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Court : Rajasthan

Decided On : Apr-02-1986

Reported in : 1986WLN(UC)693

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Criminal Revision No. 93 of 1985

Appellant : Mahadeo Singh

Respondent : Gaje Singh

Disposition : Petition dismissed

Judgement :

Mohini Kapoor, J.

1. This revision petition is directed against the order of the learned A.C.J.M., Neem-ka-Thana, dated January 16, 1985, by which he has directed that cognizance be taken against two accused under Section 5/6 of the Child Marriage Restraint Act and they have been directed to be summoned.

2. The facts of the case in brief are that on 5th May, 1984, the non-petitioner Gaje Singh, filed a complaint in the Court of A.C.J. M., Neem-ka-Thana, on the allegations that Rohitash s/o Mahadeo Singh and Smt. Bodi. and Santosh, daughter of Surja Ram, who were both about 11-12 years of age were married on

9th May, 1983. The social reformers tried to intervene in the matter but the parents of the boy and girl did not agree and performed the marriage. A complaint was, therefore, filed to prosecute those persons under Sections 5 and 6 of the Child Marriage Restraint Act, (here in after referred to as the Act). Upon this complaint, it was ordered by the learned A.C.J.M. that it may be put up on 17th May, 1984, for recording the statement of the complainant. The statement of the complainant was recorded on this date and 6th June, 1984, was fixed for recording the statement of witnesses. Eventually the witnesses were examined on 6th November, 1984, and arguments were heard on January 16, 1985, when the impugned order was passed. The main question in this petition, is as to when cognizance of the offence was taken by the learned Magistrate. The offences under Sections 5 and 6 of the Child Marriage Restraint Act are punishable with imprisonment upto three months and under Section 468(2)(b), no Court can take cognizance of an offence after the expiry of period of limitation, which in the present case is one year. The complaint was presented on 5th May, 1984, i.e. within a period of one year and it is to be seen as to when the learned Magistrate took cognizance of the offence made out in the complaint presented by the respondent. The learned Counsel for the petitioner has contended that in the order dated January 16, 1985, it has been specifically ordered by the learned Magistrate that on perusal of the record, it appears that prima facie case under Sections 5 and 6 of the Act is made out and he takes cognizance against two accused for the above offences. According to the learned Counsel for the petitioner, it has been specifically stated in the order that the Magistrate is taking cognizance against two accused persons and as such it can be said that the cognizance was taken only on 16-1-1985 and not before that. As against this the contention of the learned Counsel for the respondent is that cognizance was taken by the Magistrate as soon as he found that the complaint disclosed the commission of an offence and he proceeded to make an inquiry under Section 200 of the Criminal Procedure Code.

3. Section 190 Cr. PC provides for taking cognizance of an offence, which reads as: The cognizance, which is taken by the Magistrate is of the offence disclosed in the complaint on police report or the information received from any other person or the knowledge of the Magistrate himself and cognizance is not taken of the offender. This matter has been the subject matter of the decisions in various

decisions of the Supreme Court and it is now settled that cognizance is taken of the offence. It is to be seen in the present case as to on what date, it can be said that the Magistrate took cognizance of the offence.

4. In *R.R. Chari v. The State of Uttar Pradesh* : 1951 CriLJ775 , the applicant was suspected to be guilty of certain offence under the Prevention of Corruption Act. The police applied for warrant of his arrest under Section 3 of the Prevention of Corruption Act and continued investigation. Subsequently, sanction for prosecution was obtained and the appellant was challaned. His contention was that the Court took cognizance of the offence on the date when warrant for his arrest was issued and as on that day, there was no sanction of the Government for his prosecution, therefore, the initiation of the prosecution against him, without the sanction of the Government was illegal. In such circumstances, considering the provisions of Section 190, it was held as under:

Before it can be said that any Magistrate has taken cognizance of any offence under Section 190, he must have applied his mind to the offence for the purpose of proceeding in a particular way as indicated in the subsequent provisions of Chapter proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202, When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of the 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.

5. In *Ajit Kumar Dalit v. State of West Bengal and Anr.* : AIR 1963 SC765 , it was observed as under:

The word 'cognizance' has no esoteric or mystic significance in criminal law or procedure. It merely means to become aware of and when used with reference to a Court or Judge, to take notice of judicially. Taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence. Where the statute prescribes the materials on which alone the judicial mind shall operate before any step is taken, obviously the statutory requirement must be

fulfilled. But statutory, provision apart, there is no set material which must exist before the judicial mind can operate.

6. In *Narayan Das Bhagwan Das Madhavdas v. The State of Bengal* AIR 1959 SC 1110, the point urged on behalf of the appellant was that when the Magistrate issued the warrant of arrest against the appellant, he could not have done so without having previously taken cognizance of the offence. It was contended that the authorization required under Section 23(3) of the Foreign Exchange Regulation Act was not obtained till January, 1933 and the cognizance taken by the Magistrate, in September, 1952, was without jurisdiction. It was held as under:

As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuing of a search warrant for the purpose of an investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance is taken of an offence. It is only when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Chapter XVI of the Code of Criminal Procedure or under Section 204 of Chapter XVII of the Code that it can be positively stated that he applied his mind and therefore had taken cognizance.

7. Again in *Devarapali Lakemi Narayana Reddy and Ors. v. Narayana Reddy and Ors.* 1976 SCC 252, the question arose, whether the Magistrate, who receives the complaint disclosing the offence triable by court of Sessions forwards it to police for investigation under Section 156(3) of the Code. It was held as under:

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. The Magistrate has discretion in the matter. If on a reading of the complaint he finds that the allegation there in disclosed a cognizable offence and the forwarding of the complaint to the a 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.

Now, 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, 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.

8. Upon receiving a complaint, the Magistrate applies his mind for the purpose of proceedings under Section 200 Cr.PC and the succeeding provisions of Chapter XV of the Code of 1973. If he does so, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a) of the Code. If instead of proceeding under Chapter XV he takes some other action, such as issuing warrants for the purpose of investigation or he orders investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.

9. The observations of Justice Das Gupta in the case of Superintendent and Rememberancer of Local Affairs West Bengal v. Abani Kumar Banerji : AIR1950 Cal437 was approved by the Supreme Court in the case of R.R. Chari The State of Uttar Pradesh v. Narayandas Bhagwandas v. State of West Bengal (supra) and it may be reproduced here..taking cognizance has not been defined in the Criminal Procedure Code and I have no desire no 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), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. 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.

10. In view of the legal pronouncement of the Supreme Court, I have no hesitation in coming to conclusion that when the learned Magistrate upon receiving the complaint and applying his mind, directed to proceed under Section 200 of the Code of Criminal Procedure, and recorded the statement of the complainant, then it amounts to taking cognizance of offence. This order was passed on May 5, 1984, and was within the period of limitation, prescribed under Section 468 of the Code. The Magistrate in this case, did not order further investigation by the police or the issue of a search warrant or any similar act but ordered to examine the complainant. A reading of Section 200 Cr.PC, would go to show that a Magistrate after taking cognizance of an offence can proceed further to examine upon oath the complainant and the witnesses present, if any. It shows that the complainant is examined only after the Magistrate has taken cognizance of an offence. This being the position, cognizance of the offence in this case was taken on 5th May, 1984, and does not in any way vitiate the proceedings against the petitioner.

11. In the result, this revision petition has no force and is hereby dismissed. The record of the trial Court be sent back for proceeding further in the matter.