PAPER PRESENTATION ON

'COGNIZANCE OF OFFENCE UNDER IPC AND BNS'

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SESSION I

BY

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Meaning of '**Cognizance**':

The meaning of Cognizance derived from Latin word 'cognoscere' which means to know. The word Cognizance is not defined in CrPC/BNSS. In law, the common understanding of the term 'cognizance' is "taking judicial notice by a court of law on a cause presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter 'judicially'.

The word 'cognizance' is used in the Code to indicate the point when the Magistrate or Judge takes judicial notice of an offence. It is a word of indefinite import, and is perhaps not always used in exactly the same sense. (as held in ***Darshan Singh Ram Krishan V. State of Maharashtra (1971)2 SCC 654).***

'Taking of cognizance' means cognizance of an offence and not of an offender. Once the Magistrate takes cognizance of an offence, it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons set up by the police some other persons are involved, it is his duty to proceed against those persons.

A Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence, which is said to have been committed. Taking cognizance is entirely an act of the Magistrate. (held in ***Sarah Mathew V. Institute of Cardio Vascular Diseases (2014 CrLJ 586).***

In ***Emperor V. Sourindra Mohan Chuckerbutty*** (Dated 07th March, 1910) reported in (1910) ILR 37 CAL 412 it was held 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".

In ***Supreintendent and Remembrancer of Legal Affairs, West Bengal V. Abani Kumar Banerjee*** reported in AIR 1950 CAL 437 *it was held that* "What is taking cognizance has not been defined in the Code and I have no desire 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) of Criminal Procedure Code, 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"

In ***Gopal Marwari v. Emperor*** (A.I.R 1943 Pat. 245), It was observed that the word 'cognizance' is used in the Code to indicate the point when the Magistrate or a Judge first takes judicial notice of an offence. It is a different thing from the initiation of proceedings. It is the condition precedent to the initiation of proceedings by the Magistrate. The court noticed that the word 'cognizance' is a word of somewhat indefinite import and it is perhaps not always used in exactly the same sense.

In ***R.R.Chari V. The State of Uttar Pradesh*** reported in 1951 AIR 207, Honourable Supreme Court observed that it can be said that any Magistrate has taken cognizance of any offence under S.190 CrPC 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. When the Magistrate applies his mind or 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 u/S. 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

Cognizance refers to the legal acknowledgment of an offense by a competent court. It does not mean the court has determined the guilt of the accused; rather, it signifies that the court has taken note of the case and is willing to proceed with it.

Cognizance under Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is a critical step in the criminal justice process, marking the formal initiation of legal proceedings. It is the moment when a court applies its judicial mind to an offence and decides whether there is sufficient ground to proceed. Without cognizance, no criminal trial can begin, making it the cornerstone of the legal system. The newly implemented criminal laws in India, introduced in 2023, continue to uphold the principles of cognizance while refining procedural aspects for greater efficiency and justice delivery.

WHEN A MAGISTRATE MAY TAKE COGNIZANCE:

Chapter XV of Bharatiya Nagarik Suraksha Sanhita (for short, BNSS) under the caption 'Conditions requisite for initiation of proceedings' employs the word 'cognizance'. Section 210 of BNSS explains Cognizance of offences by Magistrate. Sub-section (1) states that Subject to the of other provisions of the 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, **including any complaint filed by a person authorised under any special law,** which constitutes such offence;

(b) upon a police report **(submitted in any mode including electronic mode)** of such facts;

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

Therefore, according to Section 210 of BNSS, a Magistrate may take cognizance of any offence upon receiving a complaint, including from a person authorised under any special law, which constitutes such offence, upon a police report, even through electronic mode, upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

Corresponding old law:

This Section corresponds to Section 190 of Code of Criminal Procedure, 1908 with certain changes. The law under the Section remains substantially the same. In Clause (a) to Sub section (1) of Section 210 the new words 'including any complaint filed by a person authorised under any special law' are added. In Clause (b) the words 'submitted in any mode including electronic mode' are added. Thereby, the cognizance on complaint made by a person authorised under any special law is also added with new Section 210 BNSS.

Scope of the Section:

Criminal proceedings are initiated by a Magistrate taking cognizance of the offence/offences alleged, and it appears that there is no distinction between the words 'initiation of proceedings' and 'institution of proceedings'. Criminal proceedings are in fact not instituted until the Magistrate has taken cognizance of the offence/offences alleged under one or other of the clauses Sub-section (1) of this Section. The mere presentation of a challan by the police under 173 CrPC/193 BNSS in a Magistrate's Court, or the mere presentation of a complaint by a private individual, does not constitute the institution of criminal proceedings.

It is clear from the words 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 Sub-section (1) of Section 210 BNSS. The first contingency evidently is in respect of non-cognizable offences as defined in the Sanhita on the complaint of an aggrieved person. The second is on a police report, which evidently is the case of 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.

The language of this Section is in marked contrast with that of the other sections of the group under the same heading. Trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Sanhita in respect of cognizable cases.

DEFECT IN INVESTIGATION AND COGNIZANCE BY COURT:

A defect or illegality in an investigation, even a serious one, does not necessarily invalidate the trial unless it caused a miscarriage of justice. Honourable Supreme Court in this regard held that '*it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based therein'* in ***H.N.Rishbud V. State of Delhi*** reported in **AIR 1955 SC 196.** This is a landmark judgment by Honourable Supreme Court of India, delivered on December 14, 1954, that clarified the legal consequences of procedural irregularities in a criminal investigation. This judgment is significant in Indian criminal law for establishing that a court's ability to take cognizance of a case is not removed by an illegal investigation, but the court must ensure that procedural defects do not result in an unfair trial.

Whether the cognizance is of offence or offender:

Cognizance is taken of an offence and not of offenders. Cognizance of any offence can be taken by the Magistrates specified in Section 210 Sub-section (1) in any of three cases mentioned in Clauses (a) to (c) therein.

In legal parlance, the act of taking cognizance is with reference to the offences and not with reference to the offenders. As such, while taking cognizance the Magistrate must be deemed to have taken cognizance of the entirety of the case in respect of all offences disclosed by the materials collected in the shape of statements recorded under Section 180 BNSS/161 CrPC and of the documents enclosed along with the report filed by the police. At the stage of taking cognizance only *prima facie* case is to be seen, cognizance is taken of the offence and not of the accused (as held in ***Kishun Singh V. State of Bihar*** reported in 1993(2) SCC 16).

What has to be considered while taking cognizance:

Section 210 BNSS authorises the Magistrate to take cognizance under any of the three clauses. But, for taking cognizance, a Magistrate requires something more. The Magistrate must apply his mind to the facts of the case and decide on a course of action in furtherance of such application of mind for the purpose of further proceeding with the matter in accordance with the subsequent provisions of the Sanhita. At the time of taking cognizance of the offence, the Court is required to consider the averments made in the complaint or the charge-sheet filed under Section 193 BNSS/173 CrPC. It is not open for the Court to analyse the evidence produced at the stage and come to the conclusion that no prima facie case is made out for proceeding further in the matter. (Honourable Supreme Court held in **Subramanian Swamy V. Manmohan Singh** reported in (2012)3 SCC 64).

At the time of taking cognizance the Court, after application of mind to the evidence of the witnesses and the suspected conditions of the defence, has to satisfy itself that a *prima facie* case is made out to proceed with against the person accused. The evidence, at the stage, is not to be meticulously examined as is required to be examined at the final stage and the cognizance can be taken if there is a *prima facie* evidence to proceed against the accused.

The clauses of sub-section (1) are not concerned with the question whether the offence of which the Court is taking cognizance is cognizable or not, that is to say, whether the offence could properly be investigated by the police or not. The section merely refers to the manner in which a Court may come to be acquainted with the commission of an offence and may thereupon proceed to take cognizance of that offence. It is not concerned with the circumstances under which the person from whom a complaint is received

comes to make a complaint (clause(a)), or the police officers from whom a report is received comes to make the report (clause (b)). It is immaterial that a person making a complaint adopted illegal means to gather the facts, or that the police officer making a report made an unauthorised investigation. This section is not concerned with antecedent illegalities.

Cognizance and commencement of proceedings are not synonymous in their connotation. Cognizance is something prior to, and does not necessarily mean, the commencement of the judicial proceedings against any one. Proceedings commence only when the accused person is made a party before the Court. (Honourable Supreme Court held in ***Gopal Marwari V. Emperor*** *reported in 1944 CrLJ 177).*

The procedure involved while taking cognizance is that there must be application of judicial mind. Such application of judicial mind based on the materials, oral statements, documents as well as other information on record. Whether it is a complaint, or a police report, or upon information of a person other than a police officer, firstly we have to go through the facts presented. We have to see those facts must from all the material available on record and none else. Secondly, we have to see what ingredients of the relevant offence attracts to the available facts and corresponding to the subject. Then thirdly apply the facts to the law to arrive at a conclusion by a process of reasoning with the relevant facts and analyse in the light of the law applicable. The cognizance of an offence is nothing but a reduced reproduction of facts, or application of a formula to the available facts. The correct reasoning and application of mind would give the best result in decision. An offence being acts of commission/omission made punishable under the law for the time

being, cognizance can be taken only if the allegations and disputes attract the Penal Provisions in the enactment.

Reasoned order not necessary:

The Court need not undertake an elaborate enquiry at the time of taking cognizance, it need not pass a detailed/reasoned order, as held in ***State of West Bengal V. Mohd. Halid*** *reported in AIR 1995 SC 785.* In the same manner, the Magistrate is not required to mention the documents, which he considered for satisfying himself to take cognizance. While taking cognizance, the Court is not required to weigh the evidence in detail, but is required to see whether prima facie offence is made out or not.

Can the Honourable High Court or Honourable Court of Session take cognizance of an offence directly?

In view of the provisions of section 213 BNSS/193 CrPC, no Court of Session can take cognizance of any offence as a Court of original jurisdiction, unless committal by Magistrate. It can take a case for trial only after it is committed for trial by a Magistrate who alone is empowered to take cognizance under Section 210 BNSS/190 CrPC. But a special provision has been made in Section 222 BNSS/199 CrPC that Court of Session alone can take cognizance of an offence of defamation against the President of India and other dignitaries mentioned in that sub-section. Excepting this one provision, a Court of Session cannot take cognizance of an offence.

In respect of cognizance by the Sessions Court Section Section 213 BNSS speaks that except as otherwise expressly provided by this Sanhita 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 Sanhita. The rider is only committal by the Magistrate, but there is no bar to take cognizance by Sessions Courts.

In this regard, the law laid down by Honourable Supreme Court in **Dharam Pal Vs. State of Haryana**, AIR 2013 SC 3018 (Five-Judge Bench) clearly speaks that Sessions Court can take cognizance after committal.

As per Section 6 of BNSS, Honourable High Court is also a criminal Court, but there is no provision in BNSS empowering Honourable High Court to take cognizance of any offence. When a publication of a newspaper or book or any document is ordered to be seized under Section 98 BNSS/95 CrPC, proceeding to set aside that order can be taken only in the Honourable High Court under Section 99 BNSS/96 CrPC.

PRE-CONDITIONS FOR TAKING COGNIZANCE:

Section 210 BNSS is also subject to Sections 215 to 222 of BNSS (195 to 199 of CrPC) and other provisions in other enactments, which require certain pre-conditions for taking cognizance.

Pre-requisites while taking cognizance:

Section 224 BNSS/201 of CrPC states the Procedure by Magistrate not competent to take cognizance of the case. If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, (a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect; (b) if the complaint is not in writing, direct the complainant to the proper Court.

Chapter XVI BNSS states about complaints to Magistrates. Section 223 BNSS/200 CrPC states **Examination of complainant.** This section states while taking cognizance, a Magistrate shall examine the complainant and witness, if any, on oath, in writing. Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. Sub-section (2) states that Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless (a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and (b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

Section 225 BNSS/202 of the Code states that on receipt of the complaint, the Magistrate concerned may postpone the issue of process against the accused, when the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, 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. The proviso to Section 225 BNSS/202 of the Code states 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 Session; 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 223 BNSS/200 CrPC. (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: 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. (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.

According to Section 215(1)(a)BNSS/195 (1) (a) of the Code, No Court shall take cognizance the offences under Sections 206 to 223 BNS/172 to 188 of IPC or abetment or attempt or criminal conspiracy to commit such offence, except upon the complaint of a public servant concerned or some other public servant to whom he is administratively subordinate. Section 215(1)(b) BNSS/195(1)(b) of the Code explains that no Court shall take cognizance of offences under Sections 229 to 233, 236, 237, 242 to 248 and 267 BNS in respect of a document produced or given in evidence in a proceeding in any Court, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court or by such officer of the Court.

Therefore, while taking cognizance of the above stated offences, the Court shall keep in mind whether any complaint from the public servant or from the Court as the case may be.

Previous Sanction:

Section 217 BNSS/196 of the Code explains the Prosecution for offences against the State and for criminal conspiracy to commit such offence. Sub Section (1) of Section 217 BNSS states that "No Court shall take cognizance of-

(a) any offence punishable under Chapter VII or under section 196, 299 or 353(1) of BNS (153A, section 295A or sub-section (1) of section 505 of the Indian Penal Code), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 47 BNS/108A IPC, except with the previous sanction of the Central Government or of the State Government.

(2) No Court shall take cognizance of— (a) any offence punishable under section 197 or sub-section (2) or sub-section (3) of Section 353 of BNS or 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence,

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(3) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 61(2) BNS/120B of the Indian Penal Code, other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 215BNSS/195 CrPC apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (2) and the District Magistrate may, before according sanction under sub-section (2) and the State Government or the District Magistrate may, before giving consent under sub-section (3), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section 174(3) BNSS/155(3) CrPC.

Section 218 BNSS/197 CrPC relates to prosecution of Judges and public servants while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance except with the previous sanction of the concerned Government.

Therefore, for the offences against State as per Section 217 BNSS/196 CrPC and prosecution of Judges and Public servants while discharging their official duties as per Section 218 BNSS/197 CrPC, we have to careful enough to observe whether the previous sanction of the concerned Government obtained by the prosecution. Except previous sanction, in the above category of cases, no Court shall take cognizance.

Section 219 BNSS/198 CrPC states that No Court shall take cognizance of an offence punishable under Sections 81 to 84 BNS/Sections 493 to 498 of IPC except upon a complaint made by some person aggrieved by the offence.

Section 220BNSS/198A CrPC states that No Court shall take cognizance of an offence punishable under section 85 BNS/498A IPC except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by

her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

Section 221BNSS/198B CrPC states that No Court shall take cognizance of an offence punishable under section 67 BNS/376B of IPC where the persons are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband.

Section 222 BNSS/199 of CrPC states that No Court shall take cognizance of an offence punishable under Section 356 BNS (Sections 499 to 502 IPC) except upon a complaint made by some person aggrieved by the offence. Provided that where such person is child, or is of unsound mind or is having intellectual disability or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

DISCRETION:

While taking cognizance, discretion must be exercised very cautiously by weighing the cause in judicial scales having regard to the facts and circumstances. In this regard, courts must carefully decide and cautiously examine as to whether the complaint filed is an outcome of personal vendetta or outburst of animosity/enmity or originated from evil impact of fickle mind so as to wreak vengeance against the opponent. Else, malicious prosecutions would be rampant putting at peril the valuable rights and liberties of citizens through courts themselves. Therefore, if a litigant or a citizen knocks at the doors of justice with a grievance, a Judicial Officer must apply judicial mind

coupled with discretion. Such exercise should not be arbitrary, capricious, whimsical, fanciful and casual. An ordinary individual cannot take just and right decision, but by a person with legal experience, knowledge and intelligence on the application of law with reference to the facts of a given case. There may be variety of grievances/cases and every grievance cannot be received as a matter of routine. The Judicial Officer must be able to classify amongst the cases so as to decide whether a particular case is fit for taking cognizance or not. We have different judicial forums and each forum can entertain certain nature of cases with exclusive purview and jurisdiction. No Court shall encroach into the jurisdiction of the other forum of jurisdiction, which defeats the very purpose behind establishment of the forum concerned.

It must be taken note of, in cases where police report is submitted for taking cognizance, the Magistrate may resort to one of the three options: (i) he may accept the report and take congnizance of the offence and issue process; (ii) he may disagree with the report and drop the proceedings or (iii) he may direct further investigation under Section 175(3) BNSS/156 (3) CrPC and require the police to make a further report. In a case where the report on the other hand states that, in the opinion of the police, no offence appears to have been committed, again, the Magistrate has three opinions viz., (a) he may accept the report and drop the proceedings; (b) he may disagree with the report and by holding that there is sufficient ground for proceeding further, take cognizance of the case and issue process or (c)he may direct further investigation to be made by the police under subsection 175(3) BNSS/156(3) CrPC.

(i) AIR 1976 Supreme Court 1672 D. Lakshminarayana Vs. V. Narayana What is meant by "taking cognizance of an offence" by the 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 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. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Sec. 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Sec. 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190 (1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the precognizance stage and avail of

Section 156 (3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156 (1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding." Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

(ii) AIR 1985 Supreme Court 1285 Bhagwant Singh Vs. Commissioner of Police and another Magistrate deciding not to take cognizance of offence or drop proceedings against some persons mentioned in F.I.R. must give notice and hear first the informant. In a case where the Magistrate to whom a report is forwarded under sub-sec.(2) of S.173 decided not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. However, either from the provisions of the Criminal Procedure Code or from the principles of natural justice, no obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing

such person an opportunity to be heard at the time of consideration of the report can be spelt out, unless such person is the informant who has lodged the F.I.R. But, even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of S.173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process.

(iii) (1993) 2 Supreme Court Cases 16 ***Kishun Sing and others Vs State of Bihar*** Sessions Court has jurisdiction, on committal of a case to it, to take cognizance of offence of persons not named as offenders, whose complicity in the crime comes to light from the material available on record – Hence on committal under S.209, Sessions Judge justified in summoning, without recording evidence, the appellants not named in police report under S. 173 to stand trial along with those already named therein. Sessions Court having jurisdiction under S.193, on committal, the restriction on the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. "The object of Section 190 is to ensure the safety of a citizen against the vagaries of the police by giving him the right to approach the Magistrate directly if the police does not take action or he has reason to believe that no such action will be taken by the police. Even though the expression 'take cognizance' is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information

and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. Cognizance is in regard to the offence, not the offender. This Judgment is also affirms the constitutional bench judgment in ***Dharam Paul*** supra.

(iv) 1997 Supreme Court Cases (Cri) 415 **Rashmji Kumar (smt) Vs. Mahesh Kumar Bhada** It is fairly settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be. It was held in State of Bihar V. Rajendra Agarwall (1996 (8) SCC 164) that it is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence, and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters.

(v) 1998 (4) Crimes 543 Ponnal @ Kalaiyarasi Vs. Rajamanickam and 11 others No doubt, it is true that the complaint filed by a private party can be dismissed by the learned Magistrate under Section 203 Cr.P.C., if he thinks that there is no sufficient ground for proceeding. While exercising his discretionary powers, the learned Magistrate should not allow himself to evaluate and appreciate the sworn statements recorded by him under Section 202 Cr.P.C. All that he could do would be, to consider as to whether there is a

prima facie case for a criminal offence, which, in his judgment, would be sufficient to call upon the alleged offender to answer. At the stage of Section 202 Cr.P.C. enquiry, the standard of proof which is required finally before finding the accused guilty or otherwise should not be applied at the initial stage.

CIVIL DISPUTE:

(vi) (2009) 1 MLJ (Crl) 352 **P. Ashok Kumar Vs. Inspector of Police** In the present matters, it is ex facie apparent that, in spite of having weighed the nature of allegations in judicial scales and thereby knowing fully well that legally are not supposed to refer the civil disputes for police investigation or take cognizance by themselves, the Judicial Officers concerned, with ulterior motives and to oblige the demand of the Bankers, illegally imputed criminal flavour to civil disputes, which action is not only inappropriate, and as such legally untenable, but elicits their unwanted intention in aiding one party to intimidate the other party. The basic premise is, once a matter is found to be purely civil nature, the scope and extent of issues covering the same cannot take on a criminal character, for, both the civil and criminal disputes are mutually exclusive. Obviously, the reasons for these Bankers/Financial Institutions trespassing into the area of criminal law remedy is that civil law remedies are time consuming; further, by obtaining orders for police investigation, they can exert pressure upon the borrowers through police to a considerable extent by imbibing the fear of arrest or being subjected to ignominy at the hands of police and ultimately, with ease, they could collect the principle amount plus exorbitant rate of interest. In the complaints taken on file, such break-up figures of principal and interest are not mentioned. Unfortunately, the Magistrates, who have been repeatedly advised and guided

by the Hon'ble Apex Court to exercise great caution in that regard, have abruptly failed in adhering to such guidance, as a result of which, the immersion of civil disputes with criminal charges is immensely growing with each passing day as reflected in the statistics furnished before this Court. Day in and day out, hundreds of such complaints have been entertained by some of the Magistrates and cognizance is taken. Humanly, it is impossible if there is proper application of mind. Obviously, such cognizance is taken by the Magistrates on the mere request of the Bankers with an ulterior motive and in collusion and conspiracy with them. To conclude, as remarked by the Supreme Court, there is no special charm or any magical formula in the expression 'taking cognizance' which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to take further judicial action.

APPLICATION OF JUDICIAL MIND AND REASONS:

(vii) **Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others** (1998) 5 SCC 749 (supra): "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The

Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

(viii) **Sunil Bharti Mittal v. Central Bureau of Investigation** (2015)4 SCC 609, which reads thus:

"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.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if

no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

(ix) **Lalankumar Singh and Others v. State of Maharashtra** 2022 SCC OnLine SC 1383 (supra), has observed thus: "38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation supra.

RUBBER STAMP ORDERS:

Hon'ble Supreme Court has deprecated the practice of taking cognizance through "Rubber Stamp" orders. The Hon'ble Supreme Court has made it very clear that taking cognizance is a judicial act, which requires application of mind. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is a prima facie case against accused persons. Of course, the order need not contain detailed reasons. Taking cognizance by using 'rubber stamp' refers to the mechanical order of cognizance. Such order indicates that the Court has taken cognizance without actually applying its mind to the facts and legal requirements. Honourable

constitutional Courts held that the cognizance taken by the Court by means of a Rubber Stamped order is patently illegal.

In ***Pawan Kumar Sharma Vs. State of Uttaranchal*** (Crl.A.No.1692 of 2007 (ASLP Crl. No.4701 of 2007) Honourable Supreme Court has dealt with this issue and the relevant portions of the judgment is extracted hereunder :

> "In the State of Uttaranchal (now known as State of Uttarkhand) there exists a strange practice. The Magistrate take cognizance of offence and issue summons in terms of Section 202 of the Code of Criminal Procedure on "rubber stamped" orders.
>
> A distinction exists between an order taking cognizance and an order issuing process. Before process is issued, the Court concerned must apply its judicial mind. It may, not only apply its mind as to whether on the basis of the allegations made in the complaint petition and the statements made by the complainant and his witnesses, a prima facie case has been made out for issuing processes but also must consider as to whether a case has been made out in terms of proper provisions of the Penal Statute for issuance of process for alleged commission of the offences vis-a-vis, the allegations made.
>
> Appellant herein seriously contend that even if the submissions made in the complaint petition are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance under Section 304(B) of the IPC."

In **State of Karnataka V. Pastor P.Raju** reported in (2006)6 SCC 728 it was held that:

> "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."

LIMITATION FOR COGNIZANCE:

The aspect of placing limitation on any remedy is based on the legal maxim "Interest reipublicae ut sit finis litium" i.e., It is in the interest of the state there must be an end to litigation. Even though the Limitation Act, 1963 is the statute of limitations, it doesn't cover the limitation on the taking of cognizance of offences under different statutes including IPC/BNS. The Limitation Act only prescribes limitations with regards to appeals, revisions and applications from criminal cases to different Courts.

Chapter XXXVI (Sections 467 to 473) of the Code of Criminal Procedure/Chapter XXXVIII of the BNSS (Sections 513 to 519) are relevant chapters and sections under the title Limitation for taking cognizance of certain offences. Section 513 of BNSS defines that period of limitation for taking cognizance as prescribed under Section 514. Section 514 of BNSS prescribes Bar to taking cognizance after lapse of period of limitation. As per Section 514 (2) of the Act the period of limitations are prescribed as follows:- (a) six months, if offence is punishable with fine only, (b) 1 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 exceeding one year but not exceeding three years.

Therefore, as per Section 514 (1) to (3) and explanation of the BNSS no court can take cognizance of the offences if they are punishable with fine only, one year and three years if no complaint is made within six months, one year and three years respectively. The date of filing complaint under Section 223 or from the date of recording of statement U/s.173 of the Act is the relevant date to be considered. In case of multiple offences tried together as part of same

transaction, the period of limitation has to be determined by taking into consideration of the offence with severe punishment.

Sections 515 to 519 of the Act have to be considered while calculating the period of limitation to know the date of commencement and exclusion of time in certain cases. Section 515 (1) & (2) of the BNSS the period of limitation commences from the date of offence. If the date of offence is not known to the aggrieved person or investigating officer, the commencement of limitation starts from the date of knowledge. Further the day from which the period of limitation is to be calculated has to be excluded.

Sections 516 & 517 of BNSS deals with exclusion of time. In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be execluded. Provided (1) no such exclusion shall be made unless the prosecution relates to same facts and is prosecuted in good faith in a Court which due to defect of jurisdiction or cause of like nature unable to grant such relief (2) the period of stay against institution of the prosecution including the date of grant of such stay and the date of withdrawal of such stay, (3) period of notice given for prosecution, (4) period spent in getting previous sanction or consent of Government wherever mandatory including the date of application and date of sanction (5) period of absence of offender from India or absconded/concealed (6) (Sec.517) if the limitation expires on the last date of limitation that day shall be excluded at the time of calculating the period of limitation.

As per Section 518 of the Act a fresh cause of action/fresh period of limitation starts at every moment during which the offence continues and Section 519 of the Act gives power to the concerned Court to take cognizance by condoning the delay in launching the prosecution if it is satisfied with the explanation of the delay or in the interest of justice.

IMPORTANT DECISIONS ON THE ASPECT OF LIMITATION IN CRIMINAL OFFENCES:-

(i) The Hon'ble Supreme Court of India in **Sarah Mathew vs Inst., Cardio Vascular Diseases & Ors** reported in AIR 2014 SC 448 to the effect that "for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance." The explanation to Section 514 of the Act covers this situation where it categorically gives the date of filing of the complaint or date of recording the statement.

(ii) The Hon'ble Supreme Court of India in **Ramesh and Ors Vs. State of Tamilnadu** reported in AIR 2005 SC 1989 to the effect that "14. .....The first limb confers power on every competent court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that is necessary so to do in the interests of justice. It is true that the expression "in the interest of justice" in Section 473 cannot be interpreted to mean in the interest of prosecution. What the court has to see is "interest of justice". The interest of

justice demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 CrPc in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying the rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of the period of limitation in the interests of justice. This is only illustrative, not exhaustive."

(iii) The Hon'ble Supreme Court of India Atiq in **Ur Rehman Vs. Municipal Corporation of Delhi** and Another reported in 1996 (3) SCC 37 to the effect that A conjoint reading of the provisions of Cr.P C. therefore, unambiguously suggests that in the absence of courts of special jurisdiction i.e. Municipal Magistrates to be appointed under Section 469 of the Act, a Judicial Magistrate of the First Class or a Metropolitan Magistrate, as the case may be, shall have the jurisdiction and powers to try the offences under the Act in accordance with the procedure envisaged by Section 467 of the Act and in accordance with the limitation the time prescribed for initiation of the criminal proceedings under Section 471 of the Act. This interpretation is in accordance with the position that every offence committed under the Indian Penal Code or under any other law for the time being in force must be tried and an accused cannot be permitted to raise any objection with regard to the forum for trial of the offence, where the specific forum has not been constituted under the Act because the law does not contemplate an offence, to go untried. Where, no court of a Municipal Magistrate has been constituted under Section

469 of the Act and no Notification has also been issued conferring the powers of a Municipal Magistrate on a Particular Judicial Magistrate of the First Class or a Metropolitan Magistrate, as the case may be, the jurisdiction of an ordinary criminal court to take cognizance of the offences committed under the Act, rules, regulations or bye-laws made thereunder is exercisable by the courts of general jurisdiction established to try offences under the Indian Penal Code as well as the offences under any other law." In that case eventhough no powers of Municipal Magistrate was conferred on the Judicial First Class Magistrate the Hon'ble Supreme Court by taking into consideration of Section 4 & 5 of the Act conferred the jurisdiction on the Judicial Magistrate of First Class.

(iv) The Hon'ble Delhi High Court in Chanchal Bhatti v. State (NCT of Delhi) reported in 2011 Cr LJ 1195 (Del) held that Section 468 of the CrPC does not bar investigation of offences by the police even if the period of limitation for taking cognizance by the Court, prescribed under the said section, has expired.

(v) The Hon'ble Supreme Court of India in State of Rajasthan v Sanjay Kumar and Others reported in AIR 1998 SC 1919 that the period of limitation commences not on the date when the sample was taken but commences only on the date of receipt of the Government Analyst's Report within Section 469(1) (b) of the CrPC;

(vi) The Hon'ble High Court of Andhra Pradesh in Appu Ramani V. State of Andhra Pradesh reported in 1993 CrLJ 1974 (AP) while holding that the charge-sheet was not barred by limitation and that the cognizance was within time, laid down the following guidelines: 1. if a charge-sheet or

complaint is found to be not within limitation, the Court must give opportunity to the police officer who filed the charge-sheet or the complainant should satisfy the Court for condonation of delay; 2. delay should not be condoned as a matter of course, but with exercise of judicial discretion. Section 473 of CrPC should also be liberally construed; 3. accused must be heard before condoning delay under section 473 CrPC. 4. if the complaint or charge-sheet is filed within time, the Court has the power to return it for removal of defects; 5. if it is presented after removal of the defects within the time granted by the Court, and that day falls beyond the period of limitation, still the Court has to take cognizance of the case by duly taking into account the original date of filing the complaint or charge-sheet at the first instance; 6. limitation prescribed u/s 468 CrPC is to be reckoned with the date of filing the complaint/charge sheet at first instance and not with reference to the date of taking cognizance;

(vii). The Hon'ble Supreme Court of India in State of Punjab v. Sarwan Singh reported in AIR 1981 SC 1054 held that "The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art. 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant, must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The prosecution against the respondent being barred by limitation,

the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein is non est."

(viii). In Maya Rani Punj v. CIT reported in 157 IT 330 (SC), the Hon'ble Supreme Court observed that if a duty continued from day to day, then its non-performance from day to day was a continuing wrong.

(ix). In Bhagirath Kanoria v. State of M.P reported in AIR 1984 SC 1688 the Hon'ble Supreme Court laid the following guidelines to know whether a particular offence is a continuing offence or not:-

(i) the language of the statute which creates the offence;

(ii) the nature of offence; and

(iii) the purposes intended to be achieved by constituting the particular act as an offence.

CONCLUSION:

Cognizance is the gateway to the criminal justice system, ensuring that only valid cases proceed to trial. The new criminal laws (BNSS, BNS, and Bharatiya Sakshya Adhiniyam, 2023) preserve the essence of cognizance while introducing procedural improvements for efficiency. With strong judicial precedents and legal safeguards, the process of taking cognizance remains fair and effective.

Hon'ble Apex Court repeatedly advised and guided the Judicial Officers to exercise great caution while taking cognizance. Failure to adhere such guidance, results the immersion of civil disputes with criminal charges. Day in and day out, hundreds of such complaints have been filing before the Criminal

Courts with an ulterior motive to convert a civil dispute with criminal flavour. To conclude, as remarked by the Honourable Supreme Court, the expression 'taking cognizance' which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to take further judicial action.