

(2007) 01 AP CK 0069

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3573 of 2003

Hindustan Lever Limited

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 31-01-2007

Acts Referred:

Child Marriage Restraint Act, 1929 — Section 9
Companies Act, 1956 — Section 50, 52, 53, 56, 58
Criminal Law (Amendment) Act, 1952 — Section 6(1)
Criminal Procedure Code, 1973 (CrPC) — Section 190, 190(1), 195, 196, 197
Electricity (Supply) Act, 1948 — Section 77
Foreign Exchange Regulation Act, 1973 — Section 61
Gold (Control) Act, 1968 — Section 97
Imports and Exports (Control) Act, 1947 — Section 6
Income Tax Act, 1961 — Section 271, 279
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 405, 406
Prevention of Corruption Act, 1947 — Section 5A
Sea Customs Act, 1878 — Section 187A
Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 39(2), 6
Standards of Weights and Measures Act, 1976 — Section 39, 6, 63, 72, 72C
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 20A(2)

Citation : (2009) 1 ALD(Cri) 162 : (2007) CriLJ 2102 : (2007) 4 RCR(Criminal) 810

Hon'ble Judges : G. Yethirajulu, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : E. Manohar for S. Leo Raj, for the Appellant; Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.

1. This matter has come up before this Court on a reference by a learned single Judge of this Court to consider the question:

Whether the date of filing of the complaint or the date of the court taking cognizance of the offence is relevant for the purpose of Section 468 Cr.P.C.

2. The question of law involved in this case, though short one, has been the subject of conflicting decisions of the Supreme Court in Krishna Pillai v. T.A. Rajendran and Bharat Damodar Kale v. State of Andhra Pradesh 2004 (1) ALD (Cri.) 27 (SC).

3. The learned single Judge expressed his inability to agree with the view taken by this Court in CrI.P. No. 3572/2003 wherein it was held that the date of taking cognizance of the offence by the Magistrate is relevant and not the date of filing of the complaint before the court for the purpose of Section 468 Cr.P.C. Hence made the reference.

4. In order to appreciate the question arising for determination, facts-in-brief may be stated thus: State through Inspector, Legal Meteorology, Mahabubabad filed a complaint u/s 72 of the Standards and Weights and Measures Act, 1976 (for short "the Act") against the petitioner-manufacturer and another retailer alleging contravention of Section 39 punishable u/s 63 of the Act r/w Rule 6(i) (c) r/w III Schedule of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (for short "the rules") and contravention of Rule 23(i) punishable u/s 39(2) of the Rules respectively. The above complaint was presented on 21-11-2002 and the same was alleged to be taken cognizance on 10-12-2002 by the Magistrate in STC No. 489/2002 and issued summons to the accused. On issuance of summons, the petitioner-A-1 moved this Court u/s 482 Cr.P.C., for quashing the proceedings on the ground that the punishment prescribed for the contravention of Section 39 of the Act is fine of Rs. 5000/- only and cognizance of the offence has to be taken before the expiry of six months as provided u/s 468 Cr.P.C., the court has no jurisdiction to take cognizance in view of the bar contained u/s 468 Cr.P.C., therefore continuing proceedings is an abuse of process and they are liable to be quashed.

5. Sri E.Manohar, learned Senior Counsel appearing for the petitioner contends that once punishment prescribed for the offence u/s 63 of the Act is a fine of Rs. 5000/-, cognizance, if any, has to be taken by the Court before expiry of six months period as provided u/s 468 Cr.P.C., from the date of inspection made on 22-5-2002, therefore, taking cognizance on 10-12-2002 is wholly illegal and without jurisdiction and the same has to be quashed. To buttress the said submission reliance has been placed on the following judgments:

1. Krishna Pillai (supra)

2. Kimberly Clark Liver Limited v. State Through Inspector, Legal Metrology, Mahabubabad Judgment of this Court dt.10-3-2006 in CrI.P.No.3572/2003

6. Before we proceed to answer the reference, it is appropriate to notice the relevant statutory provisions under the Act and Section 468 of the Cr.P.C., 39 Quantities and origin of commodities in packaged form to be declared

(1) No person shall-

(a) make, manufacture, pack, sell, or cause to be packed or sold; or

(b) distribute, deliver, or cause to be distributed or delivered: or

(c) offer, expose or possess for sale, any commodity in packaged form to which this Part applies unless such package bears thereon or on label securely attached thereto a definite, plain and conspicuous declaration, made in the prescribed manner, of-

(i) the identity of the commodity in the package;

(ii) the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package:

(iii) where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;

(iv) the unit sale price of the commodity in the package; and

(v) the sale price of the package.

(2) Every package to which this Part applies shall bear thereon the name of the manufacturer and also of the packer or distributor.

(3) Where the package of a commodity to which this Part applies or the label thereon bears a representation as to the number of servings, of the commodity contained therein, such package or label shall bear a statement as to the net quantity (in terms of weight, measure or number) of each such serving.

(4) The statement on a package or label as to the net weight, measure or number or the contents thereof shall not include any expression which tends to qualify such weight, measure or number : Provided that the Central Government may, by rules, specify the commodities, the weight or measure of which is likely to increase or decrease beyond the prescribed tolerance limits by reason of climatic variations; and it shall be lawful for the manufacturer or packer of the commodity so specified to qualify the statement as to the net content of such commodity by the use of the words "when packed". Explanation:- The words "when packed" shall not be used in any case except a case to which the proviso to Sub-section (4) applies.

(5) Where the Central Government has reason to believe that there is undue proliferation of weight, measure or number in which any commodity is, or reasonably comparable commodities are, being packaged for sale, distribution or delivery and such undue proliferation impairs in the opinion of that Government, the reasonable ability of the consumer to make a comparative assessment of the prices after considering the net quantity or number of such commodity, that Government may direct the manufacturers and also packers or distributors to sell, distribute or deliver such commodity in such standard quantities or number as may be prescribed.

(6) x x x x x.

(7) x x x x.

(8) x x x x.

(9) x x x x.

63 Penalty for contravention of Section 39 Whoever, in the course of inter-State trade or commerce, sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred any commodity in a packaged form which does not conform to the provisions of this Act or any rule made thereunder, shall be punished with fine which may extend to five thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to live years and also with fine.

72 Cognizance of offences, etc Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a.) no Court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing made by-

(i) the Director;

(ii) any other authorized officer;

(iii) any person aggrieved; or

(iv) a recognised consumer association whether the person aggrieved is a member of such association or not.

Explanation:- For the purpose of this clause "recognised consumer association" means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force.

(b) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(c) an offence punishable u/s 50, Section 52, Section 53, Section 56, Section 58, Section 60, Section 63, Section 64, Section 65 or Section 66, may be tried summarily by a Magistrate and no sentence of imprisonment for a term exceeding one year shall be passed in the case of any conviction for an offence which is summarily tried under this section.

7. Section 468 Cr.P.C., is a clog on prosecution, is intended to prevent belated and vexatious prosecution filed at a time when the material evidence might have disappeared. Section 468 Cr.P.C., reads as under: 468 Bar to taking cognizance after lapse of the period of limitation,-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be,-

- (a) six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

8. From a conjoint reading of the above quoted provisions of the Act, it is clear that the punishment liable to be imposed for the offence u/s 39 is with fine which may extend to Rs. 5000/-, second or subsequent offence, with imprisonment for a term which may extend to five years and also fine, and the offence punishable under Section 63, may be tried summarily by Magistrate and no sentence of imprisonment for a term exceeding one year, shall be passed, in case of conviction for the offence which is summarily tried. Once imprisonment of term upto one year is prescribed under Section 72 (c) the complaint as such can be filed within one year. Admittedly, the offence is noticed on 22- 5-2002 and complaint was filed on 10-12-2002, cognizance of which was taken on 10-12-2002 within one year. In view of the same, the reference is not at all called for. Having regard to the wider ramification of the issue raised which quite oftenly cropped up, we proceed to answer the reference.

9. Learned Senior Counsel for the petitioner relied upon the judgment in Krishna Pillai (supra) decided by three-Judge Bench of the Supreme Court to buttress his submission that date of cognizance of the offence cannot be taken beyond the period of limitation prescribed for the offence.

10. In Krishna Pillai (supra), on which strong reliance has been placed by the learned senior Counsel, a private complaint was filed before the Magistrate u/s 190 Cr.P.C. The Apex Court after placing reliance on the constitution Bench judgment of the Supreme Court in A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, held that filing of a complaint in Court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Since the magisterial action in this case was beyond the period of one year from the date of the commission of the offence, the Magistrate was not competent to take cognizance in view of the bar u/s 9 of the Child Marriage Restraint Act, 1929, which prohibits taking cognizance of any offence after expiry of one year from the date, on which the offence is alleged to have been committed and allowed the appeal and quashed the proceedings.

11. Having regard to the fact that the Supreme Court followed the decision of the Constitution Bench judgment of A.R. Antulay (supra) in Krishna Pillai (supra), we shall now advert to the facts in the said case.

The main issue in A.R. Antulay (supra) canvassed was that a private complaint cannot be entertained by Special Judge in respect of all or any of the offences enumerated in S.6(1)(a) and (b) of Criminal Law Amendment Act, 1952 for non-compliance of mandatory provision contained in Section 5-A of the Prevention of Corruption Act, 1947. In A.R. Antulay (supra), Justice D.A. Desai, speaking for the Constitution Bench, after analyzing the scheme of the Code of Criminal Procedure, stated that any one can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. While enumerating numerous statutory provisions such as (i) Section 187-A of Sea Customs Act, 1878 (ii) Section 97 of Gold Control Act, 1968

(iii) Section 6 of Import and Export Control Act, 1947 (iv) Section 271 and Section 279 of the Income Tax Act, 1961 (v) Section 61 of the Foreign Exchange Regulation Act, 1973, (vi) Section 621 of the Companies Act, 1956 and (vii) Section 77 of the Electricity Supply Act, are illustrative and not exhaustive, it was held, while Section 190 of the Code of Criminal Procedure permits any one to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 - 199 of the Cr.P.C. These specific provisions clearly indicate that in the absence of any such statutory provision, locus standi of a complainant is a concept foreign to criminal jurisprudence. Further, at para 31, after considering the scheme of the Prevention of Corruption Act, 1952 and repelling the contention that when a private complaint is entertained by a Special Judge before taking cognizance, the Special Judge will have to examine the complainant and all the witnesses present as enjoined by Section 200 Cr.P.C., it was held:

When a private complaint is filed, the Court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 Cr.P.C. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issues process, it means the court has taken cognizance of the offence and has decided to initiate the proceeding and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the court. This may either take the form of a summons or a warrant, as the case may be. It may be that after examining the complainant and his witnesses, the court in order to doubly assure itself may postpone the issue of process, and call upon the complainant to keep his witnesses present. The other option open to the court is to direct investigation to be made by a police officer. And if the offence is one covered by

the 1947 Act, the investigation, if directed, shall be according to the provision contained in Section 5-A. But it must be made distinctly clear that it is neither obligatory to hold the inquiry before issuing process nor to direct the investigation of the offence by police.... Upon a complaint being received and the court records the verification, it is open to the court to apply its mind to the facts disclosed and to judicially determine whether process should or should not be issued. It is not a condition precedent to the issue of process that the Court of necessity must hold the inquiry as envisaged by Section 202 or direct investigation as therein contemplated. The power to take cognizance without holding inquiry or directing investigation is implicit in Section 202 when it says that the Magistrate may if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer..., for the purpose of deciding whether or not there is sufficient ground for proceeding. Therefore, the matter is left to the judicial discretion of the court whether on examining the complainant and the witnesses if any as contemplated by Section 200 to issue process or to postpone the issue of process. This discretion which the court enjoys cannot be circumscribed or denied by making it mandatory upon the court either to hold the inquiry or direct investigation.

12. Section 190 of Code of Criminal Procedure deals with cognizance of offences by Magistrate which reads as under:

190. Cognizance of offences by Magistrates:-- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class especially 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) xxxxxxxxxx" Taking cognizance of offence has not been defined under the Code of Criminal Procedure.

13. Section 72 of the Act bars the cognizance of the offences punishable under the Act except upon a proper complaint, in writing made by the (i) Director; (2) any other authorized officer; (3) any person aggrieved or a recognized consumer association whether the person aggrieved is a member or such association or not. Section 72 is in fact a limitation on the unfettered powers of the Magistrate to take cognizance u/s 190 of the offences mentioned under the Act except on the complaint in writing as referred to above. Secondly, at the stage when the Magistrate is taking cognizance, he must examine the facts of the complaint before him and determine whether his power to take cognizance has or has not been taken away. A Magistrate has no jurisdiction to take cognizance of an

offence upon a complaint filed by a person not authorized to initiate prosecution u/s 72 of the Act. In a complaint filed by person authorized for non-cognizable offence, according to Section 2(d), the Magistrate can take cognizance on its basis and the person authorized being a public servant, he need not examine him u/s 200 Cr.P.C.

14. Before advert to the issue involved in the case, we briefly advert to the cases on which reliance is placed by learned Senior Counsel for the petitioner.

15. In R.R. Chari Vs. The State of Uttar Pradesh, His Lordship Chief Justice Patanjali Sastri approved the ratio laid down in Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, , which reads as under:

What is taking cognizance has not been defined in the Cri.P.C. & I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Mag. Has taken cognizance of any offence under Section.190(1)(a), Cri.P.C. he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding, in a particular way as indicated in the subsequent provisions of this Chap., proceeding u/s 200 & thereafter sending it for inquiry & report u/s 202. When the Magistrate. Applies his mind not for the purpose of proceeding under the subsequent sections of this Chap., but for taking action of some other kind e.g. ordering investigation....Under Section 156(3), or issuing a search warrant for the purpose of the investigation he cannot be said to have taken cognizance of the offence." In view of the above observations and referring to the facts of the case, it was held that on 25.3.1949 the Magistrate issued a notice u/s 190, Cr.P.C. to the appellant and made it returnable on 2.5.1949 and that clearly shows that the Magistrate took cognizance of the offence only on that day and acted u/s 190, Cr.P.C.

16. In Ajit Kumar Palit Vs. State of West Bengal, the Apex Court held as under:

The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means become aware of and when used with reference to a Court or Judge, to take notice of Judicially. It was held in Gopal Marwari v. Emperor AIR 43 Pat 245 (SB) by the learned Judges of a Patna High Court in a passage quoted with approval by this Court in R.R. Chari Vs. The State of Uttar Pradesh, that the word "cognizance" was used in the Code to indicate the point when the Magistrate or judge takes judicial notice of an offence and that it was a word of indefinite import, and not perhaps always used in exactly the same sense. As observed in Emperor v. Surindra Mohan ILR 37 Cal 412 at p.416, taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence. Taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.

17. In *State of West Bengal and another Vs. Mohammed Khalid and others*, the Apex Court considering Section 20-A(2) of Terrorist and Disruptive Activities (Prevention) Act, 1987, where it makes sanction necessary for taking cognizance, observed that the expression has not been defined in the Code; in its broad and literal sense, it means taking notice of an offence; this would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes.

18. In *Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada*, when a wife filed a private complaint on 10.9.1990 against her husband for the offence u/s 405 IPC punishable u/s 406, failure to return the jewellery and household articles mentioned in annexure 1 and 2, the Magistrate took cognizance of the offence after recording her statement u/s 200 Cr.P.C. and issued process to the husband. Husband, who was unsuccessful in getting quashed the proceedings, moved the Apex Court by way of an appeal. The Apex Court observed that complaint was admittedly filed on 10.9.1990 within three years from the date of the demand and refusal by the husband. The Magistrate, relied upon the evidence of wife recorded u/s 200 of the Code and held that the complaint was filed within the period of three years i.e. from the date of husband refusing to return the stridhana properties.

19. In *Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another*, the complainant filed a private complaint for the offence u/s 138 of the Negotiable Instruments Act and the question before the Apex Court was whether the date of filing of the complaint is the date of cognizance of the offence within the meaning of Section 142 or the action taken by the Court for initiating judicial proceedings against the offender in respect of the offence regarding which the complaint is filed. In the said case, the Apex Court after referring to its earlier decision in *Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*, held that mere presentation of the complaint which was returned to the complainant cannot be taken to hold that the complaint is premature and liable to be dismissed. In fact the complaint was taken cognizance by the Magistrate after expiry of 15 days after representation. The finding of the High Court holding the complaint as premature cannot be sustainable and accordingly set aside the same.

20. All the cases referred to above arise out of private complaints filed u/s 190 and 200 Cr.P.C. and they are not relevant to the issue involved in the case on hand.

21. In *Bharath Damodar Kale (supra)*, the Apex Court while dealing with a complaint filed by Drug Inspector, authorized under the provisions of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 held as under:

On facts of this case and based on the arguments advanced before us, we consider it appropriate to decide the question whether the provisions of Chapter

XXXVI of the Code apply to the delay in instituting the prosecution or to the delay in taking cognizance. As noted above, according to the learned Counsel for the appellants, the limitation prescribed under the above Chapter applies to taking of cognizance by the court concerned, therefore even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This argument seems to be inspired by the chapter heading of Chapter XXXVI of the Code which reads thus: Limitation for taking cognizance of certain offences. It is primarily based on the above language of the heading of the Chapter, the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court. The legal phrase *actus curiae neminem gravabit* which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant. This view of ours is also in conformity with the earlier decision of this Court in the case of *Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada*, .

22. The provisions of Section 190 of Cr.P.C., referred to supra, deals with cognizance of offence, according to which, the Magistrate of the first class and any Magistrate of the second class specifically empowered in that behalf under Sub-section (2) may take cognizance of offence upon receiving a complaint of facts which constitute such offence. It is indisputable fact that the complaint in the case on hand was u/s 72 of the Act for the alleged contravention of Section 39 punishable under Sections 63 of the Act r/w Rule 6(1) (c) r/w III Schedule of the Rules. Schedule I to Cr.P.C. deals with cognizable and non-cognizable offences, under IPC and other enactments classification of offences against other laws is specified under part II of Schedule-I. Whether the cognizance of an offence by Magistrate has or has not been taken will depend upon the circumstances of the particular case including the mode in which, the case is instituted from the nature of preliminary action, if any, taken by Magistrate.

23. A three-Judge Bench of the Apex Court in the case of Devarapalli Lakshminarayana Reddy (supra) after noticing the difference between Sections 200 and 202 of 1898 Code and 1973 Code, held that:

...But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 - 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in Clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding u/s 200 and the succeeding sections in Chapter XV to the Code of 1973, he is said to have taken cognizance of the offence within the meaning to Section 190(1)(a). It, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police u/s 156(3), he cannot be said to have taken cognizance of any offence.

24. In Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, a three-Judge Bench of the Apex Court held that before a Magistrate can be said to have taken cognizance of an offence u/s 190(1)(a) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding u/s 200 and the provisions following that section. But, where he has applied his mind only for ordering an investigation u/s 156(3) or issuing a warrant for purposes of investigation, he cannot be said to have taken cognizance of the offence.

25. The conflict noticed in the case of Krishna Pillai (supra) by the learned single Judge has not been referred to the earlier judgments of Devarapalli Lakshminarayana Reddy (supra) and Nirmaljit Singh Hoon (supra), which is of

equal strength. It is well accepted principle of law that when there is a conflict of opinion expressed by a Bench of equal strength, it is open for the High Court to apply the principles laid down in either of the judgments which are nearer to the facts of the case before it.

26. At this stage we feel it appropriate to refer Section 4 of the Code of Criminal Procedure which reads as under:

4. (1) x x x x ;

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations.

27. Having carefully examined those judgments in the light of submissions made and Section 4(2) Cr.P.C. the only conclusion that unquestionably emerges is that whenever a private complaint is filed the Magistrate will apply his mind to the facts when he examined the complainant for the purpose of further action to be taken by him u/s 200, 202, 203, 209 etc., It has nothing to do directly or indirectly with the mode and method of taking cognizance of offence by the court u/s 190(1)(a) Cr.P.C.,

28. One cannot pick and chose Section 468 Cr.P.C., to contend that taking cognizance is prohibited after expiry of prescribed period as it suits one's convenience. If Section 190 Cr.P.C., is attracted, all the three modalities of taking cognizance of offences would be available to the Magistrate i.e., (1) upon receiving a complaint of facts which constitute such offence; (2) upon a police report of such facts; and (3) upon information received from any person other than a police officer; or upon his own knowledge, that such offence has been committed. We are concerned with the complaint made by public servant under Section 72 of the Act which will fall u/s 190(1)(a) Cr.P.C. The complaint filed for non-cognizable offence according to explanation to Section 2 (d), which defines complaint, by a police officer which discloses after investigation the commission of a non-cognizable offence, the Magistrate can take cognizance on its basis and police officer being a public servant need not be examined u/s 200 Cr.P.C. Taking cognizance does not involve any formal action or action of any kind, but occurs as soon as a Magistrate applied his mind to the suspected commission of an offence. Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in

which, the case is instituted and the nature of the preliminary action including investigation if any taken prior to filing of complaint before the Magistrate, the Magistrate can be said to have been taken on a complaint when or received by him. Once there is no requirement of examining the complaint on oath, save in the case set out in proviso to Section 200 Cr.P.C., it will be deemed to have taken cognizance on the date when he received the complaint.

29. Admittedly, in the present case, the complaint was filed on 21.11.2002, within six (6) months from the date of commission of offence that took place on 22.5.2002. Whereas Sections 63 and 72-C of the Act deal with penalty and imprisonment for contravention of Section 39 with a fine of Rs. 5,000/-, which can be tried summarily and imprisonment of term which shall not exceed one year respectively. The said offence can be compounded u/s 73 of the Act and once the offence is compounded under Sub-section (1) of Section 73 of the Act and if any subsequent offence is committed after expiry of three years. The provision of compounding shall not apply to a person who commits the same offence within a period of three years from the date of the earlier offence, but if it is committed after expiry of the period of three years, it shall be deemed to be the first offence as per the explanation (ii) Sub-section (2) of Section 73 of the Act. These are all matters to be gone into by the Magistrate basing on the evidence adduced.

30. From the conspectus of the discussion, referred to above, we are of the view that once a complaint is filed for a non-cognizable offence by an authorized person u/s 72, who is a Public Servant, for contravention of provisions of the Act, the Magistrate need not examine him u/s 200 Cr.P.C. and he can straightaway take it on file and issue process. Once he decides that he need not examine the complainant and can issue process, he judicially applied his mind for receiving of the complaint and it is deemed to have been taken cognizance of the offence on the date of presentation of the complaint if it is filed within the period of limitation.

31. We accordingly answer the reference as under:

32. Whenever a complaint is filed by a public servant authorized u/s 72 of the Act, the date of filing the complaint will be deemed to be the date of taking cognizance of the offence and not the date when the process is ordered for computing limitation u/s 468 Cr.P.C.