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Court No. - 86

Case :- APPLICATION U/S 482 No. - 12578 of 2021

Applicant :- Badri Prasad And 3 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Sarveshwar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri S.S.Chauhan, learned counsel for the applicants and Sri Vinod Kant, learned Additional Advocate General, appearing alongwith Sri Pankaj Saxena, learned Additional Government Advocate-I for the State-opposite party.

2. The present application under Section 482 CrPC has been filed seeking quashing of the charge-sheet dated 20.11.2020 in Case Crime No. 402/2020 under Sections 324, 323 and 504 Indian Penal Code Police Station Bhojipura, District Bareilly pending in the court of Additional Chief Judicial Magistrate, Bareilly with a further prayer to stay the proceedings of the aforesaid case.

3. The principal ground which is sought to be urged for seeking quashing of the proceedings is that the order dated 19.02.2021 passed by the Magistrate taking cognizance is without application of mind and has been passed mechanically without assigning any detailed reasons. It has been further argued that as per the FIR version, the weapon used in commission of offence could not be described to be a “dangerous weapon” so as to constitute an offence under Section 324 IPC and this aspect of the matter having not been examined by the Magistrate while taking cognizance of the charge-sheet, the order taking cognizance cannot be sustained. In support of his submissions, learned counsel for the

applicants has referred to the decisions in **Pepsi Foods Ltd. v. Special Judicial Magistrate**[1]**, Fakhruddin Ahmad Vs. State of Utaranchal**[2]**, Ankit Vs. State of U.P. and another**[3]**,** and **Vineet Agarwal and others Vs. State of U.P. and another**[4]**.**

4. Learned Additional Advocate General has controverted the aforesaid submissions by pointing out that the question as to whether the weapon of offence in a given case would be a "dangerous weapon" would be a question of fact to be examined on the basis of evidence. In the instant case, from the nature of injuries as have been shown in the injury report, it cannot be conclusively said at this stage of the proceedings that the weapon of offence cannot be held to be a "dangerous weapon".

5. Learned Additional Advocate General has submitted that pursuant to the registration of the FIR dated 09.11.2020, the matter was investigated and a police report under Section 173 of the Code was submitted. The Magistrate having the advantage of police report and material submitted along with the same has taken cognizance in exercise of powers under Section 190 (1) (b) and the order taking cognizance clearly states that the Magistrate had perused the charge-sheet, the case diary and the materials which had been submitted along with the same and on the basis thereof had held that there was sufficient material to take cognizance and to register the case. He has further submitted that while taking cognizance under Section 190 (1) (b), it is not mandatory for the court to record detailed reasons for its satisfaction. In support of his submissions, learned AGA-I has placed reliance upon the decisions in **State of Gujarat Vs. Afroz Mohammad**

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1 (1998) 5 SCC 749
2. (2008) 17 SCC 157
3. (2009) 67 ACC 532
4. (Application u/s 482 No. 15450 of 2020, decided on 11.11.2020)

Hasanfatta[5], **U.P. Pollution Control Board Vs. M/s. Mohan Meakins Ltd. and others**[6], **Kanti Bhadra Shah and another Vs. State of West Bengal**[7], and **Mathai Vs. State of Kerala**[8]

6. The principal issue which thus arises is with regard to the manner of taking cognizance and issuing process as per the procedure prescribed under the Code and as to whether detailed and elaborate reasons are required to be recorded at the stage of taking cognizance or issuing of process.

7. After completion of the stage of investigation and placing of the final report by the police to a competent Magistrate, the stage of trial is to begin. As a precursor of the stage, the steps which are envisaged under the Code are as follows : (i) taking cognizance of the offence; (ii) ascertaining whether any *prima facie* case exists against the accused person; and in case it exists, then (a) to issue process against the accused person in order to secure his presence at the time of his trial, (b) to supply to the accused person copies of police statements; (iii) consolidating different proceedings pertaining to the same case; and (iv) if the case is exclusively triable by a Sessions Court, committing the case to that court.

8. Chapter XIV of the Code relates to conditions requisite for initiation of proceedings. Section 190 provides as to when a Magistrate may take cognizance of any offence. Section 190 reads 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;

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5. AIR 2019 SC 2499
6. (2000) 3 SCC 745
7. (2000) 1 SCC 722
8. (2005) 3 SCC 260

> (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."

9. A complaint referred to under sub-section (1) (a) of Section 190 is defined under Section 2 (d) of the Code, 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."

10. The police report referred to in sub-section (1) (b) has been defined under Section 2 (r), as meaning a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173. The police report refers to be the report forwarded by the police on completion of the investigation.

11. Section 193 relates to cognizance of offences by Courts of Session, which is 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."

12. Complaints to Magistrate are dealt with under Chapter XV of the Code. The provisions relating to examination of complainant are under Section 200. Section 202 provides for postponement of issue of process, where the Magistrate, thinks fit, to either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purposes of deciding whether or not there is sufficient ground for proceeding. Section 203

provides for dismissal of complaint in a situation where after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding. Sections 200, 202 and 203, are being extracted below:-

> "**200. Examination of complainant.**– A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses–
> (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
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> (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:
> Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.
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> **202. Postponement of issue of process.–**
>
> (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, 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 or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:
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> Provided that no such direction for investigation shall be made–
> (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or
> (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.
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> (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:
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> Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.
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> (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.
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> **203. Dismissal of complaint.**–If, after considering the statements

> on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

13. The procedure for commencement of proceedings before Magistrates is provided under Chapter XVI of the Code. Section 204 provides that if the Magistrate taking cognizance of an offence considers that there is sufficient ground for proceeding, he shall issue process against the accused person. Section 204 runs as follows :-

> **"204. Issue of process.**–
>
> (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be–
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> (a) a summons-case, he shall issue his summons for the attendance of the accused, or
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> (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.
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> (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.
>
> (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub- section (1) shall be accompanied by a copy of such complaint.
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> (4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.
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> (5) Nothing in this section shall be deemed to affect the provisions of section 87."

14. It would therefore be seen that cognizance of offence is the first and foremost step towards trial. The Code 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, and it would be useful to advert to the same.

15. The question as to when cognizance of an offence can be held to have been taken under Section 190 of the Code came up for consideration in **Darshan Singh Ram Kishan Vs. The**

State of Maharashtra[9], where it was held that cognizance takes place at a point when a Magistrate first takes judicial notice of an offence, whether on a complaint, or on a police report, or upon information of a person other than a police officer. The observations made in the judgment in this regard are as follows :-

> "8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate 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. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report."

16. The meaning of the word 'cognizance' and the point in time and determination of occurrence of cognizance together with its distinction with 'issuance of process' was explained in **S.K.Sinha, Chief Enforcement Officer Vs. Videocon International Limited**[10]**,** and it was held that 'cognizance' connotes to take notice judicially and it occurs simultaneously with the application of mind by the court or Magistrate to the suspected commission of an offence. The question whether cognizance of an offence was taken or not depends upon the facts and circumstances of each case and no rule of universal application can be laid down to determine it. Referring to the earlier decisions in **Supdt. & Remembrancer of Legal Affairs v. Abani Kumar Banerjee**[11], **R.R. Chari v. State of U.P.**[12]**, Narayandas Bhagwandas Madhavdas v. State of W.B**.[13],

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9 (1971) 2 SCC 654
10 (2008) 2 SCC 492
11 AIR 1950 Cal 437
12 AIR 1951 SC 207
13 AIR 1959 SC 1118

Gopal Das Sindhi v. State of Assam[14]**, Nirmaljit Singh Hoon v. State of W.B.**[15]**, Darshan Singh Ram Kishan v. State of Maharashtra**[9]**,** and **Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy**[16]**,** it was observed as follows :-

> **"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.
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> **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.
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> **21.** Chapter XIV (Sections 190-199) of the Code deals with "Conditions requisite for initiation of proceedings". Section 190 empowers a Magistrate to take cognizance of an offence in certain circumstances...
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> **22.** Chapter XV (Sections 200-203) relates to "Complaints to Magistrates" and covers cases before actual commencement of proceedings in a court or before a Magistrate. Section 200 of the Code requires a Magistrate taking cognizance of an offence to examine the complainant and his witnesses on oath. Section 202, however, enacts that a Magistrate is not bound to issue process against the accused as a matter of course. It enables him before the issue of process either to inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether there is sufficient ground for proceeding further. The underlying object of the inquiry under Section 202 is to ascertain whether there is *prima facie* case against the accused. It thus allows a Magistrate to form an opinion whether the process should or should not be issued. The scope of inquiry under Section 202 is, no doubt, extremely limited. At that stage, what a Magistrate is called upon to see is whether there is *sufficient ground for proceeding with the matter* and not whether there is *sufficient ground for conviction of the accused.*
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> **23.** Then comes Chapter XVI (Commencement of proceedings before Magistrates). This Chapter will apply only after cognizance of an offence has been taken by a Magistrate under Chapter XIV.

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14 AIR 1961 SC 986
15 (1973) 3 SCC 753
9 (1971) 2 SCC 654
16 (1976) 3 SCC 252

Section 204, whereunder process can be issued, is another material provision...

24. From the above scheme of the Code, in our judgment, it is clear that "Initiation of proceedings", dealt with in Chapter XIV, is different from "Commencement of proceedings" covered by Chapter XVI. For commencement of proceedings, there must be initiation of proceedings. In other words, initiation of proceedings must precede commencement of proceedings. Without initiation of proceedings under Chapter XIV, there cannot be commencement of proceedings before a Magistrate under Chapter XVI. The High Court, in our considered view, was not right in equating initiation of proceedings under Chapter XIV with commencement of proceedings under Chapter XVI.

25. Let us now consider the question in the light of judicial pronouncements on the point.

26. In ***Supdt. & Remembrancer of Legal Affairs* v. *Abani Kumar Banerjee***[11]**,** the High Court of Calcutta had an occasion to consider the ambit and scope of the phrase "taking cognizance" under Section 190 of the Code of Criminal Procedure, 1898 which was in pari materia with Section 190 of the present Code of 1973. Referring to various decisions, Das Gupta, J. (as His Lordship then was) stated: (AIR p. 438, para 7)

> "*7.* … What is 'taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. 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*) CrPC, he must not only have applied his mind to the contents of the petition, but he 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 enquiry 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."

27. ***R.R. Chari* v. *State of U.P.***[12]**,** was probably the first leading decision of this Court on the point. There, the police, having suspected the appellant-accused to be guilty of offences punishable under Sections 161 and 165 of the Penal Code (IPC) as also under the Prevention of Corruption Act, 1947, applied to the District Magistrate, Kanpur to issue warrant of arrest on 22-10-1947. Warrant was issued on the next day and the accused was arrested on 27-10-1947.

28. On 25-3-1949, the accused was produced before the Magistrate to answer the charge-sheet submitted by the prosecution. According to the accused, on 22-10-1947, when warrant for his arrest was issued by the Magistrate, the Magistrate was said to have taken cognizance of offence and since no sanction of the Government had been obtained before that date, initiation of proceedings against him was unlawful. The question before the Court was as to when cognizance of the offence could be said to

11 AIR 1950 Cal 437
12 AIR 1951 SC 207

have been taken by the Magistrate under Section 190 of the Code. Considering the circumstances under which "cognizance of offence" under sub-section (1) of Section 190 of the Code can be taken by a Magistrate and referring to ***Abani Kumar Banerjee***[11]**,** the Court, speaking through **Kania, C.J.** stated: (***Chari***[12] ***case,*** p. 208, para 3)

> "*3*. It is clear from the wording of the section that the initiation of the proceedings against a person commences on the cognizance of the offence by the Magistrate under one of the three contingencies mentioned in the section. The first contingency evidently is in respect of non-cognizable offences as defined in CrPC on the complaint of an aggrieved person. The second is on a police report, which evidently is the case of a cognizable offence when the police have completed their investigation and come to the Magistrate for the issue of a process. The third is when the Magistrate himself takes notice of an offence and issues the process..."

29. Approving the observations of Das Gupta, J. in ***Abani Kumar Banerjee***[11]**,** this Court held that it was on 25-3-1949 when the Magistrate issued a notice under Section 190 of the Code against the accused that he took "cognizance" of the offence. Since before that day, sanction had been granted by the Government, the proceedings could not be said to have been initiated without authority of law.

30. Again in ***Narayandas Bhagwandas Madhavdas*** **v.** ***State of W.B.***[13], this Court observed that when cognizance is taken of an offence depends upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuance of a search warrant for the purpose of an investigation or a warrant of arrest of the accused cannot by itself be regarded as an act of taking cognizance of an offence. It is only when a Magistrate applies his mind for proceeding under Section 200 and subsequent sections of Chapter XV or under Section 204 of Chapter XVI of the Code that it can be positively stated that he had applied his mind and thereby had taken cognizance of an offence (see also ***Ajit Kumar Palit*** **v.** ***State of W.B.***[17]**,**and ***Hareram Satpathy*** **v.** ***Tikaram Agarwala***[18]**.**

31. In ***Gopal Das Sindhi*** **v.** ***State of Assam***[14]**,** referring to earlier judgments, this Court said:(AIR p. 989, para 7)

> "*7*...We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the

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11 AIR 1950 Cal 437
12 AIR 1951 SC 207
11 AIR 1950 Cal 437
13 AIR 1959 SC 1118
17 AIR 1963 SC 765
18 (1978) 4 SCC 58
14 AIR 1961 SC 986

police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Chapter XVI of the Code."

32. In ***Nirmaljit Singh Hoon* v. *State of W.B.***[15], the Court stated that it is well settled that before a Magistrate can be said to have taken cognizance of an offence under Section 190(1)(*a*) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that section. Where, however, he applies his mind only for ordering an investigation under Section 156(3) or issues a warrant for arrest of the accused, he cannot be said to have taken cognizance of the offence.

33. In ***Darshan Singh Ram Kishan* v. *State of Maharashtra***[9]**,** speaking for the Court, Shelat, J. stated that under Section 190 of the Code, a Magistrate may take cognizance of an offence either (*a*) upon receiving a complaint, or (*b*) upon a police report, or (*c*) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been said, taking cognizance does not involve any formal action or indeed action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, thus, takes place at a point when a Magistrate first takes judicial notice of an offence.

34. In ***Devarapalli Lakshminarayana Reddy* v. *V. Narayana Reddy***[16]**,** this Court said: (SCC p. 257, paras 13-14)

"*13*. It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words 'may take cognizance' which in the context in which they occur cannot be equated with 'must take cognizance'. The word 'may' gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

14. This raises the incidental question: What is meant by 'taking cognizance of an offence' by a Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in Clauses (*a*), (*b*) and (*c*) of Section 190(1). Whether the Magistrate has or has

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15 (1973) 3 SCC 753
9 (1971) 2 SCC 654
16 (1976) 3 SCC 252

> not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(*a*). If, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence."

(emphasis supplied)

17. The meaning and connotation of the expression 'taking cognizance' again came up for consideration in **Fakhruddin Ahmad Vs. State of Uttaranchal and another[2],** and it was held that the expression being of indefinite import it was neither practical nor desirable to precisely define as to what is meant by 'taking cognizance' and the question as to whether the Magistrate has taken cognizance of an offence would depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of preliminary action. Taking note of the earlier decisions in **Ajit Kumar Palit v. State of W.B[17], Emperor Vs. Sourindra Mohan Chuckerbutty[19] Chief Enforcement Officer v. Videocon International Ltd.[10]**, **Supdt. & Remembrancer of Legal Affairs v. Abani Kumar Banerjee[11]**, and **R.R. Chari v. State of U.P.[12]**, it was stated thus :-

> **"9.** Before examining the rival contentions, we may briefly refer to some of the relevant provisions in the Code. Chapter XIV of the Code, containing Sections 190 to 199 deals with the statutory conditions requisite for initiation of criminal proceedings and as to the powers of cognizance of a Magistrate. Sub-section (1) of Section 190 of the Code empowers a Magistrate to take cognizance of an offence in the manner laid therein. It provides that a Magistrate may take cognizance of an offence either (*a*) upon receiving a complaint of facts which constitute such offence; or (*b*)

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2 (2008) 17 SCC 157
17 AIR 1963 SC 765
19 ILR (1910) 37 Cal 412
10 (2008) 2 SCC 492
11 AIR 1950 Cal 437
12 AIR 1951 SC 207

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

10. Chapter XV containing Sections 200 to 203 deals with "Complaints to Magistrates" and lays down the procedure which is required to be followed by the Magistrate taking cognizance of an offence on complaint. Similarly, Chapter XVI deals with "Commencement of Proceedings before Magistrates". Since admittedly, in the present case, the Magistrate has taken cognizance of the complaint in terms of Section 190 of the Code, we shall confine our discussion only to the said provision. We may, however, note that on receipt of a complaint, the Magistrate has more than one course open to him to determine the procedure and the manner to be adopted for taking cognizance of the offence.

11. One of the courses open to the Magistrate is that instead of exercising his discretion and taking cognizance of a cognizable offence and following the procedure laid down under Section 200 or Section 202 of the Code, he may order an investigation to be made by the police under Section 156(3) of the Code, which the learned Magistrate did in the instant case. When such an order is made, the police is obliged to investigate the case and submit a report under Section 173(2) of the Code. On receiving the police report, if the Magistrate is satisfied that on the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence, he may take cognizance of the offence under Section 190(1)(*b*) of the Code and issue process straightaway to the accused. However, Section 190(1)(*b*) of the Code does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation makes out a case against the accused. Undoubtedly, the Magistrate can ignore the conclusion(s) arrived at by the investigating officer.

12. Thus, it is trite that the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion in this behalf, irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. This is because the purpose of the police report under Section 173(2) of the Code, which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material referred therein, a case for cognizance is made out or not.

13. The next incidental question is as to what is meant by the expression "taking cognizance of an offence" by a Magistrate within the contemplation of Section 190 of the Code?

14. The expression "cognizance" is not defined in the Code but is a word of indefinite import. As observed by this Court in ***Ajit Kumar Palit* v. *State of W.B.***[17]

> "*19*... 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."

Approving the observations of the Calcutta High Court in

17 AIR 1963 SC 765

Emperor* v. *Sourindra Mohan Chuckerbutty[19] (at ILR p. 416), the Court said 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."

15. Recently, this Court in Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC 492 speaking through C.K. Thakker, J., while considering the ambit and scope of the phrase "taking cognizance" under Section 190 of the Code, has highlighted some of the observations of the Calcutta High Court in Supdt. & Remembrancer of Legal Affairs v. Abani Kumar Banerjee, AIR 1950 Cal 437 which were approved by this Court in *R.R. Chari* v. *State of U.P.*, AIR 1951 SC 207. The observations are : (Abani Kumar Banerjee case, AIR 1950 Cal 437 [AIR p. 438, para 7].

> "*7.* …What is 'taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. 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*) CrPC, he must not only have applied his mind to the contents of the petition, but he 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 enquiry 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."

16. From the aforenoted judicial pronouncements, it is clear that being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by "taking cognizance". Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action.

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."

18. The meaning of the term 'cognizance' was again subject matter of consideration in **Subramanian Swamy Vs.**

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19 ILR (1910) 37 Cal 412

Manmohan Singh and another[20], wherein it was held that the term though not statutorily defined, yet judicial pronouncements give it a definite meaning and connotation and broadly it means taking judicial notice by competent court of a cause or matter presented before it so as to decide whether there is basis for initiating proceedings for judicial determination. It was observed that the scope of consideration by the court at this stage would be as to whether material produced before court *prima facie* discloses commission of offence and a detailed enquiry and sifting of evidence is not to be undertaken at this stage. Referring to the earlier decisions in ***R.R. Chari v. State of U.P.***[12]***, State of W.B. Vs. Mohd. Khalid***[21]**,** and ***State of Karnataka and another Vs. Pastor P. Raju***[22]**,** it was observed as follows:-

> **"34.** The argument of the learned Attorney General that the question of granting sanction for prosecution of a public servant charged with an offence under the 1988 Act arises only at the stage of taking cognizance and not before that is neither supported by the plain language of the section nor the judicial precedents relied upon by him. Though, the term "cognizance" has not been defined either in the 1988 Act or CrPC, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially".
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> **38.** The Court then referred to some of the precedents including the judgment in ***Mohd. Khalid*** case,(1995) 1 SCC 684 and observed: (***Pastor P. Raju*** case, (2006) 6 SCC 728,[SCC p. 734, para 13].
>
> > "*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 a 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."

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20 (2012) 3 SCC 64
12 AIR 1951 SC 207
21 (1995) 1 SCC 684
22 (2006) 6 SCC 728

19. In **State of WB Vs. Mohd. Khalid**[21]**,** observing that the expression 'taking cognizance' has not been defined in the Code, it was held to mean taking notice of an offence, and to include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. It was also observed that the word 'cognizance' indicates the point when a Magistrate or a Judge first takes cognizance or judicial notice of an offence and it is entirely a different thing from initiation of proceedings; rather it is a condition precedent to the initiation of proceedings. It was further stated that while taking cognizance of an offence the Court is not required to pass a reasoned order and it can take into consideration not only police report but also on other materials on record.

> **"43**...Then, the question is as to the meaning of taking cognizance. Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. 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 or 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.
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> **44.** Cognizance is defined in ***Wharton's Law Lexicon*** **14th Edn., at page 209**[23]. It reads:
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> > "Cognizance (Judicial), knowledge upon which a judge is bound to act without having it proved in evidence: as the public statutes of the realm, the ancient history of the realm, the order and course of proceedings in Parliament, the privileges of the House of Commons, the existence of war with a foreign State, the several seals of the King, the Supreme Court and its jurisdiction, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries."
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> 78. Coming to taking cognizance, it has been held by the High Court that it is not a reasoned order. We are of the view that the

21 (1995) 1 SCC 684

23 Wharton's Law Lexicon 14th Edn., at page 209

> approach of the High Court in this regard is clearly against the decision of this Court in ***Stree Atyachar Virodhi Parishad***[24] case, which is as under:
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> > "It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."
>
> (emphasis supplied)

20. A similar observation with regard to there being no necessity to write detailed orders at the stage of issuing process was made in **Kanti Bhadra Shah and another Vs. The State of West Bengal**[7]**.**

21. In **U.P. Pollution Control Board Vs. Mohan Meakins Ltd. and others**[6], the correctness of the order of the Sessions Court quashing the order of issuing process for the reason that the Magistrate had not passed a speaking order, which had been affirmed by the High Court, was under consideration and referring to the decision in the case of **Kanti Bhadra** (supra) it was observed that the Sessions Judge could have himself looked into the complaint to form his own opinion where process could have been issued by the Magistrate on the basis of the averments contained in the complaint instead of relegating the work to the trial Magistrate for doing the exercise over again. It was stated thus :-

> "6. In a recent decision of the Supreme Court it has been pointed out that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons vide **Kanti Bhadra Shah v. State of W.B.**[7]**.** The following passage will be apposite in this context: (SCC p. 726, para 12)
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> > "*12*. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with

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24 (1989) 1 SCC 715
7 (2000) 1 SCC 722
6 (2000) 3 SCC 745
7 (2000) 1 SCC 722

> such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial."
>
> **7.** It was unfortunate that the Sessions Judge himself did not look into the complaint at that stage to form his own opinion whether process could have been issued by the Chief Judicial Magistrate on the basis of the averments contained in the complaint. Instead the Sessions Judge relegated the work to the trial Magistrate for doing the exercise over again..."
>
> (emphasis supplied)

22. In **Rajesh Talwar Vs. CBI Delhi and another**[25]**,** it was observed that the correctness of the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with.

23. The meaning of the expressions 'cognizance' under Section 190 and 'summons' in Section 204 were considered in **Bhushan Kumar and another Vs. State (NCT of Delhi) and another**[26] and it was stated that while issuing summons under Section 204 a reasoned order is not required. It was held that the Magistrate is not bound to give reasons for issuing an order of summons under Section 204 and the order issuing process cannot be quashed only on the ground that the Magistrate had not passed a speaking order. The questions which were specifically considered are as follows :-

> "(*a*) Whether taking cognizance of an offence by the Magistrate is same as summoning an accused to appear?
>
> (*b*) Whether the Magistrate, while considering the question of summoning an accused, is required to assign reasons for the same?"
>
> (emphasis supplied)

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25 (2012) 4 SCC 245
26 (2012) 5 SCC 424

24. Taking notice of the earlier decisions in **Chief Enforcement Officer v. Videocon International Ltd.**[10], **Kanti Bhadra Shah v. State of W.B.**[7], **Nagawwa v. Veeranna Shivalingappa Konjalgi**[27], **Chief Controller of Imports & Exports v. Roshanlal Agarwal**[28] and **U.P. Pollution Control Board v. Bhupendra Kumar Modi**[29] it was observed as follows :-

> "11. In ***Chief Enforcement Officer* v. *Videocon International Ltd.***[10] (SCC p. 499, para 19) 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.
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> 12. A "summons" is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.
>
> 13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning

10 (2008) 2 SCC 492
7 (2000) 1 SCC 722
27 (1976) 3 SCC 736
28 (2003) 4 SCC 139
29 (2009) 2 SCC 147
10 (2008) 2 SCC 492

thereby that it is not a prerequisite for deciding the validity of the summons issued.

14. Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.

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16. In ***Nagawwa* v. *Veeranna Shivalingappa Konjalgi***[27]**,** this Court held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that: (SCC p. 741, para 5)

> "*5.* …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 a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused."

17. In ***Chief Controller of Imports & Exports* v. *Roshanlal Agarwal***[28]**,** this Court, in para 9, held as under: (SCC pp. 145-46)

> "*9.* In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is 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 inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons...

18. In ***U.P. Pollution Control Board* v. *Bhupendra Kumar Modi***[29]**,** this Court, in para 23, held as under: (SCC p. 154)

> "*23.* It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused."

19. This being the settled legal position, the order passed by the Magistrate could not be faulted with only on the ground that the summoning order was not a reasoned order."

(emphasis supplied)

25. The aforementioned position with regard to the order issuing summons/process not required to be a detailed and

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27 (1976) 3 SCC 736
28 (2003) 4 SCC 139
29 (2009) 2 SCC 147

reasoned order was reiterated in **Nupur Talwar vs. Central Bureau of Investigation and another**[30] after noticing that the provisions under the Code do not require detailed consideration or passing of reasoned orders at the stage of summons/issuance of process. Referring to the views taken in **Kanti Bhadra Shah v. State of W.B.**[7], **U.P. Pollution Control Board v. Bhupendra Kumar Modi**[29], **Chief Controller of Imports & Exports v. Roshanlal Agarwal**[28] and **Bhushan Kumar and another Vs. State (NCT of Delhi) and another**[26]**,** it was stated as follows:-

> **"11.** Undoubtedly, merely for taking cognizance and/or for issuing process, reasons may not be recorded. In **Kanti Bhadra Shah v. State of W.B.**[7]**,** this Court having examined Sections 227, 239 and 245 of the Code of Criminal Procedure, concluded, that the provisions of the Code mandate, that at the time of passing an order of discharge in favour of an accused, the provisions referred to above necessitate reasons to be recorded. It was, however, noticed, that there was no such prescribed mandate to record reasons, at the time of framing charges against an accused.
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> 12. In **U.P. Pollution Control Board v. Mohan Meakins Ltd.**[6] the issue whether it was necessary for the trial court to record reasons while issuing process came to be examined again, and this Court held as under: (SCC pp. 748-49 & 752, paras 2-3, 5-6 & 12)
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> > "2. Though the trial court issued process against the accused at the first instance, they desired the trial court to discharge them without even making their first appearance in the court. When the attempt made for that purpose failed they moved for exemption from appearance in the court. In the meanwhile the Sessions Judge,...entertained a revision moved by the accused against the order issuing process to them and, quashed it on the erroneous ground that the Magistrate did not pass 'a speaking order' for issuing such summons.
> >
> > 3. The Chief Judicial Magistrate (before whom the complaint was filed) thereafter passed a detailed order on 25-4-1984 and again issued process to the accused. That order was again challenged by the accused in revision before the Sessions Court and the same Sessions Judge...again quashed it by order dated 25-8-1984.
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> > 5. We may point out at the very outset that the Sessions Judge was in error for quashing the process at the first round merely on

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30 (2012) 11 SCC 465
7 (2000) 1 SCC 722
29 (2009) 2 SCC 147
28 (2003) 4 SCC 139
26 (2012) 5 SCC 424
7 (2000) 1 SCC 722
6 (2000) 3 SCC 745

> the ground that the Chief Judicial Magistrate had not passed a speaking order. In fact it was contended before the Sessions Judge, on behalf of the Board, that there is no legal requirement in Section 204 of the Code of Criminal Procedure (for short 'the Code') to record reasons for issuing process.
>
> 13. Whether an order passed by a Magistrate issuing process required reasons to be recorded, came to be examined by this Court again in **Chief Controller of Imports & Exports v. Roshanlal Agarwal**[28] wherein this Court concluded as below: (SCC pp. 145-46, para 9)
>
> "9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is 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 inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in **U.P. Pollution Control Board v. Mohan Meakins Ltd.**[6] and after noticing the law laid down in Kanti Bhadra Shah v. State of W.B. (2000) 1 SCC 722 it was held as follows: (**Mohan Meakins Ltd.** case,[(2000) 3 SCC 745, SCC p. 749, para 6)]
>
> "The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to the accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."
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> 15. It is therefore apparent, that an order issuing process, cannot be vitiated merely because of absence of reasons.
>
> (emphasis supplied)

26. The material that may be considered while taking cognizance and issuing process was also discussed in the aforesaid decision of **Nupur Talwar** and it was held that the purpose of examining such material at the stage of taking cognizance and issuing process would be tentative as distinguished from consideration of actual evidence during trial. It was held that at this stage the test to be applied is as to whether there is sufficient ground for proceeding against the accused and the Magistrate is not required to weigh the evidence meticulously and to scrutinize the same as is to be done at the stage of trial. It was also observed that in the

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28 (2003) 4 SCC 139
6 (2000) 3 SCC 745

absence of any legal requirement under Section 204, it was not necessary for the Magistrate to give detailed reasons while passing an order issuing process. The observations made in the judgment in this regard are as follows :-

> 36. The basis and parameters of issuing process, have been provided for in Section 204 of the Code of Criminal Procedure.
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> 37. The criteria which needs to be kept in mind by a Magistrate issuing process, have been repeatedly delineated by this Court..."
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> 39. The same issue was examined by this Court in Jagdish Ram v. State of Rajasthan (2004) 4 SCC 432 wherein this Court held as under: (SCC p. 436, para 10)
>
> > "10. The contention urged is that though the trial court was directed to consider the entire material on record including the final report before deciding whether the process should be issued against the appellant or not, yet the entire material was not considered. From perusal of order passed by the Magistrate it cannot be said that the entire material was not taken into consideration. The order passed by the Magistrate taking cognizance is a well-written order. The order not only refers to the statements recorded by the police during investigation which led to the filing of final report by the police and the statements of witnesses recorded by the Magistrate under Sections 200 and 202 of the Code but also sets out with clarity the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view. At this stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. 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 inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.[Chief Controller of Imports & Exports v. Roshanlal Agarwal,(2003) 4 SCC 139].
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> All along having made a reference to the words "there is sufficient ground to proceed" it has been held by this Court that for the purpose of issuing process, all that the court concerned has to determine is: whether the material placed before it "is sufficient for proceeding against the accused"? The observations recorded by this Court extracted above, further enunciate that the term "sufficient to proceed" is different and distinct from the term "sufficient to prove and establish guilt".
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> 65...Sub-section (1) of Section 204 CrPC quoted above itself does not impose a legal requirement on the Magistrate to record reasons

> in support of the order to issue a process and in **U.P. Pollution Control Board v. Mohan Meakins Ltd.**[6] and **Chief Controller of Imports & Exports v. Roshanlal Agarwal, (2003) 4 SCC 139** this Court has held that the Magistrate is not required to record reasons at the stage of issuing the process against the accused. In the absence of any legal requirement in Section 204 CrPC to issue process, it was not legally necessary for the Magistrate to have given detailed reasons in her order dated 9-2-2011 for issuing process to the petitioner and her husband Dr Rajesh Talwar.
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> 66. The fact however remains that the Magistrate has given detailed reasons in the order dated 9-2-2011 issuing process and the order dated 9-2-2011 itself does not disclose that the Magistrate has considered all the relevant materials collected in the course of investigation. Yet from the mere fact that some of the relevant materials on which the petitioner relies on have not been referred to in the order dated 9-2-2011, the High Court could not have come to the conclusion in the revision filed by the petitioner that these relevant materials were not considered. Moreover, this Court has held in Nagawwa v. Veeranna Shivalingappa Konjalgi (1976) 3 SCC 736 that whether the reasons given by the Magistrate issuing process under Section 202 or 204 CrPC were good or bad, sufficient or insufficient, cannot be examined by the High Court in the revision. All that the High Court, however, could do while exercising its powers of revision under Sections 397/401 CrPC when the order issuing process under Section 204 CrPC was under challenge was to examine whether there were materials before the Magistrate to take a view that there was sufficient ground for proceeding against the persons to whom the processes have been issued under Section 204 CrPC."
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> (emphasis supplied)

27. The meaning and scope of expression 'taking cognizance' again fell for consideration in **Sunil Bharti Vs. Central Bureau of Investigation**[31] and it was reiterated that though the expression has not been defined in the Code; however, when the Magistrate applies his mind for proceeding against the person concerned, he is said to have taken cognizance of an offence. It was stated that formation of such opinion is to be stated on the basis of a material available on record.

> "48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he

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6 (2000) 3 SCC 745
31 (2015) 4 SCC 609

> shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.
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> 49. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.
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> 51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.
>
> 52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction."

28. The question as to whether at the stage of issuance of process to the accused in case of taking cognizance of an offence based upon a police report under Section 190 (1) (b) CrPC, it is mandatory for the court to record reasons for its satisfaction that there are sufficient grounds for proceeding against the accused was subject matter of consideration in **State of Gujarat Vs. Afroz Mohammed Hasanfatta**[5] and it was held that the Magistrate is only required to be satisfied about sufficient grounds to proceed and issue summons on basis of prima facie evidence in the charge-sheet and other documents filed by the police but the Magistrate is not explicitly required to record reasons therefor at the stage of issuing summons.

29. Distinguishing the cognizance taken on the basis of a police report from a case instituted on a private complaint, it

5 (2019) 20 SCC 539

was held, in **Afroz Mohammed Hasanfatta,** that the order for issuance of process without explicitly recording reasons for the issue of process does not suffer from any illegality. The observations and discussions made in the decision on the aforesaid point are as follows:-

> "13.2...While taking cognizance of an offence under Section 190(1)(b) CrPC, whether the court has to record reasons for its satisfaction of sufficient grounds for issuance of summons
>
> 14...The order of taking cognizance of the second supplementary charge-sheet and issuance of summons to the respondent Afroz Hasanfatta reads as under:
>
> > "I take in consideration charge-sheet/complaint for the offence of Sections 420, 465, 467, 468 IPC, etc. Summons to be issued against the accused."
>
> 15. The first and foremost contention of the respondent-accused is that summoning an accused is a serious matter and the summoning order must reflect that the Magistrate has applied his mind to the facts of the case and the law applicable thereto and in the present case, the order for issuance of process without recording reasons was rightly set aside by the High Court. In support of their contention that the summoning order must record reasons showing application of mind, reliance was placed upon **Pepsi Foods Ltd. v. Special Judicial Magistrate[1],** The second limb of submission of the learned Senior Counsel appearing for the respondent-accused is that there has to be an order indicating the application of mind by the Magistrate as to the satisfaction that there are sufficient grounds to proceed against the accused irrespective of the fact that whether it is a charge-sheet by the police or a private complaint.
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> 16. It is well settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused. It is fairly well settled that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused. Reliance was placed upon ***Bhushan Kumar v. State (NCT of Delhi)[26]...***
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> **17.** After referring to ***Bhushan Kumar* v. *State (NCT of Delhi)***, (2012) 5 SCC 424 ***Chief Enforcement Officer* v. *Videocon International Ltd.[10]***, and other decisions, in ***Mehmood Ul Rehman* v. *Khazir Mohammad Tunda[32]***, it was held as under:
>
> > "*20*. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would

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1 (1998) 5 SCC 749
26 (2012) 5 SCC 424
10 (2008) 2 SCC 492
32 (2015) 12 SCC 420

> constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in ***Pepsi Foods Ltd.* v. *Special Judicial Magistrate,*** (1998) 5 SCC 749, to set in motion the process of criminal law against a person is a serious matter."

The above observations made in para 20 is in the context of taking cognizance of a complaint. As per definition under Section 2(*d*) CrPC, complaint does not include a police report.

18. The learned Senior Counsel appearing for the respondent-accused relied upon various judgments to contend that while taking cognizance, the court has to record the reasons that prima facie case is made out and that there are sufficient grounds for proceeding against the accused for that offence. The learned Senior Counsel appearing on behalf of the respondent-accused relied upon the judgments in ***Pepsi Foods Ltd.* v. *Special Judicial Magistrate,*** (1998) 5 SCC 749 and ***Mehmood Ul Rehman* v. *Khazir Mohammad Tunda,*** (2015) 12 SCC 420 to contend that while taking cognizance, the court has to record reasons that prima facie case is made out and that there are sufficient grounds for proceeding against the accused for that offence. On the facts and circumstances of those cases, this Court held that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. However, what needs to be understood is that those cases relate to issuance of process taking cognizance of offences based on the complaint. Be it noted that as per the definition under Section 2(*d*) CrPC, "complaint" does not include a police report. Those cases do not relate to taking of cognizance upon a police report under Section 190(1)(*b*) CrPC. Those cases relate to taking cognizance of offences based on the complaint. In fact, it was also observed in ***Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*[32],** (at SCC p. 430, para 21) that "under Section 190(1)(*b*) CrPC, the Magistrate has the advantage of a police report; but under Section 190(1)(*a*) CrPC, he has only a complaint before him. Hence, the Code specifies that "a complaint of facts which constitutes an offence".

19...The procedure for taking cognizance upon complaint has been provided under Chapter XV — Complaints to Magistrates under Sections 200 to 203 CrPC. A complaint filed before the Magistrate may be dismissed under Section 203 CrPC if the Magistrate is of the opinion that there is no sufficient ground for proceeding and in every such case, he shall briefly record his reasons for so doing. If a complaint is not dismissed under Section 203 CrPC, the Magistrate issues process under Section 204 CrPC. Section 204 CrPC is in a separate chapter i.e. Chapter XVI — Commencement of Proceedings before Magistrates. A combined reading of Sections 203 and 204 CrPC shows that for dismissal of a complaint, reasons should be recorded. The procedure for trial of warrant cases is provided in *Chapter XIX* — Trial of Warrant Cases by the Magistrates. Chapter XIX deals with two types of cases — A-Cases instituted on a police report and B-Cases instituted otherwise than on police report. In the present case, cognizance has been taken on the basis of police report.

20. In a case instituted on a police report, in warrant cases, under

32 (2015) 12 SCC 420

Section 239 CrPC, upon considering the police report and the documents filed along with it under Section 173 CrPC, the Magistrate after affording opportunity of hearing to both the accused and the prosecution, shall discharge the accused, if the Magistrate considers the charge against the accused to be groundless and record his reasons for so doing. Then comes Chapter XIX-C — Conclusion of trial — the Magistrate to render final judgment under Section 248 CrPC considering the various provisions and pointing out the three stages of the case. Observing that there is no requirement of recording reasons for issuance of process under Section 204 CrPC, in ***Raj Kumar Agarwal* v. *State of U.P.*[33],** B.K. Rathi, J. the learned Single Judge of the Allahabad High Court held as under: (SCC OnLine All paras 8-9)

> "*8.* …As such there are three stages of a case. The first is under Section 204 CrPC at the time of issue of process, the second is under Section 239 CrPC before framing of the charge and the third is after recording the entire evidence of the prosecution and the defence. The question is whether the Magistrate is required to scrutinise the evidence at all the three stages and record reasons of his satisfaction. If this view is taken, it will make speedy disposal a dream. In my opinion the consideration of merits and evidence at all the three stages is different. At the stage of issue of process under Section 204 CrPC detailed enquiry regarding the merit and demerit of the cases is not required. The fact that after investigation of the case, the police has submitted the charge-sheet, may be considered as sufficient ground for proceeding at the stage of issue of process under Section 204 CrPC however subject to the condition that at this stage the Magistrate should examine whether the complaint is barred under any law,... At the stage of Section 204 CrPC if the complaint is not found barred under any law, the evidence is not required to be considered nor are the reasons required to be recorded. At the stage of charge under Section 239 or 240 CrPC the evidence may be considered very briefly, though at that stage also, the Magistrate is not required to meticulously examine and to evaluate the evidence and to record detailed reasons.
>
> *9.* A bare reading of Sections 203 and 204 CrPC shows that Section 203 CrPC requires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such requirement under Section 204 CrPC. Therefore, the order for issue of process in this case without recording reasons, does not suffer from any illegality."

(emphasis supplied)

We fully endorse the above view taken by the learned Judge.

21. In para 21 of ***Mehmood Ul Rehman* v. *Khazir Mohammad Tunda***[32], this Court has made a fine distinction between taking cognizance based upon charge-sheet filed by the police under Section 190(1)(b) CrPC and a private complaint under Section 190(1)(a) CrPC and held as under: (SCC p. 430)

> "*21*. Under Section 190(1)(*b*) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(*c*) CrPC,

33 1999 SCC OnLine All 1394

32 (2015) 12 SCC 420

he has the information or knowledge of commission of an offence. But under Section 190(1)(*a*) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(*a*) CrPC. The complaint is simply to be rejected."

22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 CrPC is not the same at the time of framing the charge. For issuance of summons under Section 204 CrPC, the expression used is "there is sufficient ground for proceeding…"; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is "there is ground for presuming that the accused has committed an offence…". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 CrPC, detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge-sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 CrPC.

23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason..."

(emphasis supplied)

30. The matter may be examined from another perspective,

as to whether the order taking cognizance, if held to be irregular, can be said to have occasioned failure of justice or to have vitiated the proceedings. Chapter XXXV of the Code is in respect of irregular proceedings. The provisions contained under Section 460, 461 and 465, under Chapter XXXV, which are relevant for ensuing discussion, are being extracted below.

> **"460. Irregularities which do not vitiate proceedings.**-If any Magistrate not empowered by law to do any of the following things, namely:-
>
> (a) to issue a search-warrant under section 94;
>
> (b) to order, under section 155, the police to investigate an offence;
> (c) to hold an inquest under section 176;
> (d) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;
> (e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190;
> (f) to make over a case under sub-section (2) of section 192;
> (g) to tender a pardon under section 306;
> (h) to recall a case and try it himself under section 410; or
> (i) to sell property under section 458 or section 459, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.
>
> **461.Irregularities which vitiate proceedings.-** If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-
> (a) attaches and sells property under section 83;
> (b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;
> (c) demands security to keep the peace;
> (d) demands security for good behavior;
> (e) discharges a person lawfully bound to be of good behavior;
> (f) cancels a bond to keep the peace;
> (g) makes an order for maintenance;
> (h) makes an order under section 133 as to a local nuisance;
> (i) prohibits, under section 143, the repetition or continuance of a public nuisance;
> (j) makes an order under Part C or Part D of Chapter X;
> (k) takes cognizance of an offence under clause (c) of sub-section (1) of section 190;
> (l) tries an offender;
> (m) tries an offender summarily;
> (n) passes a sentence, under section 325, on proceedings recorded by another Magistrate;
> (o) decides an appeal;
> (p) calls, under section 397, for proceedings; or
> (q) revises an order passed under section 446, his proceedings shall be void.
>
> **465.Finding or sentence when reversible by reason of error, omission or irregularity.**-(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a

> Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.
> (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

31. Section 460 pertains to irregularities which do not vitiate proceedings, whereas Section 461 is in respect of irregularities which vitiate proceedings. Clause (e) of Section 460 refers to taking cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190. Clause (a) of sub-section (1) of Section 190 refers to receipt of a complaint of facts which constitute an offence and clause (b) refers to a police report of the facts. Therefore, in a case where a Magistrate, who is not empowered by law, takes cognizance of an offence either under clause (a) or clause (b) of sub-section (1) of Section 190, even erroneously, the proceedings will not be held to be vitiated. It is only in a case, where a Magistrate, who is not empowered, takes cognizance of an offence under Section 190 (1) (c), upon information received from a person other than a police officer, or upon his own knowledge, the act of taking cognizance can be held to vitiate proceedings in view of clause (k) of Section 461 of the Code.

32. The question as to whether an order issuing summons could be held to be vitiated on the ground that it did not contain reasons was also examined in the decision of **Nupur Talwar vs. Central Bureau of Investigation and another**[32] and taking into consideration the provisions under Section 461 of the Code, which expressly delineates irregularities in procedure

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32 (2012) 11 SCC 465

which would vitiate proceedings, it was held that since orders passed under Section 204 do not find mention under Section 461, the said orders could not be faulted on the ground that they did not contain reasons.

33. Section 465 of the Code embodies the principle that the finding, sentence or order passed by the court of competent jurisdiction would not be reversible on account of any error, omission or irregularity unless the same has occasioned a "failure of justice". In determining as to whether there has been any failure of justice, sub-section (2) of Section 465 provides that regard would be had to the fact whether the objection regarding the irregularity could and should have been raised at an earlier stage in the proceedings. Section 465 relates to proceedings before trial or any inquiry, and since cognizance is pre-trial or inquiry stage, any irregularity of a cognizance order would be covered under the provision.

34. The object of provisions contained under Chapter XXXV of the Code has been subject matter of consideration in a recent decision of the Supreme Court in **Pradeep S. Wodeyar Vs. The State of Karnataka**[34]**,** wherein it has been held that the purpose of these provisions is to prevent irregularities, that do not go to the root of the case, from delaying the proceedings. Taking notice of a growing tendency on part of the accused using delaying tactics by seeking to challenge every interlocutory order with a view to prolong the proceedings and prevent the commencement or conclusion of the trial, and referring to the earlier decisions in **A.R.Antulay vs Ramdas Sriniwas Nayak And Another**[35] and **Santhosh De Vs. Archana Guha**[36]**,** it has been observed as follows :-

> "**44.** The overarching purpose of Chapter XXXV CrPC, as is

34 2021 SCC OnLine SC 1140
35 (1984) 2 SCC 500
36 AIR 1994 SC 1229

evident from a reading of Sections 460 to 466, is to prevent irregularities that do not go to the root of the case from delaying the proceedings. Sections 462-464 lay down specific irregularities which would not vitiate the proceedings. Section 465 on the other hand is a broad residuary provision that covers all irregularities that are not covered by the above provisions. This is evident from the initial words of Section 465, namely, "Subject to the provisions hereinabove contained". Therefore, irregular proceedings that are not covered under Sections 461-464 could be covered under Section 465. It is also evident that the theme of 'failure of justice', uniformly guides all the provisions in the Chapter. There is no indication in Section 465 and in Sections 462-464 that the provisions only apply to orders of conviction or acquittal. All the provisions use the words "finding, sentence or order". Though one of the major causes of judicial delay is the delay caused from the commencement of the trial to its conclusion, there is no denying that delay is also predominantly caused in the pre-trial stage. Every interlocutory order is challenged and is on appeal till the Supreme Court, on grounds of minor irregularities that do not go to the root of the case. The object of Chapter XXXV of the CrPC is not only to prevent the delay in the conclusion of proceedings after the trial has commenced or concluded, but also to curb the delay at the pre-trial stage. It has been recognized by a multitude of judgments of this Court that the accused often uses delaying tactics to prolong the proceedings and prevent the commencement or conclusion of the trial. The object of Chapter XXXV is to further the constitutionally recognized principle of speedy trial. This was highlighted by Justice Jeevan Reddy while writing for a two judge Bench in **Santhosh De v. Archana Guha** where the learned judge observed:

> "15. The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory order is challenged in the superior Courts and the superior Courts, we are pained to say, are falling prey to their stratagems. We expect the superior Courts to resist all such attempts. Unless a grave illegality is committed, the superior Courts should not interfere. They should allow the Court which is seized of the matter to go on with it. There is always an appellate Court to correct the errors. One should keep in mind the principle behind Section 465 Cr. P.C. That any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior Court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself, because such frequent interference by superior Court at the interlocutory stages tends to defeat the ends of Justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system."

45. Section 465 would also be applicable to challenges to interlocutory orders such as a cognizance order or summons order on the ground of irregularity of procedure. This interpretation is supported by sub-section (2) to Section 465 which states that while determining if the irregularity has occasioned a failure of justice, the Court shall have regard to whether the objection could or

> should have been raised at an earlier stage in the proceeding. Therefore, the very fact that the statute provides that the Court is to consider if the objection could have been raised earlier, without any specific mention of the stage of the trial, indicates that the provision covers challenges raised at any stage. The Court according to sub-Section (2) is to determine if the objection was raised at the earliest."

35. Having regard to the foregoing discussion, it would be seen that cognizance of offence is the first and foremost step towards trial. The Code has not defined or specifically explained the expression “taking cognizance of an offence”. However, it has been consistently held in various judicial pronouncements that cognizance takes place at a point when a Magistrate first takes judicial notice of an offence, whether on a complaint, or on a police report, or upon information of a person other than a police officer. Cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence.

36. "Cognizance” has been held to merely mean “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. “Taking cognizance” does not involve any formal action and it occurs as soon as a Magistrate applies his mind to the suspected commission of an offence.

37. The expression “taking cognizance” has been held to be of an indefinite import, and a consistent view has been taken that it was neither practical nor desirable to precisely define as to what is meant by “taking cognizance”. The question as to whether the Magistrate has taken cognizance of an offence would depend upon the circumstances of the particular case,

including the mode in which the action is sought to be instituted and the nature of preliminary action.

38. It is well settled that before a Magistrate can be said to have been 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 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 stated that he has taken cognizance of the offence.

39. The term "cognizance" though not statutorily defined, yet judicial pronouncements give it a definite meaning and connotation and broadly it can be held to mean "taking judicial notice" by a competent court of a cause or matter presented before it so as to decide whether there is basis for initiating proceedings for judicial determination.

40. Since cognizance is taken prior to commencement of criminal proceedings, taking of cognizance would thus be a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. The question as to whether a Magistrate has taken cognizance of an offence would therefore depend 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.

41. The scope of consideration by the court at this stage would be as to whether material produced before court *prima facie* discloses commission of offence and a detailed enquiry

and sifting of evidence is not to be undertaken at this stage. 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.

42. The guilt or innocence of the accused is to be determined in the trial, and therefore, at the stage of cognizance, the court, need not undertake an elaborate enquiry in sifting and weighing the material, nor is it necessary to delve deep into the various aspects; all that the court has to consider is whether the material on record *prima facie* discloses commission of an offence and nothing further need be enquired into at this stage.

43. The court can take into consideration not only the police report but also on other materials on record, and it would not be required to pass a reasoned order. It has been consistently held that there is no legal requirement that the Magistrate should pass a speaking order indicating reasons, at the stage of taking cognizance. A detailed order may be required to be passed by the Magistrate for culminating the proceedings but the same would be quite unnecessary at the various interlocutory stages, such as issuing process, remanding the accused to custody, framing of charges and passing over to next stages in the trial.

44. At a stage where it is to be decided as to whether process should be issued, the Magistrate would not be required to enter into a detailed discussion on merits or demerits of the case and it would suffice if the evidence led by the complainant in support of the allegations is taken into consideration. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is

sufficient ground for conviction. Whether the evidence can be held adequate for supporting the conviction can be determined only at the trial and not at the stage of issuing process, where the Magistrate is to be mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused; at this stage, the Magistrate would therefore not be required to record reasons.

45. There being no legal requirement under sub-section (1) of Section 204 of the Code to record reasons at the stage of issuance of process, the question whether the reasons assigned by the Magistrate while issuing process, are good or bad, sufficient or insufficient, would not be required to be examined in a challenge raised against the order; all that may be seen whether there was material before the Magistrate to take a view that there was sufficient ground for proceeding against the persons to whom processes had been issued under Section 204.

46. A distinction may be drawn between taking cognizance based upon charge-sheet filed by the police under Section 190 (1) (b) of the Code and taking cognizance based on a complaint under Section 190 (1) (a). Under Section 190 (1) (b), a police report and the documents filed along with it are placed before the Magistrate whereas under Section 190 (1) (a), he has only a complaint before him. Therefore, insofar as taking cognizance based on a police report is concerned, the Magistrate would have the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation.

47. In such cases, the investigating officer collects the necessary evidence during the investigation and the evidence

and materials so collected are sifted at the level of the investigating officer and thereafter charge-sheet is filed. The court has thus the advantage of the police report along with the materials placed before it by the police. Under Section 190 (1) (b), where the Magistrate takes cognizance of an offence upon a police report and is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. Such an order being based upon consideration of the police report and other documents, the Magistrate would not be required to meticulously examine and to evaluate the evidence and to record detailed reasons. The fact that after investigation of the case, the police has filed a charge-sheet along with the material thereon, may be considered as sufficient ground for proceeding for issuance of summons under Section 204 of the Code.

48. It may therefore be concluded that in the absence of any legal requirement for the Magistrate to have given detailed reasons in an order taking cognizance and issuing process the same cannot be held to be vitiated only on the ground that the order is not a reasoned order.

49. Keeping in mind the principle enunciated under Section 465 of the Code, challenges to interlocutory orders such as a cognizance order or a summons order by raising a plea of irregularity or infraction of a procedural provision may not constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice and has thereby occasioned a failure of justice — the Court would have to keep in mind that challenges to interlocutory orders that do not go to the root of the case are a major cause for delay in the trial of criminal cases.

50. Coming to the decisions relied on behalf of the applicant to contend that cognizance order passed by the Magistrate does

not reflect application of mind, in the case of **Pepsi Foods Ltd. v. Special Judicial Magistrate**[1] the proceedings were initiated by the institution of a complaint under the Prevention of Food Adulteration Act, 1964 and upon issuance of the summoning orders an application under Section 482 of the Code was filed seeking quashing of the summoning order and also the proceedings. In the light of the aforesaid background, it was observed that a Magistrate taking cognizance of an offence on a complaint is required to examine upon oath the complainant and the witnesses and also that the order of the Magistrate summoning the accused upon a complaint must reflect application of mind.

51. The proceedings in the case of **Fakhruddin Ahmad Vs. State of Utaranchal**[2] were also initiated with the lodging of a complaint upon which a direction was made by the Magistrate for investigation and upon a police report submitted pursuant thereto cognizance was taken. It was held that since the cognizance order was not placed before the Court, it could not be seen whether the Magistrate had applied his mind while taking cognizance and in view thereof the matter was remanded back to the High Court for deciding the Section 482 application afresh. It may be noticed that there is no observation in the decision in the case of **Fakhruddin Ahmad** that cognizance order based on a police report is required to contain detailed reasons.

52. As regards the decision in the case of **Ankit Vs. State of U.P. and another**[3] it is seen that in the aforesaid decision, the Court has duly taken note of the pronouncements in the case of **Deputy Chief Controller Import and Export vs. Roshan Lal**

1 (1998) 5 SCC 749
2 (2008) 17 SCC 157
3 (2009) 67 ACC 532

Agrawal[28]**, U.P. Pollution Control Board vs. Mohan Meakins and others**[6]**,** and **Kanti Bhadra Shah and another Vs. The State of West Bengal**[7], on the legal proposition that the Magistrate is not required to pass a detailed and reasoned order at the time of taking cognizance on a charge-sheet; however, in the facts of the case, the Court took the view that since the summoning order had been issued by filling up the blanks on a printed proforma the same could not be sustained.

53. The other decision relied upon by the applicant is the case of **Vineet Agarwal and others Vs. State of U.P. and another**[4] wherein the summoning order had been assailed by contending that the same had been passed on a printed proforma and following the decision in the case of **Ankit** (supra)**,** the summoning order was set aside.

54. In the present case, it is not the contention on behalf of the applicant that the order of cognizance has been issued on a printed proforma and therefore the decision in the case of **Ankit** and **Vineet Agarwal** (supra) would be distinguishable on facts.

55. The other contention sought to be raised on behalf of the application to assail the cognizance order and the proceedings, on the ground that the weapon used in the commission of offence could not be described to be a "dangerous weapon" so as to constitute an offence under Section 324 IPC, would be a question of fact to be examined on the basis of evidence and the same cannot be seen at this stage of proceedings.

56. The facts of the present case indicate that pursuant to the registration of the FIR dated 09.11.2020, the matter was investigated and a police report under Section 173 of the Code

28 (2003) 4 SCC 139
6 (2000) 3 SCC 745
7 (2000) 1 SCC 722
4 (Application u/s 482 no. 15450 of 2020, decided on 11.11.2020)

was submitted. The Magistrate having the advantage of police report and material submitted along with the same has taken cognizance in exercise of powers under Section 190 (1) (b) and the order taking cognizance clearly states that the Magistrate had perused the charge-sheet, the case diary and the materials which had been submitted along with the same and on the basis thereof had held that there was sufficient material to take cognizance and to register the case. The order of cognizance having thereafter been passed by the Magistrate after having advantage of perusing the police report and the materials therewith, the same therefore cannot be assailed only on the ground that it does not give detailed reasons.

57. Having regard to the aforestated, this Court is not inclined to exercise its inherent jurisdiction under Section 482 CrPC in the facts of the case.

58. The application thus fails and is dismissed accordingly.

Order Date :- 14.12.2021
Pratima

(Dr.Y.K.Srivastava,J.)