REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 844 OF 2015
(Arising out of S.L.P. (Crl.) No.4813/2012)

S.R. SUKUMAR ..Appellant

Versus

S. SUNAAD RAGHURAM ..Respondent

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of an order dated 20.01.2012 passed by the High Court of Karnataka at Bangalore in Criminal Petition No.5077/2007 wherein the High Court declined to quash the order dated 21.06.2007 passed in PCR No.8409/2007 thereby confirming the order passed by the VII Addl. Chief Metropolitan Magistrate, Bangalore permitting the respondent to carry out the amendment in a criminal

complaint on the premise that the amendment was made prior to taking cognizance of the offence.

3. On 9.05.2007, respondent filed the complaint under Section 200 Cr.P.C. against the first appellant and his mother Smt. H.R. Leelavathi (A-2) alleging that they have committed the offences punishable under Sections 120-B, 499 and 500 IPC. In the complaint, the respondent has alleged that he was born of the wedlock of his father late Shri S.G. Raghuram and mother Late Smt. B.S. Girija. However, his father after the death of his mother Girija, married another divorcee lady namely Smt. H.R. Leelavathi (A-2) who at the time of the second marriage, already had a son aged six years S.H. Sukumar (appellant), born from her previous wedlock. The respondent alleged in the complaint that his father's name i.e. Late Shri S.G. Raghuram has been purportedly used by the appellant portraying as if he is his natural father. Respondent alleged that the act of the appellant using name of respondent's father as his own father often created doubts among the near and dear ones about the legitimacy of the

respondent-complainant and integrity and character of his father which had affected the respondent's reputation.

4. Respondent filed the complaint on 9.05.2007 and his statement was recorded in part on 18.05.2007 and further recorded on 23.05.2007. Next day i.e. on 24.05.2007, respondent moved an application seeking amendment to the complaint by praying for insertion of paras 11(a) and 11(b) in the complaint stating the fact of poem named 'Khalnayakaru' written by the appellant in connivance with his mother (A-2) depicting the respondent as Villain-'Khalnayak', with an intention to malign the character, image and status of the respondent. The trial court allowed the amendment on 24.05.2007 and took the cognizance of the offence and directed issuance of the process to the appellant vide Order dated 21.06.2007. Aggrieved by the Order dated 21.06.2007, the appellant approached the High Court praying for quashing the proceedings in PCR No.8409/2007 registered as C.C. No.15851/2007 on the ground that there is no provision under the Code, providing for amendment of the complaint. The High Court vide impugned Order dated 20.01.2012

dismissed the petition filed by the appellant observing that before the date of allowing amendment application i.e. 24.05.2007, cognizance of case was not taken and therefore no prejudice is caused to the appellant. Further, the High Court was of the view that if amendment is not allowed, then the multiple proceedings would have ensued between the parties.

5. Mrs. Kiran Suri, learned Senior Counsel appearing for the appellant contended that under the Criminal Procedure Code there is no provision for amendment of complaint and in the absence of any specific provision in the Code, courts below erred in allowing the amendment in criminal complaint. It was submitted that on 18.05.2007, the Magistrate took cognizance of the complaint for the first time and the Magistrate allowed the amendment application on 24.05.2007 and the Magistrate again took cognizance of case for the second time on 21.06.2007 and thus the cognizance taken twice by the Magistrate is impermissible under the law. It was further submitted that once cognizance was taken, the Magistrate ought not to have allowed the amendment and the impugned order is liable to be set aside.

6. Per contra, learned counsel for the respondent contended that the respondent-complainant was examined in Court on oath in part on 18.05.2007 and his examination was deferred to 23.05.2007 for further inquiry and during the course of inquiry, the amendment application was filed and the same was allowed in order to avoid multiplicity of proceedings. It was further contended that on 18.05.2007, no cognizance was taken and therefore it would be wrong to suggest that cognizance was taken twice by the Magistrate. It was submitted that though there is no enabling provision in the Criminal Procedure Code to amend the complaint and there is no specific bar in carrying out the amendment and in the interest of justice, Court has power to do so.

7. Upon consideration of the rival contentions and materials on record, the points falling for determination are: (i) in the facts of the case, when did the Magistrate take cognizance of the complaint for the first time i.e. on 18.05.2007 or on 21.06.2007, when the Magistrate satisfied of a prima facie case to take cognizance of the complaint; (ii) whether amendment to a complaint filed under Section 200

Cr.P.C. is impermissible in law and whether the order allowing the amendment suffers from serious infirmity.

8. Section 200 Cr.P.C. provides for the procedure for Magistrate taking cognizance of an offence on complaint. The Magistrate is not bound to take cognizance of an offence merely because a complaint has been filed before him when in fact the complaint does not disclose a cause of action. The language in Section 200 Cr.P.C. *"a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any..."* clearly suggests that for taking cognizance of an offence on complaint, the Court shall examine the complainant upon oath. The object of examination of the complainant is to find out whether the complaint is justifiable or is vexatious. Merely because the complainant was examined that does not mean that the Magistrate has taken cognizance of the offence. Taking cognizance of an offence means the Magistrate must have judicially applied the mind to the contents of the complaint and indicates that Magistrate takes judicial notice of an offence.

9. Mere presentation of the complaint and receipt of the same in the court does not mean that the Magistrate has taken cognizance of the offence. In *Narsingh Das Tapadia* vs. *Goverdhan Das Partani & Another.*, AIR 2000 SC 2946, it was held that the mere presentation of a complaint cannot be held to mean that the Magistrate has taken the cognizance. In *Subramanian Swamy* vs. *Manmohan Singh & Another*, (2012) 3 SCC 64, this Court explained the meaning of the word 'cognizance' holding that "…*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*".

10. Section 200 Cr.P.C. contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to the accused or order an inquiry under Section 202 Cr.P.C. or dismiss the complaint under Section 203

Cr.P.C. Upon consideration of the statement of complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process under Section 204 Cr.P.C. Section 202 Cr.P.C. contemplates 'postponement of issue of process'. It provides that the Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance may, if he thinks fit, postpones the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 Cr.P.C. A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by complainant by filing the

complaint or by the police report about the commission of an offence.

11. "Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section 200 Cr.P.C., when the complainant is examined, the Magistrate cannot be said to have *ipso facto* taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon facts and circumstances of the particular case.

12. In *S.K. Sinha, Chief Enforcement Officer* vs. *Videocon International Ltd. And Ors.*, (2008) 2 SCC 492, considering the scope of expression "cognizance" it was held as under:-

> **"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."**

13. A three Judge Bench of this Court in the case of *R.R. Chari* vs. *State of Uttar Pradesh*, 1951 SCR 312, while considering what the phrase 'taking cognizance' mean, approved the decision of Calcutta High Court in *Superintendent and Remembrancer of Legal Affairs, West Bengal* vs. *Abani Kumar Banerjee*, AIR 1950 Cal. 437, wherein it was observed that:

> **"...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 S.190(1)(a), Criminal P.C., 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 S. 200, and thereafter sending it for enquiry and report under S. 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..."** (Underlining added)

The same view was reiterated by this Court in *Jamuna Singh & Ors.* vs. *Bhadai Sah,* (1964) 5 SCR 37 and *Nirmaljit Singh Hoon* vs. *State of West Bengal & Anr.,* (1973) 3 SCC 753.

14. Elaborating upon the words expression "taking cognizance" of an offence by a Magistrate within the contemplation of Section 190 Cr.P.C., in *Devarapally Lakshminarayana Reddy & Ors.* vs. *V. Narayana Reddy & Ors.,* AIR 1976 SC 1672, this Court held as under:-

> **"...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 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 to the Code of 1973, he is said to have taken cognizance of the offence within the meaning to Section 190(1)(*a*). It, 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."**

15. Contention of the appellant is that the act of taking cognizance of an offence by the Magistrate precedes the examination of the complainant under Section 200 Cr.P.C. and the learned Senior Counsel for the appellant placed reliance on the decision of this Court in *CREF Finance Ltd. vs. Shree Shanthi Homes (P) Ltd. And Anr.,* (2005) 7 SCC 467 wherein this Court has held as under:-

> **"10. In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of the statement of the complainant on 1-6-2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. Cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint....."** (Underlining added)

In our considered view, the above decision is of no assistance to the appellant. A perusal of the above decision would show

that this Court has emphasized upon the satisfaction of the Court to the commission of offence as a condition precedent for taking cognizance of offence. However, in the facts of the said case, Court was of the view that the cognizance was taken by the Magistrate once the Magistrate applied his mind on the contents of the complaint and on the satisfaction that prima facie case existed.

16. In the present case, the complaint was filed on 9.05.2007 and the matter was adjourned to 15.05.2007 and on that date on request for inquiry, the matter was adjourned to 18.05.2007. On 18.05.2007, statement of complainant was recorded in part and the order sheet for 18.05.2007 reads as under:-

> "Complainant is present with Shri N.V. Adv. Cognizance taken u/s 200 of Cr.P.C. r/w statement Complainant is recorded in part. Now 5.35 p.m. hence on request call on 23.5.2007."

On 23.05.2007, the complainant was present and his statement was recorded and the same was marked as Ex.P-1 and annexures A to G were referred. On request, the matter was adjourned to 24.05.2007 on which date the complainant

filed application under Section 200 Cr.P.C. seeking amendment to the complaint by adding paras 11(a) and 11(b) and the said application was allowed. Amended complaint was filed and one witness was examined for the complainant on 2.06.2007. On 21.06.2007, the Magistrate passed the detailed order recording his satisfaction to proceed against the appellant(A-1) and also observing that there are no sufficient grounds to proceed against Smt. H.R. Leelavathi and ordered issuance of summons to accused No.1–appellant herein. Before examination of the complainant, the Court was yet to make up the mind whether to take cognizance of the offence or not. It is wrong to contend that the Magistrate has taken cognizance of the case even on 18.5.2007 when the Magistrate has recorded the statement of complainant–respondent in part and even when the Magistrate has not applied his judicial mind. Even though the order dated 18.05.2007 reads "cognizance taken under Section 200 Cr.P.C."; the same is not grounded in reality and actual cognizance was taken only later.

17. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In *U.P. Pollution Control Board* vs. *Modi Distillery And Ors.*, (1987) 3 SCC 684, wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:-

> **"...The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery.... Furthermore, the legal infirmity is of such a nature which could be easily cured..."**

18. What is discernible from the *U.P. Pollution Control Board's* case is that easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.

19. In the instant case, the amendment application was filed on 24.05.2007 to carry out the amendment by adding paras 11(a) and 11 (b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before

the disposal of amendment application. Firstly, Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem 'Khalnayakaru' being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India.

20. The appeal is dismissed. The trial court is directed to take up the matter and dispose the same in accordance with law as early as possible. It is made clear that we have not expressed any opinion on the merits of the matter.

.....J.
(T.S. THAKUR)

.....J.
(R. BANUMATHI)

New Delhi;
July 2, 2015