IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1572 of 2017

Narendra Singh Tomar, son of late Shri Munshi Singh Tomar, resident of B-144, Professors Colony, P.O. and P.S. Shyamla Hills, District-Bhopal, PIN 462003, Madhya Pradesh.

…… Petitioner

Versus

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1.The State of Jharkhand
2.Md. Kalam Azad @ M.K. Azad, son of Md. Ishaq, Resident of Bhuli D Block, P.O. Bhuli, P.S. Bhuli O.P. District-Dhanbad, Jharkhand, permanent address: Bhistipara, Near H.E. School, Hirapur, P.O. and P.S. Dhanbad, District –Dhanbad, Jharkhand …… Opposite Parties

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. J.S. Singh, Advocate
Mr. Radha Krishan Gupta, Advocate
Mr. Somitra Baroi, Advocate
For the State : Mr. P.C. Sinha, Advocate
For the O.P. No. 2 : Md. Shahabuddin, Advocate

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07/Dated: 08/02/2022

Heard Mr. J.S. Singh, learned counsel for the petitioner, Mr. P.C. Sinha, learned counsel for State and Md. Shahabuddin, learned counsel for the O.P. No. 2.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The present petition has been filed for quashing the entire criminal proceeding instituted against the petitioner in connection with C.P. No. 204/2016 including part of the order dated 05.05.2017 whereby and whereunder the learned Magistrate took cognizance under section 504 of the Indian Penal Code and also for quashing of order dated 21.01.2016 whereby the case was transferred under section 192(1) Cr.P.C. and also for quashing of order dated 12.04.2017 whereby learned Sessions Judge has allowed the

Criminal Revision No. 235/2016.

4. O.P. No. 2 has instituted the complaint case stating therein that he is a social and political worker and is active member of Congress party and was also Secretary in Dhanbad District Congress Committee and also running a social body namely, 'Action Force. The petitioner is a Minister in Central Government and represents the public in general. On 19.01.2016 the petitioner came to attend a function of Bhartiya Janta Party at New Town Hall at Dhanbad. The complainant and other witnesses had gone to submit a Memorandum regarding problems relating to Steel Industry. It is further stated by the O.P. No. 2 that the petitioner gave speech that Prime Minister Sri Narendra Modi is hair of moustache and the National Vice-President of Congress Sri Rahul Gandhi is hair of the tail. It is further stated that the petitioner in order to commit breach of peace and to create hatred and enmity has given such speech which is unpleasant which was protested on 19.01.2016 at Randhir Verma Chowk against the petitioner. It is further stated that such derogatory remarks by the petitioner has resulted in hurting the sentiments of crores of people including complainant and the witnesses.

5. Mr. J.S. Singh, learned counsel for the petitioner submits that by order dated 21.01.2016 the learned C.J.M. transferred the case to the Judicial Magistrate, Ist Class under the provision of Section 192(1) Cr.P.C. Pursuant thereto learned Magistrate after going through the record and considering the Solemn Affirmation dismissed the complaint petition by order dated 05.09.2016. He further submits that this dismissal order was challenged by the complainant in Criminal Revision No. 235/2016 which was allowed by order dated 12.04.2017. He further submits that pursuant to the revisioinal order the learned Magistrate has taken cognizance vide order dated 05.05.2017. He further elaborated his argument by way of submitting that the initial order dated 21.1.2016 is not speaking order. By this order case has been transferred

to the learned Magistrate under section 192(1) Cr.P.C to proceed. He further submits that revisional Court order is erroneous in view of the fact that the revisional Court has held that once the order passed under section 192(1) Cr.P.C. it amounts to take cognizance and the learned Magistrate heard and dismissed the complaint. He further submits that due to revisional order, learned Magistrate has taken cognizance against the petitioner by order dated 05.05.2017 which is not in accordance with law. He submits that the learned Court has acted upon the direction of the revision Court and there is no independent application of judicial mind by the learned Magistrate. He further submits that in view of Section 190 of the Cr.P.C., learned C.J.M, was empowered to take cognizance thereafter section 192(1) Cr.P.C. comes into play. He submits that without taking cognizance, order dated 21.01.2016 has been passed. He submits that ingredient of section 504 of the I.P.C. is not made out against the petitioner. He further submits that Sections 200, 202 and 203 and 204 Cr.P.C. have been recently considered by the Hon'ble Supreme Court in the case of ***"Samta Naidu & Anr Vs. State of Madhya Pradesh & Anr."*** in Criminal Appeal Nos. 367-368 of 2020 (Arising out of Special Leave Petition (Crl.) Nos. 4418-4419 of 2019) wherein para 12.1 it has been held as under:-

> *"12.1 The issue was considered by the majority judgment of this Court as under:*
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> *48. Under the Code of Criminal Procedure the subject of Complaints to Magistrates is dealt with in Chapter 16 of the Code of Criminal Procedure. The provisions relevant for the purpose of this case are Sections 200, 202 and 203. Section 200 deals with examination of complainants and Sections 202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of Sections 202 and 203 were laid down in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker. The scope of enquiry under Section 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and Section 203 lays down what materials are to be considered for the purpose. Under Section 203 Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind to the*

> *materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under Section 202, of the Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under Section 203, of the Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into. Allah Ditto v. Karam Baksh; Ram Narain Chaubey v. Panachand Jain;Hansabai Sayaji Payagude v. Ananda Ganuji. In regard to the adducing of new facts for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court or the Patna High Court in the cases above quoted and adopted the opinion of Maclean, C.J. in Queen Empress v. Dolegobinda Das affirmed by a Full Bench in Dwarka Nath Mandal v. Benimadhas Banerji. It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming.*

6. Learned counsel for the petitioner submits that the aforesaid judgment is reported judgment.

7. Per contra, Md. Shahabuddin, learned counsel appearing on behalf of O.P. No. 2 submits that there is no illegality in the impugned orders. He submits that Section 504 I.P.C. is very much attracted in the case in hand. He submits that from entire reading of complaint petition, ingredient of section 504 I.P.C. is attracted in this case. He submits that in view of allegation made in the complaint, section 504 I.P.C. is attracted. He submits that there is no necessity of provoking to attract section 504 I.P.C. He further submits that there is no illegality in order dated 21.01.2016 and it is well settled that once order passed under section 192(1) Cr.PC. it is within that cognizance has been taken by the concerned Court. To buttress his argument, he relied judgement in the case of ***"Dr. Binod Kumar Vs. State of Bihar & Anr."*** reported in ***2009***

(4) East Cr. C 1 (Pat) wherin para 4 it has been held as under:-

> *"4. So far the first point regarding the learned Chief Judicial Magistrate transferring the Complaint Case to the court of the learned Sub-Divisional Judicial Magistrate without taking any cognizance is concerned, the law is no more res integra. In Anil Saran Vs. The State of Bihar reported in 1996 (1) P.L.J.R. (SC) 5 the Hon'ble Apex Court observed as follows:-*
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> *5. "We find no force in the contention. Though the Code defines "cognizable offence" and "non-cognizable offence", the word 'cognizance' has not been defined in the Code. But it is now settled law that the court takes cognizance of the offence and not the offender. As soon as the Magistrate applies his judicial mind to the offence stated in the complaint or the police report etc. cognizance is said to be taken. Cognizance of the offence takes place when the Magistrate takes judicial notice of the offence. Whether the Magistrate has taken cognizance of offence on a complaint or on a police report or upon information of a person other than the police officer, depends upon further action taken pursuant thereto and the attending circumstances of the particular case including the mode in which case is sought to be dealt with or the nature of the action taken by the Magistrate. Under sub-section (1) of Section 190 of the Code, any Magistrate may take cognizance of an offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*
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> *6. Sub-section (1) of Section 192 has conferred a special power on the Chief Judicial Magistrate, as, normally, the Magistrate taking cognizance of an offence, has himself to proceed further as enjoined by the Code. But, an exception has been made in the case of Chief Judicial Magistrate, may be because he has some administrative functions also to perform. A Magistrate who receives the case on transfer and takes cognizance would not become incompetent to do so merely because the sanction of transfer of the case to his file is not in accordance with law. The power to take cognizance has been conferred on co Magistrate by Section 190(1) of the Code and he would not be denuded of this power because the case has come to his file pursuant to some illegal order of the Chief Judicial Magistrate. The former would be exercising his power of taking cognizance even in such a case, because of his having received a complaint constituting the offence. It would not be material, for this purpose, as to how he came to receive the complaint directly or on transfer from the Chief Judicial Magistrate".*

8. Learned counsel for the O.P. No. 2 submits that this aspect of the matter has been again considered by the Hon'ble Patna High Court in the case of ***" Mohd. Abdullah @ Md. Abdullah Khan & Ors. Vs. State of Bihar & Ors."*** reported in [2002 (1) East Cr. C. 302 (Pat)] wherein para 11 & 14 it has been held as under:-

> *"11. In view of the aforesaid provisions what requires consideration is as to whether power conferred on the Chief Judicial Magistrate to make over the case for inquiry or trial, after taking cognizance of an offence, would necessarily require the Chief Judicial Magistrate to examine the complainant on oath. It is, no doubt, true that S. 190 of the Code, requires the Chief Judicial Magistrate to take cognizance before making over the case for inquiry or trial to another Magistrate and S. 200 of the Code obliges a Magistrate taking cognizance of an offence, on a complaint, to examine upon oath the complainant. However, proviso to S. 200 of the Code carves out an exception and provides that when the complaint is made in writing, the Magistrate is not mandatorily required to examine the complainant on oath, if the Magistrate makes over the case for inquiry or trial to another Magistrate under S. 192 of the Code. It is well settled that proviso is added to an enactment to create an exception to what is in the enactment. Here, in the scheme of the Code, an exception has been carved out by proviso and in view of that exception in proviso (b) of S. 200 of the Code, I have no manner of doubt that in a case where the Magistrate makes over the case for inquiry or trial to another Magistrate under S. 192 of the Code, the former is not required to examine the complainant on oath.*
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> *14. Bearing in mind the aforesaid principle, I proceed to examine the order passed by the learned Chief Judicial Magistrate making over the case to another Magistrate under S. 192 of the Code. As observed earlier, the learned Chief Judicial Magistrate has not only perused the complaint but also heard the counsel for the complainant and thereafter made over the case to another Magistrate under S. 192 of the Code. This would obviously mean that he has done so after taking cognizance. Thus, on principle, I do not find that any error has been committed by the learned Magistrate while making over the case. "*

9. Relying on the aforesaid judgements, learned counsel for the O.P. No. 2 submits that there is no illegality in the impugned orders and the learned court below has rightly taken cognizance.

10. Mr. P.C. Sinha, learned counsel for the State submits that there is no illegality in the impugned orders.

11. In view of above submission advanced by the learned counsel for the parties, the Court has perused the materials on record. It is apparent that the petitioner was addressing a meeting of a political party only. The workers of that party were assembled there. O.P. No. 2 has stated that he is one of the worker of one the party. For the offence under section 504 I.P.C. it is necessary that the insult should be delivered to the person insulted with the intention

that he may be there and then provoked to commit an offence but where there is no such publication, no offence under section 504 I.P.C. is committed. That provocation will cause the person to whom the intentional insult is offered to break the public peace or to commit any offence. In the case in hand the petitioner was addressing the workers of the political party in a particular place where persons whom it has been alleged that certain mark there person section 504 I.P.C. is attracted. Section 190 Cr.P.C. speaks of cognizance of offence by the Magistrate. Section 192(1) Cr.P.C. also speaks transfer of the case to the Magistrate for taking cognizance. The word cognizance is not defined in the Cr.P.C. In the case of ***"S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. & Others "*** reported in ***(2008) 2 SCC 492***, the Hon'ble Supreme Court in para 19 has held as under:-

> *"19. The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it cannot 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone."*

12. When the cognizance order is sought to be quashed, the Hon'ble Supreme Court has held that from the bare perusal of F.I.R. or the complaint an offence is made out then the order taking cognizance cannot be quashed. The court has to take cognizance of an offence after perusal of the FIR, police papers and chargesheet, if an offence is made out, the court has to take cognizance. Thus, it can be said that the court has to apply its mind and come to the conclusion that an offence is made out. If the offence is made out he has to take cognizance of the offence. It is well settled that it is not necessary to pass a detailed order and give detailed reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind. If the Magistrate after going through the complaint petition, statements of the other witnesses or after going through the FIR, case diary and charge sheet or the

complaint, as the case may be comes to a conclusion that the offence is made out, he is bound to take cognizance of the offence. The order should reflect application of judicial mind to the extent that the F.I.R. the case diary or complaint, offence is made out. From perusal of complaint, it transpires that offence is not made out. On perusal of impugned order dated 21.01.2016 it transpires that concerned court has not taken cognizance moreover it transpires that this order has been passed on the format drafted by the Court. In this order Sections are hand written. Name of the complainant is hand written and the transferee court is hand written. Date is also hand written. These words have been put in the order in a blank space and by hand written and thus it cannot be said that order has been passed after application of mind. Moreover, in the light of discussions made here-in-above, there is no cognizance order and merely by this order the case has been transferred to a particular Magistrate.

13. The learned Magistrate by order dated 05.09.2016 has dismissed the complaint petition after going through the case record and considering that the ingredients of Section 504 & 505 I.P.C. is not there. Learned Magistrate was well within the jurisdiction to pass reasoned order after receiving file sent under section 192(1) Cr.P.C. The revisional Court failed that once order passed under section 192(1) Cr.P.C., the Magistrate is bound to proceed further then to erroneous in view of the fact that it cannot be said that the learned Court of C.J.M. has passed the order dated 21.01.2016 after taking cognizance. The said section clearly speaks that after taking cognizance the power under section 192(1) Cr.P.C. is required to be inquired. The Revisional Court has held that once transfer of the complaint under Section 192 (1) Cr.P.C. postulates taking of cognizance and thereafter sending the records for enquiry and allowed the revision application and remanded back to the learned court below to proceed afresh. It has already been discussed earlier how the order dated 21.01.2016

has been passed. Thus this revisional order is found to be erroneous. Order dated 05.05.2017 by which the learned Magistrate has taken cognizance under section 504 of the I.P.C, this order has been passed on the strength of revisional order meaning thereby that learned Court has passed this order without applying the independent mind in which learned Court has taken cognizance. Sections 200, 202, 203 and 204 Cr.P.C. have been discussed by the Hon'ble Supreme Court in the case of ***Samta Naidu (supra).*** In the judgment relied by the learned counsel for the petitioner in the case of "***Dr. Binod Kumar" (supra)***, the Court has held that a Magistrate who receives the case on transfer and takes cognizance would not become incompetent to do so merely because the sanction of transfer of the case to his file in accordance with law, meaning thereby that on transfer of the case under section 192(1) Cr.P.C., the learned Magistrate is empowered to take cognizance. This Court has already held that order dated 21.01.2016 is not in accordance with law. Thus the said judgment relied by the learned counsel for the O.P. No. 2 is not helping the O.P. No. 2.

14. In the light of discussions made here-in-above, entire criminal proceeding instituted against the petitioner in connection with C.P. No. 204/2016 including part of the order dated 05.05.2017 whereby and whereunder the learned Magistrate took cognizance under section 504 of the Indian Penal Code, order dated 21.01.2016 whereby the case was transferred under section 192(1) Cr.P.C. and order dated 12.04.2017 whereby learned Sessions Judge has allowed the Criminal Revision No. 235/2016, are hereby quashed. Pending I.A., if any, stands disposed.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/