

COGNIZANCE – A BIRD'S EYE VIEW

by

The Hon'ble Mr. Justice R.Regupathi, Judge, High Court, Madras.

Though the word 'cognizance' (rooting from Old French "conoissance", based on Latin "cognoscere") or the words 'taking cognizance' have not been deciphered and defined in the procedural law, the same derive definite connotation from plethora of precedents and gain perceptive explanation and incisive exegesis from judicial pronouncements. While plain and dictionary meaning thereof is 'taking note of', 'taking account of', 'to know about', 'to gain knowledge about', 'awareness about certain things' etc. - and in Tamil "(transliteration:- "gavanikkapada vendiya vishayam". "gavanam"), in law, the common understanding of the term 'cognizance' is "taking judicial notice by a court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter 'judicially'". Thus, legal sense of taking judicial notice by a court of law or a Magistrate is altogether different from the view and idea a layman has for it; however, a broad and general comprehension is 'judicial notice by a court of law on a crime which, according to such court, has been committed against the complainant, to take further action if facts and circumstances so warrant' – in Tamil, (transliteration:- "Sattapadi nadavadikkai edukka thakka kutram thodarpana vazhakkai koapil eduppadhu kurithu aaraidhal").

In the language of the Hon'ble Apex Court employed in its earliest decision (Ref: [R.R.Chari v. State of U.P. AIR 1951 SC 207](#)), "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 offence".

Regarding the procedure involved in taking cognizance, to start with, there must be application of judicial mind to the materials, oral and documentary as well as other information submitted and apprised of. The litmus test of taking cognizance, whether it be relating to an offence on a complaint, or on a police report, or upon information of a person other than a police officer, is making a thorough assessment of the allegations by coming into grip with the facts presented and bringing into focus the law on the subject and

applying the facts to the law and thereafter arriving at a conclusion by a process of reasoning and evidencing that all relevant facts have been taken note of and properly analysed in the light of the law applicable. An abridged and formulaic reproduction of facts to the exclusion of relevant aspects involved from the focus of mind would undoubtedly result in decision without application of mind, for, informed reasoning is the heart of the matter. While exercising discretion, with the intelligible differentia and by weighing the cause in judicial scales having regard to the facts and circumstances peculiar to each single case, 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 and such exercise should not be arbitrary, capricious, whimsical, fanciful and casual, because just and right decisions cannot be taken by an ordinary individual but by a person with legal acumen, 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, and 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. There are different judicial forums in the country viz., Debts Recovery Tribunal, Industrial Disputes Tribunal, Central Administrative Tribunal, Military Tribunal etc. and each forum can entertain only such cases which come under their exclusive purview and jurisdiction. Taking cognizance of a case which ought not to have been taken cognizance of would amount to encroaching into the jurisdiction of the other forum and would defeat the very purpose behind establishment of the forum concerned. 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.

"Taking cognizance" of a case relating to an alleged offence is different from "cognizable case". A Police Officer can register an FIR only if a cognizable offence is made out and he cannot investigate into a non-cognizable offence without seeking permission from the court. Both the terms seem to sound similar but they stand for a meaning and context different

from each other. Though the word 'cognizance' is not defined in the Code of Criminal Procedure (in short 'Code'), 'cognizable offence' is defined in Section 2 (c) of the Code, which reads as follows:-

"Cognizable offence means an offence for which, and 'cognizable case' means a case in which a police officer may, in accordance with the First schedule or under any other law for the time being in force, arrest without warrant ", and Section 2(l) defines 'non-cognizable offence' as follows:-

"Non-Cognizable offence means an offence for which and 'non cognizable case' means a case in which a police officer has no authority to arrest without warrant."

Therefore, one must be clear about the application of the Code with reference to "taking cognizance" and distinction between "cognizable" and "non-cognizable" offences.

Once cognizance is taken, process may have to be issued against the person, who is alleged to have committed the offence and the procedure adumbrated must necessarily follow.

For better analysis of the scope of cognizance and the consequences arising therefrom, it is worthwhile to highlight the scheme of relevant provisions in the Code and the case laws touching the same.

Chapter XIV of the Code under the caption 'Conditions requisite for initiation of proceedings' employs the word 'cognizance' and the very first Section in the said Chapter viz., Section 190, outlines as to how cognizance of offences will be taken by a magistrate of an offence on a complaint, or on a police report or upon information of a person other than a police officer. Section 191 empowers the Chief Judicial Magistrate for transfer of a case taken on file suo motu by a Judicial Magistrate concerned since the Magistrate himself being a complainant, there may be scope for alleging prejudice or malice. By virtue of Section 192, a Chief Judicial Magistrate, who takes cognizance of an offence, by passing administrative order, transfer the case concerned to the file of any other Magistrate subordinate to him for inquiry or trial. Section 193 prohibits cognizance of any offence by a

court of Sessions stepping into the shoes of the court having original jurisdiction except in cases where power is conferred by the statute while Section 194 empowers Sessions Courts for transfer of cases to the file of Additional and Assistant Sessions Judges. Section 195 deals with prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence; Section 196 pertains to offences against the State and for criminal conspiracy to commit the offence; and Sections 197, 198, 198-A and 199 relates to prosecution of Judges & public servants, prosecution for offences against marriage, offences under Section 498-A IPC and defamation respectively.

Chapter XV with the title 'Complaints to Magistrates' contain four sections viz., 200 to 203 regarding examination of complainant, procedure by Magistrate not competent to take cognizance of the case, postponement of issue of process and dismissal of complaint. Sections 204 to 208 at Chapter XVI with the caption 'Commencement of proceedings before Magistrates' deal with the subsequent proceedings that would follow after cognizance is taken. 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 cognizance 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 sub-section (3) of Section 156 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 sub-section 3 of Section 156.

It is worthwhile to mention below certain case laws of the Hon'ble Apex Court wherein the scope and purview of the term 'cognizance' are vividly explained,

(i) **AIR (38) 1951 Supreme Court 207 R.R.Chari Vs. The State of Uttar Pradesh**
Before it can be said that any Magistrate has taken cognizance of any offence under S.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 U/S. 200 & thereafter sending it for inquiry & report U/S.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 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.

(ii) **AIR 1959 Supreme Court 1118 (V 46 C 150) Narayandas Bhagwandas Madhavdas Vs. West Bengal 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 S.200 and subsequent sections of Ch. XVI of the code of Criminal Procedure or under S.204 of Ch. XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance.

(iii) **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 pre-cognizance 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.

(iv) **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.

(v) **(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, mere exercise of power under a wrong provision (S.319) would not render its order invalid.

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.

(vi) **(1995) 1 Supreme Court Cases 684 State of W.B. and Another Vs. Mohd. Khalid and Another** Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. It has, thus, reference to the hearing and determination of the case in connection with an offence.

(vii) **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.

(viii) **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. This what exactly done by the learned Magistrate in the instant case.

(ix) **AIR 2000 Supreme Court 754 G. Sagar Suri and another Vs. State of U.P** A criminal complaint under S. 138 of the Negotiable Instruments Act was already pending against the appellants and other accused. They would suffer the consequences if offence under S.138 is proved against them. In any case there would be no occasion for the complainant to prosecute the appellants accused under Ss. 406/420 IPC and in his doing so it would be clearly an abuse of the process of law and prosecution against the appellants for those offences would be liable to be quashed.

(x) **(2006) 6 Supreme Court Cases 728 State of Karnataka and Another Vs. Pastor P. Raju** Several provisions in Chapter XIV of the Criminal Procedure Code use the word "cognizance". However, the word "cognizance" has not been defined in the Criminal Procedure Code. The dictionary meaning of the word "cognizance" is – "judicial hearing of a matter". 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."

(xi) **(2009) 1 MLJ (Cri) 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 imbuing 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.