistrate, as the case may be, to look into the report in final form or complaint along with supported documents to ascertain whether the offence alleged is attracted or not.

‘Taking cognizance’, in other words is a steps before the Judge or Magistrate to ascertain whether the matter presented is sufficient to take further proceedings under the law. It was reiterated by the Hon’ble Apex Court that the stage of taking cognizance, Magistrate has to examine the facts and circumstances of the particular case upon his own ‘judicial prudence’ as to whether further proceedings shall be taken or not in the interest of the justice.

Hon’ble Apex Court ruled in different cases that Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion at the stage of taking cognizance irrespective of the view expressed by the police in the report. Even if the investigating authorities are of the view that no case has been made out against the accused, the Magistrate can apply his mind independently to the materials contained the police report and take cognizance.

Therefore, Magistrate can examine the validity of the charge at the very outset i.e at the time of taking cognizance for the interest of administration of justice.

In our case, Ld. Chief Judicial Magistrate, Kalimpong, passed an order taking cognizance on the prosecution report even not by endorsing the full word 'taken' by his own pen.

Order impugned takes me aback. After looking through the order of taking cognizance it is clear to me that the order of taking cognizance was neither dictated nor written by the Ld. Chief Judicial Magistrate, Kalimpong himself. And to add to that, Ld. Chief Judicial Magistrate only put an illegible word not even like word 'taken'.

On careful perusal of the order impugned it is found that Ld. Chief Judicial Magistrate only put an endorsement like word far to speak of application of mind, ignoring the meaning of cognizance reiterated by Hon'ble Apex Court and Hon'ble High Courts.

For the reason, order dated 08.10.21 taking cognizance of the offence by the Ld. Chief Judicial Magistrate, Kalimpong in connection with CR case no. 23 of 2021 stands set aside.

Ld. Chief Judicial Magistrate, Kalimpong is requested to reconsider the matter of taking cognizance in terms of discussion made hereinabove.

Ld. Registrar of this Circuit Bench is requested to circulate this order among all the Judicial Offices of the courts within the jurisdiction of this Circuit Bench.

With this observation and direction, the revisional application being CRR 169 of 2021 stands disposed of.

All parties to this revisional application shall act on the server copy of this order downloaded or printed from the official website of this Court.

Urgent Photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(BIBHAS RANJAN DE, J.)