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MAGISTRATE’S POWER OF TAKING COGNIZANCE: A LEGAL AND JUDICIAL ANALYSIS

Lalitendu Debata¹, Soumya Ranjan Panigrahi² and Anoushka Paul³

ABSTRACT

The word cognizance has its origin from the old French term “connaissance” which means “recognition, wisdom, knowledge, and familiarity” and also from the word “conoistre” which means “to know”. It is also derived from the Latin word “cognosis” where the con means ‘with’ and gnosis means ‘to know’. The word Cognizance has not been defined in the criminal procedure code, but the meaning of cognizance is derived from the number of precedents and judicial pronouncements. The dictionary meaning of cognizance is “taking account of, taking note of, to gain knowledge about, to have knowledge regarding something”. This paper deals with the legal analysis of the statutory provisions and the judicial interpretations of the term cognizance and how the magistrates exercise their power to take cognizance.

KEYWORDS

Cognizance, Magistrate, Thana, Jurisdiction, Cr.P.C., Judiciary

I. INTRODUCTION

There are four main kinds of courts according to The Code of Criminal Procedure (hereinafter Cr.P.C.), 1973⁴. Every court functions within its own jurisdiction, and each court has its own jurisdiction. The name and nature of courts are specified in Chapter II of the Cr.P.C. This article discusses the judicial magistrate's territorial jurisdiction when exercising cognizance under section 190 of the Criminal Procedure Code. It attempts to respond to inquiries about the distribution of Police Stations (hence, Police station) to the Judicial Magistrate. Is there a correlation between the recognition taking power of Judicial Magistrate First Class (hereinafter

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⁴ The Code of Criminal Procedure, 1973 Act No. 2 Of 1974 of Indian Parliament.

JMFC) and the allocation of Police Station? What is the process for the Special Magistrate appointed by special legislation to take recognition? Understanding these inquiries is crucial given the recent appointments that the States have been making in the lower judiciary. Newly hired officers occasionally encounter these inquiries when handling records that have been transferred to them by the Chief Judicial Magistrate (hereinafter CJM). However, it is crucial to examine the hierarchy of courts first.

II. HIERARCHY OF CRIMINAL COURTS

In the context of a district, "court" refers to the major civil court with original jurisdiction, which also includes the High Court when it exercises its regular original civil jurisdiction. It holds the authority to decide the issues which constitute up the subject matter. This Code makes an effort to strike a balance between the executive and judicial branches. Every court has its own authority and purview. As mentioned in section 7 and other sections of the Code of Criminal Procedure, the term "district" refers to a district utilized for criminal administration, which, in accordance with section 20, will have a District Magistrate. In this code, "District" does not always imply "revenue district".⁵

Sec. 6 of the Cr.P.C. provides for four major classes of courts other than the high court of the state, namely-

- 1) Court of Sessions.
- 2) Judicial Magistrate First Class and in case of metropolitan area, Metropolitan Magistrates.
- 3) Judicial Magistrate Second Class.
- 4) Executive Magistrate.

The court of Judicial Magistrate is subordinate to that of Sessions court. The first schedule of Cr.P.C. provides with list of offences under IPC and

⁵ Lal Batuk, The Code of Criminal Procedure, 1973. Central Law Agency Allahabad, Second Edition 2010 P.18.

the court which will try these offences.⁶ The word “any Magistrate” in the schedule means that the case can be tried either by JMFC or JMFC. In almost all the states in India the entry level officers who join at the lowest level of judiciary is conferred the power of JMFC. In terms of jurisdiction, the position of Metropolitan Magistrate differs little from that of Judicial Magistrate. In accordance with the 74th Amendment to the Indian Constitution, the state governor designates as a metropolitan region any place with a population of more than ten lakh people⁷ through public notification.

Sec. 7 of Cr.P.C. provides that every session’s division of any state shall consist for the purpose of this Code, a district or consist of districts. There is difference between district and sessions division. A state is divided into district for administrative reasons. As far as judiciary is concerned the State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts for judicial purpose. The state government is empowered u/sec 11 of Cr.P.C. to establish any number of courts of JMFC or JMFC after consultation with the High Court. Any such court established by the High Court does not cease to exist merely because it fall vacant.

CHAPTER II Sec. 12⁸ deals with the CONSTITUTION OF CRIMINAL COURTS AND OFFICES. Sec. 12 provides that Chief Judicial Magistrate (CJM) shall be appointed by the High Court in each session’s division amongst the officers of JMFC. Generally, the senior officer from the JMFC is appointed as CJM. He has his office in session division and he is head of the entire judicial magistrate functioning in that every session’s division. The office of JM in subdivision is also controlled by CJM. Along with the office of CJM there is office of ACJM. The office of ACJM is ordinary below the office of CJM. In subdivision of any session’s division the ACJM is given

⁶ The Code of Criminal Procedure, 1973, § 28.

⁷ The Code of Criminal Procedure, 1973, § 29(k).

⁸ The Code of Criminal Procedure, 1973, § 12.

powers equal to that of CJM. This is for the reasons of smooth functioning of the court. Such powers are given by the High Court and generally the senior most JMFC is made as ACJM-I who has certain administrative powers as far as that very particular sub division is concerned. Other than ACJM there is the court of Sub-divisional Judicial Magistrate [SDJM]. The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate. Such JM who are made SDJM has a different work to do and he is relieved of the responsibilities specified in sec. 12 of Cr.P.C.. His office is below that of CJM however u/sec. 12 (b) of Cr.P.C. the High Court may by general or administrative order give the supervision and control over the office of JM to the SDJM in the subdivision. But usually this is not in practice. The control over the work of JM in sub division is controlled by the ACJM-I of that very sub division. As per sec.13⁹ the state government on the request of High Court may create a special court. If any such special courts are created than the jurisdiction to try those very cases lies exclusively by that special courts and all the records are send to such courts from the Court of Judicial Magistrate.

In ***Kameshwarsingh v. Dharamdeosingh AIR 1957 Pat 375***¹⁰ the court held that this section makes the provision for the appointment by the High Court of additional session judge and assistant session judge but as the meter of law there shall be only one session judge in a session division. In ***Abdul Mannan v. State of west Bengal AIR 1996 SC 907***¹¹ it was held that additional sessions judge has all the powers and the jurisdictions of the sessions judge to try the offences given in the code.

III. JURISDICTION

Black's Law Dictionary, sixth edition, defines jurisdiction as follows: "A

⁹ The Code of Criminal Procedure, 1973, § 13.

¹⁰ AIR 1957 Pat 375.

¹¹ AIR 1996 SC 907.

term of comprehensive import embracing every kind of judicial action. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. So, Jurisdiction means that a particular court has authority to deal with the cases if that court has territorial jurisdiction over that very particular area. So, confining the word jurisdiction to mean only Thana and giving a narrow meaning to it is not justified.

As per sec. 14 of the Cr.P.C. CJM allot the area within which any judicial magistrate shall work. These areas are particularly Police station allotted to any Judicial Magistrate which exists within a particular session division or subdivision. It means that all the judicial work of that very Police station shall be dealt by the Judicial Magistrate who is conferred Police station by the CJM. Under Sec. 15(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him. Whether the controlling power exercised by the CJM in allotment of Police station of that very particular session division limits the jurisdiction of the JMFC to that particular Police station. This needs to be understood in the light of sec. 14, sec. 177 and S. 190 of Cr.P.C.. As per Sec. 14(2) of Cr.P.C. which is the saving clause, the jurisdiction of the JM extends throughout the district. While considering s. 14 Cr.P.C. it is important to consider the other provisions of Cr.P.C. for the reasons that under s. 14 (1) the CJM is authorized to define the local limits of area within which the Magistrate may exercise all or any of the power. Here the word "all or any of the power" is important and needs attention. It means that CJM allot Police station to Judicial magistrate and all the works related to those than shall be done by those Judicial Magistrate. This saving clause provides that all the Magistrate shall function as per the allotments of Police station by their respective CJM but in case where no Police station has been allotted to the JM than in such cases the Magistrate shall have jurisdiction over the entire area in which she is

posted and it will not be limit to particular Police station.

IV. POWER TO TAKE COGNIZANCE

The word cognizance has its origin from the old French term “*connaissance*” which means “*recognition, wisdom, knowledge, and familiarity*” and also from the word “*conoistre*” which means “*to know*”. It is also derived from the Latin word “*cognosis*” where the con means ‘with’ and gnosis means ‘to know’.

The word Cognizance has not been defined in the criminal procedure code, but the meaning of cognizance is derived from the number of precedents and judicial pronouncements. The dictionary meaning of cognizance is “*taking account of, taking note of, to gain knowledge about, to have knowledge regarding something*”.

The meaning of Cognizance given in Black's Law Dictionary, reads as under, Cognizance is “*Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter, or power and authority to make it*”.

In ***Ajit Kumar Palit v. State of West Bengal, AIR 1963 SC 765***¹², Supreme Court has held: “*.....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 of Judge, to take notice of judicially*”.

In ***Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64***¹³ the Apex Court has observed that, “*.. though, the term `cognizance' has not been defined either in the 1988 Act or the Cr.P.C, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the 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*

¹² *Ajit Kumar Palit v. State of West Bengal, AIR 1963 SC 765.*

¹³ *Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64.*

or matter judicially.”

The word ‘cognizance’ indicates the point when a Magistrate or a Judge first takes judicial notice of an offence, as held in ***State of W.B. v. Mohd. Khalid (1995) 1 SCC 684***¹⁴. In ***State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 33***¹⁵ it was held that ‘Cognizance’ means ‘jurisdiction or the exercise of jurisdiction or power to try and determine causes’. In common parlance it means ‘taking notice of’.

Chapter XIV from Sections 190 to 199, of Code of Criminal Procedure deals with Conditions requisite for Initiation of Proceedings. Section 190 Cr.P.C., 1973¹⁶ deals with the power to take cognizance by a magistrate of first class. The main purpose behind section 190(1) (b) is to ensure freedom and safety of the subjects by giving him a right to approach the Court if he considers that a wrong has been committed.¹⁷ The cognizance taking power under Sec. 190 of Cr.P.C. is subject to provision of this chapter only. It means that the cognizance power is subject to sec. 195 to sec. 199 of chapter XIV. Section 191 takes care of the situations where the Magistrate himself is a complainant. The said provision removes any doubt as to the scope for prejudice or malice on the part of the Magistrate by allowing the Chief Judicial Magistrate to transfer the case to any other Magistrate.¹⁸

Under sec. 14 of the code the territorial limitations of Judicial Magistrate is limited still the cognizance taking power of Magistrate does not suffer from any constraint. This is for the reason that sec. 190 of Cr.P.C. which provides that cognizance taking power of the court is not subject to any other provision of Cr.P.C. but is subjected only to chapter XIV of the code. This chapter is concerned only with sec. 190 to sec. 199. Also, the word “any Magistrate of First Class” means all such Magistrates irrespective of

¹⁴ *State of W.B. v. Mohd. Khalid (1995) 1 SCC 684.*

¹⁵ *State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 33.*

¹⁶ The Code of Criminal Procedure, 1973, § 190.

¹⁷ *Patel v. State of Gujrat, (1971) 2 SCC 376.*

¹⁸ Bablu Kumar Sharma, Concept of cognizance under criminal law, International Journal of Law, Volume 5; Issue 5; September 2019; Page No. 12-19.

the fact whether have police stations assigned to them or not. Moreover confining the power of cognizance taking by a Magistrate to only his police station will hold no good. This is for the reason that Magistrate is empowered to take cognizance Suo motu based on his personal knowledge under sec. 190 (c) of Cr.P.C.

Procedural laws must be liberally construed to really serve as handmaid. Technical objections that tend to defeat and deny substantial justice should be strictly discouraged.¹⁹ Also, if on plain and simple reading of Sec. 190 Cr.P.C. if it is clear that any Magistrate of First class may take cognizance then that notion must prevail. The Golden Rule of Interpretation provides that a statute has to be interpreted by grammatical or literal meaning unmindful of the consequences if the language of the statute is plain and simple.²⁰

V. COGNIZANCE BY SPECIAL COURTS:

The General Clauses Act, S. 32 defines a 'Magistrate' as including every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force. Section 3 of the Criminal Procedure Code provides that any reference without any qualifying words to a Magistrate, shall be construed, unless the context otherwise requires in the manner stated in the sub-sections. This is to the reason that special court abrogates local jurisdictional limits and is conferred with special jurisdiction on every Special Court. Sections 4 and 5 of the Cr.P.C.. create an exception for special laws with special procedures. It is important to consider that whether such special court established is governed by special act or by Cr.P.C.. Section 190 Cr.P.C. reads: "This section (section 190 Cr.P.C.) applies to Magistrates and would not apply to a Special Judge whose jurisdiction arises not on his taking cognizance under Section 190

¹⁹ *Sushil Kumar Jain v. State of Bihar* 1975 3 SCR 944; *Sardar Amarjeet Singh Kalra (dead) by LRs. & Ors. v. Promod Gupta (dead) by LRs. & Ors.* 2003 3 SCC 272.

²⁰ *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat & Anr*, 2004 6 SCC 672.

of the Code of Criminal Procedure but on the case for an offence specified in the Schedule being distributed to him by the State Government by notification". To clarify further on the Special Court it has been held by Supreme Court in ***A.R. Antulay v. Ramdas Srinivas Nayak & Anr.*** [1984] 2 SCC 500²¹ that the Special Court is a court of original criminal jurisdiction and to make it functionally oriented some powers were conferred by the statute setting it up and except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrates or a Court of Session. Under the Code, it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied. Moreover, when any court is created exclusively for trial of a particular type of cases, then jurisdiction of all other courts comes to an end in respect of those matters.²² This is for the reason that Cr.P.C. applies only to the offences under IPC and if any special act is created than it is governed by the provision of that Act and not Cr.P.C.. Instance can be made of Sec. 14 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The provision of sec. 14 provides that the Courts so established or specified shall have power to directly take cognizance of offences under this Ordinance.²³ Further Sec. 4(2) of Cr.P.C. lays down that all offences under any other law shall be investigated, enquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. Section 5 of the Cr. P.C. says that nothing contained in the Cr. P.C. shall, in absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any

²¹ *A.R. Antulay v. Ramdas Srinivas Nayak & Anr.*, (1984) 2 SCC 500.

²² *Saroj Kumar Upadhyaya v. High Court Of Judicature Allahabad*;(19 July, 2007).

²³ Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014.

special form of procedure prescribed, by any other law for the time being in force. Moreover sub-clause (b) of sec 26 Cr.P.C. provides that any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned may be tried by the High Court or any other courts, by which offence is shown in the First Schedule to be triable. So, the cognizance taking power of Special Magistrate is subject to the special law enacted in this behalf.

If cognizance taking is barred by special act but still a Magistrate in ignorance took cognizance under that special law then such an act of Magistrate will be mere an irregularity and not be illegal. Sec. 460 Cr.P.C. provides that any magistrate not empowered to take cognizance of an offence under (a) or (b) of Sec. 190(1), does erroneously in good faith take cognizance of an offence under any such clause, her proceedings shall not be set aside merely on the ground of her not being empowered.

VI. CONCLUSION

The word 'Cognizance' is not defined in the Criminal Procedure Code. Basically, it means applying the judicial mind to a suspected commission of the offence. Chapter XIV of Cr.P.C. deals with Conditions Requisite for Initiation of Proceeding and Chapter XV of Cr.P.C. deals with Complaints to Magistrates. Taking of cognizance does not postulate any specific order or stage after or before which it is to be said that cognizance has been taken. Rather it is to be gathered from the facts at which stage after the filing of the challan or complaint or information covered under section 190 for taking cognizance, the magistrate has decided to move in a particular direction for taking further steps under Chapter XIV and XV so as to finally arrive to section 204 under Chapter XVI. Sec. 195-199 speaks of limitations to take cognizance. Adding to it the cognizance can be taken by a Judicial Magistrate if the limitation period as prescribed under sec. 467-473 Cr.P.C. is condoned by it stating the specific reasons. Other than that

there is nothing in the code of criminal procedure to provide limitation to the cognizance taking power of a JMFC and allotment of police station has got nothing to do with the cognizance taking power.

It must be understood that allotment of Thana is an administrative act which is performed by CJM every now and then and it is not technically possible that all the JMFC is allotted with Thana. Whenever any JMFC is transferred the Thana which vests in her is transferred to another court. So, these allotments of Thana shall have no effect on the cognizance taking power of JMFC. The cognizance is governed by Sec. 190 and the word used in this section is “any Magistrate of first class “meaning all Magistrates having conferred the power of JMFC by the High Court in that respective district. The exercise of power by the CJM or by the magistrate is governed by the provision of Cr.P.C.. Any act which prejudices these provisions is bad in the eyes of law. There is rule of law and all the judicial offices are bound by such rules. So, it can be concluded that the only limitation on the power of taking cognizance is when proper sanction has not been obtained in certain cases by the prosecution or when it is beyond the limitation period as prescribed by the Cr.P.C.