IN THE HIGH COURT OF KARNATAKA AT DHARWAD

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DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CRIMINAL PETITION NO.101445 OF 2022

C/W

CRIMINAL PETITION NO.101448 OF 2022

IN CRL.P. NO.101445 OF 2022

BETWEEN:

K. V. N. GOVINDARAJU,
S/O. LATE GOPAL SHETTY KORAGAL,
AGE. 45 YEARS, OCC. BUSINESS,
R/O. 8TH CROSS M.J. NAGAR,
GEETA GOPAL MANSION,
HOSAPETE-583201,
VIJAYANAGAR.

...PETITIONER

(BY SRI. C.V. NAGESH, SENIOR COUNSEL FOR
SRI. K.L. PATIL, ADVOCATE)

Digitally signed by PRAMILA G V
Location: HIGH COURT OF KARNATAKA

AND:

CENTRAL BUREAU OF INVESTIGATION,
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN CHENNAI-600090,
REP. BY INSPECTOR OF POLICE.

...RESPONDENT

(BY SRI N.D. GUNDE, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C., PRAYING TO QUASH THE CRIMINAL PROCEEDINGS IN CC NO.408/2020 ON THE FILE OF CIVIL JUDGE AND JMFC, ANKOLA (RC NO.17(E)2013/CBI/EOB/CHENNAI) FOR THE OFFENCES PUNISHABLE UNDER SECTION 120-B, R/W SECTION 420, 379, 411, 419, 427, 447 OF IPC, AND SECTION 24 OF

FOREST ACT, IN SO FAR THE PRESENT THE PETITIONER/ACCUSED NO.5 IS CONCERNED.

IN CRL.P. NO.101448 OF 2022

BETWEEN:

K. V. N. GOVINDARAJ,
S/O. LATE GOPAL SHETTY KORAGAL,
AGE. 45 YEARS, OCC. BUSINESS,
R/O. 8TH CROSS, M.J. NAGAR,
GEETA GOPAL MANSION, HOSAPTE-583201,
VIJAYANGAR.

…PETITIONER

(BY SRI. C.V. NAGESH, SENIOR COUNSEL FOR
SRI. K.L. PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION,
EOB, ECONOMIC OFFENCES WING,
RAJAJI BHAVAN CHENNAI-600090,
REP. BY INSPECTOR OF POLICE.

…RESPONDENT

(BY SRI. N.D. GUNDE, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CRIMINAL PROCEEDINGS IN CC NO.410/2020 ON THE FILE OF CIVIL JUDGE AND JMFC, ANKOLA (RC NO.14(E)2013/CBI/EOW/ CHENNAI) FOR THE OFFENCES PUNISHABLE UNDER SECTION 120-B, R/W SECTION 411 OF IPC, AND IN SO FAR THE PRESENT THE PETITIONER/ACCUSED NO.3 IS CONCERNED.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13TH AUGUST, 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

In a petition assailing the order taking cognizance of an offence, on the ground that the order is invalid for want of reasons or application of mind, can the Court supplement the reasons for the order taking cognizance? Or,

Should the Court invariably remit the matter to the Court of first instance fresh consideration?- are the questions that arise for consideration.

2. The Criminal Petition No.101445/2022 is filed by the petitioner No.5 to quash the proceedings in C.C.No.408/2020 on the file of JMFC, Ankola.

3. The offences alleged are under Section 120B, read with Sections 420, 379, 411, 419, 427, 447 of Indian Penal Code, 1860 ("IPC") and Section 24 of the Forest Act, 1963 ("Act, 1963").

4. The Criminal Petition No. 101448/2022 is filed by the petitioner/accused No.5 to quash the proceedings in C.C.No.410/2020 on the file of JMFC, Ankola.

5. The offences alleged are under Section 120B, read with 411 of Indian Penal Code, 1860 ("IPC") and Section 24 of the Forest Act, 1963 ("Act, 1963").

6. The respondent-Central Bureau of Investigation (CBI) contends that the Apex Court in Writ Petition No. 562/2009 vide order dated 07.09.2012 directed a preliminary enquiry relating to 32.27 lakhs tonnes of iron ore exported from 01.01.2009 to 31.05.2010 from Belekeri port.

7. Based on the materials gathered in the preliminary enquiry, an application is filed at I.A.No.189/2013 in W.P(c) No.562/2009 seeking permission to proceed further. Accordingly on 16.09.2013, the Apex Court, permitted the CBI to register criminal cases against the exporters who exported more than 50,000 metric tonnes of iron ore without valid permit.

8. Accordingly, two FIRs have been registered and after investigation two charge sheets have been filed.

9. *It is relevant to notice that the charge sheets in both cases are relating to illegal excavation and export of iron ores for the same period, the quantity of iron ores varies and the firms which carried out the transactions are different.*

10. In C.C. No. 408/2020 on the file of JMFC Ankola the allegation is that M/s Greentex Mining Industries ltd. has no mining lease in the State of Karnataka or any other place in the country. It is alleged that accused No.4 and the petitioner created fictitious firms to procure illegally excavated iron ores from various mines and supplied such ores to various traders/exporters. That the invoices of various fictious firms were signed by Jakeer Shareef at the behest of accused No.4 and the petitioner.

11. It is also alleged that the petitioner along with other accused created fictitious firms like M/s Siddeshwara Traders, M/s Tirumala Mineral and Trading Company, M/S Shafia Minerals Hospet, M/S Ganesh Minerals Hospet, M/S Divakara Minerals Company Sindhnuru and used such fictious firms for illegal transportation of iron ores and one of such fake firms was controlled by accused No.4 and the petitioner.

12. It is also alleged that money received from the said transactions were withdrawn in the form of self cheque by Jakeer Shareef and amount is paid to accused No.4 and the petitioner.

13. The further allegation is, 1,65,710 metric tones of iron ore fines exported by M/s Greentex Mining Industries Limited without bulk permits/trip sheets. It is alleged false invoices have been created by accused No.4 and 5 in respect of 1,65,710 metric tones of iron ores.

14. It is alleged that 1,48,653.410 metric tonnes of iron ores were illegally mined by trespassing into the property for which there was no permit to mine, and illegally exported without permit and substantial portion of the ores were illegally mined from the forest in Ballari and other places in Karnataka.

15. It is further alleged that M/s Greentex Mining Industries stole the natural resource/iron ores and illegally exported the same without paying royalty and tax.

16. In so far as C.C.No.410/2020 which is subject matter of Crl.P.No.101448/2022 is concerned, the respondent–CBI claims that accused No.5/petitioner is one of the Directors of M/s Swastik Steel (Hospet) Pvt Ltd. and accused No.1 to 3 are the remaining Directors of the said Company.

17. The allegation is, the accused have stolen the iron ores by excavating the same without valid authority and have exported the same without permit and have created fake

permits and have evaded payment of royalty and the forest tax. The petitioner in Crl.P.101448/2022 along with other accused have been charge sheeted for the offence under Section 411 of IPC read with Section 120-B of IPC.

18. The respondent alleges that total loss caused is approximately around Rs.15,62,38,059.78/-. It is further alleged that while committing the aforementioned the illegal acts the accused have created several fictitious documents with an intention to cheat.

19. Learned Senior Counsel for the petitioner submitted that the order taking cognizance is not a speaking order and no reason is forthcoming for passing the order taking cognizance and the order is passed without application of mind.

20. In addition the learned senior counsel would urge that the FIR is registered on 29.10.2013 and the cognizance is taken in 2020 and the order taking cognizance is beyond the prescribed period of limitation.

21. It is also urged that charge sheet materials do not disclose anything against the petitioner and the petitioner's role in the alleged activity is also not forthcoming and the petitioner

is not named in the complaint as such the cognizance could not have been taken against the petitioner.

22. The learned counsel for the respondent/CBI would submit that the Apex Court vide order dated 16.09.2013 permitted the registration of FIR and the CBI registered the FIR on 29.10.2013. Thereafter, investigation is carried out and based on credible materials collected during investigation, the charge sheet is filed in both cases.

23. It is urged that as the charge sheet materials reveal cognizable offence. The magistrate after having gone through the materials placed on record, took cognizance for the offences in both the cases.

24. Learned Senior counsel appearing for the petitioner to urge the contention that order taking cognizance and summoning the accused must reflect application of mind relied on the following judgments of the Apex Court.

(i) GHCL employees Stock Option Trust vs. India Infoline Limited[1]

(ii) Sunil Bharati Mittal vs. CBI[2]

(iii) Mallikarjuna and Another vs State of Karnataka[3]

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[1] (2013) 4 SCC 505
[2] (2015) 4 SCC 609

(iv) Shariff Ahmed and Another vs State of Uttar Pradesh and Another[4]

(v) Sujay Ghosh vs State of Jharkhand and Another[5]

25. Learned Senior counsel to contend that the order taking cognizance beyond prescribed period of limitation is bad in law relied on the judgment of the Apex Court in ***Sara Mathew vs Institute of Cardio Vascular Diseases[6]*** and the judgment in ***Roma Ahuja vs State and Another[7].***

26. Responding to the citations submitted by the learned Senior Counsel, the learned counsel for the respondent-CBI relied on the judgment of the Apex Court in ***Arun Vyas and Another vs Anita Vyas[8], State of HP vs Tara Dutt and Another[9]*** and the judgment of the Apex Court in ***A. Kaliyaperumal vs Superintendent of Police, Cuddalore and Another[10]***

27. The Court has considered the contentions raised at the Bar and perused the records.

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[3] ILR 2018 KAR 354
[4] (2024) 14 SCC 122
[5] (2026) SCC OnLine 454
[6] (2014) 2 SCC 62
[7] (2026) SCC OnLine 557
[8] (1999) 4 SCC 690
[9] (2000) 1 SCC 230
[10] (2024) SCC OnLine Madras 4279

28. Though there is no specific prayer to set aside the orders dated 06.10.2020 and 24.11.2020, taking note of the prayer to quash the proceedings, and the grounds urged in the petitions, ignoring the technicality, the Court has considered the contentions to quash the orders dated 06.10.2020 and the order dated 24.11.2020.

29. The Code of Criminal Procedure, 1973 (Code, 1973) (or even Bharatiya Nagarika Suraksha Sanhita, 2023) does not provide the format of the order taking cognizance. However, the order taking cognizance based on police report, should reflect the application of mind on the materials placed before the Court, though need not contain elaborate reasons, is the settled position of law.

30. Referring to the said settled position learned senior counsel urged that the impugned orders have to be set aside and the proceedings have to be quashed. In the alternative it is urged that the matter has to be remitted to the Magistrate for fresh consideration.

31. The Court has considered the contentions raised at the Bar and perused the records.

On the order taking cognizance, lack of reasons or non application of mind.

32. If the order taking cognizance, based on the police report does not reflect reasons or disclose the application of mind by the Court, the easiest recourse is to set aside the order taking cognizance and to remand the matter to the Court of first instance for fresh consideration.

33. The question however is, in such situation where the application of mind is not readily reflected in the order taking cognizance, whether remanding the matter to the Court competent to take cognizance is the only recourse? Is it not open to the Court before which challenge is laid to such order, to examine the charge sheet materials to ascertain whether the order taking cognizance can be sustained by supplementing the reasons, or even to quash the proceedings if there are no materials in the police report to take cognizance?

34. The Court is of the view, that in a situation where the **order taking cognizance based on the police report** is called in question on all grounds including the grounds that the order suffers from non-application of mind, or want of reasons, or lack of materials in the police report to take cognizance, the

Court examining the correctness of the said order under the Code, 1973 is not precluded from supplementing the ***reasons for such order taking cognizance if there are materials in the police report to take the cognizance.***

35. The reasons for the above said view can be explained as under.

36. In a proceeding of this nature, the Court has to ascertain -

(i) From the order taking cognizance, based on the materials placed before the Court, is it possible to ascertain or gather that the Court must have applied its mind as the contents of police report may speak for itself.

(ii) From the reasons if any found in the order taking cognizance, is it possible to form an opinion that there is application of mind before taking cognizance.

(iii) In case of remand of the matter to the Court competent to take cognizance, is there a realistic/fair chance of such Court taking a contrary view than the one under the impugned order.

37. Keeping these aspect in mind the Court has to now examine the orders under challenge.

38. The order dated 06.10.2020 in C.C.No.408/2020 taking cognizance reads as under:

> *"Perused the charge sheet and records, cognizance taken for the offence punishable under Section 120-B read with 420, 379, 411, 419, 427, 447, of IPC and Section 24 of Karnataka Forest Act, 1963 against accused No. 1 to 6.*
>
> *Office is hereby directed to register CC.*
>
> *Call on 24.11.2020."*

39. Order dated 24.11.2020 issuing process reads as under.

> *"Issue S/S to A1 to A6.*
>
> *Call on 27.01.2021."*

40. The orders dated 06.10.2020 and 24.11.2020 in C.C. No.410/2020 are as under:

> *"Perused the charge sheet and records, cognizance taken for the offence punishable under Section 120-B read with 411 of IPC against accused No. 1 to 4.*
>
> *The office is hereby directed to register CC.*
>
> *Perused the office note. Office is hereby directed to keep the original passport of accused No.3 in the safe custody.*

Call on 24.11.2020."

41. Order dated 24.11.2020 issuing process reads as under.

"Issue S/S to A1 to A4.

Call on 27.01.2021."

42. From the orders dated 06.10.2020 it is *prima facie* evident that the Court has perused the charge sheet and the records, as it is explicit from the expression "***Perused the charge sheet and records***," found in the order. It is true that the order does not refer to any specific statements of any witnesses or the complainant or any specific document. Nevertheless, the order refers to specific offences of which the cognizance is taken.

43. However, merely because the Magistrate has observed in his order that he has ***"perused the charge sheet and the records"*** and has referred to the provisions of the offences mentioned in the charge sheet, does not conclusively establish the application of mind. *However, in such situations where the order taking cognizance refers to the specific offences and perusal of charge sheet and the records*, the *Court instead of blindly remanding the matter, may adopt a*

pragmatic approach. The Court may, if not with a ***rebuttable presumption, may at least start with a tentative notion*** *that the Magistrate might have perused the police report and might have applied the mind to the ingredients of the offences while passing the order taking cognizance. It is more so because the onus to establish that the order suffers from illegality or lack of application of mind is on the petitioner who has assailed the order taking cognizance*.

44. To discharge the onus the petitioner has to demonstrate that the Police report does not contain any materials to attract the offences for which cognizance is taken. In the process (where the Court has to refer to the police report) *if the Court finds materials to support the order taking cognizance for the offences referred to in the order of the Magistrate*, *then the Court can take a view that the Magistrate has applied the mind before passing the order*. *In such situation the Court examining the said order can supplement the reasons for sustaining the order taking cognizance.*

45. It is relevant to notice that in such an exercise referred to above, *the order supplementing the reasons for the order passed by the Magistrate taking cognizance for offences,*

is not an order taking cognizance by the High Court or Sessions Court before which the order taking cognizance is called in question. *In such situation The order taking cognizance would still be by the Magistrate or the Court empowered to take cognizance*. By assigning the reasons, the Sessions Court or the High Court is not taking cognizance, but is supplementing the reasons to the order under challenge by which cognizance is taken albeit sans reasons.

46. In the situation referred to above, where the cursory perusal of charge sheet materials demonstrate the ingredients of the offences, remitting the matter to the Magistrate with a direction to apply the mind to the police report and to pass appropriate order may not serve any useful purpose and will only add to the delay and nothing more.

47. Likewise while going through the police report *if the Court finds that there are no materials to take cognizance for the offences for which the cognizance is taken, then it demonstrates lack of application of mind by the Magistrate. In such a scenario the Court has to set aside the order and if the materials do not indicate ingredients of any offence, then the proceedings have to be quashed*. Even in such situation the

remanding the matter to the magistrate appears to be futile exercise.

48. In another likely scenario the Court may find *that there are materials in the police report to take cognizance for some of the offences, and no materials for some other offences referred to in the order taking cognizance. Then the Court can set aside the part of the order for such offences for which there are no materials. And for other offences for which the cognizance is taken, the Court can assign the reasons for the order taking cognizance*. In that situation too, the remand does not appear to be a just order.

49. There is one more possibility. *The charge sheet materials may not contain any materials attracting any offence for which the cognizance is taken. On the other hand it may attract some other offence for which the cognizance is not taken at all. Such an order is certainly without application of mind. In such situation, the impugned order has to be set aside and the Court may direct the Magistrate or such Court empowered to take cognizance to re-consider the matter afresh and pass suitable orders*.

50. *It is also relevant to notice that there is no provision of law which mandates the remand to the Court of first instance if the order taking cognizance is not indicating judicial application of mind*. *Likewise there is no provision in law which prevents the Court from supplementing the reasons to the order which does not reflect the application of mind while taking cognizance, if there are materials to support the order taking cognizance.*

51. Keeping in mind the aforementioned aspects, the Court has considered the contents of the complaint/FIR and the charge sheet. The contents of the charges sheet are briefly narrated while narrating the facts of the case. The allegations are illegal mining, trespass, evasion of royalty and tax, fabrication of bills, invoices and fake documents relating to non-existent companies and entities. It is also alleged that the petitioner has cheated by acting dishonestly with an intention to cheat.

52. This Court on perusal of the charge sheet materials is of the firm view that a case is made out for holding the trial as the materials produced along with the charge sheet warrant the trial as there is allegation of creating fake invoices,

exporting iron ores in the name of fictitious companies and in excess of the permits issued.

53. Under these circumstances the contentions that the impugned order lacks reasons and is one without application of mind though appear to be attractive, that by itself is not a ground to set aside the order for remanding the matter to the Magistrate for fresh consideration.

54. Considering the materials on record, the Court is of the firm view that in the present case there is no need to remit the matter to the Trial Court for reconsideration. Even if it is done, the Trial Court will have no option but to take cognizance and to pass appropriate order by assigning reasons.

55. During the course of hearing it is urged that if this Court assigns reasons for the order passed by the Court of first instance taking cognizance, the petitioner's right to challenge the reasons for such order taking cognizance before this Court will be taken away. The contention is too technical. This Court has assigned the reasons for the order taking cognizance passed by the Magistrate after hearing the petitioner. Thus no prejudice is caused to the petitioner.

56. The Court deems it more appropriate in this case to supplement the reasons to the impugned order taking cognizance given the fact that the FIR is registered in 2013 and investigation took considerably long period for nearly 7 years as the matter appears to be complex involving multiple transactions covering the period from 01.01.2009 to 31.05.2010.

57. Though the judgments cited by the learned Senior Counsel have laid down the law, that the order taking cognizance must be passed with due application of mind, it is necessary to note that the Apex Court in various decisions has held that there is a marked difference in the order taking cognizance in a case based on police report and the case based on a private complaint. In the former case, the order need not be elaborate. Whereas in the latter case, the consideration may be different.

58. It is relevant to notice that in any of the judgments cited by the learned Senior Counsel it is not held that the High Court must remit the matter to the Magistrate or the Court competent to take cognizance for fresh consideration if the

order taking cognizance does not disclose the application of mind. However that would be one of the options.

59. The Apex Court in ***Pramila Devi and Others vs State of Jharkhand and Another***[11] has extensively dealt with the requirement of the order taking cognizance of an offence. The Apex Court has also referred to the previous judgments of the Apex Court on the point and the relevant paragraphs of the said judgment in ***Pramila Devi,*** *supra* are extracted as under:-

> ***16.*** *In the present case, we find that the Additional Judicial Commissioner has taken cognizance while recording a finding that - from a perusal of the case diary and case record, a prima facie case was made out against the accused, including the Appellants. In Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424, this Court held that an order of the Magistrate taking cognizance cannot be faulted only because it was not a reasoned order; relevant paragraphs being as under:*
>
> ***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'.*

[11] (2025) SCC OnLine 886

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16. *In* Nagawwa *v.* Veeranna Shivalingappa Konjalgi *[(1976) 3 SCC 736 : 1976 SCC (Cri) 507] 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."

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17. **.** The view in *Bhushan Kumar* (supra) was reiterated in *Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*, (2015) 12 SCC 420 and *State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539. This Court in *Rakhi Mishra* v. *State of Bihar*, (2017) 16 SCC 772 restated the settled proposition of law enunciated in *Sonu Gupta* v. *Deepak Gupta*, (2015) 3 SCC 424, as under:

*'**4.** We have heard the learned counsel appearing for the parties. We are of the considered opinion that the High*

Court erred in allowing the application filed by Respondents 2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal proceedings against them. A perusal of the FIR would clearly show that the appellant alleged cruelty against Respondents 2, 4, 5, 6, 7, 8, 9 and 10. This Court in Sonu Gupta *v.* Deepak Gupta [Sonu Gupta *v.* Deepak Gupta, *(2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] held as follows : (SCC p. 429, para 8)*

"8. … At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence … to find out whether a prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not."

5. *The order passed by the trial court taking cognizance against R-2 and R-4 to R-9 is in conformity with the law laid down in the above judgment. It is settled law that the power under Section 482 CrPC is exercised by the High Court only in exceptional circumstances only when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of a prosecution is whether the uncontroverted allegations prima facie establish a case.'*

(Emphasis supplied)

60. The law laid down is that the order taking cognizance must reflect application of judicial mind. This Court is not taking a view that order need not reflect application of judicial mind. The Court is considering whether such defect in the order (non application of judicial mind) would compulsorily warrant remand of a matter or there can be other consideration by the Court to ascertain as to whether such order can be sustained if there are materials to support the order.

61. The Apex Court in ***Pradeep S. Wodeyar vs State of Karnataka***[12] has taken a view that the judgment in ***Sunil Bharati Mittal*** (relied on by the Senior Counsel for the petitioner) stands on different footing as the said case was arising from a case where the cognizance is taken against the person not named in the charge sheet.

62. The Apex Court in the aforementioned case has also referred to the judgment of the Apex Court in ***State of Gujarat vs Afroz Mohammed Hasanfatta***[13] where it is held that while taking cognizance based on a charge sheet the consideration would be different from taking cognizance based on a private complaint.

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[12] ***2021 (19) SCC 62***
[13] ***(2019) 20 SCC 539***

63. Paragraphs No.23 and 24 of the said judgment read as under

> ***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. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file.

24. *In the present case, cognizance of the offence has been taken by taking into consideration the charge-sheet filed by the police for the offence under Sections 420, 465, 467, 468, 471, 477-A and 120-B IPC, the order for issuance of process without explicitly recording reasons for its satisfaction for issue of process does not suffer from any illegality.*

(Emphasis supplied)

64. Keeping in mind the aforementioned principles and also for the reasons assigned above, the Court is of the view that there are materials in the charge sheet for the magistrate to take cognizance for the offences.

Whether the complaint or the order taking cognizance is barred by limitation.

65. Learned Senior Counsel for the petitioner would urge that the prosecution is time barred on the premise that the cause of action arose in 2012 while the Apex Court passed the order on 07.09.2012 to conduct preliminary enquiry in

respect of 32.27 lakhs of Metric Tonnes of iron ore exported between 01.01.2009 and 31.05.2010 from Belekeri Port. In any case it is urged that the cause of action arose on 16.09.2013 when Apex Court permitted registration of FIR. However the impugned *orders are* passed on 06.10.2020 and 19.10.2020.

66. Learned Senior Counsel would refer to Sections 467, 468, 469, 470, 471, 472 and 473 of Code, 1973 falling under Chapter XXXVI of the Code which deal with limitation and restrictions to take cognizance.

67. Learned Senior Counsel referring to Section 469 of the Code, 1973 would urge that the limitation commences from the date of commission of offence and the last day for commission of the offence is 31.05.2010. Referring to Section 468, learned Senior Counsel would urge that there is a bar to take cognizance of an offence after the expiry of the period of limitation.

68. It is also urged that the application is not filed to condone the delay by invoking Section 473 of the Code, 1973.

69. The law relating to limitation under the Code 1973 is well settled. The *"period of limitation"* under the Code is the period prescribed in Section 468 of the Code, 1973 as the

expression the "period of limitation" is defined in Section 467 of Code, 1973.

70. Section 468 provides that period of limitation would be;

a) six months if the offence is punishable with fine only.

b) One Year if the offence is punishable with imprisonment for a term not exceeding one year.

c) Three Years if the offence is punishable with imprisonment for a term not exceeding three years.

71. There is no period of limitation under the Code, 1973 if the offence attracts punishment of more than three years imprisonment. In the instant case the offences alleged attract imprisonment beyond three years. Thus, Section 468 of the Code, 1973 has no application.

72. Section 473 of the Code, 1973 provides for condonation of delay for taking cognizance of an offence after the expiry of period of limitation. The said provision has no application as the complaint and FIR are registered in time.

73. It is relevant to notice that the FIR was registered pursuant to the direction issued by the Apex Court on 16.09.2013. The FIR was registered on 29.10.2013. The preliminary enquiry was conducted pursuant to the order dated 07.09.2012 by the Apex Court in the Writ Petition No. 562/2009. The last of the alleged incidents took place on 31.05.2010. The role of the accused was identified only during the investigation. Thus the Court is of the view that the complaint is in time.

74. That apart, the settled position of law in terms of the judgment of the Apex Court in ***Sarah Mathew vs Institute Of Cardio Vascular Diseases***[14] is that if the complaint or FIR is in time, then the order taking cognizance cannot be held to be barred by limitation, if the order taking cognizance is beyond the prescribed period in Section 468 of the Code, 1973.

75. ***CONCLUSIONS***

(i) ***There is no mandate of law, that if the order taking cognizance does not reflect application of mind, the Higher Court examining the correctness of such***

[14] *(2014)2 SCC 62*

order should invariably remit the matter to the Court of first instance fresh consideration.

(ii) ***In a petition assailing the order taking cognizance of an offence, on the ground that the order is invalid for lack of reasons, or for want of application of mind, the Higher Court examining the correctness of the order can supplement the reasons for the order taking cognizance, if the police report contains the materials to sustain the order under challenge. There is no provision in the code prohibiting such exercise.***

(iii) ***The order supplementing the reasons for the order passed by the Magistrate taking cognizance for offences, is not an order taking cognizance by the High Court or Sessions Court before which the order taking cognizance is called in question. The order taking cognizance would be by the Magistrate or the Court empowered to take cognizance.***

(iv) ***From the police report if the Court finds that there are no materials to take cognizance for the offences for which the cognizance has been taken, then it***

would indicate non application of mind by the Magistrate. In such a scenario the Court has to set aside the order and if the materials do not indicate ingredients of any offence, then the proceedings have to be quashed. .

(v) ***From the charge sheet the Court may find that there are materials in the police report to take cognizance for some of the offences, and no materials for some other offences referred to in the impugned order taking cognizance, then the Court can set aside the part of the order taking cognizance for such offences for which there are no materials. And for other offences where the cognizance has been taken, the Court can assign the reasons for the impugned order taking cognizance.***

(vi) ***In a situation where the charge sheet materials do not contain any materials attracting any offence for which the cognizance is taken and contains materials disclosing some other offence for which the cognizance is not taken, then such an order is***

certainly without application of mind. In such situation, the impugned order has to be set aside and the Court may direct the Magistrate or such Court empowered to take cognizance to reconsider the matter afresh and pass suitable orders.

76. Before concluding, it is necessary to observe that, this Court has held that, in a proceeding instituted on the basis of a police report, an order taking cognizance may, in the circumstances referred to above, can be sustained by the Higher Court, despite the infirmity in such orders. However **this Court reiterates that a Magistrate or any other Court competent to take cognizance is required to pass an order** which, need not necessarily be elaborate, and must *prima facie* reflects application of mind and indicates that the order has been passed considering the police report and the any other records. Such orders are necessary to avoid, or at least minimize, challenges to orders taking cognizance.

77. For the reasons stated, the Court is of the view that the petitions have to be dismissed.

78. Hence, the following:

ORDER

(i) Petitions are ***dismissed.***

(ii) Since the FIR is registered in 2013, both sides shall co-operate for early disposal of the proceedings before the Trial Court.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN/CHS