Supreme Court of India
Mohd. Yousuf vs Smt. Afaq Jahan & Anr on 2 January, 2006
Author: A Pasayat
Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:
Appeal (crl.) 2 of 2006

PETITIONER:
Mohd. Yousuf

RESPONDENT:
Smt. Afaq Jahan & Anr

DATE OF JUDGMENT: 02/01/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T (Arising out of SLP (Crl.) No. 2305 of 2004) ARIJIT PASAYAT, J.

Leave granted.

Challenge in this Appeal is to the order passed by a learned Single Judge of the Allahabad High Court, Lucknow Bench. The respondent No. 1 filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') to quash the direction given to register F.I.R., charge sheet filed after investigation as well as the cognizance taken by the learned Chief Judicial Magistrate (in short CJM) Raebareli. By order dated 13.7.1998 learned CJM had directed the police to register and investigate the case. On 19.7.1998 on the basis of the order passed by learned CJM police registered FIR No. 830 of 1998 for alleged commission of offences punishable under Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860 (in short the IPC).

Background facts as projected by the appellant are as follows:

Appellant received a notice dated 18.1.1996 from the Union Bank of India, Raebareli asking him to pay back the loan amount with interest amounting to Rs.1,25,421/-. Appellant was shown to be a guarantor for the loan taken by respondent no.1 on 30.12.1994. Appellant was surprised to receive the notice as he had never stood as guarantor for any loan. He made enquiry from the Bank and came to know that the respondent No. 1 had forged some documents in conspiracy with her husband Zahirul Islam. An affidavit purported to have been signed by the appellant was filed with the bank to make him the second guarantor. Appellant had never signed the document and his signature was forged. A writ petition was filed before the Allahabad High Court to quash the notice issued by the Bank. The writ petition was dismissed giving liberty to the appellant to seek appropriate remedy. On 13.7.1998 an application was filed before learned CJM alleging commission of offences by the named accused persons. Learned CJM directed the police to register and investigate the case. As noted above, on the basis of order of learned CJM the FIR was registered. The essence of the grievance of

the appellant was that the accused persons with the help of the bank manager made forged signature of the appellant in the agreement form and an affidavit to show him as a guarantor. After investigation charge sheet was filed by the police on 13.9.1999. On 24.5.2000 respondent no.1 filed the application under Section 482 of the Code for quashing the FIR, the charge sheet and the order of learned magistrate by which he had taken cognizance, and the order directing the police to register the case under Section 156(3) of the Code. By the impugned order the High Court quashed the charge sheet on the ground that the magistrate had no power to order registration of the case.

In support of the appeal learned counsel for the appellant submitted that the order of the High Court is clearly contrary to law and on misreading of the provisions contained in Section 156(3) of the Code. Learned counsel for the respondent No.1 on the other hand submitted that the true scope and ambit of Section 156(3) of the Code has been kept in view by the High Court and the impugned order does not suffer from any infirmity. Learned counsel for the State supported the stand of the appellant.

In order to appreciate rival submissions Section 156 of the Code needs to be quoted; the same reads as follows: "156. Police officer's power to investigate cognizable cases. - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

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

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."

Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Code. Chapter XII of the Code contains provisions relating to "information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code. The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The

investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. "or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding".

This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

The above position was highlighted in Suresh Chand Jain v. State of M.P. and Another [2001(2) SCC 628].

In Gopal Das Sindhi and Ors. v. State of Assam and Anr. (AIR 1961 SC 986) it was observed as follows:

"When the complaint was received by Mr. Thomas on August 3, 1957, his order, which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint under Section 156(3) of the Code to the Officer Incharge of Police Station Gauhati for investigation. Section 156(3) states "Any Magistrate empowered under section 190 may order such investigation as above-mentioned". Mr. Thomas was certainly a Magistrate empowered to take cognizance under Section 190 and he was empowered to take cognizance of an offence upon receiving a complaint. He, however, decided not to take cognizance but to send the complaint to the police for investigation as Sections 147, 342 and 448 were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was

bound to take cognizance and proceed under Chapter XVI of the Code. It is clear, however, that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because Section 200 states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Chapter XVI of the Code. Numerous cases were cited before us in support of the submissions made on behalf of the appellants. Certain submissions were also made as to what is meant by "taking cognizance." It is unnecessary to refer to the cases cited. The following observations of Mr. Justice Das Gupta in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee, AIR 1950 Cal 437 "What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence under Section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter-

proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence".

were approved by this Court in R.R. Chari v. State of Uttar Pradesh (1951 SCR 312). It would be clear from the observations of Mr. Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of Chapter XVI but for taking action of some other kind, e.g., ordering investigation under Section 156(3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. The observations of Mr. Justice Das Gupta above referred to were also approved by this Court in the case of Narayandas Bhagwandas Madhavdas v. State of West Bengal (AIR 1959 SC 1118). It will be clear, therefore, that in the present case neither the Additional District Magistrate nor Mr. Thomas applied his mind to the complaint filed on August 3, 1957, with a view to taking cognizance of an offence. The Additional District Magistrate passed on the complaint to Mr. Thomas to deal with it. Mr. Thomas seeing that cognizable offences were mentioned in the complaint did not apply his mind to it with a view to

taking cognizance of any offence; on the contrary in his opinion it was a matter to be investigated by the police under Section 156(3) of the Code. The action of Mr. Thomas comes within the observations of Mr. Justice Das Gupta. In these circumstances, we do not think that the first contention on behalf of the appellants has any substance."

In Narayandas Bhagwandas Madhavdas v. The State of West Bengal (AIR 1959 SC 1118) it was observed as under: "On 19.9.1952, the appellant appeared before the Additional District Magistrate who recorded the following order:-

"He is to give bail of Rs.50,000 with ten sureties of Rs. 5,000 each. Seen Police report. Time allowed till 19th November, 1952, for completing investigation."

On 19.11.952, on perusal of the police report the Magistrate allowed further time for investigation until January 2, 1953, and on that date time was further extended to February 2, 1953. In the meantime, on January 27, 1953, Inspector Mitra had been authorized under s.23(3)(b) of the Foreign Exchange Regulation Act to file a complaint. Accordingly, a complaint was filed on February 2, 1953. The Additional District Magistrate thereon recorded the following order:

"Seen the complaint filed to day against the accused Narayandas Bhagwandas Madhavdas under section 8(2) of the Foreign Exchange Regulation Act read with section 23B thereof read with Section 19 of the Sea Customs Act and Notification No. F.E.R.A. 105/51 dated the 27th February, 1951, as amended, issued by the Reserve Bank of India under Section 8(2) of the Foreign Exchange Regulation Act. Seen the letter of authority. To Sri M. N. Sinha, S. D.M. (Sadar), Magistrate 1st class (spl. empowered) for favour of disposal according to law. Accused to appear before him."

Accordingly, on the same date Mr. Sinha then recorded the following order:-

"Accused present. Petition filed for reduction of bail. Considering all facts, bail granted for Rs. 25,000 with 5 sureties.

To 26.3.1952 and 27.3.1952 for evidence."

It is clear from these orders that on 19.91952, the Additional District Magistrate had not taken cognizance of the offence because he had allowed the police time till November 19, 1952, for completing the investigation. By his subsequent orders time for investigation was further extended until February 2, 1953. On what date the complaint was filed and the order of the Additional District Magistrate clearly indicated that he took cognizance of the offence and sent the case for trial to Mr. Sinha. It would also appear from the order of Mr. Sinha that if the Additional District Magistrate did not take cognizance, he certainly did because he considered whether the bail should be reduced and fixed the 26th and 27th of March, for evidence. It was, however, argued that when Mitra applied for a search warrant on September, 16, 1952, the Additional District Magistrate had recorded an order thereon, "Permitted. Issue search warrant." It was on this date that the Additional District Magistrate took cognizance of the offence. We cannot agree with this submission because the petition of Inspector Mitra clearly states that "As this is non-cognizable offence, I pray that you will

kindly permit me to investigate the case under section 155 Cr.P.C." That is to say, that the Additional District Magistrate was not being asked to take cognizance of the offence. He was merely requested to grant permission to the police officer to investigate a non-cognizable offence. The petition requesting the Additional District Magistrate to issue a warrant of arrest and his order directing the issue of such a warrant cannot also be regarded as orders which indicate that the Additional District Magistrate thereby took cognizance of the offence. It was clearly stated in the petition that for the purposes of investigation his presence was necessary. The step taken by Inspector Mitra was merely a step in the investigation of the case. He had not himself the power to make an arrest having regard to the provisions of s. 155(3) of the Code of Criminal Procedure. In order to facilitate his investigation it was necessary for him to arrest the appellant and that he could not do without a warrant of arrest from the Additional District Magistrate. As already stated, the order of the Additional District Magistrate of September 19, 1952, makes it quite clear that he was still regarding the matter as one under investigation. It could not be said with any good reason that the Additional District Magistrate had either on September 16, or at any subsequent date upto February 2, 1953, applied his mind to the case with a view to issuing a process against the appellant. The appellant had appeared before the Magistrate on February 2, 1953, and the question of issuing summons to him did not arise. The Additional District Magistrate, however, must be regarded as having taken cognizance on this date because he sent the case to Mr. Sinha for trial. There was no legal bar to the Additional District Magistrate taking cognizance of the offence on February 2, 1953, as on that date Inspector Mitra's complaint was one which he was authorized to make by the Reserve Bank under s. 23(3)(b) of the Foreign Exchange Regulation Act. It is thus clear to us that on a proper reading of the various orders made by the Additional District Magistrate no cognizance of the offence was taken until February 2, 1953. The argument that he took cognizance of the offence on September 16, 1952, is without foundation. The orders passed by the Additional District Magistrate on September 16, 1952, September 19, 1952, November 19, 1952, and January 2, 1953, were orders passed while the investigation by the police into a non-cognizable offence was in progress. If at the end of the investigation no complaint had been filed against the appellant the police could have under the provisions of s. 169 of the Code released him on his executing a bond with or without sureties to appear if and when so required before the Additional District Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial. The Magistrate would not be required to pass any further orders in the matter. If, on the other hand, after completing the investigation a complaint was filed, as in this case, it would be the duty of the Additional District Magistrate then to enquire whether the complaint had been filed with the requisite authority of the Reserve Bank as required by s. 23(3)(b) of the Foreign Exchange Regulation Act. It is only at this stage that the Additional District Magistrate would be called upon to make up his mind whether he would take cognizance of the offence. If the complaint was filed with the authority of the Reserve Bank, as aforesaid, there would be no legal bar to the Magistrate taking cognizance. On the other hand, if there was no proper authorization to file the complaint as required by s. 23 the Magistrate concerned would be prohibited from taking cognizance. In the present case, as the requisite authority had been granted by the Reserve Bank on January 27, 1953, to file a complaint, the complaint filed on February 2, was one which complied with the provisions of s. 23 of the Foreign Exchange Regulation Act and the Additional District Magistrate could take cognizance of the offence which, indeed, he did on that date. The following observation by Das Gupta, J., in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerji

[A.I.R. (1950) Cal. 437] was approved by this Court in the case of R. R. Chari v. The State of Uttar Pradesh [[1951] S.C.R. 312]:- "What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence under section 190(1)(a) Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter - proceeding under section 200 and thereafter sending it for inquiry and report under section

202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence." It is, however, argued that in Chari's case this Court was dealing with a matter which came under the Prevention of Corruption Act. It seems to us, however, that that makes no difference. It is the principle which was enunciated by Das Gupta, J., which was approved. As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuing of a search warrant for the purpose of an investigation or of a warrant of arrest for that purposes cannot by themselves be regarded as acts by which cognizance was taken of an offence. Obviously, it is only when a Magistrate applies his mind for the purpose of proceeding under s. 200 and subsequent sections of Chapter XVI of the Code of Criminal Procedure or under s. 204 of Chapter XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance."

A faint plea was made by learned counsel for the respondent No.1 that the petition filed by the appellant was not a complaint in strict sense of the term. The plea is clearly untenable. The nomenclature of a petition is inconsequential. Section 2(d) of the Code defines "complaint" as follows:

"'Complaint' means any allegation orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation:- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

There is no particular format of a complaint. A petition addressed to the magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprits be suitably dealt with, as in the instant case, is a complaint.

In view of the aforesaid position in law, order passed by the High Court is clearly unsustainable and is quashed. The appeal is allowed.