R.R. Chari vs State on 28 April, 1950

Equivalent citations: AIR1950ALL626

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1.Shri R. R. Chari formerly Regional Deputy Iron and Steel Controller, U. P. Circle, Kanpur is being tried in the Court of a Magistrate first class for offences under Sections 161, 165, 465, 467, 471 and 109, Penal Code, and Section 120B, Penal Code, read with aforesaid sections and under Rules 47 (2) (a) (b) and 81, Defence of India Rules.

2. On 6th December 1948, the Provincial Government sanctioned under Section 196A (1) and (2), Criminal P. C., his prosecution for the offences under Section 120B, Penal Code, and other offences.

3. On 3lst January 1949, the Governor General of India sanctioned under Section 197, Criminal P. C., his prosecution for the various offences.

4. The same day the Central Government sanctioned under Section 6, Prevention of Corruption Act (Act II [2] of 1947), the institution of criminal proceedings against him for acts which constituted offences under Section 161 and 165, Penal Code.

5. The charge sheet against the accused was filed in Court on 25th March 1949.

6. It would appear that the necessary sanction had been obtained prior to the submission of the charge sheet by the police against the applicant and that, therefore, the Court was competent to take cognizance of the offences. It is not disputed that if it be held that the Court took cognizance of the offences on 24th March 1949, the Court had jurisdiction to try the accused. It is, however, contended for the applicant that the Court had taken cognizance of the offences against him prior to 6th December 1948.

7. It may be mentioned that of the various offences for which the applicant is being tried offences under Section 465, 467 and 471 are non-cognizable offences. Offences under Section 161 and 165, Penal Code, which were non-cognizable offences were made cognizable by Section 8, Prevention of Corruption Act 1947 (Act No. II [2] of 1947) with this restriction that a police officer below the rank of the Deputy Superintendent of Police was not to investigate any such offence without the order of

the Magistrate of the first class or make an arrest therefore without a warrant.

8. On 22nd October I94t Shri L. S. Darbari, Inspector of Police, Anti Corruption Department requested the District Magistrate, Kanpur for the issue of a bailable warrant of arrest against Shri R. R. Chari, the applicant, as he was alleged to have disappeared from his post without giving any notice the Government and was in hiding. This report is marked 'Top Secret' and indicates that he had been permitted by the District Magistrate to make enquiries into the various offences. The District Magistrate on this report issued bailable warrants.

9. In pursuance of those warrants the applicant presented himself before the District Magistrate of Kanpur on 26th November 1947. Shri Darbari, the Anti-Corruption Officer requested the District Magistrate to take fresh sureties, from him. The District Magistrate ordered:

> "Please arrest him. Send him to jail and he can then move the bail application before the trying Magistrate " On 1st December 1947, the Special Magistrate appointed for trying corruption cases granted bail to the accused. He granted remands to the police till the charge sheet was submitted.

10. It is contended for the applicant that the District Magistrate, Kanpur, took cognizance of the offences on 22nd October 1947, or on 26th November 1947 and that the trial Magistrate took cognizance of the offences on 1st December 1947. It was therefore urged before the trial Magistrate that cognizance of the offences having been taken without proper sanction, the Court had no jurisdiction to try the case and all the proceedings were illegal. The trial Magistrate did not agree with this contention and rejected the application of the accused. It is against this order that this revision is filed.

11. The learned counsel relies on the cases reported in Emperor v. Sourindra Mohan, 37 Cal. 412: (11 Cr. L. J. 217), N. L. Carrick v. Emperor, A. I. R. (28) 1941 Pat. 395 : (42 Cr. L. J. 504) and on the observations of Meredith J. in Gopal v. Emperor, A.I.R. (30) 1943 Pat. 245 : (45 Cr. L. J. 177 S. B.), in support of his contention that cognizance of the offences had been taken long before the necessary sanctions were given.

12. There is nothing useful in the aforesaid Calcutta cage. An accused was arrested in connection with a dacoity on 24th April 1909. He made a confession on 18th October. Subsequently, the District Magistrate transferred the case to his own file. On 20th January 1910, the Provincial Government passed an order under Section 2 of Act XIV [14] of 1908. It was contended in that case that the Magistrate had not taken cognizance of the Naitra dacoity on 20th January. It was observed :

> "On looking at the record we find that a police report was made to the Sub-divisional Officer of Diamond Harbour on 24th April, the day when the dacoity is alleged to have taken place, and that the ease was afterwards transferred to head-quarters. Cognizance had therefore, been taken of the offence on 20th January 1910, as recited in the order of the Local Government of that date; for taking cognizance does not invlove 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."

There is no reference to any provision of law with respect to the stage or the occasion when the cognizance of an offence committed is taken by a Court. It, however, appears that the report submitted on 24th of April was a report contemplated under Section 157, Criminal P. C. and that the observations imply that cognizance of the offence had been taken by a Magistrate when this police report reached him.

13. In N. L. Carrich v. Emperor, A. I. R. (28) 1941 Pat. 395 : (42 Cr. L. J. 504), a Magistrate accepted the final report from a police in connection with the investigation of a report under Sections 147 and 323, Penal Code. The successor of the Magistrate, in view of the opinion of the Government, called for a charge sheet and on receipt of the charge sheet transferred the case to another Magistrate for disposal. In connection with the question whether the High Court could revise the orders of the Magistrate, Dhavale J. observed :

> "Section 192(1) empowers a Sub-Divisional Magistrate to transfer any case of which he has taken cognizance for inquiry or trial, to any Magistrate subordinate to him. Mr. Sinha's order of transfer to Mr. Bajpai therefore necessarily imports his taking cognizanee of the case and though the expression 'taking cognizance' is not defined in the Code, there can be no dispute that it constitutes a judicial act. It follows that even ii the calling for a charge sheet he regarded as an administrative matter, the Magistrate's action in taking cognizance and transferring the case to Mr. Bajpai for trial is a judicial matter open to scrutiny by Courts of revision under Ss. 435 and 439, Criminal P. C."

This case is again not of much help. The Magistrate took cognizance and transferred the case after the receipt of the charge sheet. There is no dispute that the Magistrate takes cognizance of the case on the receipt of a report giving the necessary facts, from the police.

14. In Gopal v. Emperor, A. I. R. (30) 1943 Pat. 245 : (45 Cr. L. J. 177 S. B.), Meredith J. observed at p. 251 :

> "What is that point ? There is no charm in the word 'cognizance.' It is nowhere defined in the Code of Criminal Procedure. It is a word of somewhat indefinite import. It is perhaps not always used in exactly the same sense." He further observed :
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> "In my judgment, the word 'cognizance' is used in the Code to indicate the point when a Magistrate or a Judge first takes judicial notice of an offence. It is a different thing from the initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate. Cognizance is taken of cases, not of persons, and there seems to be nothing in theory to prevent a Magistrate from taking cognizance of a case even where the offenders are unknown. The fact that a Magistrate has taken cognizance does not necessarily mean that there will be judicial

> proceedings against any one."

He further observed :

> "Similarly, where cognizance is taken upon a police report, the Code seems to contemplate that it shall be taken upon the preliminary report which Is sent up by the police with the first information under Section 157. ... It is obvious that the Code contemplates that the Magistrate may take cognizance upon this preliminary report and need not wait for the charge sheet."

Sections 157 and 169, Criminal P. C., nowhere refer to the Magistrate's taking cognizanee of the case. Reference to the powers of the Magistrate to take cognizance of an offence upon police report is with respect to the description of a Magistrate to whom the report of a cognizable offence is to be sent by the officer in charge of the police station and not with a view to indicate that the Magistrate concerned is to take cognizance or takes cognizance on the receipt of such report.

15. These observations, to my mind, are of not much use to the applicant. Meredith J. himself observed that the word cognizance is of somewhat indefinite import and hag not always been used in exactly the same sense. Then he considered cognizance to mean mental decision of a Magistrate to take judicial notice of a case. This raises the question, what amounts to taking judicial notice of a case? Does an order of a Magistrate to the police to investigate an offence amount to taking such judicial notice? Does the order of the Magistrate for the issue of a warrant on the request of the police conducting investigation under the Magistrate's orders into a non-cognizable case amount to the Magiatrate's taking judicial notice of the cage? I should think that a Magistrate takes judicial notice of the case when he intends to deal with a case, judicially and that in its turn would mean that the Magistrate intends to start criminal proceedings against a person accused o£ a particular offence to determine his guilt.

16. The word 'cognizance' is defined in Wharton's Law Lexicon, 14th Edition as "the hearing of a thing judicially."

17. The learned counsel for the applicant referred to the cases reported is Hari Ram v. Emperor, A. I. R. (34) 1947 Cal. 420,and Basdeo Agarwalla v. Emperor, A.I.R. (32) 1915 F.C. 16 : (46 Cr. L. J. 510) also.

18. In Basdeo Agarwalla v. Emperor, A.I.R (32) 1945 F. C. 16 : (46 Cr. L. J. 510), an accused was produced in Court along with a challan on 22nd May. The sanction was given on 23rd May. It was held that the proceedings wore illegal is view of Section 16, Drugs Control Order, 1943, which provided that no prosecution for contravention of the provisions of the order would be instituted without the previous sanction of the Provincial Government. It is clear that prosecution had been instituted on 22nd May without the proper sanction.

19. In Hari Ram v. Emperor, A. I. R. (34) 1947 Cal. 420, the accused had been arrested and released on bail and a Sub-Divisional Magistrate ordered on llth June 1945, on the report of the Deputy

Superintendent of Police Enforcement that a warrant of arrest under Section 81 (4), Defence of India Rules, be issued for 25th June 1946. Sanction for the prosecution is required under Section 4, Cotton Cloth and Yarn Control Order, which again provided that no prosecution for the contravention of any of the provisions of the order would be instituted without the previous sanction of the Provincial Government. The sanction was obtained on 1st July 1945. Change sheet was filed on 4th July 1945, In these circumstances Sen J. observed :

> "It is clear from this order that a warrant of arrest was being issued by the Sub-Divisional Magistrate acting as a Court and he could only do this upon taking cognizance of the offence alleged to have been committed by the petitioner. Up to this date, there was no sanction obtained from the Provincial Government or the District Magistrate." He further observed :
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> "The prosecution of a person commences as soon as the Court takes cognizance of the offence alleged against him. Unless the Magistrate had taken cognizance the Magistrate could not have issued a warrant of arrest on llth June 1945. The learned Magistrate had therefore rightly or wrongly commenced the prosecution of this case on llth June 1945. The submission of a charge sheet subsequently would not have the effect of altering the date of the initiation of the prosecution."

He, therefore, held that proceedings in the case were null and void ab initio. It may be that a Magistrate could not have issued a warrant without taking cognizance of the offence; but it does not mean, to my mind, that if a Magistrate issues a warrant which he is incompetent to issue he must be held to have taken cognizance of an offence. The Magistrate's taking cognizance of an offence would depend upon what he did and intended to do and not merely upon an order which he was not competent to to pass but which he did pass.

20. In R. C. Pollard v. Satya Gopal Mazumdar, A. I. R. (30) 1943 Cal. 594 at p. 608: (45 Cr. L. J. 224 S. B.), Lodge J. remarked:

> "It seems) to me that the phrase 'take cognizance' in Section 197, Criminal P. C., must be the same as 'hear and determine' and that consequently as soon as a Court is satisfied that the alleged offence was committed (if at all) while the officer was acting or purporting to act In the discharge of his official duty he shall drop the proceeding."

21. Cognizance, therefore, has a reference to the hearing and to the determination of the case in connection with the commission of an offence and not merely to a Magistrate's learning that some offence had been committed and his ordering that the matter be investigated. During the investigation of the matter the Magistrate has nothing to do judicially. He has to determine nothing. It will be after the investigation that he will have to determine whether there is a case to go on against any particular person or not. It is at that stage that he will be taking cognizance of the offence because he would be determining whether the matter should be judicially enquired into or not. If he decides to enquire into the matter judicially, he takes cognizance of the offence. If he decides that there is no case to go on and he accepts the final report submitted by the police after

investigation, he does not take cognizance of the offence. Similarly, a Magistrate does not take cognizance of a complaint if he dismisses it under Section 203, Criminal P. C.

22. Section 190 is the first section in which the expression 'take cognizance of an offence' appears and its Sub-section (l) is:

> "Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate, specially empowered in this behalf may take cognizance of any offence:
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> (a) upon receiving a complaint of facts which constitute such offence;
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> (b) upon a report in writing of such facts made by any police-officer;
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> (a) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed."

23. This merely provides the circumstances in which a Magistrate is to take cognizance of an offence and does not mean that merely on receipt of a complaint or a report by a police officer or information, a Magistrate has to and does take cognizance of the offence.

24. After a Magistrate has taken cognizance of an offence under Sections 190, 191 and 192 provide as to what the Magistrate hag to do with respect to the case. The former section deals with the case in winch cognizance had been taken under Section 190 (l) (c) and provides that the accused would be told about his right to have the case tried by another Court and that the Magistrate would either transfer the case to another Court or commit it to the Court of session if he objects to being tried by him. Section 192 provides for the transfer of oases whose cognizance has been taken by other Courts.

25. Section 200, Criminal P. C., provides for the procedure of a Magistrate taking cognizance of an offence on complaint. Section 202 of the Code says that any Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been transferred to him under Section 192, may, if he thinks fit, postpone the issue of process for compelling the attendance of the person complained against, and either enquire into the case himself, or have an enquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of ascertaining the truth or falsehood of the complaint. It is significant that this section does not state that any Magistrate taking cognizance of an offence on a complaint was to act in the manner specified, Such should have been the expression, in my opinion if a Magistrate was bound to take cognizance of an offence merely because the complaint has been filed before him. Section 203 authorises a Magistrate taking action under Section 202 to dismiss the complaint if there be no sufficient ground for proceeding. Then follows Section 204, which provides that if in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding ho may either issue a summons or a warrant as be justified. This section does not use the expressions used in Section 202 and speaks of a Magistrate taking cognizance of an offence. I am, therefore, of

opinion that a Magistrate takes cognizance of an offence when he decides to proceed, against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by complaint or by police report about the commission of an offence.

26. The same would appear to be the meaning of the words 'taking cognizance of an offence' from the provisions of Section 480, Criminal P. C. This section provides that when a person commits an offence specified in the view of any civil, criminal or revenue Court, the Court may cause the offender to be detained in custody and may at any time before the rising of the Court on the same day take cognizance of the offence and sentence the offender. The Court detaining the offender must be doing so with a view to take action against him. That action the Court could take in two ways. The Court could lodge a complaint against him in view of Section 482, Criminal P. C. The Court could itself take action against the offender. It is only when the Court decides to proceed against the offender itself that it takes cognizance of the offence and not when it had seen the offender commit the offence and had decided to take action against him and, therefore, had ordered his detention. This makes it clear, to my mind, that the expression 'taking cognizance of an offence" means "the Court deciding to proceed against the offender with a view to determine his guilt". 27. Section 230, Criminal P. C., is : "It the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary the cage shall not be proceeded with until such sanction is obtained, unless sanction hag already been obtained for a prosecution on the same facts as those on which the new or altered charge is founded."

It would appear, therefore, that if the Court has taken cognizance of a case with reference to a certain offence whose cognizance can be taken without previous sanction and finds during the trial that the offence prima facie made out against the accused was an offence for which previous sanction was necessary, the Court can alter the charge framed and withhold further proceedings until sanction for the prosecution of such of the new offences has been obtained. It follows that the mere fact that a charge for such an offence has been framed does not amount to the taking of cognizance of the offence when the Court withholds subsequent proceedings and that, therefore, taking cognizance of an offence means deciding to proceed with the trial of the accused for that offence.

28. I may in this connection refer to the case reported in U Ba Hla v. Mg. Tun Sein 38 Cr. L. J. 945 : (A. I. R. (24) 1937 Rang. 312). In this case a Court issued notice against a Deputy Superintendent of Police under Section 467, Criminal P. C., to show cause why complaints under Sections 211 and 193, Penal Code be not instituted against him. No Court could have taken cognizance of these offences alleged to have been committed by him in the discharge of his official duties without the previous sanction of the Government in view of Section 197, Criminal P. C. It was held that the enquiry under Section 476, Criminal P. C., could be held by the Court without such sanction. It was observed at p. 947:

> "As for the argument that the sanction of the Local Government should be applied for now, in my view, this is a wrong view to take of the procedure. It is far better that the learned Magistrate should satisfy himself by enquiry that it is expedient in the interests of justice that an enquiry should be held into the alleged offence There can

> be no question that this preliminary enquiry can be held without the sanction of the Local Government for it does not entail taking cognizance of any offence, and if the enquiry is held before the Local Government is approached, the Local Government will he in a much better position to be able to decide what action to take under Section 197."

29. Their Lordships of the Privy Council have emphasised in the, case reported in Gokulchand Dwarkadas v. The King, 1948 A. L. J. 170 : (A.I.R. (35) 1948 P. C. 82 : 49 Cr. L. J. 261), that sanction for the prosecution of persons should indicate the facts constituting the offence for the prosecution of which sanction is given, and observed :

> "It is plain that the Government cannot adequately discharge the obligation of deciding whether to give or withhold the sanction without the knowledge of the facts of the case."

It is clear, therefore, that sanction can be given for the prosecution of a person with respect to the offence alleged against him after the sanctioning authority is in possession of all the facts having a bearing on the question of his committing the offence. Such can be the position only after a full investigation and can never be the position at the stage when the commission of some offence is suspected or reported.

30. The police can investigate a cognizable offence and can also arrest a person suspected to have committed such an offence without the order of a Magistrate. A person is to be produced before a Magistrate after his arrest. The arrested person can apply for bail. The Magistrate can grant bail. It is not contended that the Magistrate takes cognizance of the cognizable offence, when he grants bail to the accused. Cognizance is taken by a Magistrate when the police submits the charge sheet against an accused. In Emperor v. Nazir Ahmad, A. I. R. (32) 1945 P. C. 18 : (46 Cr. L. J. 413), their Lordships of the Privy Council considered the question whether a High Court can prohibit the police from investigating a cognizable offence alleged to have been committed by a public servant and observed at p . 21 :

> "The action of the police in investigating Saleh's charges is a different matter. The position in and time at which a Court is required to take cognizance of the matter has not yet been reached." It was further remarked at p. 22 :
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> "In such a case as the present, however, the Court's functions beg'n when a charge is preferred before it and not until then." They also remarked :
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> "Of course in the present case as in the petition brought by Mr. Gauba, no prosecution is possible unless the necessary sanction under Section 197, Criminal P. C., has first been obtained. But that stage like the stage at which the Court may legitimately intervene is not in their Lordships opinion yet been reached. The question so far is one of investigation and not of prosecution."

It is clear from this that in cognisable cases the stage for the taking of cognizance of the offence by the Court comes when the police submits the charge sheet and that till then the matter is under investigation and not under prosecution.

31. The police investigates non-cognizable offences under the orders of a Magistrate which are given under Section 155 (2), Criminal P. C. Once such an order is given the investigation which the police makes is an investigation under Chap. 14, Criminal P. C. which constitutes Part V dealing with "Information to Police and their powers to investigate" and includes Sections 154 and 176. It has been so held by this Court in the case reported in Raghubar Dayal v. Emperor, 32 Cr. L. J. 465: (A.I.R. (18) 1931 ALL. 263). It is Part VI which deals with proceedings in prosecutions.

32. A Magistrate can also order investigation under Section 166 (3), Criminal P. C. in cognizable cases. I have already indicated above that in cognizable cases a Magistrate takes cognizance of an offence after the charge sheet is submitted. This would make it clear that an order for investigation by a Magistrate whether it be in connection with a non-cognizable offence or a cognizable offence does not amount to his taking cognizance of the case. An order to investigate an offence is not consistent with the Magistrate's taking cognizance of the offence.

33. Section 167 (1), Criminal P. C. provides that:

> "Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61 and there are grounds for believing that the accusation or Information is well founded, the officer in charge of the police station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate."

Under Sub-section (2) the Magistrate can authorise the detention of the accused irrespective of the fact whether he has or has not jurisdiction to try the case. It would follow, therefore, that the Magistrate's order of detention of accused is not contemplated on the ground of his taking cognizance of the case. If the order detaining a person does not amount to taking cognizance of the case against him an order granting bail to him will also not amount to the taking of cognizance.

34. Further Section 197, Criminal P. C. says that when one of the persons described is accused of any offence alleged to have been committed by him in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the specified authority. It should appear that the stage of taking cognizance of an offence under Section 197, Criminal P. C. arises when a certain person is accused of an offence. The mere allegation that an offence has been committed does not amount to an accusation against any person. A person is accused of an offence when he is charged with having committed that offence. This stage of charging a person cannot arise during the course of investigation. This will arise only when the investigation is completed and it is decided as a result of the investigation that a certain person be charged with the commission of that

offence. In this view of the matter too, the stage of taking cognizance of the offence against the accused did not arise prior to 26th March 1949 when the charge sheet was filed in Court. It follows that the orders of the District Magistrate or the Special Magistrate appointed to trv such cases in connection with arrest, bail and custody of the accused did not amount to the taking of cognizance of the offence against him.

35. I, therefore, hall that the special Magistrate took cognizance of the offences of which the applicant is accused on 25th March 1949 after the necessary sanctions had been given by proper authorities. This revision fails. I, accordingly, reject it, and order that the record be seat back to the Court below without undue delay for further proceedings according to law.