

(1996) 08 MAD CK 0059

In the Madras High Court

Case No : Criminal R.C. No. 547 of 1996 (Against the Order passed by the Principal, Sessions Judge, Madras, D/- 15-7-96)

Dr. Subramanian Swamy

APPELLANT

Vs

J. Jayalalitha

RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 173(2), 190, 190(1)
Prevention of Corruption Act, 1988 — Section 11, 13(1)

Citation : (1997) CriLJ 2481 : (1994) 1 MLJ 314

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Advocate : Dr. Subramanian Swamy, for the Appellant; Mr. K.A. Panchapagesan, for the Respondent

Judgement

1. This petition coming on for orders as to admission on this day upon perusing the petition, and the order of the Lower Court and upon hearing

the arguments of Dr. Subramanian Swamy the petitioner herein and of Mr. K. A. Panchapagesan, advocate for the respondent and of Mr. R.

Shanmugasundaram the Public Prosecutor, the Court made the following order :-

An interesting question of law, however, almost settled by the judicial pronouncements by now, is being raised in this case, while seeking admission

of this revision filed to challenge the order passed by the learned Principal Sessions Judge, Madras in Unnumbered C.C. of 1996 in S.R. No.

4604 of 1996 dated 15-7-1996.

2. Mr. Subramanian Swamy, President of Janatha party, filed a private complaint before the court below against Selvi Jayalalitha for the alleged

commission of offences under sections 11, 13(1)(c) and (d) of Prevention of

Corruption Act, 1988 stating that the latter while she was the Chief Minister, along with others contravened the various provisions of law and indulged in some transaction of the property owned by the Government and so on. The matrix of the matter to be highlighted for the limited purpose of appreciating this revision, as culled out from the complaint is extracted as under :- The Tamil Nadu Small Industries Corporation Limited, popularly known as Tansi, a Government undertaking under the aegis of the Department of industries runs certain Industries owning its infrastructure like buildings, lands, machineries, etc., however with a constant incurring of debt. It was stated that the Government of Tamil Nadu by passing a Government Order, had decided to dispose of certain properties amongst, the same, one is the property, which is the subject matter herein along with others by violating all the norms and procedures and by abdicating various procedures and so on, she enriched by herself and therefore, the complaint was preferred in the court below. To sub-ststantiate this, G.O. Ms. 832 Industries SID (2) Department, dated 30-9-1985 was also referred to in the complaint. The plinth area of the property is roughly about 30,966 sq.ft. provided with all amenities and accommodations. The respondent herein and her sole partner of Jaya Publication, a partnership firm, purchased this property on 29-5-1992 as the said firm has been reconstituted on 22-1-1990. In an offshoot publication made in one of the News media by the Chairman and Managing Director of TANSI, the so-called advertisement was made for the disposal of the land and building of TANSI, but it was not decipherable and noted down by anyone. The said publication did not contain the proposed extent of the property to be disposed of and the said advertisement was made without giving adequate time to reflect as provided by the rules and all these methods were adopted by the respondent/accused only with a view to make a stage-management as if the relevant procedure and rules have been followed. The market value of the property was also said to have been undermined to a great extent and to suit such under valuation, violation of rules more in number were also made to get the document executed, completed and registered. The revenue duly expected by the exchequer of the Government was thus avoided and benefited by the respondent, which amounted to the commission of offences above referred to. The private

complaint as provided u/s 200 of the Code of Criminal Procedure was filed by the petitioner herein before the court below on 11-7-1996 and the

learned Principal Sessions Judge, Madras, by passing the impugned order has returned the same while exercising his powers u/s 200 of the Code

of Criminal Procedure. The following is the exact narration of the operation order of the learned Principal Sessions Judge as found in paragraph 5

:-

It is necessary to state that for the very same subject matter in the complaint, the State Crime Branch, CID Police, has already registered a case

against the accused and other persons on 9-7-1996 in Cr. No. 17/96 and the case is under investigation. The present complaint has been given by

the complainant only on 11-7-96. When the subject matter has already been taken cognizance by the police and the matter is being investigated,

there is absolutely no necessity to take the present complaint on file and proceed according to law. It is also not necessary to send this complaint

u/s 156(3) of Cr.P.C. to the police, because the matter is already under investigation by the police and this Process would amount to duplication.

Taking into consideration of the fact that for the very same subject matter, a case has been registered by the State Police and the investigation is

going on, I am of the view that it is not necessary to take the complaint on file and as such the complaint has to be returned to the complainant.

In the result, the complaint is returned to the complainant as the matter is already under investigation by the Crime Branch CID Police.

It is, this order which is being challenged and canvassed in this revision for its want of legality and propriety.

3. I have heard Dr. Subramanian Swamy, the petitioner herein who appeared in person and contra by Mr. Panchapagesan, learned counsel

appearing for the respondent. That apart, I have heard learned Public Prosecutor Mr. R. Shanmugasundaram also. As I felt necessary and directed

already to produce the case diary in C.B. C.I.D. Police crime No. 17/96, the case diary has been produced before me and I have had an occasion

to peruse the same and thereafter, the same was returned to the learned Public Prosecutor.

4. The petitioner in support of his revision and the prayer made therein had raised the following contentions :- 1. Learned Sessions Judge while

passing the impugned order has virtually failed to note the very existence of a prima facie case against the respondent for the relevant offence

referred to in the complaint itself supported by all documents and the petitioner was ready to give and produce all quantum of his evidence and

therefore, the return of the complaint instead of taking cognizance of the same u/s 200 of the Code of Criminal Procedure is clearly an erroneous

one and the impugned order lacks every legal sanctity. 2. It was almost settled by now that when a complaint by a person of his status being

involved in public life, has come forward with an allegation with an allegation with all and adequate materials to be taken cognizance of u/s 200 of

the Code of Criminal Procedure, learned Sessions Judge being specially empowered to take cognizance of the said offences, ought to have taken

cognizance of and ought to have followed the procedure laid down u/s 210 of the Code of Criminal Procedure, the failure of which would clearly

amount not only to a serious prejudice to him, but also the denial of the statutory right provided to anyone. 3. There was no option for the learned

Sessions judge to return the complaint instead of taking cognizance of the same for the very reasoning of adequate materials that have been alleged

in his complaint, which are in total fulfillment of Section 200 of the Code of Criminal Procedure. Under the circumstances, the Court below either

ought to have dismissed the complaint or ought to have proceeded with the same as provided u/s 201 and 203 of the Code of Criminal Procedure

and the passing of the impugned order is virtually a denial of the rights conferred upon him in whatever capacity it may be.

5. In support of the above contentions, reliance was placed in Kewal Krishan Vs. Suraj Bhan and Another, wherein, the following principle has

been laid down at page 1274 :-

Where two cases exclusively triable by the court of session, one instituted on a police report u/s 173 Cr.P.C. and the other initiated on a criminal

complaint, arise out of the same transaction, if the two cases are tried by two different courts, there is a risk of two courts coming to conflicting

findings. To obviate such a risk, it is ordinarily desirable that the two cases should be tried separately but by the same court.

In Harjinder Singh Vs. State of Punjab and Others, , their Lordships of the Supreme Court have observed as follows :-

It is contended by learned counsel for the appellant that the High Court was wrong in upholding the order of the learned Additional Sessions Judge

that the cases be clubbed and consolidated particularly when the prosecution versions in the police challan case and the complaint case are

materially different and the accused persons are also not be same. He places reliance on the decision of this Court in Kewal Krishan Vs. Suraj

Bhan and Another, for the submission that the two cases should be tried together but not consolidated. Further, he contends that in view of the

conflicting prosecution version in the two cases it is proper that the learned Additional Sessions Judge should inform the Government about the

desirability to appoint a Special Public Prosecutor to conduct the case of the complainant.

In the facts and circumstances of this particular case we feel that the proper course to adopt is to direct that the two cases should be tried together

by the learned Additional Sessions Judge but not consolidated i.e., the evidence should be recorded separately in both the cases one after the

other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence

be read as evidence in the other. The learned Additional Sessions Judge should after recording the evidence of the prosecution witness in one case,

withhold his judgment and then proceed to record the evidence of the prosecution in the other case. Thereafter he shall proceed to simultaneously

dispose of the cases by two separate judgments taking care that the judgment in one case is not based on the evidence recorded in the other case.

In Kewal Krishan Vs. Suraj Bhan and Another, supra, this Court had occasion to deal with a situation as the present, where two cases exclusively

triable by the court of Session, one instituted on a police report under S. 173 of the Code and the other initiated on a criminal complaint, arise out

of the same transaction. The Court observed that to obviate the risk of two courts coming to conflicting findings, it was desirable that the two cases

should be tried separately but by the same Court. The High Court was largely influenced in upholding the order of the learned Additional Sessions

Judge by the fundamental right of the accused guaranteed by Art. 20(2) of the Constitution and S. 300 of the Code which provides that no person

shall be prosecuted and punished for the same offence more than once. If there is no punishment for the offence as a result of the prosecution, sub-

cl. (2) of Art. 20 has no application. The constitutional right guaranteed by Art. 20(2) against double jeopardy can still be reserved if the two cases are tried together but not consolidated i.e. the evidence be recorded separately in both cases and they be disposed of simultaneously. Further, the second prosecution must be for the "same offence". If the offences are distinct, there is no question of the rule as to double jeopardy being applicable.

6. Reliance was also placed by the petitioner on a judgment rendered by a Division Bench of Bombay High Court in *Banappa Kallappa v.*

Emperor, AIR (81) 1944 Bom 146 : 45 Cri LJ 701 wherein the following observations have been made at page 703 :-

No hard and fast rule can be laid down, and we do not suggest that the procedure which we have recommended above should be invariably

followed in the trial of counter cases arising out of one and same riot. But, normally, we think that that procedure is the one least open to objection.

The view which we have taken on this point is in accord with the view which was taken by the Madras High Court in *Krishna Pannadi Vs.*

Emperor, . It was observed in that case that cases and counter cases should be tried in quick succession by the same Judge, who should not

pronounce judgment till the hearing of both cases is finished. The same view was taken by another Judge of the Madras High Court in *Paladugu*

Lakshminarayana and Others Vs. Tadiboyina Suryanarayana,

7. Lastly, in furtherance, of the second and third contentions, the petitioner has brought to my notice the findings given by a learned Single Judge of

this court in *T. M. Rajendran v. C. A. Reddy*, (1913) LW (Cri) 72 for the similarity of the question involved, though the facts are not altogether

identical to the facts of the instant case, which ran as follows :-

It was contended for the petitioners in this petition to quash proceedings that since cognizance has been earlier taken by the Magistrate on the

Police report filed under S. 173(2), CrI.P.C. and the subsequent taking cognizance in respect of the same transaction against same accused on the

initiation of a private complaint was not sustainable and therefore, the criminal proceedings initiated against petitioner accused 1 and 2 by way of a

private complaint were liable to be quashed.

Held : the taking on file of the private complaint by the Magistrate does not

involve taking cognizance once again, and even if it is so interpreted, there is no bar against such proceedings. The petition therefore deserves to be dismissed and is hereby dismissed.

While coming to the above view, learned Judge has formulated the legal synthesis in the following manner :-

The occasion by way of preferring a private complaint had been necessitated in this case as the police report, did not reflect the real offences

against the offenders concerned as borne out by records. Since the complaint case had been given subsequent to the filing of the police report, duly

taken cognizance of by the Magistrate, there is no question of any stay of the complaint case, inasmuch as the Magistrate can try both the cases

together without any obstacle whatever and arrive at an independent conclusion in each case on the assessment or evaluation of the evidence. The

facts of the instant case reflects the reverse of a situation as contemplated under S. 210 Cr.P.C. of no consequence. The point emphasised by

reference to S. 210 is that there is no prohibition for the Magistrate to take cognizance of an offence twice, once on a police report and another on

a private complaint in respect of the same transaction. The adoption of such procedure will not in any way hamper autrefois acquit or convict

principles adumbrated u/s 300 of the Cr.P.C.

8. While interpreting the meaning for the concept, "taking cognizance" learned Single Judge has observed as follows :-

If taking cognizance" means only "becoming aware of" or "taking judicial notice of" an offence, whatever might be the situation in a given case, in

law the Magistrate takes cognizance or becomes aware of an offence only once. In that sense, it is correct to say that the Magistrate cannot take

cognizance of an offence twice. When on the basis of a police report or private complaint or otherwise, a Magistrate takes cognizance of an

offence he becomes becomes aware of the Commission of the offence and that awareness will certainly continue or at any rate in the eyes of law,

be deemed to continue. In such state of affairs, the commission of an offence is again brought to his notice, say by way of private complaint; strictly

speaking, he does not take cognizance of the offence again but exercises his judicial power and proceeds with that case in pursuance of the

cognizance already taken by him on the previous occasion. As such, the taking

on file of the private complaint by the Magistrate in the instant case cannot amount to taking cognizance for the second time and in this view of the matter, the view as projected by learned counsel for the petitioner deserves outright rejection.

9. The petitioner also added another contention on factual aspects that even if the first information report registered by the C.B. C.I.D. Police in their Crime No. 17/96 is taken into consideration, then, it is obvious to note that it is only an omni-bus narration but, however, not particular and nor decisive against such of person who are to be proceeded with and to this extent, the registration of it case by the police has become a cumbersome method and it does not provide any immediate legal redressal and to this extent also, he is much prejudiced by the impugned order passed. By referring to all the above contentions and case-laws, it was persuaded that the revision has to be admitted and proper direction has to be given by setting aside the impugned order.

10. As I felt necessary to provide an opportunity to the respondent, notice was served and accordingly, the Bar entered appearance for and on behalf of the respondent and consequently, a written objection has also been filed inter-alia contending that the very impugned order passed by the Court below is correct in the sense that the Court has got power to reject or return or proceed with in accordance with law on a complaint filed by any aggrieved person for the commission of offences under the procedural law. Though several contentions were raised in the counter-statement, it is seen that altogether it would justify the impugned order passed by the learned Principal Sessions Judge.

11. Mr. Panchapagesan has also referred to a case-law held by me in Abdul Salam and another Vs. Inspector of Police R. 1 Mambalam Police

Station and others, in support of his case by quoting the following passage :-

In Chinnu Naicken Vs. Rangasami, a learned single Judge of this Court has held as follows (at page 495 of Cri LJ) :-

"It is permissible to hold a joint trial of the accused named in the police report and the accused named in the private complaint, amalgamating the

two, even though the accused in the police report may not all be the same as those in the complaint. It is better for the purpose of a proper

appraisal if the two cases are clubbed together as the persons accused are

involved in the same offence arising in the course of the same transaction. The foundation for the charge is one and the same and it is only just that there should be one trial." In *Kadiresan v. Kasim*, 1987 LW

(Cri) 64 : 1987 Cri LJ 1225 David Annoussamy, J. has observed as follows at page 1229 :- "The error of the Magistrate arose from the fact that

he made a confusion between joint trial and complete amalgamation of cases. As held by the Supreme Court there cannot be amalgamation of cases when joint trial is permitted.

When using a loose language, two cases are said to be clubbed, that means that they are being tried together but that cannot make any one of those cases to lose its identity. Once in a matter summons has been issued by the Magistrate, unless the accused is discharged, the case continues to exist and therefore, judgment should indicate that.

The Court, while ordering that both the cases would be clubbed in respect of this occurrence has practically merged them which it had no

jurisdiction to do. Since it is clear from the language of S. 210 Cr.P.C., that both the cases exist side by side and continue to have their specific

identities and the Court has no jurisdiction to merge them, it is always better to avoid terms like, "clubbing" and to use the language of the Code

itself, that is to say, "trying together". Since the Court below has committed a gross error which has affected the interests of justice in both the

cases, the revision petition has to be allowed, and the trial Court while dealing with the matter should follow the guidelines indicated by the

Supreme Court in *Harjinder Singh Vs. State of Punjab and Others*, . In the present case, the Magistrate did not act at the beginning strictly in

accordance with S. 210 Cr.P.C. by way of staying the proceedings and calling for a report. But after the case filed by the police has been

transferred to his court the Magistrate has become aware that the cases were covered by S. 210, Cr.P.C. and he purported to act under that

section. As per that section, the merging of the cases is not contemplated. What is contemplated is only that the cases be tried together.

As per S. 210, Cr.P.C. the two cases continued to exist separately. But both the cases should be tried as if both of them have been instituted on a

police report, from the time the Magistrate has taken cognizance of an offence under the report. It is to be noted that this contingency may happen

at any stage of the private complaint case because the Magistrate would have stayed that case only when it has been made to appear to him that an

investigation by the police is in progress in relation to the same subject matter."

In *Samraj v. Saravanchami*, 1990 LW (Cri) 370, following the decision of David Annoussamy, J., Arunachalam, J. has observed that S. 210,

Cr.P.C. would not permit literal merging of the cases, for the separate identity of the two different prosecutions, though in respect of the same

occurrence could not be overlooked and they may have to be dealt with together side by side. The Supreme Court in *Manikandan v. Pandian*,

1990 SCC (Cri) 203 has observed as follows :- "Before parting with the case, it may be necessary to point out that the two cases however,

cannot be consolidated and tried together though the case instituted on private complaint is in respect of the same offence for which the charge-

sheet has been filed against the first accused. The entire evidence in the case may not be the same. It may, therefore, be proper to record the

evidence separately in both the cases unless the witnesses are common. The cases be tried one after another. In this context, we invite the attention

of the parties and the trial Court to have regard to the principles laid down in *Harjinder Singh v. State of Punjab*".

Thus, it is made clear that in order to have a joint trial or amalgamation of two cases identical in nature between the same parties, involving the

same set of facts and evidence, it requires a finding and order on the basis of the above materials referred, according to the plain reading of Section

210 Cr.P.C. If the evidence let in both the cases are identical in nature and common, nothing is illegal for the trial Magistrate to have a joint trial but

however, it can be made by a proper reasoning. Otherwise, it is not valid in law. With the result, Section 210, Cr.P.C. cannot be invoked. In the

light of the above enunciated legal position and made applicable to the instant case, pertaining to the private complaint taken on file before the

XVII Metropolitan Magistrate in C.C. 2052 of 1984 was made amalgamated or clubbed with the present case without any reasoning whatsoever

in the absence of specific finding for the amalgamation or clubbing, the same is not in consonance with the provision of law contained in Section

210, Cr.P.C. Therefore, I have no hesitation to hold that the very approach adopted by the learned trial Magistrate is totally against the legal

position enunciated in Section 210, Cr.P.C. and is clearly an erroneous one and on this ground, also the impugned order in Cr.R.C. No. 809 of

1987 has to be interfered with.

12. In the light of the above rival position, the only point that arises for consideration in this case, whether the impugned order passed by the learned Principal Sessions Judge is valid in law or vitiated with any illegality or impropriety ?

13. It is all well to note that the parties are not at controversy or dispute presently on factual aspects, and one and the only question that has been

projected before me is with regard to the very involvement of the legal position viz., the return of the complaint filed by the petitioner against the

respondent u/s 200 of the Code of Criminal Procedure for taking cognizance of offences referred to therein is correct or not. Apparently the

private complaint was filed before the Court below u/s 200 of the Code of Criminal Procedure. To appreciate the rival contentions and the

grievances of the parties, it has become relevant to extract the very section of law itself, spelt out in Section 200 of the Code which runs as follows

:-

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the

substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :

Provided that, when the complaint is made in writing, the Magistrate need not examine the complaint and witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192;

Provided further if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complaint and the witnesses, the latter

Magistrate need not re-examine them.

A casual reading of this section and minimum understanding of the same would clearly reveal that a Magistrate while "taking cognizance of an

offence" on complaint should examine upon oath the complainant and the witnesses present if any, and such examination should be reduced into

writing, signed by the complainant, witnesses and also by the Magistrate. Then, the proviso added to this section provides two further modes of various categories of persons and circumstances. It is also noticed at this stage that when the complaint is made in writing, then, there exists no need to go on recording the evidence of the complainant or other witnesses. It is well-settled by now that the Magistrate for the purpose of taking cognizance, is entitled to proceed on the basis of a written complaint alone, if not, to record the evidence of the complainant as well as the witnesses present. Thus, the obligations cast upon the Magistrate are more in numbers for the purpose of taking cognizance. What is more important and imperative for the Magistrate to proceed under the Section is the concept "taking cognizance of an offence".

14. Section 190 of the Code of Criminal Procedure provides like this :

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this

behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as

are within his competence to inquire into or try.

15. It is worthwhile to note the expression or the phraseology adopted in the above Section of law, namely, "Take cognizance of an offence" has

not been defined at all anywhere in the Code but however, in its broad and literal sense, it would mean "take notice of an offence" and would

include -

(i) the taking notice of an offence in a judicial capacity with a view to the initiation of judicial proceedings against the offender in respect of that

offence; or

(ii) the taking notice of an offence by a Magistrate in an executive capacity, with a view to take steps to see whether there is any basis for initiating

judicial proceedings against the offenders in respect of the offence; or

(iii) the taking notice of an offence for other purposes. Among the above, it is always desirable to note that the expression adopted in the above

Section has been used only to indicate the limited sense of the first category mentioned above.

16. A learned single Judge of this Court in *T. M. Rajendran v. C. A. Reddy*, 1993 LW (Cri) 72 also held the view that if "taking cognizance"

means only "becoming aware of" or "taking judicial notice of" an offence, whatever might be the situation in a given case, in law the Magistrate

takes cognizance or becomes aware of an offence only once and that in that sense, it is correct to say that the Magistrate cannot take cognizance

of an offence twice.

17. It is also noticed that the said expression "take cognizance of an offence" signifies and is only indicative of the judicial proceedings with

reference to the offence said to have been involved. Hence, taking cognizance of an offence is a judicial act though it may only be with a view to

initiate such proceedings indicated above. If this is the position clearly culled out from the very Section of law provided by the Statute, then, it

would be very clear to say that the all and every act of a Magistrate before taking cognizance of an offence would clearly fall outside the province

of the judicial proceedings with reference to any of the offences alleged, which would imply that such acts would not be judicial acts with reference

to the offence.

18. Having thus considered the very gamut of Section 200 and Section 190 of the Code of Criminal Procedure, it can be understood that the very

scheme of judicial process to be undertaken by various stages by the court of law has been clearly spelt out under Chapters XIV and XV of the

Code. If the taking cognizance of an offence is considered to be the very foundation and basis for all further proceedings as has been clearly spelt

out by the other Sections of law in the Chapter, the latter is the species of which the Court must follow always but the question remains to be seen

in conjunction with the contention raised by the petitioner that once a private complaint u/s 200, Cr.P.C. is filed before a Court for taking

cognizance of an offence, the Magistrate or the Judge, must entertain it and dismiss it or follow further by means of initiating his own inquiry or trial,

or call for a report u/s 156(3) of the Code and he is not competent to return the

complaint. In the context of the above specific contention, with great constraint and regard, I am inclined to go one step forward to consider what has been provided actually in Section 190 of the Code of Criminal Procedure. In sub-clause (1) of Section 190 the word "May" may however be indicative of judicial discretion. In this context, I have to advert to certain backdrops of the legal history to understand the proper perspective in the instant case. These words "May take cognizance" used in the corresponding Section of the Old Code have been retained in the present Code in spite of the conflict of opinion under the Old Code as to the meaning of the word "may". According to one view, "may" signifies an option to take cognizance and the contrary view is that it means must and hence the Magistrate cannot refuse to take cognizance of an offence.

19. The Law Commission of India adverted to the various reasons for retaining the word "may" in the following manner :

Meaning of "may take cognizance" - Before concluding we would like to mention one aspect of Section 190 which has been discussed in Courts

but which does not seem to require any change in its wording. It will be noticed that Section 190 provides that certain Magistrates "may" take

cognizance of offences if certain conditions are satisfied. It has at times been argued in Court and the argument accepted, that, despite the use of

the word "may" a Magistrate is bound to take cognizance of an offence if there is before him a proper complaint, or a proper police report. At

other times, as in a recent case in the Supreme Court, it has been observed that a Magistrate has ample discretion in this respect and if on looking

at a police report he finds that there has not been a thorough investigation he can, without taking cognizance, order further investigation. We take it

therefore, that a Magistrate has certain discretion in this connection but as this discretion is judicial in nature, it is limited in its scope and that is how

it should be. We, therefore, do not propose to disturb the language of the section.

20. The Apex Court in *Gopal Das v. State of Assam*, 1961 (2) Cri LJ 39 : AIR 1961 SC 986, has observed the following :

We are unable to construe the word "may" in Section 190 to mean "must". Thus, this decision of the Apex Court settled the conflicting view. In

Shri A.C. Aggarwal, Sub-divisional Magistrate, Delhi and Another Vs. Mst. Ram Kali, etc., , the Supreme Court has held that "under Section

190(1)(b) of the Code of Criminal Procedure, the Magistrate is bound to take cognizance of any cognizable offence brought to his notice. The

words ""may take cognizance"" in the context mean ""must take cognizance"". He has no discretion in the matter, otherwise that Section will be

violative of Art. 14."" This authority has not been accepted by the Apex Court itself and the ratio decided in Gopal Das's case has been maintained

and not been shaken by its subsequent decision in Aggarwal's case as further strengthened in State of Assam Vs. Abdul Noor and Others, , to the

effect that the Magistrate can, u/s 190 of the Criminal Procedure Code, before taking cognizance ask for investigation by the police under Section.

156(3) of the Criminal Procedure Code and that the Magistrate can also issue warrant for production before taking cognizance. In the light of

these Supreme Court decisions, it must now be taken as settled law that the word ""may"" gives judicial discretion to the Magistrate to take

cognizance of a police report or a complainant. This was also the view expressed by the Law Commission in its report referred to above.

21. In the light of the above reference of the Law Commission and the ratio held by the Apex Court, the phraseology adopted in Section 190

may"" remains always indicative of and pertaining to the discretionary power and certainly not a mandatory obligation of entertaining or accepting

the complaint for all further proceedings as provided by Section 190 or Section 200, Cr.P.C. with all the observations made up to this point with

reference to the case laws and the various provisions of the Code in the midst of rival contentions, it would be made clear that taking cognizance of

an offence by a Magistrate who is specially, empowered or otherwise by a Court of law competent to do so is only discretionary and not

mandatory and what are all the Magistrate is expected to do is to take judicial notice of the commission of the offence with the available materials

and so on and if it is so, that act can be characterised with the legal dictum "cognizance" and if this legal exercise is done basically at the inception

then, I have no second opinion to say that all the other proceedings in the same Chapter of the Code will automatically follow, which is, inclusive of

conducting inquiry or trial by the Magistrate himself, issue process and framing the charge or taking the simultaneous trial or inquiry as provided u/s

210 of the Code and so on and that is the very scheme clearly spelt out and mandated by the Statute. The conspectus of various case laws cited

by and on behalf of the respective parties herein, would directly relate to a proceedings totally after taking the cognizance of an offence by a Court

of law and not before the taking of cognizance of an offence. Therefore, while recognising and identifying the enormity of the strain made by the

petitioner as well as the Bar on the other side in persuading me to see that the procedural mandate schemed out under Chapters XIV and XV of

the Code has not been followed by the learned Sessions Judge in the instant case, it does not help or render any assistance to improve their case

for want of its relevancy. With respect to the petitioner I am giving this observation for the very simple reasoning that the actual operative portion of

the impugned order made by the learned Sessions Judge adverted to above would clearly indicate that he has neither entertained the complaint or

dismissed, nor refused to take cognizance but however, it is noted that by adverting to certain circumstances pertaining to the filing of the complaint

and other attendant factors, he felt that taking cognizance would amount to duplication in the context that the cognizance of the offence against the

respondent has already been taken note of and the matter is seized of by the C.B. C.I.D. wing of the State Police. It is thus seen that the learned

Sessions Judge has neither refused nor taken cognizance of but however, returned the complaint filed by the petitioner alleging the commission of

certain offences by the respondent and that the impugned order would not reach or provide a finality. This would mean that the right of the

petitioner has not been denied at all nor refused but however the complaint has been returned in the context of the State has already been seized of

the matter, by taking cognizance of already, as indicated above in the impugned order.

22. I am looking this aspect in another angle also. To say more precisely, under the legal perspective, I have to exert something more to see what

acts constitute "judicial acts" for attributing the impugned order as the resultant factor of a judicial act so as to be canvassed in this revision under

the revisional jurisdiction of this Court. I am inclined to proceed in this angle for the very reasoning that the petitioner had brought to my notice a

passage in the impugned order, namely, that taking in to consideration of the fact that for the same subject matter a case has been registered by the

State Police and the investigation is going on, I am of the view that it is not necessary to take the complaint on file and as such the complaint has to

be returned to the complainant, would clearly pertain to the fact that the learned Sessions Judge has considered the gamut of the complaint in full

and that therefore it is not correct to say that this is not a judicial act. I am totally unable to persuade myself to agree with the contention above

raised for the very reasoning that the learned Sessions Judge while passing the impugned order used the words ""taking in to consideration of the fact

that for the very same subject matter"" alone would not amount to a judicial act. With great respect and constraint, however, for the limited

purpose, I may observe that the above words seem to have been used by the learned Sessions Judge only in the context and circumstances under

which the complaint was filed and nothing else and however, taking into consideration of the notice of the other fact, he passed the impugned order

without touching the substratum of the complaint in any manner.

23. In *Kalavagunta Sriramarao Vs. Kalavagunta Suryanarayanamurthi and Others*, , a learned single Judge of this Court, while dealing with the

meaning and scope of the words and phrases, has observed as follows (at page 343) :

A judicial act seems to be an act done by a competent authority upon a consideration of facts and circumstances and imposing liability of affecting

the rights of others. Thus, it must be that of a person or persons who have legal authority to determine the questions affecting the rights of parties

and in a judicial manner.

24. A judicial act according to Black's Law Dictionary, VI Edition at page 846, has the following meaning :

An act which involves the exercise of discretion or judgment. It is also defined as an act by Court or Magistrate touching the rights of parties or

property brought before it or him by voluntary appearance or by prior action of ministerial officers. An act by a member of a judicial department in

construing law or applying it to a particular set of facts.

25. At page 645, *THE LAW LEXICON* compiled and edited by P. Ramanatha Aiyar, Reprint Edition 1987, defines "judicial Act" in the

following way :

The term "judicial" does not necessarily mean acts of a Judge or legal Tribunal sitting for the determination of matters of law, but a judicial act may

be an act done by competent authority upon a consideration of facts and

circumstances and imposing liability or affecting the right of other. The authority must ""exercise some right or duty to decide"" before its act can be called ""judicial"". A judicial act must be an act performed by a Court, touching the rights of parties, or property brought before it by voluntary appearance, or by the prior action of ministerial officers. An adjudication of the rights of parties who in general appear or are brought before the Tribunal by notice or process, and on whose claims some decisions is rendered; the power to decide rights of person or property in specific cases. Enough for me at this state to see that the facts of the instant case is purely outside the legal concept of "judicial act" for the impugned order has been passed by the learned Sessions Judge by simply returning the complaint, which does not amount at all to a finality in nature and character. This would mean, that if the complaint can be entertained again taking the ratio of the apex Court in very many cases into account and the rulings of this Court cited by and on behalf of the respective parties, and it cars be proceeded, it is not at all possible to think of attributing the colour of "judicial act" to the order passed by the Special Magistrate, namely the Sessions Judge, in returning the complaint, to bring it within the scope and ambit of Section 200 of the Code of Criminal Procedure.

26. Having thus considered the gamut of whole legal perspects to the facts of the instant case, with greatest constraint, I am satisfied to hold that the impugned order passed by the learned Sessions Judge returning the complaint to the petitioner is not a judicial act but however an administrative one and that even if assuming so, it would not provide the finality for the reason of he has neither accepted nor dismissed nor proceeded further but however returned the complaint. The petitioner can under the circumstances represent it sometime later if he felt aggrieved.

27. I have had the occasion to hear the learned Public Prosecutor in this regard, to be on the safer side to spell and cull out the remedy if any, in the context of the impugned order, who produced the case diary maintained by the State branch of the C.B. C.I.D. and on a perusal, it is seen that the investigation is in progress. Pertinent at this stage to note that two days prior to the filing of the present complaint in the impugned order, the case was registered by State C.B. C.I.D. in Crime No. 17 of 1996 and investigation is going on accordingly. Only this aspect seems to have been

taken note of by the learned Sessions Judge while passing the impugned order. On a perusal of the impugned order, he has never touched the

substance or the gamut of the complaint in any manner for the very reason that he felt for the entertaining of such complaint administratively, the fact

that the State Police has already been seized of the matter is relevant and that therefore, he has passed the impugned order.

28. One cannot comprehend that with regard to the commission of any offence, there can be any parallel investigation by two independent

agencies either by the Court or the other. Particularly, crime detection in the name of investigation is totally distinct and different from the concept

of crime punishment. If two parallel investigation is ordered, then, it has to face its consequences. Therefore, parallel investigation is alien to the

recognised proposition of law but the matter here is not akin to the parallel investigation. What Section 210, Cr.P.C. provides is that when in a

case instituted otherwise than on a police report, it is made to appear to the Magistrate during the course of inquiry or trial held by him that an

investigation by the police is in progress in relation to the same subject matter, the Magistrate shall stay the proceedings of such inquiry or trial and

call for a report on the matter from the Police Officer conducting the investigation.

29. If the mandate spelt out in the above section of law is looked into, one is made very clear that even if a private complaint is entertained u/s 200,

Cr.P.C. after having taken the cognizance, when it is brought to the notice of the Magistrate that the State Police is already seized of the matter by

investigating, it then the Magistrate is clearly mandated that he shall stay the trial of the complaint case and wait till the particulars and details of the

investigation, till the filing of the final report and then proceed with the trial or inquiry simultaneously as provided by the Statute. The object

underlying the Section is very significant. To avoid the quick order of acquittal or disposal of case for certain offences of certain persons without

proper investigation when the police is seized of the matter or the converse, by way of filing private complaints, is the main theme of the section.

Therefore, to import the ratios held by the Apex Court as well as this Court in very many cases above referred to, to any facts of the case except

the present one, absolutely I have no quarrel or disagreement. But my firm view is that the very synthesis enunciated by Their Lordships of the

Supreme Court in the abovesaid case laws, do not come in any way to improve the case of the parties herein, for the very reasoning that the

nuggets of the present case stands on the basically different situations and not the one very much involved in the above cases.

30. The above observations of mine in detail would clearly provide an answer to the various contentions raised by the petitioner and the learned

Counsel for the respondent in this case. It is therefore, under the circumstances, I do not propose to say anything more in this regard, except to say

that the impugned order passed by the learned Principal Sessions Judge, the Special Magistrate empowered to take cognizance, does not deserve

for any interference by virtue of my revisional jurisdiction. I would make it very clear that the petitioner herein has not been refrained from

representing the complaint again if necessity arose, nor his right is affected, nor an adjudication upon his right to file the complaint has been taken

note of or touched by the Court below. Therefore, the impugned order cannot be canvassed in this revision.

31. However, the instant revision deserves the giving of the following direction in the interests of justice and fair play for all the reasonings given

above. The State C.B. C.I.D. who have already registered the case in crime number 17 of 1996 for investigation is hereby directed to complete

the investigation within a maximum period of ten weeks from today and file the final report without fail before the Court of competent jurisdiction

for further action.

32. For all the foregoing reasonings and direction, the revision has to fail and accordingly, it is dismissed even at this admission stage.

33. Petition dismissed.