Ms. Sonia Gobind Gidwani and Another Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: May 31, 2013

Acts Referred: Constitution of India, 1950 â€" Article 20(2)
Criminal Procedure Code, 1973 (CrPC) â€" Section 156, 188, 200, 202, 482
Information Technology Act, 2000 â€" Section 2
Penal Code, 1860 (IPC) â€" Section 120B, 3, 34, 4, 406

Citation: (2013) 7 ADJ 97 : (2013) 6 ALJ 168 : (2013) 83 ALLCC 312

Hon'ble Judges: N.A. Moonis, J

Bench: Single Bench

Advocate: Devendra Dahma, Imran Ullah, K. Zaidi and R.K. Singh, for the Appellant; S. Shekhar and V.K. Singh, for the Respondent

Final Decision: Disposed Of

Judgement

N.A. Moonis, J.
Heard learned counsel for the applicants, Sri S. Shekhar learned counsel for the complainant and AGA and have been

taken through the record.

By means of the present application u/s 482 Cr.P.C. the applicants have invoked inherent jurisdiction of this Court with a prayer to quash the

entire proceeding in Complaint case No. 392 of 2012 (Asia Exchange Centre v. Sonia Gobind Gidwani and another) u/s 406, 420, 408, 409,

477-A, 120-B/34 IPC whereof cognisance has been taken by the learned A.C.J.M.III Gautam Budh Nagar vide order dated 5.5.2012.

The fact of the case emanating from the prosecution in a short conspectus is that a complaint was filed by the opposite party No. 4 holding Power

of Attorney on behalf of the opposite parry No. 3 Ali Omran Salim Alowais who is proprietor of M/s Exchange Centre having its office at 904, 9th

Floor, Twin Tower Building, Abdul Naser Square, Diera, Dubai U.A.E. The aforesaid firm is a licencee by virtue of licence issued by the Central

Bank of U.A.E bearing its Commercial Licence No. 232142 and Registry No. 29076 issued by the Department of Economic Development of

Dubai. The complainant is engaged in the business of buying and selling foreign currencies, traveller''s sheets against foreign currencies, executing

transfer transactions of local and foreign currencies etc. in U.A.E. and other parts of the world. Ms. Sonia Gobind Gidwani (applicant No. 1) is an

Indian national approached the complainant in the year 2001 representing herself as one of the reputed finance and currency trader in India namely

Centrum Group and projected herself as most distinguished and eminent person in Indian Business Circle. It was divulged by the applicant No. 1

that Centrum Group was consisting of so many companies including that of Centrum Investment Ltd. Centrum Capital Ltd. Centrum Direct Ltd.

and is engaged in diversified financial services including foreign exchange traveller"s sheets, foreign currency, stocks, debentures and various other

financial activities. The applicant No. 1 impressed the complainant portraying her vast experience and knowledge in the field of market planning,

business development, marketing project and operation, management in the Money Exchange Industry. The applicant No. 1 tried to convince that

on account of her vast experience of planning and strategies she would augment and accelerate his business in Dubai and other parts of the word

which will yield high return and immense profit. On the persuasion of the applicant No. 1, the complainant appointed her as consultant/business

development associate at the fixed remuneration. The applicant No. 1 assured that she will make her best efforts towards overall growth and will

carry out her fiduciary responsibilities with full devotion and dedication. The applicant No. 1 won over the confidence of the complainant for

putting more working capital so as to flourish business expansion. The complainant was fully assured by the applicant No. 1 that in the event of

putting more working capital, she will explore profitable business by virtue of extensive contracts, net work and good nexus in the business world.

2. The applicant No. 2 being an Indian national was working with the said Centrum Group since long time. It was delineated that the applicant No.

2 was a Senior Management Executive having vast experience and knowledge in Money Exchange Industry including framing of policy and

accounting procedure, marketing, planning, operations and management. The applicant No. 2 represented himself as a core team member of

Centrum Group to which the applicant No. 1 was associated. In the guise of displaying good description and assurance, the applicants succeeded

in instilling congenial atmosphere in the eyes of the complainant. The accused applicants won trust of the complainant with respect of the

management and control of the company therefore, the accused applicants were entrusted the properties and assets of the complainant company

and were having dominion over the accounts, records, finance of complainant and hence were in the position of trustees as well as shareholders.

After some time it was found through audit report that the applicant No. 1 in collusion with the applicant No. 2 manipulated the accounts and

deposited a sum of 11744752 (eleven million seven hundred forty four thousand seven hundred fifty two) Dirhams with complainant company as

loan amount for interregnum period 31st March 2005 to 22nd April 2005 and started receiving interest at the rate of 9% per annum in her name.

The applicant No. 2 was signatory with the bank. A total sum of Rs. 4,98,66,219/- of which there was no agreement with the company. The

applicant No. 1 has withdrawn four cheques from the account of the corporation amounting to Rs. 30,53,63,552/- in the form of interest which

was never deposited in the company''s account. The applicants have dishonestly and fraudulently for unlawful gain committed loss to the

complainant company and misappropriated company''s property and after playing fraud on the company of the complainant, they left Dubai in very

shrouding way in October/November 2010 without furnishing the accounts. The complainant, who had reposed his faith upon the accused

applicants was swindled by their mischievous act as they misplaced the entire record of the company which were in their possession. The

applicants have committed breach of trust and swindled huge amount by misusing their power of management and control. In such circumstances

complaint was filed by the opposite party No. 3 on 10.4.2012 before the Chief Judicial Magistrate u/s 188 Cr.P.C. To take cognisance of

offences committed by the applicants under Sections 420, 406, 408, 409, 497-A read with Sections 120B and 34 IPC and to issue process. In

support of the complaint, the statement of Anees Aravindakshan (opposite party No. 4) was recorded u/s 200 Cr.P.C.

3. In support of the complaint, the licence of the company, power of attorney in favour of the complainant, audit report, distribution of account,

notice and the reply of the notice filed by the applicants were adduced and an application was moved by the complainant on 18.4.2012 that the

documents may be taken on record as evidence u/s 202 Cr.P.C. The learned Chief Judicial Magistrate Gautam Buddha Nagar took cognisance of

the matter, following the principles laid down in a catena of decisions of Apex Court, finding that prima facie accused applicants while doing

service in the company of the complainant had opened forged accounts, submitted forged deposit receipts and surreptitiously received the interest

at the rate of 9% on the amount and also usurped hefty amount by playing fraud and committing forgery. The accused applicants came back in

India surrendering their services hence offence under Sections 420, 406, 408, 409, 477, 120-B/34 IPC is prima facie made out against the

applicants, the learned Magistrate summoned the accused persons to face the trial in respect of the aforesaid offences vide order dated 5.5.2012.

4. Learned counsel for the applicants raised serious objection that the cognisance taken by the Magistrate is palpably without jurisdiction on the

ground that by virtue of proviso of Section 188 Cr.P.C. no such offence shall be inquired into or tried in India except with the previous sanction of

the Central Government. The complaint shows that no part of the alleged offence has taken place within the territory of India. As per allegations

made in the complaint, entire offence was committed in Dubai. Section 188 Cr.P.C. clearly provides procedure in respect of an offence committed

outside India. In view of proviso to Section 188 Cr.P.C. complaint cannot be entertained without sanction of the Central Government for the

initiation of the proceedings.

Section 188 Cr.P.C. runs as under;

Offence committed outside India.--When an offence is committed outside India;

(a) by a citizen of India whether on the high seas or elsewhere or

(b) by a person not being such citizen, on any ship or aircraft registered in India.

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found;

Provided that notwithstanding anything in any of the proceeding Sections of this Chapter, no such offence shall be inquired into or tried in India

except with the previous sanction of the Central Government.

5. The complainant has filed the complaint suppressing material fact to deprive the applicants to lodge their dues which were agreed between them

under the memorandum of understanding. The entire allegations made against the applicant No. 2 that he conspired with the applicant No. 1 who

had approved the payment vouchers @ 9% per annum absolutely false as the interest calculation on the loan was approved and signed by the sole

proprietor of the complainant himself. In respect of the alleged cheques, the complainant had already filed a criminal complaint against the

authorized signatory of the said cheques in Dubai. After investigation charges were dropped by the prosecution. Neither applicants had deposited

any cheque as security for repayment of loan or in cash therefore, prima facie no offence is made out against the applicants involving in the

aforesaid case. The complainant had lodged civil and criminal proceedings against the applicant No. 1 which is pending before the competent

Court in Dubai. The Complaint Case No. 12075 of 2011 filed against the applicant No. 1 was found baseless. The proceedings were dropped

and on the same set of facts after loosing criminal case at Dubai filed the complaint in India. Merely on the documentary evidence and the

statement of the complainant u/s 200 Cr.P.C. the Court below has proceeded against the applicants even otherwise complainant had taken no

permission from the Court concern for filing the complaint by the holder of power of attorney therefore, the proceedings initiated thereon is

absolutely baseless and illegal. The complainant after loosing the criminal case against the applicant No. 1 filed a civil case No. 1821 of 2011 on

the same set of facts on 27.10.2010 and the said case is still pending. The complainant has given colour of a criminal proceeding to the dispute of

civil nature. The applicants are maliciously being prosecuted in the present case on account of false allegations made against them, hence the entire

proceeding is an abuse of process of law.

6. Learned counsel for the applicants has referred to plethora of decisions of Apex Court which are being delineated:

1. Om Hemrajani Vs. State of U.P. and Another,

2. Tula Ram and Others Vs. Kishore Singh,

3. Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, .

4. Kunhayammed and Others Vs. State of Kerala and Another,

5. Thota Venkateswarlu Vs. State of A.P. tr. Princl Sec. and Another, .

6. Ajay Agarwal Vs. Union of India and others, .

7. It is further contended that in National Bank of Oman Vs. Barakara Abdul Aziz and Another, , the Apex Court held that the learned Magistrate

had not carried out any investigation as contemplated under amended Section 202 Cr.P.C. before issuing process hence the learned Magistrate

was directed to pass fresh orders after complying with the procedure laid down in Section 202 Cr.P.C. Section 202 Cr.P.C. was amended by

Criminal Procedure Code Amendment Act 2005 and came into force w.e.f. 23.6.2006 and the following words were inserted:

and shall in a case where the accused is residing at a place beyond the area in which he exercises jurisdiction:

8. In the present case also the applicants are resident of State of Maharashtra and the cognisance has been taken by the Chief Judicial Magistrate-

III Gautam Budh Nagar. The learned Magistrate ought to have carried out inquiry or investigation as contemplated under amended Section 202

Cr.P.C before issuing the process so as to find out whether or not there was sufficient ground for proceeding against the applicants who are

resident of different State and do not come within the jurisdiction of Gautam Budh Nagar. Thus the entire proceeding against the applicants is

vitiated in law due to non-compliance of mandatory requirement of procedure laid down u/s 188 viz-a-viz 202 of the Code of Criminal Procedure.

9. Per contra learned for the complainant has vehemently argued that the complainant was constrained to file a complaint in India against the

applicants on account of misuse of trust reposed upon them as the applicants have illegally usurped the assets of the opposite party No. 2 by

causing wrongful loss to him. The applicant No. 1 had persuaded the complainant for being appointed as consultant in the trade of buying and

selling the foreign currencies in U.A.E. The audit report itself reveals that the applicant No. 1 being hands in gloves with the applicant No. 2 had

shown the deposit of Rs. 15,26,81,776/- with the company of the opposite party No. 2 as a loan against which the applicant No. 1 received

interest at the rate of 9% per annum in her name but the audit report shows that no amount was ever deposited by the applicants in the account of

the complainant. There was no documentary proof of the alleged loan given by the applicant No. 1 to the complainant. The applicant Nos. 1 and 2

in connivance with each other withdrew the amount of interest for the alleged loan amount which was never deposited, thus they cheated the

complainant''s company and misappropriated hefty amount. The Power of Attorney holder, opposite party No. 4 is having valid power of attorney

and as such he is competent to file complaint even otherwise no permission is required for any person to set criminal law in motion. So far as the

objection with regard to taking cognisance u/s 188 Cr.P.C. is concerned, at the stage of taking cognisance. Section 188 Cr.P.C. provides that an

Indian citizen who commits an offence at any place outside India or on the high seas may be dealt with in respect of such offence as if it has been

committed in India. Where offence is committed outside India, sanction of the Central Government at pre-enquiry stage is not required. Where

offence is committed outside India, case can be registered/investigated in India. It is not necessary that the sanction of the Central Government may

be obtained before taking cognisance. There are a gamut of decisions to this effect specially Om Hemarajan (Supra) is identical with the facts of

the case wherein it has been held that sanction u/s 188 Cr.P.C. is not a condition precedent to take cognisance of the offence which was

committed outside the territory of India. The objection of the applicant against filing of the complaint is subject-matter of trial. Section 188 Cr.P.C,

does not require that the victim shall state in the complaint as to which place the accused may be found. The gravity of the offence can only be

judged by the trial Court after evaluating the evidence. The act of the applicants constitutes an offence under the law in force in India therefore, the

applicants can very well be prosecuted in India. Even if the applicants have been tried by the Court at Dubai, the Court in India cannot be

precluded from prosecuting the applicants within the territory in India. The cognisance has been taken long back and the applicants are not

appearing before the Court below, therefore, non-bailable warrants have been issued against them. The applicants are free to raise objection at the

appropriate stage.

Para 6 of the judgment enunciated in the case of National Bank of Oman (Supra) is relevant which is delineated as under:

The duty of a Magistrate receiving a complaint is set out in Section 202 of the Cr.P.C. and there is an obligation on the Magistrate to find out if

there is any matter which calls for investigation by a Criminal Court. The scope of enquiry under this section is restricted only to find out the truth or

otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation u/s 202 of the

Cr.P.C. is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is

sufficient grounds for him to proceed further. The scope of enquiry u/s 202 of the Cr.P.C. is, therefore, limited to the ascertainment of truth or

falsehood of the allegations made in the complaint (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of

finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of

the complainant without at all adverting to any defence that the accused may have.

10. Learned counsel for the complainant strenuously argued that a criminal complaint cannot be quashed for simple plea that the transaction

involved is commercial or civil in nature. Prima facie it cannot be said that the commission of offence is not made out of from misappropriation of

property which was entrusted by the complainant with intent to defraud and to cause damage, betraying trust showing their dishonest intention from

beginning. This is all question of fact to be determined in the light of offences, they have been charged. At the inception of criminal prosecution, this

Court has to be circumspect in evaluating the pros & cons of the case.

11. To prop up his submission learned counsel for the complainant has referred to a gamut of decisions delineated here under:

1. Ajay Agarwal Vs. Union of India and others, .

2. Om Hemrajani Vs. State of U.P. and Another,

3. Thota Venkateswarlu Vs. State of A.P. tr. Princl Sec. and Another,

4. Vishwa Mitter of Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot Vs. O.P. Poddar and Others,

5. Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another,

6. Mohinder Singh Vs. Gulwant Singh and others, ,

7. S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others,

8. Shivjee Singh Vs. Nagendra Tiwary and Others, .

9. Narayandas Bhagwandas Madhavdas Vs. The State of West Bengal,

10. Kishun Singh and Others Vs. State of Bihar,

11. Rosy and Another Vs. State of Kerala and Others,

12. Abdul Salam Vs. State of Kerala

In view of above facts and legal position, this petition sans any merits hence deserves to be dismissed.

12. I have considered the aforesaid submission of the learned counsel at the bar.

So far as the jurisdiction of Courts in India to entertain the complaint against a person who has committed an offence in another country is

concerned, the identical issue was decided by this Court in Om Hemarajani v. State of U.P. and another (Supra) which has been upheld by the

Apex Court in SLP No. 99 of 2004 and has dealt with in extenso keeping in view of the proviso u/s 188 Cr.P.C. requiring prior sanction of the

central Government. The word ''inquiry'' used in proviso to Section 188 Cr.P.C. is confined to proceedings before the Magistrate prior to trial

alone but cannot be extended to investigation by the police. A police officer investigates a case by himself or under the order of the Magistrate u/s

202 Cr.P.C. In view of the same the bar if any, will operate to inquiry before the Magistrate after the police laid the charge-sheet for the offence.

The requirement of sanction is necessary at the stage of trial and is not a precondition to taking cognisance. Similar view has been laid down by the

Apex Court in Ajay Agarwal Vs. Union of India and others, and Thota Narain v. State of A.P., (2011) (9) SCC 527. The aforesaid decisions

clearly cull out that sanction u/s 188 Cr.P.C. is only necessary before the commencement of trial and it is not a condition precedent for taking

cognisance for issuing of process. The applicants cannot derive any benefit as there are sufficient materials showing complicity of the applicants in

the commission of said offences.

13. So far the objection raised with regard to the maintainability of the complaint by the holder of Power of Attorney on behalf of the respondent

No. 2, there is no restriction prescribed by the code regarding the requirement of maintainability of complaint as anyone can set the criminal law

into motion. The respondent No. 4 was duly authorised to file a complaint against the applicants. In the recent decision in Dr. Subramanian Swamy

Vs. Dr. Manmohan Singh and Another, , the Hon''ble Apex Court has diluted the decision rendered in the case of A.R. Antulay Vs. Ramdas

Sriniwas Nayak and Another, . In para 6 of the aforesaid decision of the Constitution Bench, it has been observed that;

It is a well recognised principle of criminal jurisprudence that any one can set or put the criminal law into motion except where the statute enacting

or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies

for taking criminal offences to Court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be

filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence

save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general

principle gets excluded by such statutory provision.

14. Similarly the non-examination of witnesses when the case has been filed u/s 200 Cr.P.C. will not vitiate the entire proceedings. Learned

Magistrate on the basis of material on record filed alongwith complaint may take cognisance therefore, in the case in hand, learned Court below

has committed no illegality or absurdity in issuing the process against the applicants. Consequence of non-examination of the witnesses would be

considered at the stage of trial and not at the stage of issuing the process. Learned Magistrate considered the statement of the complainant in

support of the complaint and after sifting the material found that prima facie offence is made out against the applicants. At that stage, detailed

discussions on merit is not required to record finding that the allegations would end in conviction of the accused persons.

15. The Apex Court in the National Bank of Oman v. Barakara Abdul Aziz and another (Supra) has no doubt referred to Section 202 of the

Code of Criminal Procedure qua amendment made by Act of 2005 which refers to ""and shall, in a case where the accused is residing at a place

beyond the area in which he excesses jurisdiction;"" to make it obligatory upon the Magistrate before summoning the accused residing beyond his

jurisdiction, to enquire into the case himself or to direct investigation to be made by a police officer or by such other person as he thinks fit, for

finding out as to whether offence is made out against the accused. At the same time it is relevant to quote para 6 of National Bank of Oman

(Supra) which is portrayed herein under:

The duty of a Magistrate after receiving a complaint is set out in Section 202 Cr.P.C. and there is an obligation on the Magistrate to find out if

there is any matter which calls for investigation by a criminal Court. The scope of enquiry under this section is restricted only to find out the truth or

otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. The scope of enquiry u/s 202

Cr.P.C. is limited to the ascertainment of truth or falsehood of the allegations made in the complaint (i) on the material placed by the complainant

before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding

the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have;

16. Thus it is quite evident that the learned Magistrate in the case in hand has primarily satisfied with the allegations made in the complaint for

issuing the process on the basis of the allegations made in the complaint. At this stage, role of the applicants cannot be weighed.

17. Quintessentially when cognizance is taken of an offence, it depends upon the facts and circumstances of each case and it is impossible to

attempt to define what is meant by taking ""cognisance"".

In order to know the definition of ""Cognisance"" I have gone through the different dictionaries which defines the term as under:

In Black''s Law Dictionary the word ""cognisance has been defined as under:

Cognisance/ko(g) nezens/Jurisdiction or the exercise of jurisdiction or power to try and determine causes; judicial examination of a matter, or

power and authority to make it. Judicial notice or knowledge; the judicial hearing of a cause; acknowledgement; confession; recognition.

In Oxford Dictionary the word ""cognisance/ko (g)niz (e)ns/(also cognisance)"" n.1. Formal knowledge or awareness-Law the action of taking

judicial notice. 2. Heraldry a distinctive device or mark, especially as formerly worn by retainers of a noble house. PHRASES take cognisance of

formal attend to; take account of.

In the New Lexicon Webster''s Dictionary of the English Language the word ""cognisance"" has been defined as under:

cognizance (kgnizens, konizens) n. the range of mental observation or awareness/the fact of being aware, knowledge/(law) the power given to a

Court to deal with a given matter, jurisdiction/(heraldry) a distinguishing device beyond one''s cognisance not one''s concern, outside one''s terms

of reference to have cognisance of to take into one''s reckoning cognizant adj, cognize (kbgnaiz) pres. Part. Co gniz.ing past and past part,

cog.nized v.t. To make (something) an objection of cognition (O.F.connoissance, knowledge).

18. The Hon''ble Apex Court has elaborately dealt with the expression ""taking cognisance"" S.K. Sinha, Chief Enforcement Officer Vs. Videocon

International Ltd. and Others, . In paras 19 and 20 the Hon''ble Apex Court deals with the expression cognisance which are being quoted here-in-

under:

Para 19: The expression cognisance has not been defined in the Code. But the word (cognisance) is of indefinite import. It has no esoteric or

mystic significance in criminal law. 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 anyone.

Para 20. ""Taking cognisance"" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected

commission of an offence. Cognisance is taken prior to commencement of criminal proceedings. Taking of cognisance is thus a sine qua non or

condition precedent for holding a valid trial. Cognisance is taken of an offence and not of an offender. Whether or not a Magistrate has taken

cognisance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a

Magistrate can be said to have taken cognisance.

19. In view of the legal position, it is crystal clear that cognisance of an offence is taken depending on the facts and circumstances of the case and it

is not possible at this stage to record any finding that no offence is made out against the accused persons. The summons or warrants are issued for

the purpose of bringing the accused persons before the Magistrate concern. Section 3 of I.P.C. lays down with respect of punishment of offences

committed beyond, but which by law may be tried within India. Section 3 I.P.C clearly contemplates that any person liable, by any Indian Law to

be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in

the same manner as if such act had been committed within India.

Section 4 of I.P.C. deals with extension of Code to extra territorial offences which reads thus;

The provision of this Code apply also to any offence committed by

i. any citizen of India in any place without and beyond India.

ii. any person on any ship or aircraft registered in India wherever it may be;

iii. any person in any place without and beyond India committing offence targeting a computer resource located in India.

Explanation: In this section

(a) the word "offence" includes every act committed outside India which, if committed in India would be punishable under this Code.

(b) the expression ""computer resource"" shall have the meaning assigned to it in clause (k) of sub-section (1) of Section 2 of the Information

Technology Act 2000).

This issue has further been dealt with in Abdul Salam v. State of Kerala, 2003 (1) Crime 471, holding that a person who has been prosecuted and

punished in a foreign country for an offence under the law in force in that country, is prosecuted in India for the commission of an offence, he is

being prosecuted under the law in force in India. The prosecution in India is not for the act which was made an offence under the law in force in

foreign country, but for the act which is an offence as per the law in India. Identity of the offence is requisite for the application of Article 20(2) of

the Constitution of India. The previous prosecution and conviction or acquittal does not bar a subsequent prosecution and trial for a separate and

distinct offence even though the two offences arise out of the same fact.

20. Thus I am of the view that once the Magistrate takes cognisance of an offence either without discussing what are the reasons behind it, it shall

be presumed that on the basis of material available before him he is satisfied that there is sufficient material for taking cognisance and if he is

satisfied with those materials for taking cognisance, the detail discussion of those materials by the learned Magistrate is not required. Further once

he issues process, even without writing word "cognisance" it is presumed that he has taken cognisance, the writing of word ""cognisance is taken" is

not necessary. The reason is that by issuance of process he proceeds with the case and the accused who has been summoned for trial have

sufficient opportunity to defend himself at the appropriate stage provided in the code. In response of issuance of process/summons it is not open

for the accused to challenge the summoning order on the ground that no cognisance has been taken or no satisfaction has been shown or there is

no detail discussion of the material available rather he has to follow the next step of the process.

From the perusal of the materials on record and looking into the facts and after considering the extensive arguments of the learned at the bar, it

cannot be said that no offence has been made out against the applicants. Cognisance taken by the trial Court, whereby the applicants have been

summoned to face the trial suffers from no illegality and as such the prayer for quashing the proceedings is refused.

21. At the stage of issuing process the Court below is not expected to examine and assess in detail the material placed on record. Only this has to

be seen whether prima facie cognisable offence is made out or not. The Apex Court has also laid down the guidelines in the case State of Haryana

v. Bhajanlal, 1999 SCC (Crl) 426, and State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , where the criminal proceedings could be

interfered and quashed in exercise of its power envisaged u/s 482 Cr.P.C. It is apt to quote from Jonathan Swift"s ""an essay on the Faculties of the

Mind:

The laws are cobwebs which may catch small flies but let wasps and hornets break through.

Salman has described ""Laws are like spiders webs; If some light or powerless things falls into them, it is caught, but a bigger one can break through

and get away"".

In the light of prolix discussion, this Court does not find any justifiable ground to exercise its inherent powers to quash the proceedings of aforesaid

case. This application is bereft of merits and is accordingly dismissed.

However, considering the facts and the circumstances of the case, it is directed that in case applicants appear before the Court concerned in the

aforesaid case within 30 days from today and apply for bail, the same shall be heard and disposed of in view of decision rendered in the case

Amarawati and Another (Smt.) Vs. State of U.P., , which was approved by the Hon"ble Apex Court in Lal Kamlendra Pratap Singh Vs. State of

U.P. and Others, .

No coercive steps shall be taken against the applicants within the stipulated period of 30 days.

In case the applicants do not appear before the Court below within stipulated time the Court below shall be at liberty to take appropriate action

against the applicants in accordance with law.