STATE OF KARNATAKA AND ANR.

v.

PASTOR P. RAJU

AUGUST 4, 2006

[G.P. MATHUR AND DALVEER BHANDARI, JJ.]

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Criminal Procedure Code, 1973—Sections 173, 196(1A) and 482—Indian Penal Code, 1860—Section 153B—Criminal case registered against accused under section 153B IPC—Accused was arrested and was remanded to judicial custody by Magistrate—Petition before High Court filed by the accused to quash the criminal proceedings—High Court quashed the proceedings on the ground that previous sanction required under section 196(1A) Cr.P.C. from appropriate authority has not been obtained—Correctness of—Held, previous sanction is required only for taking cognizance of an offence by Court and not for registration of a criminal case and conducting investigation thereof—Order of Magistrate remanding an accused judicial to custody for investigation does not amount to taking cognizance of an offence by Court—On facts, the criminal proceedings was only at investigation stage—Inherent power cannot be exercised by High Court to interfere with the statutory power of police to conduct investigation in a cognizable offence—Hence, the High Court was in error in quashing the criminal proceedings.

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Respondent, who is a member of Christian community, made an appeal to people to get themselves converted to Christian religion and thereby entitling themselves many benefits and facilities. An FIR was lodged and a case has been registered against the respondent under section 153B IPC. The respondent was arrested by the police and was produced before a Magistrate who remanded him to judicial custody. The respondent moved a bail application before the Magistrate which was rejected on the ground that the offence is a non-bailable offence. The respondent filed a petition under section 482 Cr.P.C. before High Court to quash the criminal proceedings initiated against him contending that the criminal proceedings initiated under section 153B IPC were illegal and without jurisdiction on the ground of non-obtaining of the required previous sanction from appropriate authority under section 196(1A) Cr.P.C. The High Court allowed the petition of the respondent and

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A quashed the criminal proceedings. Hence the appeal.

Allowing the appeal, the Court

HELD: 1.1. The bar created under section 196(1A) IPC is against taking of cognizance of an offence by the Court. There is no bar against B registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation as contemplated by Section 173 Cr.P.C. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the C District Magistrate, there will be no violation of Section 196(1A) Cr.P.C. and no illegality of any kind would be committed. [274-B-D]

1.2. The cognizance of an offence is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a D complaint or to 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. Neither any complaint had been filed nor any police report had been submitted nor any information had been given by any E person other than the police officer before the Magistrate competent to take cognizance of the offence. The Magistrate had merely passed an order remanding the respondent to judicial custody. A limited role has to be performed by the Judicial Magistrate to whom the accused has been forwarded, viz., to authorize his detention under section 167 Cr.P.C. This F is anterior to Section 190 Cr.P.C. which confers power upon a Magistrate to take cognizance of an offence. Therefore, an order remanding an accused to judicial custody does not amount to taking cognizance of an offence. In such circumstances, Section 196(1A) Cr.P.C. can have no application at all and the High Court clearly erred in quashing the proceedings on the ground that previous sanction of the Central G Government or of the State Government or of the District Magistrate had not been contained. The specified authority empowered to grant sanction does so after applying his mind to the material collected during the course of investigation. There is no occasion for grant of sanction soon after the FIR is lodged nor such a power can be exercised before completion of H investigation and collection of evidence. Therefore, the whole premise on

the basis of which the proceedings have been quashed by the High Court is wholly erroneous in law and is liable to be set aside. A

[276-B-H; 277-A-C]

R.R. Chari **v.** *State of U.P.*, **AIR (1951) SC 207;** *Darshan Singh Ram Krishan* **v.** *State of Maharashtra,* **AIR (1971) SC 2372;** *Narayandas Bhagwandas Madhavdas* **v.** *The State of West Bengal,* **AIR (1959) SC 1018;** B *Kishun Singh and Ors.* **v.** *State of Bihar,* **[1993] 2 SCC 16 and** *State of West Bengal* **v.** *Mohd. Khalid and Ors.*, **[1995] 1 SCC 684, referred to.**

1.3. No report as contemplated by Section 173 Cr.P.C. had been submitted by the incharge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 Cr.P.C. saves C **inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable** D **offence. The High Court ought not to have interefered with and quashed the entire proceedings in exercise of power conferred by Section 482 Cr.P.C. when the matter was still at the investigation stage.**

[277-D-E; 278-A-B]

Union of India **v.** *Prakash P. Hinduja and Anr.*, **[2003] 6 SCC 195;** *King* E *Emperor* **v.** *Khwaja Nazir Ahmad,* **AIR (1945) PC 18;** *H.N. Rishbud and Inder Singh* **v.** *The State of Delhi,* **AIR (1955) SC 196;** *State of West Bengal* **v.** *SN Basak,* **AIR (1963) SC 447;** *Abhinandan Jha and Ors.* **v.** *Dinesh Mishra,* **AIR (1968) SC 117 and** *State of Bihar and Anr.* **v.** *JAC Saldanha and Ors.*, **[1980] 1 SCC 554, referred to.**

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4. The High Court has observed in its judgment that the initiation of criminal proceedings is abuse of process of Court and miscarriage of justice. No reasons in support of the observation have been given. The case was still under investigation and the police was in the process of collecting evidence. The sweeping remark made by the High Court in the G **circumstances of the case was wholly unjustified. [278-C]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 814 of 2006.

From the Order dated 23.2.2005 of the High Court of Karnataka at Bangalore in Criminal Petition No. 437/2005. H

A Sanjay R. Hegde for the Appellants.

Jawahar Raja, P. Ramesh Kumar and Aparna Bhat for the Respondent.

The Judgment of the Court was delivered by

B **G.P. MATHUR, J.** Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 23.2.2005 of Karnataka High Court by which initiation of criminal proceedings against the respondent under Section 153-B IPC were quashed in exercise of jurisdiction under Section 482 Cr.P.C.

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3. One R.N. Lokesha son of R.S. Narayanappa resident of Ramapura, Channapatna, lodged an FIR alleging that at about 7.30 p.m. on 14.1.2005, he along with some other persons was celebrating Sankranthi festival when the respondent Pastor P. Raju, who is a member of Christian community, came there and made an appeal to them to get converted to Christian religion D where they would get many benefits and facilities which were not available to them in Hindu religion to which they belong. It is also alleged that many persons who were present there resented the appeal made by the respondent and strongly opposed the plea or assertion for their conversion from Hindu religion to Christian religion. On the basis of the FIR, a case as Crime No.8 E of 2005 was registered under Section 153-B IPC at the concerned police station. The respondent was arrested on 15.1.2005 and was produced before a Magistrate on the same day who remanded him to judicial custody as no application for bail had been filed. Subsequently, a bail application was moved under Section 436 Cr.P.C. before the learned Magistrate which was rejected on the ground that the offence under Section 153-B IPC being a non-bailable F offence, the power under the aforesaid provision could not be exercised as the said provision empowered the Court to grant bail in bailable offences only. The respondent filed a petition under Section 482 Cr.P.C. on 27.1.2005 for quashing of the proceedings initiated against him under Section 153-B IPC in case Crime No.8 of 2005. This petition was allowed by the High G Court by the order under challenge and the entire proceedings initiated against the respondent were quashed.

4. The principal submission which was made before the High Court on behalf of the respondent was that before initiating any proceedings under Section 153-B IPC, the police ought to have obtained previous sanction of H the Central Government or of the State Government or of the District

Magistrate as required by Section 196(1-A) Cr.P.C. and in the absence of such a sanction having been obtained, the proceedings initiated against the respondent were illegal and without jurisdiction. After hearing counsel for the parties, the learned judge framed the question for consideration in the following manner :-

> "Having heard the arguments of the learned counsel appearing for the petitioner and the learned H.C.G.P. for the respondent/State, the point that arises for my consideration and decision is whether initiation of criminal proceedings against the petitioner is bad in law and whether prior sanction to prosecute a person who tries to instigate Hindus to convert into Christianity requires any prior sanction to *register a case and arrest the accused* under Section 153-B (1) of IPC ?"

(emphasis supplied)

5. The High Court has held that as the investigating agency had not obtained previous sanction of the Central Government or of the State Government or of the District Magistrate as required by Section 196(1-A) Cr.P.C., the initiation of criminal proceedings against the respondent is bad in law and consequently it was liable to be quashed.

6. We have heard learned counsel for the appellant State of Karnataka, learned counsel for tne respondent Pastor P. Raju and have perused the record.

7. The heading of Chapter XIV of Code of Criminal Procedure is "Conditions Requisite For Initiation Of Proceedings". The first provision in this Chapter is Section 190 and it deals with the power of the Magistrate to take cognizance of offences. There are some other provisions in this Chapter which create an embargo on the power of the Court to take cognizance of offences committed by persons enumerated therein except on the complaint in writing of certain specified persons or with the previous sanction of certain specified authorities. Section 196(1-A) Cr.P.C. with which we are concerned here reads as under :-

> "196(1-A). No Court shall take cognizance of
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> (a) any offence punishable under Section 153-B or sub-section (2) or sub-section (3) of Section 505 of the Indian Penal Code, 1860 (45 of 1860), or
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> (b) a criminal conspiracy to commit such offence.

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

A plain reading of this provision will show that no Court can take cognizance of an offence punishable under Section 153-B or sub-section (2) or sub-section (3) of Section 505 of Indian Penal Code or a criminal conspiracy B to commit such offence except with the previous sanction of the Central Government or of the State Government or of the District Magistrate. The opening words of the Section are "No Court shall take cognizance" and consequently the bar created by the provision is against taking of cognizance by the Court. There is no bar against registration of a criminal case or C investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173 Cr.P.C. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) D Cr.P.C. and no illegality of any kind would be committed.

8. After the FIR had been lodged and a criminal case had been registered against the respondent under Section 153-B IPC, the police arrested him as the offence disclosed was a cognizable offence. Thereafter, the respondent E was produced before a Magistrate and the Magistrate remanded him to judicial custody. The High Court seems to have taken the view that as the learned Magistrate remanded the respondent to judicial custody when he was produced before him in accordance with Section 167 Cr.P.C., it amounted to taking cognizance of the offence. The question that arises is whether passing of an order of remand would amount to taking of cognizance of the offence.

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9. Several provisions in Chapter XIV of the Code of Criminal Procedure use the word "cognizance". The very first Section in the said Chapter, viz., Section 190 lays down how cognizance of offences will be taken by a Magistrate. However, the word "cognizance" has not been defined in the Code of Criminal Procedure. The dictionary meaning of the word "cognizance" G is - 'judicial hearing of a matter'. The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is *R.R. Chari* v. *State of U.P.*, AIR (1951) SC 207, wherein it was held :-

H "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."

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In *Darshan Singh Ram Kishan* v. *State of Maharashtra,* AIR (1971) SC 2372, while considering Section 190 of the Code of 1908, it was observed 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. Cognizance, therefore, takes place at a point when a magistrate first takes judicial notice of an offence. This is the position whether the magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer." In *Narayandas Bhagwandas Madhavdas* v. *The State of West Bengal,* AIR (1959) SC 1118 it was held that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter-proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. It was observed that 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 taking further action. It was also observed that what Section 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations. The Court then referred to the three situations enumerated in sub-section (1) of Section 190 upon which a Magistrate could take cognizance. Similar view was expressed in *Kishun Singh & Ors.* v. *State of Bihar,* [1993] 2 SCC 16 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. In *State of West Bengal* v. *Mohd. Khalid & Ors.,* [1995] 1 SCC 684 the Court after taking note of the fact that the expression had not been defined in the Code held :-

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> "......... 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 and taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point

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A 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."

B 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 police report or upon information received from any other person that an offence has been committed. The issuance of process is at a C 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.

10. In the present case neither any complaint had been filed nor any police report had been submitted nor any information had been given by any D person other than the police officer before the Magistrate competent to take cognizance of the offence. After the FIR had been lodged and a case had been registered under Section 153-B IPC, the respondent was arrested by the police and thereafter he had been produced before the Magistrate. The Magistrate had merely passed an order remanding him to judicial custody. Section 167 Cr.P.C. finds place in Chapter XII which deals with Information E To The Police And Their Powers To Investigate. This Section gives the procedure which has to be followed when investigation cannot be completed within twenty-four hours and requires that whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57 and F there are grounds for believing that the accusation or information is well founded, he shall be forthwith transmitted to the nearest Judicial Magistrate along with copy of the entries in the diary. Sub-section (2) of Section 167 will show that even a Magistrate who has no jurisdiction to try the case can authorize the detention of the accused. A limited role has to be performed by the Judicial Magistrate to whom the accused has been forwarded, *viz.*, to G authorize his detention. This is anterior to Section 190 Cr.P.C. which confers power upon a Magistrate to take cognizance of an offence. Therefore, an order remanding an accused to judicial custody does not amount to taking cognizance of an offence. In such circumstances Section 196(1-A) Cr.P.C. can have no application at all and the High Court clearly erred in quashing H the proceedings on the ground that previous sanction of the Central

Government or of the State Government or of the District Magistrate had not been obtained. It is important to note that on the view taken by the High Court, no person accused of an offence, which is of the nature which requires previous sanction of a specified authority before taking of cognizance by the Court, can ever be arrested nor such an offence can be investigated by the police. The specified authority empowered to grant sanction does so after applying his mind to the material collected during the course of investigation. There is no occasion for grant of sanction soon after the FIR is lodged nor such a power can be exercised before completion of investigation and collection of evidence. Therefore, the whole premise on the basis of which the proceedings have been quashed by the High Court is wholly erroneous in law and is liable to be set aside.

11. There is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15.1.2005 and the petition under Section 482 Cr.P.C. was filed within 12 days on 27.1.2005 when the investigation had just commenced. The petition was allowed by the High Court on 23.2.2005 when the investigation was still under progress. No report as contemplated by Section 173 Cr.P.C. had been submitted by the incharge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. This question has been examined in detail in *Union of India* v. *Prakash P. Hinduja & Anr.*, [2003] 6 SCC 195, where after referring to *King Emperor* v. *Khwaja Nazir Ahmad,* AIR (1945) PC 18, *H.N. Rishbud & Inder Singh* v. *The State of Delhi,* AIR (1955) SC 196, *State of West Bengal* v. *SN Basak,* AIR (1963) SC 447, *Abhinandan Jha & Ors.* v. *Dinesh Mishra,* AIR (1968) SC 117 and *State of Bihar & Anr.* v. *JAC Saldanha & Ors.*, [1980] 1 SCC 554, it was observed as under in para 20 of the reports:-

> "20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court under Section 173(2) Cr.P.C., this field being exclusively

A reserved for the investigating agency."

This being the settled legal position, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482 Cr.P.C. when the matter was still at the investigation stage.

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12. In the concluding paragraph of the judgment under challenge, the High Court has also observed that considering the facts and circumstances and the allegations made in the complaint it could be said that the initiation of criminal proceedings is abuse of process of Court and miscarriage of justice. No reasons in support of the aforesaid observation have been given.

C As already stated, the case was still under investigation and the police was in the process of collecting evidence. The sweeping remark made by the High Court in the circumstances of the case was wholly unjustified.

13. For the reasons mentioned above, the appeal is allowed and the

D judgment and order dated 23.2.2005 of the High Court is set aside. It is made clear that any observation made in this order is only for the limited purpose of deciding the appeal and shall not be construed as an expression of opinion on the merits of the case.

B.S. Appeal allowed.