



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Appeal No. 1482/2023

Bhuta Ram S/o Sh. Bhakra Ram, Aged About 44 Years, B/c Bishnoi, R/o Village Janvi, Police Station Sarwana, Tehsil Chitalwana, District Jalore (Raj.), Presently Posted As C.i., Station House Officer, Police Station - Chohtan, District Barmer (Raj.)

----Appellant

Versus

1. State Of Rajasthan, Through Pp
2. Smt. Singari Devi W/o Sh. Raimal Ram, Aged About 79 Years, B/c Meghwal, R/o Village - Buth - Rathodan (Mate-Ka-Tala), Police Station Chohtan, District Barmer (Raj.)

----Respondents

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For Appellant(s)	:	Mr. Pradeep Shah Mr. Chakravarti Singh Rathore
For Respondent(s)	:	Mr. S.K. Bhati, P.P.

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**HON'BLE MR. JUSTICE FARJAND ALI**

**Judgment**

**03/08/2023**

1. By way of filing the instant criminal appeal under Section 14-A(1) of SC/ST Act, the appellant has challenged the order dated 05.07.2023 passed by learned Special Judge, SC/ST Act, Barmer, Rajasthan whereby the final report submitted by PS Chohtan was rejected; the protest petition filed by respondent No. 2 was accepted; cognizance was taken against the appellant for offences under Sections 341 & 323 of IPC and Sections 3(1)(r)(s) & Section 3(2)(va) of the SC/ST (Prevention of Atrocities) Act; the case was registered and process was issued against the appellant.



2. The brief facts of the case are that the complainant of the matter pending before the learned Special Judge, who is respondent No. 2 herein, had gone to Police Station, Chohtan along with her husband Raimal Ram to inquire regarding the complaint sent by the Collector to the Police Station on 28.05.2022. Upon such inquiry, Bhuta Ram, who was the then SHO of PS Chohtan and is the appellant herein got annoyed and acting upon the feeling of agitation, he gave an antagonizing and insolent reply to the couple. The husband of respondent No. 2 said that he was a retired army officer and asked him not to use inappropriate words upon which he got angrier and started hurling profanities at the husband, including caste-based expletives as well as began to hit him. When the wife tried to intervene to break the tension, the appellant herein pushed her to the floor and her clothes also got disordered.

3. Aggrieved by the humiliation, intimidation and maltreatment meted out to her husband as well as vexed by outraging of her modesty, the complainant submitted a report about what transpired between the SHO and her husband & herself to the Superintendent of Police, Barmer on 13.06.2022 but no action was taken in furtherance of the same. She also made a request to the SP, Barmer for getting her husband and herself medically examined on 16.06.2022 but nothing was done in pursuance thereof too. This inaction drove her to submit a complaint on 21.06.2022 before the Special Judge, SC/ST Act, Barmer. The complaint was forwarded by the learned Special Judge for investigation under Section 156(3) of CrPC. The officer in-charge,



Police Station Chohtan, District Barmer registered FIR No. 185/2022 on 04.07.2022 for offences under Sections 323, 341, 354, 354B, 166 IPC and Sections 3(1)(s) and 3(1)(r) of SC/ST Act, 1989. After conducting investigation, a negative final report was submitted stating that after complete investigation, it was found that the commission of offences under Sections 323, 341, 354, 354B, 166 IPC and Sections 3(1)(s) and 3(1)(r) of SC/ST Act did not take place and that a false case had been lodged. The complainant/respondent No. 2 was dissatisfied with the result of the investigation and filed a protest petition before the learned Special Judge and got her husband and herself examined under Sections 200-202 CrPC. The trial court did not accept the final report and took cognizance under Sections 341 & 323 IPC and Section 3(1)(r), 3(1)(s) and 3(2)(va) of the SC/ST Act against the appellant and issued process against him vide order dated 05.07.2023.

4. Aggrieved by the order dated 05.07.2023, the present appeal has been preferred by the appellant.

5. Learned counsel for the appellant submits that the learned trial court committed gross irregularity and patent illegality in passing the impugned order whereby cognizance was taken and process was issued against the appellant as he had nothing to do with the incident that happened with the aged couple. The negative final report submitted by the agency revealed that the FIR was totally false and no such incident had taken place as alleged. Respondent No. 2 submitted a false report because she



wanted to put pressure on the appellant as he was dealing with the complaint sent by the Collector on 28.05.2022 which she had come to enquire about.

6. Learned counsel further submits that the learned trial judge has exercised his judicial discretion while taking cognizance but in a very cursory and cryptic manner and without considering the definite grounds mentioned in the negative final report submitted by the Investigating Officer and thus, the impugned order deserves to be quashed and set aside and it may be directed that the final report be accepted.

7. Contrary to the submissions of learned counsel for the appellant, the learned public prosecutor submits that the learned trial court is empowered to take cognizance even if the final report submitted by the agency concludes that no offence has been committed by the accused, and thus, he supports the order under assail.

8. Heard learned counsel for the parties. Perused the impugned order, the final report and other material available on record.

9. It is trite law that at the stage of taking cognizance, there is no need to do an in-depth analysis of the evidence or dive deep into the merits of the case. Neither meticulous examination of the evidence is required to be done nor scrupulous discussion of the matter is warranted at the time of ascertaining whether to take cognizance of the offences alleged or not. At this juncture of taking cognizance, it is to be seen whether prima facie the alleged offences can be made out against the accused and at the same



time, the defence of the accused is not required to be considered or in other words, the probative value of defense evidence need not be ascertained. Whether the evidence is sufficient to base conviction can be decided only at the trial and not at the stage of taking cognizance. Wharton's Law Lexicon<sup>1</sup> defines "cognizance" as follows:

"Cognizance (Judicial), knowledge upon which a judge is bound to act without having it proved in evidence: as the public statutes of the realm, the ancient history of the realm, the order and course of proceedings in Parliament, the privileges of the House of Commons, the existence of war with a foreign State, the several seals of the King, the Supreme Court and its jurisdiction, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries."

As defined above, knowledge upto the extent of attaining prima facie satisfaction that an offence has been committed is enough to take cognizance and it is not required to go deep in the matter so as to examine whether the material is sufficient enough to acquit or convict the proposed accused.

10. It was not long ago that this Court passed a detailed order dated 07.07.2023 in S.B. Criminal Revision Petition No. 529/2023 titled ***Khedaram & Anr. Vs. State of Rajasthan & Anr.*** wherein the term '*cognizance*' has been elaborated upon. The relevant portion of the afore-mentioned judgment is reproduced below for the sake of reference as well as brevity:

"32. First things first, it is pertinent to understand what does the word '*cognizance*' actually mean. No definite definition has been prescribed for this word in the Code of Criminal Procedure but from the series of judicial pronouncements passed by Hon'ble the Supreme Court discussing '*cognizance*', this Court derives that it can be

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1 Wharton's Law Lexicon, 14th Edn., p. 20925.





described as '**formal application of judicial mind to proceed further in the matter.**'

33. Next, it would be logical to understand what 'formal application of judicial mind to proceed further in the matter' means. It simply means that after receiving any complaint, if the magistrate makes up his mind to initiate inquiry and to examine the complainant under Section 200 CrPC and his/her/their witnesses under Section 202 CrPC, then the moment he decides to proceed further in this direction, he has taken cognizance.

34. Upon receiving a police report, as per Section 190 CrPC, magistrate may take cognizance of any offence so constituted by the facts contained in such police report. After receiving the police report, the magistrate, if finds the case to be triable by Court of Session; would take the subsequent step towards committal after complying with the provision contained under Section 207 CrPC. Section 207 CrPC provides that the magistrate shall see to it that a copy of a list of documents as enumerated in the provision is supplied to the accused without delay or imposition of cost in any case where the proceeding has been instituted on a police report. The first proviso of this section formulates that with respect to request made by police officer for exclusion of any part from the statements of the proposed individuals that the prosecution wishes to examine as witnesses recorded u/s 161(3), the magistrate may, **after perusing** any such part of such statement as referred above & specified in sub-clause (iii) and post considering the reasons proffered by the police officer, direct that a copy containing such part be supplied to the accused. The second proviso of this Section further supplements that **if the Magistrate is satisfied** that any document adverted to in sub-clause (v) is voluminous, he shall direct the accused and allow him to inspect such document either in person or through pleader in court while doing away with the requirement of furnishing a copy of the same to the accused. The idiolect of the Code suggests that both the riders make it abundantly clear that the stage as prescribed under Section 207 CrPC comes only after cognizance of the offence has been taken and the same is very evident from the words used by the legislature, specifically '*...after perusing any such part of such statement...*' and '*...if the Magistrate is satisfied...*'. In consequence, it can be interpreted that magistrate has to see the police report as well as the FIR recorded u/s 154 CrPC; examine the statements of the proposed prosecution witnesses recorded under Section 161(3) CrPC, confessions and statements recorded u/s 164 CrPC and peruse other material or relevant extract of any such other material







forwarded to the magistrate under sub-clause (5) of Section 173 CrPC. Further, it can be said that examination of the police report and thereafter, finding the case to be triable by Court of Session means that the magistrate has applied his/her/their mind as to what offence is alleged to have been committed.

35. As discussed above, a plain, straightforward reading of Section 173 CrPC makes it abundantly clear that police forwards a report containing information as formulated in sub-clauses (2)(i)(a) to (h) to a Magistrate and from perusal and afore-said discussion of Section 207, it is clear that the magistrate goes through all the documents mentioned in the provision. Sections 173 and 207 are corresponding or reciprocal provisions to each other in the sense that the police/any other investigating agency forwards the police report including specific details to the Magistrate empowered to take cognizance under the former and the Magistrate receives the forwarded police report containing those specific details along with other documents and he/she/they see(s) the report, go(es) through it and examine(s) it before proceeding further in the matter. This very process of considering and going through the report would mean taking cognizance as envisaged under Section 190 CrPC. Having a look at information stated in sub-clauses (2)(i)(a) to (h) of Section 170 CrPC and sub-clauses (i) to (v) of Section 207 CrPC is enough to tantamount to the word "cognizance".

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42. ...The summation of the discussion above is that this Court has tracked the word 'cognizance' in the Code of Criminal Procedure moving from one provision to another like skipping a stone on water in order to assign an explicit meaning to the same. The definition of cognizance is not derivable from any single provision rather it is to be understood by reading the Code in its entirety..."

It is ascertainable from the above reproduction that cognizance does not mean a detailed examination of the evidence so as to conduct a mini trial before an actual trial but a look at the





report and other mentioned documents is enough to constitute taking of cognizance.

11. It is settled legal position and has also been elaborated upon in ***Minu Kumari and Ors. Vs. the State Of Bihar & Ors.*** reported in AIR 2006 SC 1937 by Hon'ble the Supreme Court that upon receipt of the final report, there are three alternatives that a magistrate can opt for; namely, taking of cognizance; directing for further investigation and initiating inquiry upon filing of protest petition. In the matter at hand, the trial court has opted for one of the alternatives and it had every right and authority to move forward in this manner.

12. It is the discretion of the trial court to accept or reject the final report submitted by the investigating agency after considering and evaluating the final report as well as the other material available as evidence. The trial court can apply its judicial mind independent of the opinion of the investigating officer and can proceed to take cognizance of offence(s) that it thinks may prima facie be made out against the accused from the contents of the police report. Cognizance is taken after consideration of the police report, be it positive or negative. In an order dated 13.04.2023 passed by this Court in S.B. Criminal Appeal No. 399/2023 titled ***Niraj Goyal & Anr. Vs. State of Rajasthan & Anr.***, it was held as under:

"In a case where a detailed negative final report is submitted, it becomes imperative upon the Judicial Officer to show his disagreement with the conclusion of the Investigating Officer and it should be mentioned in clear terms in the order that why he was not agreeable with the result of the investigation. This is to





be done before taking cognizance of the offence and issuance of the process."

As held in the afore-said case, if the result of the investigation is in favour of the accused or a negative final report has been submitted, then it is important for the judicial officer to state with clarity the reasons for disagreement with the conclusion of the investigating agency and in the case at hand, the learned Special Judge has stated his conclusion in lucid terms and has countered and considered the reasoning on the basis of which the investigating officer had submitted a negative report against the accused.

13. It is evincing from perusal of the final report that the forwarding officer of the document exonerating the appellant is none other than the appellant himself, thus, a cloud of doubt is looming over the final report submitted by the investigating officer. The investigating officer and the forwarding officer/appellant could have been working in cahoots with each other and as such, there is no major difference in hierarchical order of their ranks. Furthermore, this Court is dumbfounded at the fact that the report vindicating the appellant was forwarded by himself in light of the principle of natural justice which provides that nobody should be a judge in his own cause. Though it is reflecting that the investigation was conducted by one Dharmendra Dukiya, Dy. SP, but the possibility of exercise of dominion and influence over the investigation by the appellant cannot be obviated.



14. Moving on, the grounds mentioned in the Final Report are not only absurd and purported but seem to be apparently unconvincing.

15. A glance at the case from the sociological perspective leads this Court to consider that the appellant was in a position where he was entrusted to help the respondent No. 2 and her husband rather than misbehaving with them as alleged and if there is enough material to suspect prima facie commission of offence by the accused-appellant, then the trial court should not hesitate to proceed further in the matter. As the appellant was an officer responsible for protection of law and order as well as the public, it would leave the citizens helpless if he would indulge in acts that hamper the decorousness of his role and that become a hindrance in citizens seeking help from the police. Police is the first door that citizens usually knock at when endeavouring to seek justice. In such matters, if ears are not lent to the complaint of the distressed citizen, then it would enrage the public and on the other hand, it would encourage discharging of duty in a capricious manner.

16. Additionally, the husband of respondent No. 2 was an aged person, an octogenarian, who was allegedly abused orally as well as physically and this impacts the seriousness of the offence from a sociological perspective incrementally. The complainant herself was a septuagenarian who was ill-treated as alleged in the complaint.



17. Bearing all the above grounds in mind, in the considered opinion of this Court, the learned Special Judge has given due regard to all the aspects appearing before him for the purpose of taking cognizance and the legal as well as the factual aspects of the matter have been duly appreciated with adequate consideration of the material available before him before passing the order taking cognizance against the accused. Therefore, the learned trial court has rightly passed the order dated 05.07.2023 taking cognizance of the offences under Sections 341 & 323 IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the SC/ST Act and there appear to be no reasonable grounds to interfere in the well-reasoned order passed by the learned trial Court.

18. Accordingly, the instant criminal appeal does not succeed and is hereby dismissed, however, the appellant shall be at liberty to raise all his objections before the trial Court at an appropriate stage.

19. The stay petition and all pending applications, if any, also stand disposed of.

20. Record of the case be sent back forthwith.

**(FARJAND ALI),J**

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