
(1982) 11 AP CK 0001

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition No. 2834 of 1982

J. Shankaraih

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 22-11-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 174, 176, 190(1), 191

Citation : (1982) 11 AP CK 0001

Hon'ble Judges : Seetharama Reddy, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Addl. Public Prosecutor and K.G. Kannabhiram, for the Respondent

Judgement

1. This petition is to quash the procedure in Cri.M.P. No. 1175/82 on the file of the 1st Addl. Munsif Magistrate, Proddatur. The petitioner, Sub-Inspector of Police, Proddatur-I Town Police Station, filed Cri.M.P. No. 1351 of 1982 for stopping the enquiry sought to be conducted by the Magistrate for the cognizance of an offence of culpable homicide or murder of a person in I Town Police block on the ground that the said Magistrate had already issued summons to the sub-divisional Magistrate and the Deputy Civil surgeon, Government Hospital, Proddatur and recorded their statements and thereafter 6 number of witnesses were also examined either by issuing summons or on their appearance for which the learned Magistrate had no jurisdiction. However, the learned Magistrate was said to be investigating into the matter. Such enquiries can only be made by an executive Magistrate u/s 176 Cr.P.C. In fact, the said enquiry is pending before the Sub-divisional Magistrate, Jammalamadugu. The summoning and examining of any witness can only be made u/s 202 Cr.P.C. on a private complaint u/s 200 Cr.P.C. and therefore, it is not competent for the Magistrate to enquire u/s 190(1) Cr.P.C. into the cause of the death, nor can be examine any witness, nor conduct any investigation. The procedure so adopted was illegal and unknown to law. It is also further submitted that the learned Magistrate had initiated proceedings on the basis of certain pamphlets issued by some political

parties which are inimical to the petitioner. For all these reasons, it was prayed that the proceedings initiated may be quashed.

2. The learned Magistrate held in the impugned order that the petitioner had no locus standi to move the said petition, as he is said to be conducting a preliminary inquiry and if at all the same could be challenged only at a time when the cognizance is actually taken, u/s 190(1)(c) Cr.P.C. Yet at the end of his order the learned Magistrate says thus :

"The Magistrate after taking cognizance u/s 190(1)(c) Cr.P.C. took follow up action u/s 204 Cr.P.C. read with Section 177 C.P.C. for issue of process etc. as mere taking cognizance is not enough to come to the right conclusions whether there is offence or not."

3. It is this order that is challenged by the learned counsel for the petitioner on the ground that u/s 190(1)(c) Cr.P.C. the procedure that is laid down in it, alone must be adopted. If the cognizance of offence is taken by the Magistrate then he has no alternative but to follow the procedure laid down in Section 190(1)(c) Cr.P.C. according to which, the accused will have to be informed that he was entitled to have the case enquired into or tried and in case of its being objected to, then the same will have to be transferred to another Magistrate. So, no preliminary enquiry can be held as is sought to be done by the learned Magistrate. In so far as the power u/s 190(1)(c) Cr.P.C. which stipulates that the Magistrate if receives a private complaint, should adopt the procedure laid down under Sections 200 & 202 Cr.P.C. (Sic). But in this case, the information, according to the learned Magistrate, is that he received the intimation from the Medical Officer Government Hospital Proddatur, to the effect that one person K. Subbarayudu dies in the hospital and again another intimation was received after 55 minutes of the death intimation sent earlier, related to a person sent to the hospital from police lock-up and therefore in such cases it is contended the nearest Magistrate empowered to hold inquest or any Magistrate so empowered, may hold an enquiry into the cause of death and since the Sub-divisional Magistrate is already holding the enquiry into the cause of the death, it is not competent nor any such preliminary enquiry is envisaged by any of the provisions of the Criminal P.C.

4. The counter arguments of the learned counsel, Shri K. G. Kannabhiram, who appears for the intervenor are, that u/s 190(1)(c) on information, if it is incoherent, the Magistrate before taking cognizance, can as well, enquire in order to ascertain as to the nature of the prima facie case, which course must be presumed from the provisions enacted in Section 190(1)(c) as it is implicit in the language used and it would be a part of criminal justice system to investigate and inquire as otherwise the "provision made therein becomes otiose. Before subjecting the arguments to analysis the relevant statutory provisions may be cited.

CRIMINAL PROCEDURE CODE

"Section 156(1). Any Officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above mentioned.

Section 174(1). When the officer-in-charge of a police station or some other police officer specially empowered by the State Government in that behalf, receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest executive Magistrate empowered to hold inquests and unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-Divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body and stating in what manner or by what weapon, or instrument (if any such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to it being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the State of the weather and the distance admit or its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

Section 176(1). When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquest shall, and in any other case mentioned in sub-section (1) of Section 174, any Magistrate so empowered may hold and inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

Section 177. Every offence shall ordinarily be enquired into and tried by a court

within whose local jurisdiction it was committed.

Section 190(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.

Section 191. When a Magistrate takes cognizance of an offence under Clause (c) of sub-section (1) of Section 190. The shall, before any is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

Section 200. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, it 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 complainant and the 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 that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

Section 201 : If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall -

- (a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect.
- (b) if the complaint is not in writing, direct the complainant to the proper Court.

Section 202(1) : Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him u/s 192, 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 or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.

Provided that no such direction for investigation shall be made -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the court of session or

(b) where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200.

(b) where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200.

(2) In an inquiry under sub-section (1) the Magistrate may, if he thinks fit, take evidence of witnesses on oath;

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a police station except the power to arrest without warrant.

Section 204(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be -

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case he shall issue a warrant, or if he thinks fit, a summons for causing the accused to be brought to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complainant.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87."

It is not clear from the order made by the learned Magistrate both in

Cri.M.P. 1351/82 as well as in Cri.M.P. No. 1228/82 in Cri.M.P. No. 1175/82 as to whether he has taken cognizance and then has taken up the preliminary inquiry or is he merely intending to inquire into the facts of the case before taking cognizance. In other words, whether the proceedings which he has taken up, are pre-cognizance or post-cognizance proceedings, because at various places in his order, there have been overlapping and inconsistencies. Now, from the provisions enacted in Section 190(1)(c) under which the learned Magistrate has initiated proceedings is on the basis of the information which he has received. This position is not in doubt as both the counsel agreed on that. If that he so, u/s 190(1)(e) he may take cognizance of any offence upon the information received from any person or upon his own knowledge, that such offence has been committed. However it is also clear from the provision in Section 156(3) Cr.P.C. which says that any Magistrate u/s 190 may mentioned, if the information received is not adequate which investigation has to be taken up by a police officer. The submission of the learned counsel Sri. K. G. Kannabhiram that cognizance is a continuous process and therefore before actually taking cognizance u/s 190(1)(c) the Magistrate may as well inquiry into the offence, in order to ascertain the facts, to my mind, has no foundation. No provision of law enacted in the Cr.P.C., has been brought to my notice empowering the Magistrate himself to conduct preliminary enquiry for investigation of the facts constituting the offence. The only provision for causing investigation by the police is Section 156(1) but in this case, the offence is said to have been committed in the police lock-up. The apprehension of the learned counsel that no purpose would be served in causing investigation by the very police officer, is equally unfounded because firstly a higher officer may be directed to investigate into the matter, or if the report, after investigation, is not favourable to the case wherein the offence is not said to be made out, even then it is open to the Magistrate to take cognizance of the matter, as there is nothing to inhibit the power of the Magistrate to take cognizance of such an offence.

5. On the other hand, the Magistrate whenever receives a complaint of an offence u/s 190(1)(a) the course which is left open to him is to follow the procedure laid down u/s 202 Cr.P.C. Section 202 enables either inquiry into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not, there is sufficient ground for proceeding with the matter. Likewise, on a police report u/s 190(1)(b) he can take cognizance of the offence and proceed with the trial himself if it is a summons-case or refer to the court of competent jurisdiction if it is a warrant case. So far as Section 190(1)(e) is concerned, the Magistrate either on information or on his own knowledge can straightway take cognizance of an offence or drop the case if no prima facie case is made out. In so far as the case on hand is concerned, there is express provision dealing with the case when a person is said to have died in the police lock-up u/s 174 Cr.P.C. and in which case Section 174 Cr.P.C. empowers. Executive Magistrate to hold inquiry into the cause of the death, and after investigation it may be that he might send up a

report to the Magistrate for taking cognizance of it or otherwise. The argument of the learned counsel for the intervener is that the Executive Magistrate may as well drop after the investigation stating that it was not of homicide, and then there is no course left open to the judicial Magistrate u/s 190(1)(e) (Sic) is presumed to be invested with the powers to inquire himself. This argument against has no legs to stand. There is no enabling provision at all under which the Magistrate can embark upon either a preliminary enquiry or investigation before taking cognizance in view of the provisions enacted in Section 190(1) (a), (b) and (c). The Magistrate is not empowered to investigate or conduct the preliminary enquiry into the matter. The cases cited by the learned counsel are R.R. Chari Vs. The State of Uttar Pradesh, , wherein it is held.

"What is taking cognizance has not been defined in the Cr.P.C. and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1)(a) Cr.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 the chapter. Proceeding u/s 200 and thereafter sending it for enquiry and report u/s 200 when the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this chapter but for taking action of some other kind e.g. ordering investigation. u/s 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 Ramchandra and Others Vs. State of Uttar Pradesh and Another, Division Bench of the Allahabad High Court held.

"If a charge-sheet is submitted by the police, it is open to the Magistrate either to take cognizance u/s 190(1)(b) or to refuse to take. Likewise, if a final report is submitted by the police, it is open to the Magistrate to accept the final report and drop the matter or to take cognizance u/s 190(1)(c). It is, therefore, clear, that in the present case, it was open to the Magistrate to take cognizance even though the police had submitted a final report. But cognizance could be taken only u/s 190(1)(c) and not u/s 190(1)(b) Cr.P.C. The result of taking cognizance u/s 190(1)(c) is that the Magistrate should comply with the provisions of Section 191 Cr.P.C. and should proceed in accordance with the procedure laid down u/s 252 petitioner.

6. In Abhinandan Jha and Others Vs. Dinesh Mishra, it is held (Paras 15, 16 and 17) :

"Then the question is, what is the position when the Magistrate is dealing with a report submitted by the Police, u/s 173, that no case is made out for sending up an accused for trial, which report as we have already indicated, is called, in the area in question, as a "final report ? Even in these case, if the Magistrate agree with the said report, he made accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a

consideration of the final report, that the opinion formed by the Police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, u/s 156(3) to make a further investigation. That is if the Magistrate feels, after considering the final report that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, u/s 156(3). The police, after such further investigation, may submit a final report, depending upon the further investigation forms the opinion that the facts, set out in the final report, constitute an offence, u/s 190(1)(b) notwithstanding the contrary opinion of the police, expressed in the final report ... We have to approach the question, arising for consideration in this case, in the light of the circumstances pointed out above. We have already referred to the scheme of Chapter XIV as well as the observations of this court in H.N. Rishbud and Inder Singh Vs. The State of Delhi, that the formation of the opinion as to whether or not there is a case to place the accused on trial before Magistrate is left to the officer-in-charge of the police station. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack not can such power be implied. There is certainly no obligation, on the Magistrate, to accept the report if he does not agree with the opinion formed by the police. Under these circumstances if he still suspects that an offence has been committed he is entitled, notwithstanding the opinion of the police, to take cognizance, u/s 190(1)(c) of the Code. That provision, in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police either want only or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, u/s 190(1)(e) on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative, the power of a Magistrate to call for a charge-sheet from the police when they have submitted a final report. The entire scheme of Chap. XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the officer-in-charge of the police station and that opinion determines whether the report is to be u/s 170, being a charge-sheet or u/s 169, a final report. It is not doubt open to the Magistrate, as we have already pointed out, to accept, or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because the submission of the report depends upon the opinion formed by the police, and not on the opinion on the investigation, and to submit a report,

according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision so as to accord with the decision of the Magistrate and send a report either u/s 169 or u/s 170, depending upon the nature of the decision. Such a function has been left to the police under the Code.

In *H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh)*, it is held :

"In *Abhinandan Jha and Others Vs. Dinesh Mishra*, (supra) the question arose whether a Magistrate to whom a report u/s 173(1) had been submitted to the effect that no case had been made out against the accused, could direct the police to file charge-sheet on his disagreeing with the report submitted by the police. This court held that the Magistrate had no jurisdiction to direct the police to submit a charge-sheet. It was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was not case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect u/s 156(3). If ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance of the offence, notwithstanding the contrary opinion of the police expressed in the report. While-expressing the opinion that the Magistrate could take cognizance of the offence notwithstanding the contrary opinion of the police, the court observed that the Magistrate could take cognizance u/s 190(1)(c). We do not have any doubt that the reference to Section 190(1)(e) was a mistake for Section 190(1)(b). That appears to be obvious to us. But Shri Kapil Sibal urged that the reference was indeed to Section 190(1)(c) since at that time Section 190(1)(c) included the words "or suspicion" and the court had apparently taken the view that the Magistrate could take cognizance of the offence not u/s 190(1)(b) as if "on suspicion". We do not agree with this submission section 190(1)(c) was never intended to apply to case where there was a police report u/s 173(1). We find it impossible to say that a Magistrate who take cognizance of an offence on the basis of the facts disclosed in a police report must be said to have taken cognizance of the offence on suspicion and not upon a police report, merely because the Magistrate and the Police arrived at different conclusions from the facts. The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant, in a complaint."

7. In *Tula Ram and Others Vs. Kishore Singh*, it is held (Paras 7, 7A and 8) :

"It seems to us that there is no special charm or any magical formula in the expression "taking cognizance" which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. Thus what Section 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of

the said allegations. The court prescribes several modes in which a complaint can be disposed of after taking cognizance. In the first place, cognizance can be taken on the basis of three circumstances (a) upon receiving a complaint of facts which constitute such offences (b) upon a police report of such facts and (c) upon information received from any person other than the police officer or upon his own knowledge, that an offence has been committed. These are the three grounds on the basis of which a Magistrate can take cognizance and decide to act accordingly. It would further appear that this court in the case of *Narayandas Bhagwandas Madhavdas Vs. The State of West Bengal*, observed the mode in which a Magistrate could take cognizance of an offence and observed as follows : "It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1)(a) Cr.P.C. he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the chapter-proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202."

It is now well settled by the decision of this court in *Abhinandan Jha v. Dinesh Mishra* (1969 Cri LJ) (supra) that while a Magistrate can order the police to investigate the complaint it has no power to compel the police to submit a charge-sheet on a final report being submitted by the police. In such cases a Magistrate can either order re-investigation or dispose of the complaint according to law."

8. In *Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*, it is held :

"When a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation u/s 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified to adopting that course as an alternative to taking cognizance of the offence himself. Now whether the Magistrate has or has not taken cognizance 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 u/s 200 and the succeeding sections in Chapter XV of the Code of 1973 he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chap. 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."

9. In *Ajit Kumar Palit Vs. State of West Bengal*, , it is held :

"The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means become aware of an when used with reference to a court or Judge to take notice of judicially. 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. Where the statute prescribes the materials on which alone the judicial mind shall operative before any step is taken, obviously the statutory requirement must be fulfilled. But statutory provision apart, there is no set material which must exist before the judicial mind can operate."

In *Vikyamal Dakumal Vs. Prakashsing Atmasing and Others*, it is held that in the case of complaints against police officers, it can be an unjust exercise of discretion to order enquiry and report from other police officer belonging to the same police station even though he be superior in rank. It is the Magistrate who must in such a case, enquire himself. In *Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee*, it is held :

"What is "taking cognizance" has not been defined in the Cr.P.C. and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1) (a) 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 chapter, proceeding u/s 200 and thereafter sending it for enquiry and report u/s 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this chapter, but for taking action of some other kind, e.g. ordering investigation u/s 156(3) or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. My conclusion, therefore is that the learned Magistrate is wrong in thinking that the Chief Presidency Magistrate was bound to take cognizance of the case as soon as the petition of complaint was filed." In Vol 2 of AIR Commentaries on the Cr.P.C., 1973 at pages 302 and 303 illustrations in regard to the offences which could be taken cognizance of u/s 190(1), Cr.P.C. have been enumerated. It is stated therein that the enumerated. It is stated therein that the object of this clause is to enable a Magistrate to see that justice is dispensed notwithstanding the fact that the persons individually aggrieved, are unwilling or unable to prosecute.

10. From the above conspectus, it becomes clear that a Magistrate can take cognizance of an offence if he concludes that a prima facie case is made out. But, however, he may if the materials in the complaint, report or information, as the case may be, are not adequate before taking cognizance of, refer the matter to the police for investigation and if, on investigation, the materials are not still adequate, even then he can taken cognizance of the case and then follow the procedure laid down u/s 190(1)(c). It is not, however, open to him either to conduct preliminary enquiry or investigate himself into the circumstances of the offence. In this case, when it is stated that many people are coming forward for

giving information, then why not the same be treated as complaint and follow the procedure after taking cognizance of an offence under-section 190(1)(c). There are people who are prepared to give information thus enabling the Magistrate to exercise the powers laid down under-section 190(1)(a). The investigative process has been deliberately taken away from the Magistrate as it is chiefly the concern of the police. This also gets reinforced by the circumstances that the amendment made in the year 1973 has taken away the words".On suspicion" from Section 190(1)(c).

11. Viewed from any angle. It is manifest that the Magistrate, who is now attempting to initiate investigation and enquiry into the case, lacks competency and jurisdiction and particularly when he says at the end of the impugned order that he is adopting the procedure laid down under-section 204 Cr.P.C. because on the one hand he says that the cognizance in the matter itself had not been taken of, though on the other hand it is stated, that cognizance of the case has been taken of. In either way he has no power to proceed with the matter within the meaning of Section 190(1)(c) Cr.P.C. The only course left open to him if he has taken cognizance of the case y/s, 190(1)(c), he has to follow the procedure laid down under-section 190(1).

12. In the result, the proceedings sought to be initiated, in Cr.M.P. No. 1175/82 on the file of the First Additional Munsif Magistrate, Proddatur, are quashed and consequently all further proceeding in criminal Miscellaneous petitions including the Cr.M.P. No. 1351/82 in Crl.M.P. No. 1175/82 are set aside and the Crl.M.P. No. 2834/82 is allowed.

13. Petition allowed.