

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.3651 OF 2023

Between:

Thiyagarajan Aniyampati Sivaswamy ... Petitioner

And

The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana
and others. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 18.04.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 3651 of 2023

% Dated 18.04.2023

Thiagarajan Aniyampati Sivaswamy

... Petitioner

And

\$ The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana
and others.

... Respondents

! **Counsel for the Petitioner:** Sri K.R.Raman

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

R.S.Associates for respondents

>**HEAD NOTE:**

? **Cases referred**

¹ (2015) 4 Supreme Court Cases 609

² (2013) 4 SCC 505

³ (2008) 2 SCC 492

⁴ (2008) 17 Supreme Court Cases 157

⁵ 2023 LiveLaw (SC) 3

⁶ 1992 Supp(1) SCC 335

⁷ (2015) 6 SCC 287

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.3651 OF 2023****ORDER:**

1. This Criminal Petition is filed to mainly on the ground of cryptic order passed by the Special Judge for trial of Cases under Economic Offences in C.C.No.59 of 2022, dated 10.10.2022 taking cognizance of offence under Sections 420, 406, 426, 468, 470, 471 and 120-B of IPC against the petitioner and others. The said cognizance order is as follows:

“The complaint is taken on file as CC 59/2022 against the Accused No.1 to 4 for the offence punishable U/s 448 of the Companies Act, 2013 and U/s.420, 406, 426, 468, 470, 471, 120-B of IPC. Issue summons to Accused No.1 to 4. Call on 21.11.2022.”

2. Learned counsel appearing for the petitioner would submit that the order taking cognizance has to be set aside as learned Sessions Judge has not given any reasons for taking cognizance.

3. Several quash petitions are being filed before this Court questioning the very cognizance order taken by the learned Magistrates or the Special Courts. The cognizance orders are

bereft of any reasons and bald assertions are made for taking cognizance; to illustrate,

i) it is mentioned in the cognizance orders that “having gone through the statements and other material, the court is satisfied to take cognizance” and accordingly summons are issued;

ii) As in the present case, it is mentioned in the cognizance order that “the complaint is taken on file against the accused for offences punishable U/s....”;

iii) Cognizance order, stamps are made and stamped on the document/complaint, Blanks are filled about the cognizance taken under the provisions and the next date of hearing and issuing summons to accused;

iv) In some of the cases in the remand report, police have prepared the notes of the Magistrate and the Magistrate has filled up the offences, date and signs the remand order.

4. The Hon’ble Supreme Court in the case of **Sunil Bharti Mittal v. Central Bureau of Investigation**¹ case held that the order of issuing process to accused to face criminal trial is a serious issue. Such summoning cannot be done on mere asking and the Court has to record reasons for summoning a person. In **GHCL Employees Stock Option Trust v. India**

¹ (2015) 4 Supreme Court Cases 609

Infoline Limited², the Hon'ble Supreme Court found fault with the order of the Magistrate in issuing summons when the Magistrate has not recorded his satisfaction about the *prima facie* case against the accused. In **Chief Enforcement Officer v. Videocon International Limited**³, the Hon'ble Supreme Court while discussing the expression 'cognizance' held that in criminal law 'cognizance' means becoming aware of and the word used with respect to Court or a Judge initiating proceedings in respect of an offence. Taking cognizance would involve application of mind by the Magistrate to the suspected commission of an offence. The Hon'ble Supreme Court in **Sunil Bharati Mittal's** case (supra), further held as follows:

“Sine Qua Non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the Court remains to consider

² (2013) 4 SCC 505

³ (2008) 2 SCC 492

judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.”

5. In **Fakhruddin Ahmad v. State of Uttaranchal and another**⁴ it is held as follows:

“17.Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.”

6. In **Deepak Gaba and others v. State of Uttar Pradesh and another**⁵, it was held as follows:

“21.....A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200

⁴ (2008) 17 Supreme Court Cases 157

⁵ 2023 LiveLaw (SC) 3

of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued.¹⁷ Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the 17 Birla Corporation Limited v. Adventz Investments and Holdings Limited and Others, (2019) 16 SCC 610; Pepsi Foods Ltd. (Supra); and Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420. Criminal Appeal No.2328 of 2022 Page 21 of 23 offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.”

7. In **Babu Venkatesh and others v. State of Karnataka and another** in Criminal Appeal No.253 of 2022 dated 18.02.2022, the Hon’ble Supreme Court held referring to the judgments in the case of **State of Haryana and others v. Bhajan Lal and others⁶** and **Priyanka Srivastava and another v. State of Uttar Pradesh and others⁷** held that it is for the Magistrate to verify the

⁶ 1992 Supp(1) SCC 335

⁷ (2015) 6 SCC 287

veracity of the allegations since complaints under Section 156(3) of Cr.P.C are made in routine manner and without any responsibility and only to harass certain persons. The Hon'ble Supreme Court has found fault with the Magistrate passing an order under Section 156(3) of Cr.P.C without following the law laid down in **Priyanka Srivastav's** case (supra) and also for non-application of mind to the facts.

8. Normally, the criminal courts pass orders taking cognizance;

- 1) When charge sheets are filed by the police;
- 2) When private complaints are filed under Section 138 of the Negotiable Instruments Act, Section 500 of IPC etc.
- 3) Complaints filed into Special Courts such as ACB, CBI, Economic Offences Court.
- 4) Protest Petition questioning the investigation being closed by the police in a criminal offence.
- 5) Reference by the Magistrate to police for the purpose of investigation after taking cognizance and if investigation is required for any specific reason U/s.200 Cr.P.C.

6) Though no cognizance is taken, however Magistrates/Special Courts referring mater for the purpose of investigation under Section 156(3) Cr.P.C

9. In view of the observations and directions of the Hon'ble Supreme Court in the judgments referred to supra, the act of issuing process and summoning the accused to face criminal trial is a serious issue and such orders directing summons to a person to face criminal trial cannot be on the basis of cryptic orders and it should be an order reflecting application of mind by the Presiding Officer while taking cognizance and issuing process.

10. Though elaborate discussion is not required for the purpose of issuing summons, the order taking cognizance should reflect that the Presiding Officer has grasp of the case. The contents of either the charge sheet/private complaint/protest petition are understood by the Presiding Officer and the cognizance orders should reflect that there is a prima facie case stating facts very precisely to summon the accused or refer a case for the purpose of

investigation or set aside the findings of investigation and summon the accused.

11. Judicial orders cannot be cryptic or vague or bald assertion that an offence is made out. It would not suffice to merely mention that cognizance is taken or that mere mentioning that the Presiding Officer is satisfied on the basis of the record that it is a fit case to take cognizance and issue summons. When the order does not reflect even briefly what the case is about, it is apparent that the Presiding Officer has not applied his mind judicially to the facts of the case before summoning the accused to face criminal trial and the orders are mechanically passed without even considering whether the allegations or the contents of such charge sheets/complaints make out a prima facie case.

12. However, elaborate discussion would be required at the stage of discharge under Sections 227, 239 or 245 of Cr.P.C.

13. In several cases it is found that the cognizance was mechanically taken and process and summons were ordered in cases which are purely civil disputes. To illustrate, in a money transaction when loan was taken and part of the amount was paid and remaining part unpaid, several cases are found wherein summons are issued, trial are conducted and later acquitted. In cases of criminal misappropriation, when there is no element of entrustment even then cognizance is taken and after examination of several witnesses, the court concludes that there is no entrustment and consequently acquits.

14. In cases under Section 498-A of IPC the relatives of the husband who have not even met the aggrieved/victim/wife are made parties on bald allegations. In cases of criminal trespass, where there are long pending civil dispute and though there is an order in favour of the accused restraining the complainant from entering into the property but still the charge sheets are

filed, though the details of the civil disputes are mentioned in the charge sheet, cognizance is taken.

15. These illustrations are only a few and several cases are regularly being filed in the High Court for quashing proceedings. As seen in appeals, criminal revisions, quash petitions, the same are allowed on the basis of there being no evidence whatsoever.

16. Non-application of mind which taking cognizance is resulting in a time consuming trial being undertaken. The criminal Courts are over burdened with cases and criminal trials are being undertaken for years together. A criminal trial runs in cases where there is no prima facie case. Not only the precious time of the Court is being wasted but also a person is forced to undergo rigmarole of criminal trial as a result of mechanically taking cognizance of a case. At the inception itself the courts are competent to either refuse to take cognizance or discharge the accused.

17. In view of the above, this Court deems it appropriate to pass the following directions which shall be scrupulously followed by the trial Courts on criminal side in the State of Telangana.

1) While referring a case under Section 156(3) of Cr.P.C, the Magistrate shall make a very brief note of the case and his satisfaction that it is a fit case to be investigated by the police;

2) In Sessions Cases, where the charge sheets are filed in the Magistrate's Court Magistrate shall take cognizance giving reference to the offence very briefly before summoning the accused. Though a committal order is written in detail, it is necessary that even at the time of taking cognizance of the charge sheet filed by the police, the Magistrate shall pass orders reflecting his satisfaction.

3) Similarly, in protest petitions being filed when the Court records the statement of witnesses produced or/and documents being considered appropriate orders be passed reflecting understanding of the Presiding Officer about the facts of the case.

4) As already stated, there need not be a detailed order while taking cognizance but should reflect the objective satisfaction of the Presiding Officer.

5) It is also observed in criminal trials that though the main witnesses turn hostile to the prosecution case, the other witnesses are being mechanically examined who have no bearing on the subject matter of the case. Magistrates may use their discretion in examination of such witnesses.

6) In sessions trials, when the main witnesses turn hostile to the prosecution case and learned Sessions Judge is of the opinion that no purpose would be served, if the remaining witnesses are examined, the learned Sessions Judge shall invoke powers under Section 232 of Cr.P.C and acquit the accused.

7) Precious time of the court shall not be wasted by recording evidence which to the knowledge of the Presiding Officer and the Public Prosecutor would not serve any useful purpose.

18. In view of above discussion, since the impugned cognizance order passed by the learned Sessions judge is bereft of any reasons and reflects non application of mind, cognizance order is set aside. However this order will not

preclude the learned Special Judge from taking cognizance by giving adequate reasons.

19. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous applications, if any, shall stand closed.

Registry is directed to circulate the judgment to the Courts concerned in the State of Telangana.

K.SURENDER, J

Date: 18.04.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.3651 OF 2023

Dt.18.04.2023

kvs