
(2012) 08 PAT CK 0084
In the Patna High Court
Case No : Cr.WJC No. 1043 of 2011

Jai Prakash Singh, Public Prosecutor

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 190, 190
Evidence Act, 1872 — Section 144, 145, 146, 165

Citation : (2012) 3 PLJR 916

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Sanjay Kumar Verma, Bijay Bihari Sinha, for the Appellant; Subhas Prasad Singh for the State, for the Respondent

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The present writ application has been filed under Articles 226 and 227 of the Constitution of India for declaration that the procedure adopted by the Chief Judicial Magistrate, Patna, in dealing with Complaint Case No. 1838-C of 2011 was illegal and thus, the order dated 27.7.2011 is fit to be set aside. The Petitioner has sought the following reliefs:--

(i) Learned Chief Judicial Magistrate, Patna, be commanded to proceed under the provision of Chapter-XV or XVI of the Criminal Procedure Code in view of the order dated 12.7.2011 by which the learned Magistrate applied his mind on the complaint petition filed by the Complainant-Petitioner and put the matter for Further proceeding as per prescribed procedure of the Code.

(ii) Learned Chief Judicial Magistrate, Patna, be commanded to proceed with the complaint case as per the normal rules and prescribed procedure defined under Chapters-XV and XVI of the Code of Criminal Procedure.

(iii) Learned Magistrate be restrained from passing any order on the point of

maintainability of the complaint petition as the case was never put for hearing on the point of maintainability rather it talks about Further proceeding in the matter and not otherwise.

(iv) Learned Chief Judicial Magistrate, Patna, be directed to proceed with the examination and the enquiry of the case in a well defined manner as prescribed in the Code without being prejudiced by the position and status of the accused person/persons.

(v) Learned Chief Judicial Magistrate, Patna, be directed to follow the procedure as laid down in Criminal Procedure Code in dealing with such complaint so as to give it the logical conclusion.

(vi) Any other relief/reliefs be granted to the Petitioner to which he is legally entitled to.

2. To be able to appreciate the legal issues involved it would be essential to place in some detail the contents of the written complaint filed in the Court below. The Complainant submitted that he had a long standing experience at the Bar of 32 years and had got various distinctions in his profession. He had been elected President and General Secretary of the District Bar Association, Patna, as well as Member of the Bihar State Bar Council and had been an Office Bearer of various Associations. He had been also awarded by the district administration for his distinctive work.

3. He complained that on 7.3.2011, an order was passed by accused no. 1, Sri Raghvendra Pratap Singh, the then Presiding Officer of Fast Track Court No. 5, Patna, in Sessions Trial No. 1148 of 2005 containing "callous unfounded and unwarranted imputation" against the Complainant which had been widely circulated in daily newspaper by accused nos. 2, 3, 4, 5 and 6 in connivance with Accused No. 1. He alleged that Accused No. 1 while occupying the post of a Judicial Officer had got it circulated in order to project the Complainant in bad light to settle personal scores with him. It was done with the sole intention to defame the Complainant and tarnish his image and lower down his reputation in the estimation of all concerned.

4. On 18.4.2011, the Complainant allegedly received a communication issued under the hand of Accused No. 1 along with a copy of the order dated 7.3.2011 passed by the Additional Sessions Judge-cum-Fast Track Court No. 5, Patna, in connection with Sessions Trial No. 1148 of 2005 arising out of Patna City Chowk P.S. Case No. 69 of 2002. The said order allegedly comprised of defamatory insinuation against the Complainant and revealed his intention towards the Complainant. After perusal of the order dated 7.3.2011, he was shocked to see the defamatory allegations that had been raised against the Complainant by the Accused No. 1 while dealing with a sensational murder trial and he had allegedly travelled beyond the periphery of his jurisdiction and had not acted judicially, knowing fully well that he was acting beyond the power vested in him while acting and purporting to act in discharge of his judicial function. It was alleged

that the observations made at page no. 69 to 73 of the order made the intention of Accused No. 1 clear. The extract of the order was reproduced in the complaint, wherein, certain remarks had been made against the Complainant with regard to his corrupt ways. The Complainant Further alleged that the aforesaid part of the order-sheet comprising of the offending remarks caused mental suffering. He alleged that contents quoted in the complaint were not relevant for Sessions Trial No. 1148 of 2005 and hence, Accused No. 1 had travelled beyond his jurisdiction to malign the image of the Complainant. The Complainant stated that the Presiding Officer had shown special interest in the case and had entered into domain of the Public Prosecutor and had attempted to prevail upon him to examine such witness, who had filed attendance in Court through a private lawyer ignoring the authority of the Public Prosecutor.

5. On 7.3.2011, during the course of examination, the Court had put some questions to a witness inviting ambiguity. PW-3 was examined even in absence of Public Prosecutor. He alleged that in fact the order dated 7.3.2011 was ante-dated and he had learnt of it only on 18.4.2011. It was circulated by Accused No. 1 in a well planned move to defame the Complainant. His communication of the same to the Complainant was without any authority. In the end, the Complainant alleged as follows:--

...the Accused No. 1 firstly circulated the aforesaid ante-dated order-sheet and secondly managed to forward the same order-sheet to the Press where Accused Nos. 2, 3, 4, 5 and 6 being the Editor, Resident Editor, Publisher and Printer respectively in Hindi daily "Prabhat Khabar" conspired with each other and managed to exaggerate the facts out of proportion for publication and made communication a news items published in the Hindi Daily Newspaper "Prabhat Khabar" dated 29.4.2011 under bold heading with capital "JUDGE NE KAHA KEE P.P. MAHABHARAST".

see copy 6

Further submits that the system would collapse if the Courts refuse to take cognizance or the Police to register a First Information Report. In support of his contention, counsel for the Petitioner places reliance upon CREF Finance Ltd. Vs. Shree Shanthi Homes Pvt. Ltd. and Another, and an unreported judgment of the Kerala High Court in the case of Biju Purushothaman vs. State of Kerala (Cri. Rev. Pet. No. 1255 of 2008). The Further submission is that the petitioner is a very responsible Counsel, was always cooperative and such general sweeping allegations against him were unfortunate. Hence, the Judicial Officer should be proceeded against for having passed unsavory remarks against him and rest of the accused persons for having published them.

6. On the other hand, counsel for the State submits that since the Complaint is pending, this Court may direct the Court below to proceed in the manner prescribed in law.

7. Heard the rival contentions of the parties, perused the documents annexed

with the Writ Application and given my anxious thoughts to the issues at hand.

8. The Petitioner has annexed the order-sheet of date 7.3.2011 of Sessions Trial No. 1148 of 2005 on which the Complaint is based, pertaining to a murder case pending before the Judicial Officer. The whole story unfurls on its reading.

9. It seems that attendance of one witness, Vidyapati Dwivedi, whose name found place in the charge-sheet at serial no. 4 was filed in the Court below on the said date. However, the State did not appear. The Court then sent its Peon to inform the Public Prosecutor that the case had been taken up. Then at about 12.45 PM attendance on behalf of the State/Prosecution bearing signature of Public Prosecutor Jai Prakash Singh (Complainant) and one Sri Mahavir Prasad Kamaliya, as charge-sheet witness was filed. However, neither the Public Prosecutor nor the Additional Public Prosecutor made their appearance. The case was once again called out for attendance of the State/Prosecution. The witness Vidyapati Dwivedi, assisted by a private lawyer, made a grievance against the Public Prosecutor that even though he was in attendance on 13.1.2011, 20.1.2011, 14.2.2011 and 5.3.2011 for his evidence, after issuance of warrant against him to secure his attendance, but he was not being examined. He submitted that he was a Non-Resident Indian usually residing at Toronto, Canada, with his son and had to go there in near future. In such circumstances, he prayed that he be examined or be discharged without his examination.

10. The Court noted that the said witness on the mentioned dates had filed his attendance having been identified by a private lawyer. An application had also been filed on 5.3.2011 regarding his plight in attending the Court for giving his evidence. The Court also noted that on 13.1.2011, one witness, Rajesh Kumar Kamaliya, had been examined as PW-2 and Hajri (Attendance) for another witness Vidyapati Dwivedi, another Prosecution Witness, was also filed but they were not examined by the Public Prosecutor on the pretext that he had not gone through the case diary thoroughly and other Prosecution Witnesses would be examined later on after perusal of the case diary. The case was adjourned for the next few dates.

11. On 5.3.2011, the Court was informed that the Public Prosecutor had gone to Civil Court, Patna City, and therefore, the matter be adjourned. In the background development of the case, the Court recorded that it had proceeded to note down the name and address of the said witness Vidyapati Dwivedi when the Complainant/Public Prosecutor made his appearance in the Court Room. The Court then asked him as to whether he would examine Vidyapati Dwivedi or he would give him up without his examination. The Complainant allegedly raised his voice that since the Court had proceeded to examine him in Chief, what was his necessity to do so. The Court then tried to reason with him that examination of the witness was yet to start and he should proceed if he proposed to examine him. Thereafter, Vidyapati Dwivedi was examined as a witness but was declared hostile. However, the Public Prosecutor started to ask irrelevant questions which the Court tried to stop. The Complainant allegedly warned that he was making

suggestive answers to the witness and had travelled beyond his jurisdiction as a Trial Judge and that he would take appropriate action against him. A heated exchange took place between them. However, later PW-3 Vidyapati Dwivedi was discharged. The Public Prosecutor thereafter was asked to examine Mahawir Prasad Kamalia, whose attendance has been filed but the parties asked for adjournment. The matter was then adjourned for 10.3.2011.

12. The Trial Court, in its order, noted various decisions of the Hon''ble Supreme Court on the principle as to why cases should not be adjourned as also the scope of Section 165 of the Evidence Act which gave power to a Judge to put question to a witness as and when necessary. Several decisions on Sections 165 and 144 to 146 Evidence Act were referred to by the Court. It also considered the scope of other relevant provisions of the Code of Criminal Procedure and explained the relevance of his intervention during the examination of Vidyapati Dwivedi as also the conduct of the Public Prosecutor in the present case as well as previous cases in which he had unfortunate experiences. He generally expressed his concern over the working of the system which had frustrated the interest of justice. At the end, while expressing his anguish, he noted in the following manner:--

While judging the conduct and approach of the learned PP since PW-3 Vidyapati Dwivedi, had been making his appearance for giving his evidence as a PW his non-examination as such by the learned PP and the complain made by PW-3 on 5.3.2011 cannot be ignored keeping in view the conduct of learned PP prior to today and also of today after appearance of the learned PP in the Court Room described earlier hereinabove and the Court could not be a party to the conduct and statements of the learned PP disclosed in the written complain made against him (the learned PP) by PW Vidyapati Dwivedi, if the same is true.

Before parting with the order I would like to mention that the present case and the order of this case made today is an example of alleged corruption of judicial system and problem/agony felt by PWs while making their appearance in Court for giving their evidence as such, and also of atmosphere under which Subordinate Courts or District or Sub-District Courts are working. There is need of a review of the whole beginning with the recommendations and appointments of the PPs/Addl. P.Ps. in the whole Bihar and there should be earmarking of P.Ps/Addl. PPs. for each Sessions Court in the whole State of Bihar and the advocates appointed as P.Ps/Addl. P.Ps. should be debarred from taking briefs of any other litigants other than the State during their tenure as such for good administration of justice in the State. For fighting corruption in the judicial system and to apprise the matter and circumstances under which District Courts and Sub-Districts Courts are working, a copy of this order be sent to each of the followings:--

- (1) To the Hon''ble Chief Minister of Bihar through his Principal Secretary,
- (2) The Hon''ble Law Minister through the Secretary, Govt. of Bihar,
- (3) The Registrar General, High Court of Judicature, Patna, with request to

appraise the matter to the Hon''ble Standing Committee of the High Court,

(4) The Director, Bihar Judicial Academy, Gulzarbagh, Gaighat, Patna, with request to place the copy before the Governing Body of the Academy to decide whether the order is worthy to circulate among the young Judges coming there for training,

(5) To the Joint Registrar, Fast Track Court Monitoring Cell, Patna High Court, with request to place the copy before the Hon''ble Judge, Patna High Court In-charge of the said Cell,

(6) To the District & Sessions Judge, Patna, for information and needful,

(7) To the learned PP Shri Jay Prakash Singh with request to go through the copy of the order and to re-think about his conduct,

(8) To the Secretary, District Bar Association, Patna, with request to circulate the copy amongst the members of the Association,

(9) To the Chairman, Bihar Bar Council, Patna, Bar Council Building, Patna, for needful.

It is in this backdrop that the Complaint was filed.

13. Now to examine the manner in which the petition of Complaint proceeded on its presentation before the Court. The order sheet reveals that on the date the Complaint was filed i.e. 8.7.2011 the Chief Judicial Magistrate, Patna, the Presiding Magistrate was on leave. The Magistrate officiating posted the Complaint before the concerned Officer for consideration on 12.7.2011. On the said date, the Presiding Magistrate noted the presence of the Complainant and posted the matter for 23.7.2011 for Further action but on the said date once again the Presiding Magistrate was on leave. Hence, the matter was not taken up and deferred till 27.7.2011 by the officiating-Magistrate. On 27.7.2011, the Complainant was heard on the question of maintainability and the matter was posted for orders on 30.7.2011 on the question of maintainability. On 29.7.2011, two petitions were filed on behalf of the Complainant but none of them were pressed. On 30.7.2011, when the matter was placed for orders on question of maintainability the Complainant and his companion advocates appeared before the Court and submitted that no order be passed since they had moved the High Court for transfer of the case and a long adjournment be granted.

14. The contentions advanced on behalf of the Petitioner raises an interesting issue as to whether a Magistrate, on presentation of a Complaint, has an option of postponing examination of the Complainant/his Witnesses as provided under Chapter-XIV. Since an answer to this question would be dependent on whether the order dated 12.7.2011 wherein the Presiding Magistrate states "PARIWADI KI HAJIRI HAI. PARIWAD PATRA DINANK 23.7.2011 KO AGRIM KARAWAHI HETU RAKHA GAYA" (The complainant files attendance. Let the Complaint be placed on 23.7.2011 for Further action) is an order of cognizance, I would proceed to

examine that issue first.

15. Courts, have on various occasions, in the past grappled as to how the word cognizance be defined. Justice Debabrata Mookerjee while sitting in a Full Bench in Calcutta High Court; and hearing a reference on a related issue in the case of Ajit Kumar Palit Vs. The State, very interestingly observed in para 54 "...no concept in law of procedure was perhaps more widely and yet less precisely known than the concept of taking cognizance of crimes".

16. As of now there appears to be a general consensus that however intangible or undefined, the word has no esoteric or mystic significance. It only means to be aware, to take judicial notice. The Hon"ble Supreme Court in the case of R.R. Chari Vs. The State of Uttar Pradesh, while considering this issue had reproduced the words of Calcutta High Court passed in Supdt. & Remembrancer of Legal Affairs, W.B. vs. Abani Kumar and approved the decision given therein which is reproduced below.

9. After referring to the observations in Emperor Vs. Sourindra Mohan Chuckerbutty, , it was stated by Das Gupta, J. in Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, , as follows:--

What is taking cognizance has not been defined in the Cri. 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 Mag. has taken cognizance of any offence u/s 190 (1)(a), Cri.P.C. he must not only have applied his mind to the contents of the pent, 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 and thereafter sending it for inquiry and report u/s 202. When the Mag. 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.....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 Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, , this view was upheld in the following manner:--

What is meant by "taking cognizance of an offence" by the Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. 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 to 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 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 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.

17. From the definitions explained above it is clear that the question as to whether cognizance has been taken or not, will depend on the circumstances of each case, including the mode in which the case is sought to be instituted and the nature of preliminary action, if any, taken by the Magistrate. In fact the usual procedure adopted by Courts in Bihar is that once a Complaint is filed, if the matter is not sent for investigation u/s 156(3) Cr.P.C, the Complainant, his witnesses are examined and thereafter if it is not dismissed u/s 203 the Magistrate mentions that "cognizance" is taken under the specified Sections and Summons are issued to the mentioned accused. Fact of the matter is that the Magistrate has taken cognizance on the date he has decided to proceed as provided u/s 200 Cr.P.C. What this Court is trying to demonstrate is that the word cognizance is used very loosely and the word by itself has no sanctity. What is crucial is the nature of judicial exercise and its application. Actually much confusion has been created on account of a mechanical reference to the order issuing process as the order of cognizance. A mindful and conscious exercise is essential for viewing them as having distinct characters and of having been passed at two different stages altogether.

18. In the present case, we find that on 12.7.2011 the Magistrate merely noticed the presence of the Complainant and posted the complaint for Further proceeding not specifying that it was being posted for examination of the Complainant. The order does not demonstrate a judicial act to determine whether there is prima facie ground for proceeding in the matter. Further even on the next date he heard the Complainant on the question of maintainability because a high Judicial Officer of the rank of Sessions Judge had been arrayed a prime accused. Since the Magistrate on 12.7.2011 had not proceeded to evaluate the guilt or otherwise of the Accused which is the first step and a precondition for trial this Court would be inclined to hold that the Magistrate had not taken cognizance on 12.7.2011. To Further clarify, if a mere reading of a Complaint is defined in a restrictive meaning as cognizance no order passed u/s 156(3) Cr.P.C. would stand the scrutiny of the Sections 200/202 Cr.P.C.

19. Now to deal with the next interconnected and main question as to what is the extent of discretion allowed to a Magistrate when a Complaint is filed before him. Whether he has an option to adopt a procedure other than to proceed to examine the Complainant after reading/perusing/considering the Complaint. Since procedural law is involved, a fair determination would require a survey and analysis of the scheme of the relevant provisions of the Code of Criminal Procedure. Whereas Section 190 Cr.P.C. provides power to a Magistrate to take

cognizance Chapter-XV and part Chapter-XVI prescribe the procedure for dealing with Complaints. Sections 190, 200, are reproduced below for easy reference:--

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 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 offences;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

200. Examination of Complainant.--A Magistrate taking cognizance of an offence on complaint shall examine upon oath the Complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the Complainant and the witnesses, and also by the Magistrate:

Provided that, when the Complaint is made in writing, the Magistrate need not examine the 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.

20. A bare reading of Section 190 Cr.P.C. discloses that it enables a Magistrate to take cognizance in certain situations specified therein whereas Section 200 Cr.P.C. provides the procedure thereafter in Complaint cases. The importance of the words "may take cognizance" in Section 190 and the words "A Magistrate taking cognizance of an offence on complaint shall examine..." must not be lost sight of. Significantly Section 190 Cr.P.C. does not make it mandatory to take cognizance, whereas there is a mandate in Section 200 Cr.P.C. but the same is operative only after cognizance is taken. The drawing of attention to this distinction will have some bearing on what is to follow in the next few paragraphs which necessitates a brief overview of the provisions of the Code in reference to the procedure on receipt of a complaint.

21. It appears, at the first stage of receiving a Complaint the Magistrate has two

major options; either to deal with it himself under Sections 200/202 or direct an investigation by the Police u/s 156(3) Cr.P.C. which stipulates "Any Magistrate empowered u/s 190 may order such an investigation as mentioned above".

22. Further Sections 97 and 98 empower him to issue search warrants for a wrongly confined person or order restoration of an abducted female respectively.

23. Notwithstanding the aforementioned proactive jurisdiction conferred upon a Magistrate certain provisions in the Code explicitly abrogate his cognizance-taking powers. A hurried analysis of some of the provisions are as follows: Sections 195 (bar on taking cognizance of certain offences except on complaint by a specified Authority), 196 (bar on taking cognizance under certain sections without sanction) 197 (bar in Complaints against public servants) 198 (bar in offences against marriage) and 199 (bar in cases filed by an incompetent person in cases of defamation) 468 (beyond the period of limitation). These Sections curtail the cognizance taking powers of a Magistrate.

24. Section 197 is important for adjudication of the present case. Relevant portion is reproduced below:--

197. Prosecution of Judges and public servants.--(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction--

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

XXX XXX XXX

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

25. Apart from the aforementioned restrictions there are certain situations where a Magistrate has to consider the question of his own competency as prescribed u/s 201 Cr.P.C. which regulates his procedure in the following manner:--

201. Procedure by Magistrate not competent to take cognizance of the case.--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.

26. Section 201 to some extent is relatable to Chapter-XIII which deals with the question of territorial jurisdiction and offences punishable under the Special Acts.

27. Hence the scheme of the Code not only invests in a Magistrate certain powers but also abrogates them, in certain conditions. The most glaring prohibition is that a Magistrate has no inherent power to take cognizance.

28. In final analysis, as per the scheme of the Code, on perusal of the complaint a Magistrate has to discharge amongst others the following functions:--

I. Consider as to the whether to inquire into the allegations himself or to refer it to the police u/s 156(3);

II. Consider as to whether to issue search/recovery order;

III. Consider as to whether the Complaint satisfies the question of jurisdiction;

IV. Consider as to whether he is competent to take cognizance e.g. in cases arising out of offences punishable under the Special Acts;

V. Consider as to whether the Complainant is competent to file the Complaint;

VI. Consider as to whether there is a bar operational against taking cognizance as per Sections 195 to 199 Cr.P.C. and such others;

VII. Consider as to whether the Complaint is barred by limitation;

29. So, in conclusion, the Magistrate after perusal of the complaint has to apply himself judicially to various factors. This judicial act, not coming within the definition "cognizance" the Further course of action of the Magistrate is subject to the conferred powers and proscriptions. In this context, the Apex Court has held that word "may" in Section 190 does not necessarily mean "must". See Gopal Das Sindhi and Others Vs. The State of Assam and Another . However there can be no dispute that if once the Magistrate decides to take cognizance he has to proceed in the manner provided by Sections 200/203/204 Cr.P.C. The Code does not permit a Magistrate the discretion to refuse taking of cognizance at the stage of 200 Cr.P.C. on grounds of insufficiency of material which he can do only at the stage of 203 Cr.P.C. As pointed out above, a Magistrate does not have inherent power to take cognizance and hence he cannot ignore the aforementioned provisions and proceed mechanically to examine the Complainant irrespective of the restrictions as soon as a Complaint is filed before him. It would most certainly be against the law and in derogation of the provisions of the Code of Criminal Procedure. There is no gainsaying that procedural laws expect strict compliance, more so, if there are express limitations. Every judicial order no matter how innocuous to a non-discerning eye is an act of responsibility derived from the office held. Needless to add a judicial officer is not only expected to be

conscious of his powers but also of his limitations. The established twin principles of law that jurisdiction cannot be assumed by an Authority nor does one have a vested right in procedure have to be always kept in mind.

30. The Hon"ble Supreme Court in the case of Jamuna Singh and Others Vs. Bhadai Sah, considered the options open to a Magistrate in the following manner:--

It has to be noticed that the Magistrate was not bound to take cognizance of the offences on receipt of the complaint. He could have, without taking cognizance, directed an investigation of the case by the police under S. 156(3) of the Code of Criminal Procedure.

31. In the case of CREF Finance Ltd. Vs. Shree Shanthi Homes Pvt. Ltd. and Another, , interestingly also relied upon by the Petitioner, the Hon"ble Supreme Court held that there could be situation where the Magistrate may not take cognizance at all. The relevant portion is extracted below:

.....for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority, etc. These are cases where the Magistrate will refuse to take cognizance and return the complaint to the Complainant.

32. Once having held that the order dated 12.7.2011 is not an order taking cognizance this Court would Further hold that it was not only open to the Magistrate but also incumbent upon him to consider the express bar created by Section 197 Cr.P.C. on finding a Senior Judicial Officer arrayed the main accused. Hence, the Magistrate rightly postponed the issue of examination of the Complainant.

33. Now to deal with the decisions relied upon by the Petitioner. In the case of Cref Finance Ltd. (supra) the issue was quite different and in fact on a close scrutiny it does not even support the Petitioner which the above quoted observations demonstrate. The fact situation there was that the Appellant had raised a doubt that the Magistrate had not taken cognizance because he had failed to mention the same in the order sheet. The Apex Court held that even assuming the same, once the Magistrate had mentioned that the case was deferred to a Further date for recording the statement of the complainant cognizance was to be assumed because the Magistrate had decided the course of the Complaint. As explained in great detail earlier such is not the situation in the present case.

34. Similarly in the case of Biju Purushothaman vs. State of Kerala (Cri. Rev. Petition No. 1255 of 2008) the question for determination before the court was as to whether the Magistrate once having postponed the case for inquiry u/s 202 Cr.P.C. could thereafter direct a police investigation u/s 202(1) Cr.P.C. It has no

application to the case at hand,

35. The Further consideration before this Court is whether, in the fact situation, where the prosecution of a Senior Judicial Officer, without sanction, is brought to the notice of the Court, it should exercise its inherent jurisdiction derived from Articles 226/227 of the Constitution of India to interfere in such a Complaint. Justice Wadhwa speaking for the Bench in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, had observed "provision of Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure are devised to advance justice and not to frustrate it".

36. The Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, had laid down rough parameters of quashing reproduced below:

....we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court of otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases where in such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by the police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations" in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

37. The said decision is fully applicable to the present case, inasmuch as, the facts stated in this Complaint are merely the grievance of the Petitioner against a Senior Judicial Officer, who had expressed his anguish over his conduct, it having disturbed his judicial conscience. The communication addressed to each of the authority as mentioned in concluding paragraph of the order reveals that the Complainant was also served with a copy of the same so he could go through it and re-think about his conduct. Evidently, the intention of the Court was not to scandalize or defame him but to sensitize him to consider conducting himself more responsibly so that justice would not suffer at his hands. The Judicial Officer's anxiety to the cause of the judicial system completely exonerates him that his remarks were intended to malign the Complainant and therefore this Court would be inclined to hold that no offence whatsoever is made out in the facts of the case and, hence, proceeding of Complaint Case No. 1838-C of 2011 pending before the Chief Judicial Magistrate, Patna, in regard to Accused No. 1-Respondent No. 2 is hereby set aside.

38. As for the rest of the accused, this Court wishes to clarify that it has not determined their complicity and quashing of the case against Accused No. 1-Respondent No. 2 may not be interpreted as such. The Court may proceed against them in accordance with law without any prejudice. In the result, the application is dismissed.