



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 27<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**R**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CRIMINAL PETITION NO. 9078 OF 2024**

**BETWEEN:**

1. SRI ARJUN ANJANEYA REDDY  
AGED ABOUT 35 YEARS,  
S/O SRI P.ANJANEYAREDDY  
RESIDING AT:  
NO.83, 1<sup>ST</sup> MAIN ROAD,  
VERSOVA LAYOUT, C.V.RAMAN NAGAR,  
BENGALURU – 560 093.
2. SRI HARSHA VARDHAN ANJANEYA REDDY  
AGED ABOUT 38 YEARS  
S/O SRI P.ANJANEYAREDDY  
RESIDING AT:  
NO.83, 1<sup>ST</sup> MAIN ROAD,  
VERSOVA LAYOUT, C.V.RAMAN NAGAR,  
BENGALURU – 560 093.
3. SRI PAPAIAH SRINIVASA REDDY  
AGED ABOUT 69 YEARS,  
S/O LATE PAPAIAH  
RESIDING AT:  
NO.37/5-3,  
KEMPAPURA YAMALURU POST,  
BENGALURU – 560 037.
4. SRI M. SUNDAR MURTHY  
AGED ABOUT 57 YEARS,  
S/O LATE MUNISWAMY





RESIDING AT:  
NO.2, 1<sup>ST</sup> CROSS,  
MUDALIAR COMPOUND RESIDENTS' ASSOCIATION  
ROAD, EJIPURA,  
BENGALURU – 560 047.

5. SRI V. MUNIRAJU  
AGED ABOUT 66 YEARS  
S/O LATE S. VENKATAPPA,  
RESIDING AT:  
NO.4444, APPA AMMA NILAYA,  
MES COLONY, KONENA AGRAHARA,  
H.A.L. POST,  
BENGALURU – 560 017.

6. SRI POOVAYYA T.M.,  
AGED ABOUT 62 YEARS,  
S/O LATE T.P. MANICHA,  
RESIDING AT:  
NO.39A, JAL VAYU VIHAR  
KAMMANAHALLI MAIN ROAD,  
BENGALURU – 560 043

...PETITIONERS

(BY SRI C.V.NAGESH, SR.ADVOCATE FOR  
SRI VARUN S., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH THE ANEKAL POLICE STATION  
REPRESENTED BY  
THE STATION HOUSE OFFICER  
REPRESENTED BY LD.SPP  
HIGH COURT OF KARNATAKA  
BENGALURU – 01.



2. SRI B.ANKAMMA RAO  
S/O SRI B.VEERAAIAH  
AGED ABOUT 51 YEARS  
RESIDING AT: NO.1/727, 9<sup>TH</sup> LINE,  
PANDARIPURAM, CHILAKALURIPETTA,  
GUNTUR DISTRICT,  
ANDHRA PRADESH – 522 616.

...RESPONDENTS

(BY SRI JAGADEESHA B.N., ADDL.SPP FOR R-1;  
SRI AKASH R.RAO, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., (528 OF BNSS) PRAYING TO 1) QUASH THE COMPLAINT DATED 2<sup>ND</sup> JANUARY 2023 FILED BY RESPONDENT NO.2 WITH RESPONDENT NO.1 (ANNEXURE-D) AND THE F.I.R. DATED 3<sup>RD</sup> JANUARY 2023 REGISTERED BY RESPONDENT NO.1 IN CRIME NO.3 OF 2023, BY THE ANEKAL P.S. ON THE FILE OF THE LD. PRL. CIVIL JUDGE AND JMFC, ANEKAL U/S 417, 418, 420, 464, 465 AND 34 OF IPC, 1860 (ANNEUXRE-E) WITH RESPECT TO THE PETITIONERS AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

### **ORAL ORDER**

The petitioners/accused Nos.3 to 8 are before this Court seeking quashment of the complaint filed by the 2<sup>nd</sup> respondent dated 02-01-2023 and charge sheet dated 16-03-2024 and have also sought setting aside the order dated 04-04-2024 passed by the Principal Civil Judge and JMFC, Anekal in



C.C.No.2600 of 2024 arising out of crime in Crime No.3 of 2023 registered for offences punishable under Sections 417, 418, 420, 464, 465 read with Section 34 of the IPC.

2. Heard Sri C.V.Nagesh, learned senior counsel appearing for the petitioners, Sri B.N. Jagadeesha, learned Additional State Public Prosecutor for respondent No.1 and Sri Sandesh J. Chouta, learned senior counsel appearing for respondent No.2.

3. Facts, in brief, germane are as follows:-

The petitioners had knocked at the doors of this Court in Criminal Petition No.1372 of 2023 dated 16-06-2023, which comes to be dismissed holding that the investigation in the case at hand was imperative. Therefore, it would suffice if the facts as narrated therein are paraphrased to the subject order. This Court noticed the facts and considering those facts has held as follows:

*"2. Facts adumbrated are as follows:-*

*The 2<sup>nd</sup> respondent is the complainant and petitioners are accused Nos. 1, 3 to 8. A complaint comes to be registered against the petitioners and another by*



the 2<sup>nd</sup> respondent on 02-01-2023 alleging that the petitioners have all connived, forged the signatures of the complainant and got several sale deeds registered. A brief history to the complaint as narrated is that on 04-12-2014 a Joint Development Agreement ('JDA' for short) comes to be executed between the 2<sup>nd</sup> respondent/Ankamma Rao with M/s Mahidhara Projects Private Limited ('the Company' for short), a Company registered under the Companies Act. The Company later, on the strength of JDA develops a layout in the name and style of 'Mahidhara Fortune City' after obtaining all necessary permissions from Anekal Development Authority. The complainant further narrates that he along with other owners of properties subsequently entered into a partition to partition the remaining sites after the disposal, which fell to the individual shares under the deed of partition dated 2-03-2021.

3. Thirteen properties are identified to be the subject matter of the complaint, as in terms of the JDA and the sharing agreement as well as the partition deed, the properties ought to have been in the share of the owner/complainant. The owner in order to secure loan from SBICAP, by way of depositing of title deeds, has mortgaged those 13 sites in favour of SBICAP and has secured finance. After the said act, the complainant comes to know that sale deeds are executed of those 13 properties which are the subject matter of loan that was secured from SBICAP on depositing of title deeds. The properties were sold by the Special Power of Attorney Holder one Chikka Kondappa, an employee of the 1<sup>st</sup> petitioner without consent, knowledge, authorization and by forging the signatures of the owner of the properties and without even mentioning the mode of payment. It is, therefore, alleged that the 1<sup>st</sup> petitioner who is one of the Directors of Bhoomika Infrabuild Private Limited along with his children and other accused have all connived and conspired to cheat the complainant. Therefore, the complainant seeks to register the complaint on 02-01-2023. The complaint becomes a crime in Crime No.3 of 2023 for the offences aforementioned. Soon after registration of crime, the petitioners knocked at the doors of this Court with the present petition and a co-ordinate Bench of this Court in terms of its order dated 17-02-2023 stayed further investigation into the matter. The interim order is subsisting even as on date.



4. Heard Sri H. Pavana Chandra Shetty, learned counsel for petitioners, Sri Mahesh Shetty, learned High Court Government Pleader appearing for respondent No.1 and Sri Sandesh J.Chouta, learned senior counsel appearing for respondent No.2.

5. The learned counsel appearing for petitioners would vehemently contend that the issue in the lis is purely civil in nature and a proceeding that ought to have been before the civil Court is sought to be given a colour of crime by setting the criminal law in motion. If there was a dispute with regard to the JDA, it was open to the complainant to have knocked at the doors of the appropriate forum seeking resolution of the dispute. The Special Power of Attorney is executed in favour of Mr. C. Kondappa, accused No.2 by the complainant in respect of those very 13 sites that he complains of and, therefore, having executed Special Power of Attorney and permitted the attorney to sell the properties, it is not open to the complainant to turn around and contend that there has been fraud played or there is forgery of signatures of the complainant. He would seek to place reliance upon the judgment of the Apex Court in the case of VIJAY KUMAR GHAI v. STATE OF WEST BENGAL<sup>1</sup> to buttress his submission.

6. On the other hand, the learned senior counsel representing the 2nd respondent/complainant, who has filed detailed statement of objections, takes this Court through the statement of objections and documents that are placed for perusal of the Court. He would contend that the Special Power of Attorney is specific for the purpose of presentation of sale deeds before the Registering Authority as he could not be present at all times before the Registering Authority being a resident of the State of Andhra Pradesh. The learned senior counsel would further take this Court through several sale deeds of comparative nature to demonstrate that the sale deeds that are subject matter of the complaint do not contain any indication of what is the consideration and the mode of payment which is imperative for a sale deed to be registered. A sale deed cannot be vague and the mode of

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<sup>1</sup> (2022) 7 SCC 124



*payment cannot be kept clandestine is what the learned senior counsel would submit. He would further emphasise the fact that these very properties are mortgaged to SBICAP in the year 2021 for the purpose of raising of loan and title deeds are deposited before the SBICAP. If title deeds are before the Bank, it is definitely a forged signature of the accused No.2 while executing the sale deeds and who buys the property is most important. Accused No.1 has sold all the properties to accused Nos. 3 and 4 his children. He would submit that it is a matter of trial for the petitioners to come out clean.*

*7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.*

*8. The afore-narrated facts are not in dispute. The matter is still at the stage of investigation, as registration of crime has happened on 03-01-2023 and an interim order is granted by this Court on 17-02-2023. Therefore, the investigation has not proceeded any further. The relationship between the complainant and the petitioners is that the 1<sup>st</sup> petitioner is one of the Directors and other petitioners are Directors of one Bhoomika Infrabuild Private Limited. In the light of his association with Bhoomika Infrabuild Private Limited, the complainant executes a Special Power of Attorney in favour of Chikka Kondappa, accused No.2 who is not before Court. Sri. Chikka Kondappa, on the strength of Special Power of Attorney has executed several sale deeds in favour of the 1<sup>st</sup> petitioner, one of the Directors of Bhoomika Infrabuild Private Limited. In turn, accused No.1 has executed several sale deeds in favour of petitioners 2 and 3/ Accused No.3 and 4 who are the children of petitioner No.1.*

*9. The history to the said transaction is execution of a JDA between the complainant with M/s Mahidhara Projects Private Limited to jointly develop the lands and share the developed sites. In terms of the agreement, the complainant and a few neighbouring land owners enter into a sharing agreement on 04-12-2014. The Company developed the land and formed layout with sites of various dimensions. Later the complainant along with*



other land owners entered into a partition deed to partition the remaining sites which had fallen to the exclusive share of the complainant. The partition deed was entered into on 02-03-2021. After the JDA executed on 04-12-2014 and in furtherance of any further transaction since the complainant was a resident of Andhra Pradesh, the complainant had executed a Special Power Attorney on 06-05-2015 in favour of accused No.2/Sri. C.Kondappa who is not before the Court. The entire submission of the learned counsel for the petitioners hinges upon a clause in the Special Power of attorney and it reads as follows:

"Accordingly the sale agreements, sale deeds, so also Deeds of Rectification, Supplemental Deeds, Declaratory Deeds etc. are being drafted as per my instructions and I am executing the same at all relevant times in the presence of the purchasers, attesting witnesses and my Power of Attorney Holder.

Whereas I am pre-occupied with several commitments and I am unable to present personally at all relevant times before the Sub-Registrar, Attibele/Basavanagudi/ Banashankari, Bangalore to admit execution of the sale deeds and perform such other act/s or deed/s, document/s for completion of the conveyance in favour of the intending purchasers, which includes execution of any other deeds of conveyance of sale, so also Deeds, Agreements granting easementary rights and also deeds of sale conveying the plots in the lay-out to be formed. However, I am intend to personally execute the document and further I deem it fit and necessary for to authorize my Special Power of Attorney to represent me before the Sub-Registrar for the purpose of completion of registration in the aforementioned mattes and perform all such act/s may be required for fulfillment of the aforementioned object and intent of this POWER OF ATTORNEY."

The afore-quoted clause in the Special Power of Attorney indicates that the complainant cannot be personally present to execute any document and, therefore, for the completion of conveyance in favour of intending purchasers the power of attorney holder was permitted to execute documents i.e., register the same before the concerned Registering Authority. It is alleged that on the strength of special power attorney, several transactions have taken place.





10. The 1<sup>st</sup> petitioner has sold sites that had fallen to the share of the complainant to petitioners 2 and 3/accused 3 and 4. The sites that are sold, by accused No.1 are already mortgaged to the Bank/SBICAP for the purpose of raising of finance by the complainant. Therefore, the title deeds are all deposited before the Bank. The complainant comes to know that despite the properties being mortgaged to the Bank, those very properties are sold by way of several registered sale deeds and the purchasers are the children of the 1<sup>st</sup> petitioner/accused No.1. It is then the complaint comes to be registered by the complainant. The complaint insofar as it is necessary to be noticed reads as follows:

"I state that I had executed SPA dated 06<sup>th</sup> may 2015 to Mr.Chikka Kondappa, registered in the office of Sub Registrar of Basavangudi (Banashankari), Vide Document No. BNG(U)BSK 30/ 2015-16, only to present the documents executed/signed by me before the concerned authority for registration and granted other limited powers. The same Special Power of Attorney now stands cancelled.

By way of Deed of Revocation of SPA dated 28<sup>th</sup> December 2022 at Bangalore and registered in the office of Sub Registrar of Basavangudi (Banashankari), Vide Document NO.BNG(U)BSK514/2022-23.

**I have mortgaged the plots falling to my share which includes the above-mentioned properties by way of Depositing the title Deeds on 07<sup>th</sup> October 2021 (attached) with SBICAP Trustee Company Limited, registered as "Memorandum of Entry – By Deposit of Title Deed with The Security Trustee" Vide Document No.4649 of 21-22 of Book I in the office of the Sub Registrar, Anekal, Bengaluru, to which Papaiah Anjaneya Reddy was a witness. As part of SBICAP Trustee Company Limited requirement to check EC annually, I have checked the same and to my utter shock and dismay the above-mentioned properties were sold vide various sale deeds by the SPA holder Chikka Kondappa (an employee of Papaiah Anjaneya Reddy) without my consent, knowledge, authorization and have used forged documents (Forged my signatures) to dupe the concerned authorities. I further looked at the forged sale deeds and even the payment mode is not mentioned, no particulars of how the payment was made to acquire such sale is not mentioned and**



***was clearly scripted by simply paying challan amounts without any sale considerations, to create a dispute and legal hassle.***

***I, B.Ankamma Rao, and Papaiah Anjaneya Reddy are the Directors of Bhoomika Infrabuild Private Limited. Articles of Association attached. Due to my association in Bhoomika Infrabuild Private Limited, I have entrusted Chikka Kondappa with SPA with him being the employee of my partner Papaiah Anjaneya Reddy, He and the following persons have conspired to dispute my personal properties situated in Bengaluru. The following persons are the conspirators in the crime.***

***Papaiah Anjaneya Reddy, son of Papaiah Reddy, aged 49 years residing at No.C1, 225, 2<sup>nd</sup> floor, BDA Flats, Domlur, Bangalore 560 071 is another Director of Bhoomika Infrabuild Private Limited.***

***Chikka Kondappa, son of Chikka Kondappa, residing at Venkatapura Village, Chikkamaluru Post, Madugiri Taluk, Tumkur 572 123, an employee of Papaiah Anjaneya Reddy.***

***Arjun Anjaneya Reddy is the son of Papaiah Anjaneya Reddy, residing No.83, 1<sup>st</sup> Main Road, Versova Layout, CV Raman Nagar, Bangalore 560 093.***

***Harsha Vardhan Anjaneya Reddy is the son of Papaiah Anjaneya Reddy, residing at NO.83, 1<sup>st</sup> main road, Versova Layout, CV Raman Nagar, Bangalore 560 093.***

***Papaiah Srinivasa Reddy is the brother of the Papaiah Anjaneya Reddy residing at No.37-5/3, Kempapura, Yamalur Post, Bangalore 560 037.***

***M. Sundara Murthy, residing at NO.2, 1<sup>st</sup> Cross Road, Mudaliar Compound Residents Association, Ejipura, Bangalore 560 047, Mr.Muniraju V, residing at No.4444, Appa amma Nilaya, MES Colony, Konena Agrhara HAL Post, Bangalore 560 017, and T.M Poovayya, residing at NO.39A, Jal Vayu Vihar, Kammanahalli Main Road, Bangalore 560 043, are the employees of the Papaiah Anjaneya Reddy.***

***I state that Papaiah Anjaneya Reddy, one of the Director of Bhoomika Infra build Private Limited, along with his children Arjun Anjaneya Reddy and Harsha Vardhan Anjaneya Reddy, and his brother Papaiah Srinivasa Reddy, and his employees***



***Chikka Kondappa, M.Sundara Murthy, Mr. Muniraju V, and T.M Poovayya, have all conspired to criminally cheat me and forged my signatures and have registered the above said Sale Deeds (Properties Personally belonging to me) in their names, when I have not signed any of the above mentioned sale deeds registered by Sub Registrar, Anekal (Sale Deeds attached), to which Papaiah Anjaneya Reddy acted as a witness.***

*I state that Papaiah Anjaneya Reddy also being the witness of depositing the title Deeds by me on 07<sup>th</sup> October 2021 (attached) of the above said properties with SBICAP Trustee Company Limited, has intentionally and willfully conspired with all the above mentioned conspirators, to cheat me in illegally registering the above-mentioned sale deeds of the properties belonging to me in their favour without my consent or knowledge. When I along with my cousin Mr. Siva Sankar Prathipati enquired and asked about the same with Mr.Chikka Kondappa, Papaiah Anjaneya Reddy, Arjun Anjaneya Reddy, Harsha Vardhan Anjaneya Reddy, Papaiah Srinivasa Reddy, M.Sundara Murthy, Mr. Muniraju V, and T.M.Poovayya, they have threatened me and my cousin of dire physical consequences claiming to be influential people and further threatened me saying "we are local here and be careful" if I intend to initiate any legal actions against them.*

*Therefore, I pray your esteemed authority to register case and take immediate action as per law against Mr. Chikka Kondappa, Papaiah Anjaneya Reddy, Arjun Anjaneya Reddy, Harsha Vardhan Anjaneya Reddy, Papaiah Srinivasa Reddy, M.Sundara Murthy, Mr.Muniraju V and T.M Poovayya on their acts of forgery, willful misrepresentation, cheating, Criminal Intimidation, and Physical threats. And I also request your goodselfs to give necessary protection to me in the interest of justice and equity."*

*(Emphasis added)*

*It is upon the said complaint, the crime in crime No.3 of 2023 comes to be registered for the afore-quoted offences. The offences are the ones punishable for cheating and forgery inter alia.*

*11. The contention of the petitioners is that the issue is purely civil in nature and therefore, investigation should not be permitted to be continued. The allegation*



of the complainant is that signatures of the complainant have been forged which is demonstrable on the very look of the documents, as also the contents of the sale deeds. As an illustration, the sale deed alleged to have been executed on 18-03-2022 in favour of the 4<sup>th</sup> petitioner/accused No.5 requires to be noticed. It reads as follows:

**"NOW THIS DEED OF ABSOLUTE SALE  
WITNESSETH AS FOLLOWS:**

1. The total sale consideration of Rs.24,20,000/- (Rupees Twenty-Four Lakhs Twenty Thousand Only) is paid by the Purchaser/s to the Vendor/s which payment the Vendor/s hereby jointly admit and acknowledge as proper and sufficient consideration, the Vendor/s hereby grant, convey, transfer, assign and assure unto the use of the Purchaser/s herein, the **"Schedule"B"Property"** together with all easements and appurtenances thereto, to the Purchaser/s herein, to have and hold the same forever."

The total sale consideration of the property mentioned is ₹24,20,000/-. It reads that it is paid by the purchaser to the vendor who is the complainant. The mode of payment and date of payment are not even mentioned in the sale deed which are necessary concomitants to be present in a sale deed to be executed between the parties. Another sale deed is also appended to the petition which has the same amount and the same narration. This is executed in favour of petitioner No.6/accused No.7. Likewise all the sale deeds contain same contents. There is not an iota of difference in the disputed sale deeds. This Court in order to consider the submission of the 2<sup>nd</sup> respondent/complainant that the sale deed did not contain any amount, summoned other sale deeds executed by the complainant which have been produced for perusal by this Court. One of the sale deed executed by the complainant in favour of the Company reads as follows:

**"NOW THIS DEED OF ABSOLUTE SALE  
WITNESSETH AS FOLLOWS:**

1. **The total sale consideration of Rs.12,00,000/- (Rupees Twelve Lakhs Only) is paid by the Purchaser/s to the Vendor/s as under,**



- i. An amount of Rs.2,00,000/- (Rupees Two Lakhs only), by way of Cheque bearing No.988829, Drawn on State Bank of India, Yelahanka Branch, Bengaluru, in favour of the confirming party as instructed by the Vendor,**
- ii. An amount of Rs.4,97,200/- (Rupees Four Lakhs Ninty Seven Thousands and Two Hundred Only), by way of Cheque bearing No.988841, Drawn on State Bank of India, Yelahanka Branch, Bengaluru, in favour of the Vendor.**
- iii. The balance amount being the loan amount sanctioned by AXIS BANK to the Purchaser/s vide Cheque/DD No.156570, Dated 01.07.2015, Drawn on AXIS BANK Bank, Branch, at the request and authorization of the Purchaser/s and paid this day to the vendor/s at the time of registration of this Absolute Sale Deed."**

*(Emphasis added)*

*If the sale deeds that are the subject matter of the complaint is juxtaposed with what are produced by the learned senior counsel for the 2<sup>nd</sup> respondent, what would unmistakably emerge is a serious dispute with regard to execution of sale deeds.*

*12. The other circumstance that would require a detailed investigation is that these very properties are said to be subject matter of mortgage before the Bank and all the necessary title deeds are deposited before the Bank. This is a fact, that is not in dispute. If all the title deeds of the disputed property were deposited before the Bank, on what strength the sale deed is executed is yet another factor that requires to be thrashed out. These are all in the realm of seriously disputed questions of fact. If the complainant had deposited title deeds with SBICAP, he could not have sold the properties in favour of several accused after executing a Special Power of Attorney in favour of accused No.2. Therefore, these seriously disputed questions of fact, it is for the petitioners to come out clean in a full blown proceeding."*

4. After dismissal of the aforesaid petition, the Police conduct investigation and file a final report/charge sheet before



the concerned Court. The concerned Court, on the final report filed by the jurisdictional Police, takes cognizance of the offence. Taking cognizance of the offence has driven these petitioners to this Court yet again in the subject petition.

5. The learned senior counsel appearing for the petitioners Sri C.V. Nagesh would, for the present, restrict his submissions to the order of taking cognizance. It is his contention that the order of taking cognizance runs contrary to the provisions of law and contrary to several judgments of the Apex Court, as it does not bear application of judicial mind for taking cognizance and issuing summons. He would submit that if this Court considers this issue and leave all other issues open, it would suffice.

6. *Per contra*, the learned senior counsel, Sri Sandesh J. Chouta representing the 2<sup>nd</sup> respondent would vehemently refute the submissions contending that the order of taking cognizance on a report by the Police i.e., the charge sheet need not bear application of mind. Application of mind would be required only if the concerned Court is taking cognizance on a



complaint before it, as there would be no investigation in those cases.

7. Both the learned senior counsel for the petitioners and the 2<sup>nd</sup> respondent have relied on several judgments of the Apex Court and that of this Court, all of which would bear consideration *qua* their relevance.

8. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

9. The facts obtaining in the case at hand are narrated hereinabove. It would not require any reiteration for the issue that is now projected before this Court. The issue is whether the order of taking cognizance and issuance of summons require application of mind at the hands of the learned Magistrate, and whether the order impugned does bear application of mind.

10. At the outset, I deem it appropriate to consider the judgments relied upon by the learned senior counsel for the 2<sup>nd</sup>



respondent. They, along with the paragraphs cited therein, read as follows:

10(a). **JAGDISH RAM v. STATE OF RAJASTHAN – (2004) 4 SCC 432**, paragraph-10:

**"10.** *The contention urged is that though the trial court was directed to consider the entire material on record including the final report before deciding whether the process should be issued against the appellant or not, yet the entire material was not considered. From perusal of order passed by the Magistrate it cannot be said that the entire material was not taken into consideration. The order passed by the Magistrate taking cognizance is a well-written order. The order not only refers to the statements recorded by the police during investigation which led to the filing of final report by the police and the statements of witnesses recorded by the Magistrate under Sections 200 and 202 of the Code but also sets out with clarity the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view. At this stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. **The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.** (Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal [(2003) 4 SCC 139 : 2003 SCC (Cri) 788].)"*

(Emphasis supplied)





10(b). **BHUSHAN KUMAR v. STATE OF DELHI** –

**(2012) 5 SCC 424** – paras 11, 18 & 19:

**"11.** In *Chief Enforcement Officer v. Videocon International Ltd.* [(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. **Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry.** If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

...  
**18.** In *U.P. Pollution Control Board v. Bhupendra Kumar Modi* [(2009) 2 SCC 147 : (2009) 1 SCC (Cri) 679] this Court, in para 23, held as under: (SCC p. 154)

"23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused."

**19. This being the settled legal position, the order passed by the Magistrate could not be faulted**



***with only on the ground that the summoning order was not a reasoned order."***

*(Emphasis supplied)*

10(c). **STATE OF GUJARAT v. AFROZ MOHAMMED**

**HASANFATTA – (2019) 20 SCC 539** – paras 16, 21, 22, 23,

24, 39:

**"16.** *It is well settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused. It is fairly well settled that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused.* Reliance was placed upon *Bhushan Kumar v. State (NCT of Delhi)* [*Bhushan Kumar v. State (NCT of Delhi)*, (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] wherein it was held as under : (SCC pp. 428-29, paras 11-13)

"11. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492: (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.' It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. **Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the**



***Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.***

12. A "summons" is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

***13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."***

*(emphasis supplied)*

...

...

....



**21.** In para 21 of *Mehmood Ul Rehman* [*Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , this Court has made a fine distinction between taking cognizance based upon charge-sheet filed by the police under Section 190(1)(b) CrPC and a private complaint under Section 190(1)(a) CrPC and held as under : (SCC p. 430)

**"21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected."**

**22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 CrPC is not the same at the time of framing the charge. For issuance of summons under Section 204 CrPC, the expression used is "there is sufficient ground for proceeding..."; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is "there is ground for presuming that the accused has committed an offence...". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 CrPC, detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge-sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 CrPC.**



**23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file.**

**24. In the present case, cognizance of the offence has been taken by taking into consideration the charge-sheet filed by the police for the offence under Sections 420, 465, 467, 468, 471, 477-A and 120-B IPC, the order for issuance of process without explicitly recording**



reasons for its satisfaction for issue of process does not suffer from any illegality.

... ..

**39. For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused. At the stage of issuance of process, the court is not required to weigh the evidentiary value of the materials on record. The court must apply its mind to the allegations in the charge-sheet and the evidence produced and satisfy itself that there is sufficient ground to proceed against the accused. The court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty. The court is also not required to embark upon the possible defences. Likewise, "possible defences" need not be taken into consideration at the time of issuing process unless there is an ex facie defence such as a legal bar or if in law the accused is not liable. [Vide Nupur Talwar v. CBI [Nupur Talwar v. CBI, (2012) 11 SCC 465 : (2013) 1 SCC (Cri) 689] .]"**

(Emphasis supplied)

10(d). **S.C. JAYACHANDRA v. STATE OF KARNATAKA**

– Criminal Revision Petition No.1479 of 2019 decided on 18<sup>th</sup>

May, 2020 – paras 12, 14, and 19:

"12. I have perused the aforesaid judgments. By applying the principles laid down by the Hon'ble Supreme Court in the judgments stated supra and on perusal of the case on hand, the Trial Court while taking cognizance and issuing process, has passed the following order:

" The Karnataka Lokayuktha City Division, Bengaluru, have filed the charge sheet against the accused, that the accused has made total assets of Rs.2,27,13,936/-. And his total expenditure is Rs.1,71,95,040/-. The total of assets and expenditure comes to Rs.3,99,08,976/-. The income of the accused and his family from all sources is Rs.2,02,50,007/-. The



accused from 1.2.1985 to 18.12.2008 working as Chief Engineer of Hemavathi Project, Goruru, Hassan, as on 18.12.2008, has made disproportionate assets of total Rs.1,96,58,969/- i.e. 97.08%, and committed offence punishable u/s 13(1)(e) R/w 13(2) of Prevention of Corruption Act, 1988.

2. The prosecution has produced the fresh Sanction dated 20.03.2019, authorization dated 17.12.2008, F.I.R., Source Report, P.F., Panchanama dated 23.12.2008, Panchanama dated 18.12.2008, property documents, Panchanama dated 18.12.2008 and other documents.

3. Perused the documents.

4. Found prima facie case, Cognizance is taken. Register the case as Special Case, and issue summons to accused returnable by: 27.05.2019."

14. Keeping in view the principles laid down by the Hon'ble Supreme Court in the latest dictum stated supra, here in this case, the Lokayuktha Police filed the charge sheet and **the Trial Court while taking cognizance need not pass detailed order and hence, issuing process under Section 204 of Cr.P.C. by taking cognizance under Section 190(a)(b) of Cr.P.C. would attract. Therefore, there is no illegality committed by the Trial Court while issuing process against the petitioner and it cannot be said that there is no application of mind by the Trial Court. Even otherwise, the Trial Court considered the documents and proceeded to issue process after satisfaction of the same Judge who passed the order of discharge on the earlier occasion.** Therefore, the arguments of learned Senior Counsel Sri C.V. Nagesh cannot be accepted. Accordingly, I answer the Point No.1 in favour of Lokayuktha Police and against the accused.

19. Accordingly, the Criminal Revision Petition is dismissed. The Trial Court is directed to proceed with the trial against the accused and dispose of the matter in accordance with law."

(Emphasis supplied)



10(e). **PRADEEP S. WODEYAR v. STATE OF KARNATAKA – (2021) 19 SCC 62** – paras 76, 85, 86, 87, 88, 91, 108.8:

**"C.5. Cognizance order and non-application of mind**

**76.** *The counsel for the appellant has contended that the order of the Special Judge taking cognizance has not sufficiently demonstrated application of mind to the material placed before him. To substantiate this contention, the appellant relied on the decisions in Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , Fakhruddin Ahmad v. State of Uttaranchal [Fakhruddin Ahmad v. State of Uttaranchal, (2008) 17 SCC 157 : (2010) 4 SCC (Cri) 478] , Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , Sunil Bharti Mittal v. CBI [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] and Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. [Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd., (2022) 15 SCC 430 : 2021 SCC OnLine SC 806] **The respondent argued that this Court has made a distinction on application of mind by the Judge for the purpose of taking cognizance based on a police report on the one hand and a private complaint under Section 200CrPC on the other, and that the requirement of a demonstrable application of mind in the latter case is higher.** For this purpose, the counsel relied on this Court's decisions in Bhushan Kumar v. State (NCT of Delhi) [Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] and State of Gujarat v. Afroz Mohammed Hasanfatta [State of Gujarat v. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876]*

...

...

....





**85. Moreover, Kurian Joseph, J. writing for the two-Judge Bench has clearly taken note of the difference between Sections 190(1)(a) and 190(1)(b) : (Mehmood Ul Rehman case [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , SCC p. 430, para 21)**

**"21. Under Section 190(1)(b)CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c)CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a)CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a)CrPC. The complaint is simply to be rejected."**

**86. In Fakhruddin Ahmad [Fakhruddin Ahmad v. State of Uttaranchal, (2008) 17 SCC 157 : (2010) 4 SCC (Cri) 478] , a complaint was lodged before the Judicial Magistrate alleging commission of offences under Sections 240, 467, 468 and 471IPC. The Magistrate directed the police to register the case and investigate it. The Magistrate thus, instead of following the procedure laid down under Section 200 or 202CrPC, ordered that the matter be investigated and a report be submitted under Section 173(2) of the Code. Based on the police report, cognizance was taken by the Magistrate. A two-Judge Bench of this Court observed that the Magistrate must apply his mind before taking cognizance of the offence. However, no observation was made that the cognizance order based on a police report needs to be "well-reasoned". On the facts of the case, the Court held that since the cognizance order was not placed before the High Court, it did not have the opportunity to review if the Magistrate had applied his mind while taking cognizance. The matter was thus remanded back to the High Court for it to peruse the documents and then decide the Section 482 petition afresh.**

**87. It must be noted that the decisions in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Special Judicial Magistrate,**



(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] and *Mehmood Ul Rehman* [*Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] arose in the context of a private complaint. Though the decision in *Sunil Bharti Mittal* [*Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] arose from a police report, it is evident from the narration of facts in the earlier part of this judgment that in that case, the charge-sheet had not named the Chief Executive Officers of the Telecom Companies as accused. The Magistrate, however, furnished the reason that the CEO was an alter ego of the Telecom Company which, as this Court noted in its judgment was a "reverse application" of the alter ego doctrine.

**88.** Similarly, the cognizance order in *Fakhruddin Ahmad* [*Fakhruddin Ahmad v. State of Uttaranchal*, (2008) 17 SCC 157 : (2010) 4 SCC (Cri) 478] was based on a police report. However, this Court remanded the case back to the High Court for fresh consideration of the validity of the cognizance order and did not review the Magistrate's satisfaction before issuing the cognizance order. Therefore, none of the above judgments referred to support the contention of the appellant. Though all the above judgments mention that the Magistrate needs to apply his mind to the materials placed before him before taking cognizance, they have been differentiated on facts from the present case as unlike the present case where cognizance was taken based on the SIT report, in those cases cognizance was taken based on a complaint. The difference in the standard of proof for application of mind with reference to cognizance based on a complaint and police report has been briefly discussed in *Mehmood Ul Rehman* [*Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] and *Fakhruddin Ahmad* [*Fakhruddin Ahmad v. State of Uttaranchal*, (2008) 17 SCC 157 : (2010) 4 SCC (Cri) 478] . A two-Judge Bench of this Court in *Afroz Mohammed Hasanfatta* [*State of Gujarat v. Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876] laid down the law on the difference of the standard of review of the application of mind by the Judge while taking cognizance based on a police report and a private complaint.

...

...

...



**91.** While distinguishing the decision in *Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400]* on the ground that it related to taking of cognizance in a complaint case, the Court in *Afroz Mohammed Hasanfatta case [State of Gujarat v. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876]* held since in a case of cognizance based on a police report, the Magistrate has the advantage of perusing the materials, he is not required to record reasons : (*Afroz Mohammed Hasanfatta case [State of Gujarat v. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876]* , SCC p. 552, para 23)

**"23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b)CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate**



***considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."***

*(emphasis supplied)*

...  
**108.8.** *Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material."*

*(Emphasis supplied)*

10(f). **RATAN BABULAL LATH v. STATE OF KARNATAKA** – Criminal Petition No.1367 of 2022 decided on 10<sup>th</sup> May, 2022:

***"The Apex Court in terms of clause (viii) of the aforesaid conclusions holds that since cognizance is taken based on a police report and not a private complaint, it is not obligatory for the Judge to issue a completely reasoned order if it otherwise appears that the Judge has applied his mind to the material"***

*(Emphasis supplied)*



10(g) **S.L. HALESHAPPA v. STATE BY**

**LOKAYUKTA POLICE STATION** – Criminal Petition

No.10263 of 2021 decided on 25<sup>th</sup> May, 2022:

***"The three judge of the Apex Court while considering the entire spectrum of law with regard to taking cognizance and issuing summons to the accused, has held that the order taking cognizance need not be elaborate or in the nature of a mini trial but nonetheless should bear application of mind ....."***

..... *The order taking cognizance and issuing summons reads as follows:*

*"Perused the charge sheet. Cognizance taken against accused for the offence punishable U/sec. 13(1)(e) r/w 13(2) of Prevention of Corruption Act, 1988.*

*Register the case and issue summons to accused."*

*(Emphasis supplied)*

The learned senior counsel Sri Sandesh J. Chouta to buttress his submissions on the issue whether the order of the concerned Court should bear application of mind when it takes cognizance and issues summons, has relied on the aforesaid judgments.

11. The Apex Court in the case of **JAGDISH RAM** *supra* holds that the Magistrate is not expected to consider the entire



material while taking cognizance; it should be a well written order and bear application of mind. The Magistrate is not required to advert to whether there is sufficient ground for conviction. In the case of **BHUSHAN KUMAR** *supra*, the Apex Court again reiterates that if cognizance is taken under Section 190 of the Code, application of judicial mind to the averments of the complaint is necessary. The Magistrate has to be satisfied whether there is sufficient ground for proceeding in the matter and not whether sufficient ground for conviction. In the case of **AFROZ MOHAMMED HASANFATTA** *supra*, the Apex Court holds that it is not necessary to pass a detailed order when the Magistrate or the concerned Court has taken cognizance on a final report. The same goes with the order of the Co-ordinate Bench in the case of **S.C.JAYACHANDRA** *supra*. The Apex Court in the case of **PRADEEP S.WODEYAR** at para 108.8 (*supra*) holds that the Court is not obliged to pass a fully reasoned order, if it otherwise appears that the Special Judge has applied his mind. This Court in **RATAN BABULAL LATH**'s case considers all these judgments and holds that the order of taking cognizance did bear application of



mind. The aforesaid are the judgments relied on by the learned senior counsel for the 2<sup>nd</sup> respondent.

12. The learned senior counsel for the petitioners places reliance upon the judgment of the Apex Court in the case of **SACHIN GARG v. STATE OF U.P. AND ANOTHER – 2024 SCC OnLine SC 82**, wherein it is held as follows:

***"20. While it is true that at the stage of issuing summons a magistrate only needs to be satisfied with a prima facie case for taking cognizance, the duty of the magistrate is also to be satisfied whether there is sufficient ground for proceeding, as has been held in the case of Jagdish Ram (supra). The same proposition of law has been laid down in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749]. The learned Magistrate's order issuing summons records the background of the case in rather longish detail but reflects his satisfaction in a cryptic manner. At the stage of issue of summons, detailed reasoning as to why a Magistrate is issuing summons, however, is not necessary. But in this case, we are satisfied that the allegations made by the complainant do not give rise to the offences for which the appellant has been summoned for trial. A commercial dispute, which ought to have been resolved through the forum of Civil Court has been given criminal colour by lifting from the penal code certain words or phrases and implanting them in a criminal complaint. The learned Magistrate here failed to apply his mind in issuing summons and the High Court also failed to exercise its jurisdiction under Section 482 of the 1973 Code to prevent abuse of the power of the Criminal Court."***

*(Emphasis supplied)*



The Apex Court has held that while it is true that at the stage of issuing summons, the Magistrate only needs to be satisfied with a *prima facie* case for taking cognizance, the duty is to record that there is sufficient ground. The Apex Court observes that learned Magistrate's order issuing summons records the background of the case in rather longish detail, but reflects his satisfaction in a cryptic manner. Therefore, the Apex Court was holding that satisfaction of the Magistrate to issue summons was imperative. Satisfaction is discernible only if the order would bear application of mind. The Apex Court again in the case of **SHARIF AHMED AND ANOTHER v. STATE OF UTTAR PRADESH AND ANOTHER – 2024 SCC OnLine SC 726**, has held as follows:

**"6. We would like to elaborate on certain aspects, as submission of the chargesheet is for taking cognizance and summoning of the accused by the Magistrate, which stages are of considerable importance and significance.**

...

....

....

**14.** In the context of the present issue, it would be apt to refer to Section 190 and Section 204 of the Code, along with the provisions relating to contents of charge, namely, Sections 211 to 213 and Section 218 of the Code, which read as under:

**"190. Cognizance of offences by Magistrates.**—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class 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.*

*(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.*

XXXXXX

**204. Issue of process.**—*(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 may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or 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 under 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 complaint.

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

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**211. Contents of charge.**—(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall



*be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.*

**212. Particulars as to time, place and person.**—(1) *The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.*

(2) *When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219:*

*Provided that the time included between the first and last of such dates shall not exceed one year.*

**213. When manner of committing offence must be stated.**—*When the nature of the case is such that the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.*

XXXXXX

**218. Separate charges for distinct offences.**—(1) *For every distinct offence of which any person is accused there shall be a separate*



charge, and every such charge shall be tried separately:

*Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.*

*(2) Nothing in sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223.*

**15.** *On the submission of the police report, Dablu Kujur (supra) refers to an earlier decision of this Court in Bhagwant Singh v. Commissioner of Police<sup>10</sup>, and discusses the power and the role of the Magistrate when he receives the police report and the options available to him, in the following words:*

**"14.** *When such a Police Report concludes that an offence appears to have been committed by a particular person or persons, the Magistrate has three options : (i) he may accept the report and take cognizance of the offence and issue process, (ii) he may direct further investigation under subsection (3) of Section 156 and require the police to make a further report, or (iii) he may disagree with the report and discharge the accused or drop the proceedings. If such Police Report concludes that no offence appears to have been committed, the Magistrate again has three options : (i) he may accept the report and drop the proceedings, or (ii) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (iii) he may direct further investigation to be made by the police under sub-section (3) of Section 156."*

*It is in this context that the provisions of Sections 190 and 204 of the Code become important. Clause (a) of Section 190 states that the Magistrate can take cognizance of an offence on receiving a complaint of facts which constitute such offence. Clause (b) relates to a*



situation where the Magistrate receives a police report carrying such facts, i.e., facts which constitute such offence. In *Minu Kumari v. State of Bihar*<sup>11</sup> this Court referred to the options available to the Magistrate on how to proceed in terms of Section 190(1)(b) of the Code, and held:

**"11... The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. (See *India Carat (P) Ltd. v. State of Karnataka* [(1989) 2 SCC 132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885].)"**

12. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is



*material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. This Court in Bhagwant Singh v. Commr. of Police held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.*

*13. We may add here that the expressions "charge-sheet" or "final report" are not used in the Code, but it is understood in Police Manuals of several States containing the rules and the regulations to be a report by the police filed under Section 170 of the Code, described as a "charge-sheet". In case of reports sent under Section 169 i.e. where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e. referred charge, final report or summary. Section 173 in terms does not refer to any notice to be given to raise any protest to the report submitted by the police. Though the notice issued under some of the Police Manuals states it to be a notice under Section 173 of the Code, there is nothing in Section 173 specifically providing for such a notice."*

*(Emphasis supplied)*

The Apex Court holds that application of mind is imperative, if taking of cognizance and issuing of process is an action that the concerned Court would take. The Apex Court considers earlier judgments of the Court, all of which are relied on by the learned senior counsel for the 2<sup>nd</sup> respondent. In the later



judgment, the Apex Court in the case of **VIKAS CHANDRA V. STATE OF UTTAR PRADESH AND ANOTHER – 2024 SCC OnLine SC 1534**, has held as follows:

*"14. In the aforesaid circumstances, the next question to be considered is whether a summons issued by a Magistrate can be interfered with in exercise of the power under Section 482, Cr. P.C. In the decisions in Bhushan Kumar v. State (NCT of Delhi) and Pepsi Foods Ltd.'s case (supra) this Court held that a petition filed under Section 482, Cr. P.C., for quashing an order summoning the accused is maintainable. There cannot be any doubt that once it is held that sine qua non for exercise of the power to issue summons is the subjective satisfaction "on the ground for proceeding further" while exercising the power to consider the legality of a summons issued by a Magistrate, certainly it is the duty of the Court to look into the question as to whether the learned Magistrate had applied his mind to form an opinion as to the existence of sufficient ground for proceeding further and in that regard to issue summons to face the trial for the offence concerned. In this context, we think it appropriate to state that one should understand that 'taking cognizance', empowered under Section 190, Cr. P.C., and 'issuing process', empowered under Section 204, Cr. P.C., are different and distinct. (See the decision in Sunil Bharti Mittal v. C.B.I.).*

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**16. In the decision in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, this Court held that the settled position for summoning of an accused is that the Court has to see the prima facie evidence. This Court went on to hold that the 'prima facie evidence' means the evidence sufficient for summoning the accused and not the evidence sufficient to warrant conviction. The inquiry under Section 202, Cr. P.C., is limited only to ascertain whether on the material placed by the complainant a prima facie case was made out for summoning the accused or not.**



**17.** In an earlier decision in *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi*, this Court laid down certain conditions whereunder a complaint can be quashed invoking the power under Section 482, Cr. P.C., thus:—

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

... ..

**20.** As per the impugned judgment the High Court went on to consider and held thus:—

"As per mandate of this Section, there must be explicit or implicit abetment or some overt act indicative or suggestive of fact that some instigation was given for committing suicide and the applicant was having an interest in it. Nothing has surfaced, which may reflect on the mindset of the applicant that he ever intended the consequence that the deceased would commit suicide and with that view in mind, he stopped payment of salary. Had it been the actual position then obviously the suicide note must have





*whispered about that particular aspect or it would have at least alluded to that situation, but on careful perusal of the suicide note it explicit that the deceased himself was bent upon committing suicide in case the salary was not drawn in his favour. But under circumstances, there is nothing to suggest that the applicant was conscious of that position and knowing the same situation he insisted that he would not pay the salary in question. The trial court, however, ignoring all these legal aspects took cognizance of the offence by rejecting the final report submitted by the Investigating Officer and issued process against the applicant by way of summoning. Resultantly, this application is allowed. Criminal proceedings of impugned order dated 05.04.2012 passed by Chief Judicial Magistrate, Shahjahanpur in Criminal Case No. 1478 of 2012, Vikas v. Ram Babu, Case Crime No. C-2 of 2005, under Section 306 IPC, Police Station-Alhaganj, District Shahjahanpur by which the applicant has been summoned to face the trial is hereby quashed."*

...

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...

**22.** *It is to be noted that apart from the above mentioned alleged incident, there is no allegation of continued course of conduct (against the respondent No. 2) creating circumstances compelling the victim to or leaving the victim with no other option but to, commit suicide. In this contextual situation from the decision of this Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)<sup>14</sup>, paragraphs 16 and 17 therein dealing with the expression 'instigation' are worthy for reference and they read thus:—*

*"16...instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was*



*left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation."*

*"17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts..."*

*(emphasis in original)*

**29.** *In short, applying the principles of the decisions referred above to the facts of the case on hand would reveal that the impugned judgment of the High Court did not suffer from any legal infirmity, illegality or perversity and the conclusions are arrived at after a rightful appreciation of the complaint and the other materials on record, within the permissible parameters."*

*(Emphasis supplied)*

Here again, the Apex Court considers entire spectrum of law and all the judgments that the learned senior counsel for the 2<sup>nd</sup> respondent has placed reliance upon and would hold that application of judicial mind while taking cognizance and issuing summons is imperative. The Apex Court was interpreting both cognizance under Section 190(1)(b) and issuance of process under Section 204 of the Cr.P.C. The said provisions read as follows:



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

(2) 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.

...

...

....

**204. Issue of process.**—(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 may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or 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 under 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 complaint.*

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

Section 190(1)(a) deals with cognizance being taken on a complaint, which would be a private complaint presented before the concerned Court. Section 190(1)(b) deals with cognizance taken on a police report, which would be a final report/charge sheet filed before the concerned Court. Therefore, cognizance can be taken only under Section 190 of the Cr.P.C. Section 204 deals with issue of process.

13. After the concerned Court takes cognizance under Section 190 of the Cr.P.C., process is issued under Section 204 Cr.P.C. Sub-section (1) thereof mandates that if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, it shall issue process. Therefore, the words '*there is sufficient ground*' assume importance. The necessity of recording reasons for existence of sufficient ground is thus imperative, and those reasons are



discernible only if they are recorded in writing. It is only then such orders would reflect application of mind, on the part of the Court, taking cognizance and issuing summons. Therefore, the judgments relied on by the learned senior counsel for the petitioners are all overwhelming, to the judgments relied on by the learned senior counsel for the 2<sup>nd</sup> respondent, as all the judgments that are quoted hereinabove, fallen from the arsenal of the learned senior counsel for the petitioners, are all of 2024 and consider the very issue as against the judgments, which are little earlier cited by the learned senior counsel for the 2<sup>nd</sup> respondent and the law as laid down by the Apex Court is that order of taking cognizance and issuing summons, must bear application of mind.

14. With the law being thus, I now deem it appropriate to notice the order taking cognizance in the case at hand. It reads as follows:

**"ORDER**

*Perused the charge sheet and all the documents submitted along with the charge sheet by the investigating agency.*

*On perusal of the same, this court is satisfied at this stage that prima facie offence has been committed by the accused as alleged.*



*The charge sheet and its enclosed papers satisfies that there exists sufficient materials to proceed against the accused.*

*Therefore, cognizance is taken under Section 190(1) of CrPC for the offence punishable under Section 418, 420, 464, 465, 120B r/w 34 IPC against the accused persons.*

*Office to register the case as Criminal Cases in Register No.3 against the accused for the offence punishable under Section 418, 420, 464, 465, 120B r/w 34 IPC and put up.*

*Issue summons to accused by 11-07-2024."*

The Court observes '*perused the charge sheet and all the documents*'. On perusal of the same, the Court is satisfied that *prima facie* offence has been committed by the accused as alleged. Therefore, cognizance is taken under Section 190 (1)(b) and summons issued ostensibly under Section 204 of the Cr.P.C. The order of taking cognizance and issuing of process does not bear even a semblance of application of mind. It runs completely counter to the necessity under Section 190(1)(b) or Section 204 of the Cr.P.C. as elucidated by the Apex Court in the aforesaid judgments.

15. The learned senior counsel for the respondents submits that in 80% of cases, the Courts would take



cognizance in the same manner, while that would not impress this Court to dismiss the petition and permit perpetration of irregularity or illegality by the concerned Court, just because it has become a habit to take cognizance and issue summons in this manner. Not for nothing is the elucidation by the Apex Court in regard to existence of sufficient grounds and application of judicial mind. The Court is expected to record reasons for taking of cognizance. Though the reasons need not be so elaborate like when it records framing of charges or conviction, nonetheless, it must bear application of mind to set further proceedings into motion, as taking of cognizance or issuance of process has some judicial sanctity. It cannot be a frolicsome act on the part of the learned Magistrate/concerned Court, which would take cognizance and issue summons.

16. Therefore, it is made clear that the learned Magistrates/concerned Court who take cognizance and issue process, shall henceforth follow the law laid down by the Apex Court as quoted hereinabove and pass orders that would bear application of mind, failing which, the learned Magistrates/concerned Court are contributing docket explosion



in this Court, as every order of taking cognizance and issuance of process is brought before this Court on the score that it does not bear application of mind. Wherefore, the impugned order of taking cognizance is necessarily to be obliterated and the matter remitted back to the hands of the learned Magistrate to redo the exercise bearing in mind the observations made hereinabove.

17. For the aforesaid reasons, the following:

**ORDER**

- (i) Criminal petition is allowed-in-part.
- (ii) The order taking cognizance dated 04-04-2024 passed in C.C.No.2600 of 2024 by the Principal Civil Judge and JMFC, Anekal stands quashed.
- (iii) The matter is remitted back to the hands of the Principal Civil Judge and JMFC, Anekal to redo the exercise of passing an order of taking cognizance and issuing process, bearing in mind the observations made in the course of the order.





- (iv) The aforesaid exercise shall be concluded within a period of four weeks' from the date of receipt of a copy of this order.
- (v) All other contentions except the one considered in the course of the order shall remain open.

Pending applications, if any, also stand disposed.

**Sd/-**  
**(M.NAGAPRASANNA)**  
**JUDGE**

bkp  
List No.: 1 Sl No.: 16