
(2022) 04 BOM CK 0080

In the Bombay High Court

Case No : Criminal Application No. 507 Of 2021,(LD/VC/OCR No. 146 Of 2020)

Hari Sankaran

APPELLANT

Vs

Serious Fraud Investigation Office, Through Assistant Director

RESPONDENT

Date of Decision : 19-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 167, 167(2), 167(2)(a), 173, 190, 309, 309(2), 482
Companies Act, 2013 — Section 212(14), 447
Indian Penal Code, 1860 — Section 34, 109, 120B, 177, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 406, 408, 409, 411, 465, 466, 468, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2)

Citation : (2022) 04 BOM CK 0080

Hon'ble Judges : Revati Mohite Dere, J

Bench : Single Bench

Advocate : Aabad H. Ponda, Vikrant Singh Negi, Ekta Tyagi, Pratik Thakkar, P. Singhanian, Hiten S. Venegavkar

Final Decision : Dismissed

Judgement

Revati Mohite Dere, J

1 By this application preferred under Section 482 of the Code of Criminal Procedure (`Cr.P.C'), the applicant seeks quashing and setting aside of the remand orders passed by the learned Special Judge, Greater Bombay, after filing of the impugned complaint, on the premise that the Special Court had not taken cognizance of the complaint filed by the Serious Fraud Investigation Office ('the SFIO') and hence the detention/custody of the applicant was illegal. The applicant also seeks his release forthwith from the alleged illegal detention/ custody on the aforesaid premise.

2 A few facts as are relevant to decide the aforesaid application are as under:-

The applicant was arrested by the respondent-SFIO on 1st April 2019, for the

alleged offence punishable under Section 447 of the Companies Act, 2013 vis-a-vis IL&FS Financial Services Limited ('the IFIN'). The applicant, after his arrest, was remanded to custody under File No. SFIO/INV/Unit-V/1003/IL&FS/2018-2019. On 28th May 2019, the respondent-SFIO submitted a report to the Ministry of Corporate Affairs ('MCA') against IFIN's Directors (including the applicant) and auditors, running into more than 32000 pages. On 29th May 2019, MCA issued a sanction letter under Section 212(14) of the Companies Act, directing the respondent-SFIO to file its complaint before the Special Court against the applicant and others, by 30th May 2019. Pursuant to the said direction issued by the MCA, the respondent-SFIO filed a criminal complaint, being Criminal Complaint No.20/2019 before the Special Court on 30th May 2019. Being aggrieved by the direction issued by the MCA to file a criminal complaint against the applicant and others, the applicant filed a writ petition in this Court, being Writ Petition No.5263/2019 seeking quashing of the said direction, the complaint and consequently, the prosecution lodged by the respondent-SFIO, on the premise that the MCA had not applied its mind whilst granting sanction. Similar petitions were also filed by the other Directors and Auditors. The Division Bench of this Court (Coram: B. P. Dharmadhikari, CJ and Nitin R. Borkar, J.) quashed and set-aside the direction dated 29th May 2019, issuing sanction by the respondent No.1–Union of India through Ministry of Corporate Affairs ('MCA') under Section 212(14) of the Companies Act, to the respondent No.2–SFIO as being unsustainable and consequential prosecution lodged by the respondent No.2–SFIO vide Criminal Complaint No. 20/2019 on the file of Special Court (Companies Act) and Additional Sessions Judge, Greater Mumbai, was held to be not maintainable and the same was also quashed and set aside.

Whilst partly allowing the said petition, the Division Bench, in para 202 XVII of the said judgment observed that the respondent-SFIO had admitted that the Court had not taken cognizance of the report and in these facts, if cognizance is not taken, the Court may not have power to remand and as such the detention of the petitioner-Director may not be legal. The Court also observed that however, since in the said petition, they were not required to answer the said question of detention of the petitioner (applicant), the said issue was kept open for consideration and liberty was granted to the applicant to file appropriate proceedings for his release. It appears that pursuant to the liberty granted by this Court vide order dated 21st April 2020, the applicant filed an application under Section 167(2) of the Cr.P.C before the Sessions Court and the learned Sessions Judge vide order dated 28th April 2020, was pleased to grant interim bail to the applicant.

Being aggrieved by the said order granting interim bail, the respondent No.2–SFIO filed an application being Criminal Application No. LD/VC/OCR/13/2020 and sought quashing and setting aside of the order passed by the Sessions Court granting interim bail. The said application was allowed by this Court (Coram : C. V. Bhadang, J.) vide order dated 5th May 2020. It appears that the applicant filed

an SLP before the Apex Court challenging the order dated 5th May 2020 passed by this Court (Coram: C. V. Bhadangi, J.). The Apex Court vide order dated 16th June 2020, after hearing the applicant's counsel, permitted the applicant to withdraw the SLP and granted liberty to the applicant to pursue appropriate remedies as available in law. Pursuant to the liberty granted by the Apex Court, the applicant has filed the aforesaid application, seeking his release on the premise that his detention, post filing of charge-sheet was illegal, as no cognizance of the complaint has been taken by the learned Special Judge.

3 Mr. Ponda, learned senior counsel for the applicant submitted that the power under Section 167(2) of the Cr.P.C to remand the accused, is only upto 60 days (as applicable to this case) and not beyond. He submitted that once the complaint (or charge-sheet, as applicable to this case) is filed, the power to remand under Section 167(2) comes to an end. He submitted that the applicant was first remanded to custody on 1st April 2019 and the complaint was filed by the respondent-SFIO on 30th May 2019 and therefore, the power to remand the applicant under Section 167(2) of the Cr.P.C had come to an end. According to the learned senior counsel, remand under Section 309 of the Cr.P.C is possible only after the Court takes cognizance of the complaint and since admittedly, cognizance has not been taken by the Special Court, there is no power to remand the applicant to custody even under Section 309 of the Cr.P.C. Learned senior counsel submitted that having regard to the aforesaid, the detention and custody of the applicant is illegal and his remand being contrary to law, he be released forthwith.

4 Mr. Ponda further submitted that once charge-sheet is filed, it is incumbent on the Court to take cognizance and that no gap is envisaged in the Cr.P.C between filing of charge-sheet and taking of cognizance. This, according to him, is in consonance with the constitutional mandate of protecting the personal liberty of an accused. In support of the said submission, learned senior counsel for the applicant relied on the judgments in *Rahul Pareek vs State of Rajasthan & Ors.* 2017 (1) WLN 148 and *C.B.I vs Anupam J. Kulkarni* (1992) 3 SCC 141. Thus, according to Mr. Ponda, remand under Section 309 of Cr.P.C is possible only after Court takes cognizance of the offence and as such, all the remand orders passed by the learned Judge being illegal, the same be set-aside and the applicant be released from the alleged illegal detention/custody.

5 He further submitted that taking cognizance of an offence is not an elaborate procedure and that it ought not to take so long, as has happened in the present case. He submitted that once charge-sheet was filed, it was open for the learned Judge to take cognizance, as the Magistrate is not required to record any reasons for taking cognizance. He submitted that the delay by the Court in taking cognizance, as pointed out by Mr. Venegavkar, learned Prosecutor, cannot be accepted. He further submitted that reliance placed by Mr. Venegavkar on *Suresh Kumar* (supra) and *Rahul Pareek* (supra) and other judgments, is misplaced, as the factual matrix of the said cases will not apply to the facts in the present case.

and that the said cases are clearly distinguishable. He submitted that the observations made by the Apex Court in the case of Suresh Kumar (supra) have no applicability to the facts of the present case, and that the case was an exception and hence, the observations were restricted to the facts in that case. Mr. Ponda submitted that if cognizance is not taken immediately on filing of the charge-sheet and is postponed, the same would have disastrous consequences, including violation of Article 21 of the Constitution. According to the learned senior counsel, the trial Court has no inherent power of remanding an accused to custody, except as contemplated by law, by an express provision in the Statute. In this regard, learned senior counsel relied on the judgment of Natabar Parida vs. State of Orissa (1975) 2 SCC 220, Union of India vs. Thamisharasi (1995) 4 SCC 190 and A. S. Gauraya vs. S. N. Thakur (1986) 2 SCC 709, to show that the trial Court has no inherent powers and that their powers have to be strictly traced to some express provision in the Statute. Learned senior counsel also relied on the Law Commission reports to show that soon after charge-sheet is filed, it is obligatory on the Court to take cognizance of the offence and that no such gap is contemplated in law. Thus, in conclusion, Mr. Ponda submitted that the power of remand under Section 309(2), being only post cognizance and cognizance not having been taken, the remand orders are illegal and contrary to law and as such, cannot be sustained.

6 Mr. Venegavkar, learned counsel for the respondent-SFIO submitted that the issues raised in the present application have already been considered and decided by this Court (Coram : C. V. Bhadang, J.) in Criminal Application No. LD/VC/OCR/13/2020, in its order dated 5th May 2020. He submitted that the said order dated 5th May 2020 was challenged in the Apex Court and the applicant having withdrawn the said SLP, the order dated 5th May 2020 had attained finality.

7 Mr. Venegavkar further submitted that the legal position as contended by Mr. Ponda in the present case, is clearly covered by the judgment of the Apex Court in Suresh Kumar (supra) and of the Rajasthan High Court in Rahul Pareek's case (supra). Mr. Venegavkar submitted that Section 309(2) Cr.P.C would also cover remands made by the Court, post filing of charge-sheet till cognizance is taken of the offence. He submitted that after the charge-sheet is filed under Section 167 Cr.P.C, the Court assumes custody of the accused till cognizance of the offence is taken. He submitted that taking cognizance would mean, "application of mind to the material filed by the prosecution by way of a complaint/charge-sheet, as the case may be". According to Mr. Venegavkar, Section 309 applies to an 'inquiry' or 'trial' and that 'inquiry' means whether or not cognizance is to be taken of the offence. He further submitted that the submission of Mr. Ponda, that Section 309 is to be exercised only post cognizance is contrary to the mandate of law and cannot be accepted. He submitted that the prosecution cannot be faulted for the delay in taking cognizance, inasmuch as, taking cognizance is a judicial act. He further submitted that not only has there been change of four judges in the trial Court, since the time charge-sheet was filed, till date, but even applications have

been filed by various accused, praying therein for adjourning the matter sine-die and as such, no fault can be found with the prosecution. He submitted that the prosecution has been vehemently opposing all the applications before the trial Court.

8 After the aforesaid application was reserved for orders in January 2022, the respondent-SFIO on 8th February 2022, placed on record through the Court Sheristedar, the recent judgment of the Apex Court in Serious Fraud Investigation Office vs. Rahul Modi & Ors. Cri. Appeal Nos. 185-186/2022 dated 7/2/2022 Pursuant thereto, the matter was placed on board on 23rd February 2022, when Mr. Ponda tendered the applicant's response to the said judgment. According to the learned senior counsel for the applicant, the judgment in Rahul Modi's case (Supra) was clearly distinguishable and would not apply to the facts in hand.

9 Both sides have relied on several judgments in support of their respective submissions.

10 The short question that arises for consideration in the aforesaid application is, whether the detention/custody of the applicant i.e. remand orders are illegal, since the Special Court has not taken cognizance of the complaint filed by the SFIO, even after filing of the complaint.

11 The ground or premise on which the applicant seeks his release is that his detention, post filing of complaint, is illegal, as no cognizance of the complaint filed by the SFIO has been taken by the learned Special Judge, till date. It is submitted that all the remand orders post the complaint are illegal, inasmuch as, there is no provision in law, post 167 of the Cr.P.C for continuing the remand of an accused in the absence of the Court taking cognizance of the complaint. According to the learned senior counsel, remand under Section 309 of the Cr.P.C is possible only post cognizance and hence, the custody/detention of the applicant being illegal, the applicant be released forthwith.

12 The relevant provision of Cr.P.C, with which, we are concerned i.e. 309 Cr.P.C is reproduced hereinunder :

"309. Power to postpone or adjourn proceedings.- (1) In every inquiry or trial, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376-A, section 376- AB, section 376-B, section 376-C, section 376-D, section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn,

any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that -

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1. - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."

13 Section 167 of Cr.P.C spells out the powers of a Magistrate to authorise detention of an accused in custody. Filing of a charge-sheet, by itself, does not, in any way, affect/impinge the right, that an accused otherwise has, under proviso (a) of Section 167(2) of Cr.P.C. Under Section 190 of Cr.P.C, the Magistrate is empowered to take cognizance of offence or offences reported by the police in the final report filed under Section 173 of the Cr.P.C, after investigation. Therefore, at the stage of filing of charge-sheet, all that the Magistrate has to do, is to apply his mind to the facts narrated in the report and the material found in the documents and come to a conclusion, whether, the material before him would be prima facie sufficient, to take cognizance. It may not be even incumbent upon the Magistrate to record reasons, whilst taking cognizance. The power of the Magistrate to authorize the detention of an accused in custody till/after he takes cognizance of the offence reported in the final report

submitted by the police, is governed by Section 309 (2) Cr.P.C.

14 Whether or not Section 309 comes into force only post cognizance/trial; whether there is no provision in law to remand an accused after filing of charge-sheet and before cognizance is taken under Section 309(2) of Cr.P.C, are the questions that arise for consideration in the aforesaid application.

15 It is not in dispute that complaint has been filed in the present case by the prosecution on 30th May 2019. It is also not in dispute that till date, cognizance has not been taken by the learned Judge of the offence/ offences. The reasons for not taking cognizance will be dealt with, a little later. The question is, what happens to the remand orders passed in the interregnum, between filing of charge-sheet and taking cognizance under Section 309 and whether Section 309 only applies post cognizance as urged by the learned senior counsel for the applicant.

16 The Court can remand an accused person to custody, under sub-section (2) of Section 309, pre and post filing of charge-sheet/complaint. On a plain reading of Section 309, it is evident that the said provision applies to an 'inquiry' or 'trial'. The question is, when inquiry commences within the meaning of sub-section (2) of Section 309. According to Mr Ponda, learned senior counsel for the applicant, the inquiry will commence only post taking of cognizance, on filing of charge-sheet/police report/complaint.

17 The issue of 'taking cognizance' has been dealt with by the Supreme Court in a catena of decisions. In a nutshell, the expression 'taking cognizance' means 'application of mind'. Though the expression 'cognizance' has not been defined in the Cr.P.C, several decisions to the effect reveal that taking cognizance does not involve any formal action or indeed action of any kind, but occurs as soon as the Magistrate applies his mind to the suspected commission of an offence. Infact, the common practice is that when a police report is submitted before the Magistrate, it is not necessary that there has to be a formal order of taking cognizance. Infact, an inquiry within the meaning of Section 309(2) may commence before the Magistrate, no sooner than charge-sheet is submitted, so as to vest him with a power of remand under sub-section (2) of Section 309 of the Cr.P.C.

18 In this context, it would be apposite to refer to the decision of the Apex Court in the case of Suresh Kumar (supra). In the said case, the powers of the Magistrate to remand an accused to judicial custody under Section 167(2) was considered. In Suresh Kumar (supra), despite the charge-sheet having been submitted and the Magistrate not having taken cognizance of the same, yet, the accused was remanded to custody, post filing of charge-sheet. The arguments of the petitioner in Suresh Kumar (supra) was, that on filing of charge-sheet, the Magistrate could not have remanded the accused to custody, without taking cognizance and as the Magistrate was awaiting sanction to be accorded, the accused therein was entitled, as a matter of right, to be released on bail. The

question that arose in Suresh Kumar (supra) was whether the remand of accused on submission of charge-sheet, without taking cognizance, was sustainable in law. The Apex Court in para 18 of Suresh Kumar (supra) has observed as under :

"18. The scheme of the CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court."

19 Similar is the situation in the present case. In the instant case, despite charge-sheet having been filed, no cognizance has been taken of the same and the learned Magistrate has continued to pass remand orders, post filing of charge-sheet.

20 In Jeevan Kumar Raut vs. Central Bureau of Investigation (2009) 7 SSC 526, the Supreme Court while interpreting 167(2) of the Cr.P.C in the context of the Transplantation of Human Organs Act 1994, held in clear terms that only because the Court itself took time in taking cognizance of the offence, i.e. after the expiry of the period of 90 days, the same would not mean that any new right would be created in favour of the appellants therein.

21 In Rahul Modi's case (Supra), infact, the controversy in question is now put to rest by the Apex Court, by reiterating what was laid down in Suresh Kumar (supra). Paras 9 and 10 of the Rahul Modi's case (Supra) are reproduced hereunder :

"9. The issue is squarely covered by a judgment of this Court in Bhikamchand Jain (supra), as contended by the Appellant. It is necessary to closely examine the judgment passed in Bhikamchand Jain (supra). The petitioner in the said case was arrested on 11.03.2012 on the allegation of misappropriation of amounts meant for development of slums in Jalgaon City. The petitioner therein was accused of committing offences punishable under Sections 120-B, 409, 411, 406, 408, 465, 466, 468, 471, 177 and 109 read with Section 34, IPC and also under Sections 13(1) (c), 13(1)(d) and 13(2) of the Prevention of Corruption Act,

1988. The contention of the petitioner therein was that he could not have been remanded to custody in view of cognizance not being taken for want of sanction within the statutory period of 90 days. The scheme of the provisions relating to remand of an accused first during the stage of investigation and thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within the period prescribed therein, according to this Court in *Bhikamchand Jain* (supra). This Court held that in the event of investigation not being completed by the investigating authorities within the prescribed period, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. This Court was of the firm opinion that if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. However, once the charge-sheet was filed within the stipulated period, the right of the accused to statutory bail came to an end and the accused would be entitled to pray for regular bail on merits. It was held by this Court that the filing of charge-sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2), CrPC and that taking of cognizance is not material to Section 167. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced, with such Magistrate being vested with power to remand the accused to police custody and/or judicial custody, up to a maximum period as prescribed under Section 167(2). Acknowledging the fact that an accused has to remain in custody of some court, this Court concluded that on filing of the charge-sheet within the stipulated period, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309, CrPC. This Court clarified that the two stages are different, with one following the other so as to maintain continuity of the custody of the accused with a court."

"10. It is clear from the judgment of this Court in *Bhikamchand Jain* (supra) that filing of a charge-sheet is sufficient compliance with the provisions of Section 167 CrPC and that an accused cannot demand release on default bail under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. The accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken. The conclusion of the High Court that the accused cannot be remanded beyond the period of 60 days under Section 167 and that further remand could only be at the post-cognizance stage, is not correct in view of the judgment of this Court in *Bhikamchand Jain* (supra)."

(Emphasis supplied)

22 Considering the aforesaid legal pronouncements and what is stated hereinabove, the submissions advanced by the learned senior counsel for the applicant, being devoid of merit, would have to be rejected.

23 What was disturbing to note during the course of arguments, was that though the complaint in the said case was filed on 30th May 2019, however till date, cognizance of the complaint has not been taken by the learned Special Judge. On 14th January, 2022, during the course of arguments, when Mr. Venegavkar, learned counsel for the respondent No.1 was asked why cognizance of the criminal complaint bearing No. 20/2019 was not taken till date by the learned Special Court, Greater Bombay, learned counsel sought time to take instructions and place on record the reasons for the same. Accordingly, Mr. Venegavkar had tendered a compilation of documents and a note setting out the reasons for delay by the learned Special Judge in taking cognizance. The said compilation is taken on record vide order dated 18th January 2022.

24 From the said note, it transpires that after completing investigation into the affairs of IFIN, criminal complaint bearing No.20/2019 was filed before the learned Special Judge, 37th Sessions Court at Mumbai on 30th May 2019 before Shri Nitin Jiwane, the learned Presiding Officer at the relevant time. It appears that thereafter, Mr. Jiwane was transferred before the next date of hearing and a new Judge Shri S. T. Soor presided over the Court before whom the matter was posted on 7th June 2019 for the first time and after hearing the matter for some time, the matter was adjourned to 18th June 2019. It appears that in the meantime, accused No. 7 and subsequently accused No. 3-Hari Sankaran (present applicant) filed bail application on 12th June 2019 and 4th July 2019 respectively. Replies to these applications were filed on the very next date i.e. on 19th June 2019 and 20th July 2019 respectively. The learned Special Judge heard the applications and passed orders in said bail applications on 3rd October 2019. Subsequently, the matter was listed on 18th October 2019, 8th November 2019, 27th November 2019, 11th December 2019, 10th January 2020 and 24th January 2020 and arguments on cognizance and other applications filed by accused on these dates were heard by the learned Special Court.

The learned Presiding Officer of the trial Court was transferred and the learned Judge Smt. S. S. Sawant, was appointed as the Presiding Officer of the Court. The matter was then listed and heard by the said learned Judge on 6th February 2020 and 21st February 2020 for cognizance and other applications but learned Judge was again transferred before the next date of hearing i.e. 4th March 2020.

On 4th March 2020, since the Court was vacant, the matter was adjourned to 17th March 2020. The matter could not be heard on 17th March 2020, as the new Presiding Officer, Shri S. N. Yadav, who had taken charge, was hearing only urgent matters, due to COVID-19 pandemic. It appears that pursuant to the SOP issued by the High Court, on account of COVID-19, the matter could not be heard from 21st March 2020 to 21st September 2020.

On 21st September 2020, 3rd October 2020 and 5th October 2020, the matter was heard on cognizance and was posted for further hearing on cognizance, on 13th October 2020.

It appears that on 13th October 2020, proposed accused No.13 had filed an application, praying therein that "the matter be adjourned sine-die, pending final hearing of the proceedings of Hon'ble Supreme Court." The matter was thereafter listed on 31st October 2020, 27th November 2020 and 14th December 2020, however, the same could not be heard on the said dates, as the learned Judge was on leave.

Thereafter, Shri S. N. Yadav was transferred and another Presiding Officer Shri R. V. Kokare had taken the charge. On 7th January 2021, reply to the application filed by proposed accused No. 13 was filed by the complainant and the matter was adjourned for arguments on the said application on 8th February 2021. Thereafter, the matter was listed on 8th February 2021 and 9th February 2021 for arguments, however, the arguments could not be advanced, as the learned senior counsel appearing for proposed accused No. 13 sought permission to argue the matter through video-conferencing.

On 30th April 2021 and 6th May 2021, the matter could not be heard in view of the SOP issued by the High Court due to prevalent conditions of COVID-19.

In the interregnum, the Presiding Officer Shri R. V. Kokare was transferred and Shri R. M. Sadrani, learned Judge took charge as the Presiding Officer of the said Court.

It appears that the matter was listed on 6th July, 30th July, 6th August, 2nd September, 28th September and 29th October 2021, however, the hearing could not proceed further, as the learned senior counsel appearing for accused No. 13 insisted for hearing through video-conferencing.

Learned senior counsel appearing on behalf of the accused No.13, argued the matter on 29th November and 16th December 2021 and the matter was posted for further arguments on 18th January 2022.

25 Whether or not to take cognizance of an offence/offences, is a decision to be taken by the concerned Court before whom the complaint/charge-sheet is filed. An accused has no right to be heard before taking of cognizance, except as provided under Section 167(2) of Cr.P.C. It appears from the Roznama that on several dates, it is at the behest of the accused (non-applicant) that the matter was adjourned, as the said accused had raised an objection to taking cognizance of the complaint. It is under these circumstances, that till date cognizance has not been taken by the Court. Cognizance of any complaint has to be taken expeditiously and the accused has no right to be heard at the pre-cognizance stage, except as provided by Cr.P.C.

26 In the present case, prima facie, it appears that the accused (non-applicant) in the said case, have been protracting the proceedings. It is always open to an

accused to challenge the cognizance taken by the Court, in the event, cognizance is taken by the Court. No doubt, cognizance has to be taken at the earliest, as soon as the the complaint/charge-sheet is filed, ofcourse, unless there are inevitable circumstances resulting in delay in taking cognizance. Considering that the complaint is pending at the pre-cognizance stage from 30th May 2019, the trial Court is directed to decide the issue of cognizance as expeditiously as possible.

27 Accordingly, the application stands dismissed with the aforesaid observations/directions.

28 A copy of this order be forwarded by the Registry to the learned Additional Sessions Judge, Court Room No. 37, City Civil & Sessions Court, Greater Bombay, who is seized of the Company Petition No. 20/2019, either by fax/e-mail.

29 All concerned to act on the authenticated copy of this order.