CREF FINANCE LTD. A

v.

SHREE SHANTHI HOMES PVT. LTD. AND ANR.

AUGUST 23, 2005

[B.P. SINGH AND S.H. KAPADIA, JJ.] B

Code of Criminal Procedure, 1973 :

Cognizance of offence—When taken of—Held : Once the Court is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the compliant at that stage, and proceeds further, cognizance of the offence must be considered to have been taken. C

Cognizance of offence and Issuance of process—Distinction between—Explained. D

Respondent No. 2, Managing Director of respondent No. 1 company issued 4 cheques in favour of the appellant on behalf of respondent No. 1. These cheques were dishonoured. Appellant field compliant before Magistrate who issued the process against the respondents finding that there was ground to proceed for offence under Section 138 of Negotiable Instruments Act, 1881. E

Respondent sought quashing of the proceedings before the High Court under Section 482 CrPC on the ground that Magistrate issued summons without taking cognizance of offence. High Court remitted the matter back to the Magistrate holding that the taking of cognizance is a condition precedent, hence magistrate erred in issuing the summons. Hence the present appeal. F

Allowing the appeal, the Court G

HELD : 1. The cognizance is taken of the offence and not of the offender. Once the Court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not H

confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later 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. In the facts and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal. [877-F-G-H; 878-D]

Ajit Kumar Palit **v.** *State of West Bengal,* **[1963] Supp. 1 SCR 953, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1063 of 2005.

From the Judgment and Order dated 21.9.2004 of the Karnataka High Court in Crl. P. No. 4469 of 2002.

Ashok H. Desai, L.K. Bhushan, G.L. Vishwanathan, Ms. Jasleen Oberio, and Ms. Shiraz Contractor Patodia for the Appellant.

N.P. Midha, Pankaj Kumar and N. Ganpathy for the Respondents.

The Judgment of the Court was delivered by

Special Leave granted.

This appeal is directed against the judgment and order dt. 21st September, 2004 of the High Court of Karnataka at Bangalore in Criminal Petition No. 4469/2002. The appellant is the complainant, and he is aggrieved by the order passed by the High Court whereby the High Court remitted the matter to the Magistrate on a finding that the Magistrate had issued process against the respondents without taking cognizance of the offence, and since taking of cognizance was a condition precedent, the issuance of process was bad. The correctness of this order is challenged before us.

It is not in dispute that four cheques were issued by respondent No.2, the Managing Director of the respondent No.1 Company for the total amount

of rupees five crores. The payments were made by respondent No. 2 on behalf of the respondent No. 1 company of which he was a Director. The cheques were dishonoured since the respondent No. 2 stopped payment of those cheques. The appellant filed a complaint before the 14th Additional Chief Metropolitan Magistrate, Bangalore who on 19.4.2000, the date of filing of the complaint itself, directed the matter to be put up on 01.06.2000. The rubber seal order put on the complaint itself reads as follows :-

> "Presented on 19/4/2000
> Cognizance taken .....
> Register & put up on 1/6/2000
> Sd....."

This has been signed by the 14th Additional Chief Judicial Magistrate. The order-sheet of the court of that date records that cognizance was taken against the accused persons in the presence of the complainant whose statement was to be recorded on 1.6.2000. It appears that the order sheet is not signed by the Magistrate himself, though the rubber seal order is signed by him. On 29.7.2000, the Magistrate proceeded to record the statement of the complainant and thereafter by order dated July 31, 2000, issued process against the respondents finding that there was ground to proceed against the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881.

After about four years, the respondents moved an application before the High Court under Section 482 of the Code of Criminal Procedure for quashing the proceeding. The said petition has been disposed of by a brief order, the relevant portion of which reads as follows :-

> "On presentation of the complaint before the Magistrate, the Magistrate neither endorsed on the complaint by applying his mind to proceed with the complaint by taking cognizance nor in the order sheet produced. It is mandatory that the word taking cognizance necessarily requires application of mind by perusing the complaint and taking of cognizance precedes recording of sworn statement in respect of P.C.R. like this. The Magistrate did not take cognizance before proceeding to sworn statement and after recording the sworn statement going through the documents he has formed an opinion that it is a

A case to proceed against the petitioners and accordingly issued summons. The same has been assailed in this petition on various grounds. Since taking of cognizance is a condition precedent as noted above, without entering into the merits of the case on various grounds raised by the petitioners in this petition, it would be
B appropriate to quash the order of issuance of summons and to remit back the matter to the Magistrate to proceed from the stage of taking cognizance in accordance with law and it is left open to the parties to raise all the contentions before the Magistrate at the appropriate stage."

C

Learned counsel for the appellant submitted before us that the order passed by the High Court is clearly unsustainable both on law as also in the facts of this case. He brought to our notice the photocopy of the original complaint filed in the Court which bears the rubber stamp order to the effect that the complaint was presented on 19.4.2000, cognizance was taken, the
D case was ordered to be registered and to be put up on 01.06.2000. It is not disputed before us that this order is signed by the learned Magistrate on 19.4.2000 itself. He, therefore, submitted that the High Court was clearly in error in coming to the conclusion that the Magistrate had not taken cognizance before proceeding further in the matter.

E

Secondly, he submits that in any event, once the Magistrate peruses the complaint and proceeds to take further steps which he is required to take in law, he should be deemed to have taken cognizance even if not so expressly recorded because that is not necessary. The fact that he did not reject the
F application on any of the grounds on which such an application could be rejected, and chose to proceed further in the matter, itself amounts to taking cognizance of the offence. The High Court was clearly wrong in holding that the Magistrate had proceeded in the matter without taking cognizance.

Learned counsel appearing on behalf of the respondents submitted that
G it may be that the Magistrate need not in express words record the fact that he has taken cognizance, but the record must show that he had applied his mind to the contents of the complaint before proceeding further in the matter. He supported the view of the High Court and submitted that even if it be held that cognizance was taken, this Court must hold that cognizance was taken
H improperly, without application of mind.

In *Ajit Kumar Palit* v. *State of West Bengal,* [1963] Supp. 1 SCR 953, this Court observed :-

> "The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means—become aware of and when used with reference to a Court or Judge, to take notice of judicially. It was stated in *Gopal Marwari* v. *Emperor,* AIR (1943) Pat. 245 by the learned Judges of the Patna High Court in a passage quoted with approval by this Court in *R.R.Chari* v. *State of Uttar Pradesh,* [1951] SCR 312, 320 that the word, 'cognizance' was used in the Code to indicate the point when the Magistrate or Judge takes judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense. As observed in *Emperor* v. *Sourindra Mohan Chuckerbutty,* [1910] ILR 37 Cal.412, 416, "taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence." Where the statute prescribes the materials on which alone the judicial mind shall operate before any step is taken, obviously the statutory requirement must be fulfilled."

In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of statement of the complainant on 01.06.2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. The cognizance is taken of the offence and not of the offender and, therefore, once the Court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later 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. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after

A taking cognizance and examining the complainant on oath, the Court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the Court may consider it appropriate to send the complaint to police for investigation under Section 156(3) of the Code of Criminal B Procedure. We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that Court, or that cognizance of the offence alleged to have been committed cannot be taken without the C sanction of the competent authority etc. etc. These are cases where the Magistrate will refuse to take cognizance and return the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. We are, therefore, of the opinion that in the facts D and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal.

Counsel for the respondents submitted that the cognizance even if taken E was improperly taken because the Magistrate had not applied his mind to the facts of the case. According to him, there was no case made out for issuance of process. He submitted that the debtor was the company itself and the respondent No.2 had issued the cheques on behalf of the Company. He had subsequently stopped payment of those cheques. He, therefore, submitted that F the liability not being the personal liability of respondent No.2, he could not be prosecuted, and the Magistrate had erroneously issued process against him. We find no merit in the submission. At this stage, we do not wish to express any considered opinion on the argument advanced by him, but we are satisfied that so far as taking of cognizance is concerned, in the facts and circumstances of this case, it has been taken properly after application of mind. The G Magistrate issued process only after considering the material placed before him. We, therefore, find that the judgment and order of the High Court is unsustainable and must be set aside. This appeal is accordingly allowed and the impugned judgment and order of the High Court is set aside. The trial court will now proceed with the complaint in accordance with law from the H stage at which the respondents took the matter to the High Court.

Since the matter is already considerably delayed, it must be disposed of with promptitude. Counsel for the parties are present in Court and in their presence, we direct the parties to appear before the trial court on 19.9.2005 on which date the Court will give further directions.

This appeal is allowed.

D.G. Appeal allowed.