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Concept of cognizance under criminal law

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Abstract
This paper intends to deal with the meaning of cognizance, which is one of the important aspect of Criminal procedural law. In general or in the language of layman, cognizance means when the court, allow or reject the suit. As per black law dictionary, Cognizance means, the taking of judicial or authoritative notice. The term taking of cognizance has not been defined under the criminal procedure code, 1973, so it is simply understood as when the court applies his judicial mind. If any judicial magistrate or judge has not acted with his judicial mind, it shall not be considered as taking of cognizance. This paper further, discuss about the scope and applicability of the taking of cognizance, limitations of cognizance, laws relating to cognizance. Further, it is intended to deal with the interference by the high court to civil court in the matter of taking of cognizance. Important sections related to the cognizance and its limitation are discussed separately.

Keywords: cognizance, judicial notice

Introduction
The law of criminal procedure is intended to provide a mechanism for the enforcement of criminal law. Without proper procedural law, the substantive criminal law which defines offences and provides punishments for them would be almost worthless. Thus, the law of criminal procedure is meant to be complementary to criminal law and has been designed to look after the process of its administration. In view of this objective, the law of criminal procedure creates the necessary machinery for the detection of crime, arrest of suspected criminals, collection of evidence, determination of guilt or innocence of the suspected person, and the imposition of proper punishment on the guilty person. Trial process including framing of charge and taking cognizance are some of the important aspects of criminal justice administration system in India.

After the stage of investigation is completed and the final report is forwarded by the police to a competent magistrate, the second important stage of giving fair trial to the accused person begins. As a precursor of this second stage the code envisages some preliminary steps. They are as follows. 1) to take cognizance of the offence; 2) to ascertain whether any prima facie case exists against the accused person; and in case it does so exist, then a) to issue process against the accused person in order to secure his presence at the time of his trial; b) to supply to the accused person the copies of police statements; 3) to consolidate different proceedings pertaining to the same case; and 4) if the case is exclusively triable by a Sessions Court, to commit the case to that court.

The expression 'cognizance' merely means 'become aware of' and when used with reference to a court or judge, it connotes to take notice of judicially [1]. In common parlance, 'cognizance' means 'taking notice of [2]'. Taking cognizance is a mental as well as judicial act. It ordinarily means that the Magistrate has come to the conclusion that there is a case to be enquired into. The word "cognizance" is used in the Code of Criminal Procedure to indicate the point when a Magistrate or a Judge first takes judicial notice of an offence.

Cognizance of an offence
Meaning
Taking cognizance of an offence is the first and foremost step towards trial. Cognizance literally means knowledge or notice, and taking cognizance of offence means taking notice, or becoming aware of the alleged commission of an offence. Obviously, the judicial officer will have to take cognizance of the offence before he could proceed to conduct a trial [3].

A Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons [4].

As per black law dictionary
Cognizance – 1) A court's right and power to try and to determine cases; JURISDICTION. 2) The taking of judicial or authoritative notice. 3) Acknowledgment or admission of an alleged fact; esp. (hist), acknowledgment of fine [5].

Cognizance means to take notice of judicially. Taking of cognizance is *sine qua non* for trial. It could not be equated with issuance of process. Complaint was lodged for offences under FERA. Cognizance held on facts was taken before period of limitation stipulated by Section 49(3) of FEMA [6].

The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means "become aware of" and when used with reference to a court or judge, "to take notice judicially" [7]. Taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence for the purpose of proceeding to take subsequent steps (under

Section 200 or Section 202, or Section 204) towards inquiry and trial [8]. However, when a Magistrate applies his mind not for the purpose of proceeding as mentioned above, but for taking action of some other kind, for example, 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 the offence [9]. The word "cognizance" has been used in the Code to indicate the point when the Magistrate or a judge first takes judicial notice of an offence [10]. Taking cognizance includes intention of initiating a judicial proceeding against an offender in respect of an offence or taking steps to see whether there is a basis for initiating a judicial proceeding [11]. 8 It is a word of indefinite import, and is not perhaps always used in exactly the same sense.

Ordinarily, a private citizen intending to initiate criminal proceedings in respect of an offence has two courses open to him. He may lodge a first information report before the police if the offence is a cognizable one, or he may lodge a complaint before a competent Judicial Magistrate irrespective of whether the offence is cognizable or non-cognizable. The object of the Code is to ensure the freedom and safety of the subject, in that it gives him the right to come to court if he considers that a wrong has been done to him or to the Republic and be a check upon police vagaries [12]. The Supreme Court in Azija Begum v. State of Maharashtra [13] had occasion to explain thus:

In the facts and circumstances of this case, we find that every citizen of this country has a right to get his or her complaint properly investigated. The legal frame work of investigation provided under our laws cannot be made selectively available only to some persons and denied to others. This is a question of equal protection of laws and is covered by the guarantee under Article 14 of Indian the Constitution.

Scope and applicability

This section is one out of a group of sections under the heading conditions requisite for initiation of proceedings. The language of the section is in marked contrast with that of other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases except in compliance therein. Safi v. State of W.B [14].

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. Bhushan Kumar v. State of (NCT of Delhi) [15]

Taking of cognizance

- Meaning of what is "taking cognizance" has not been defined in the Criminal Procedure Code. However, it can be said that any Magistrate who has taken cognizance under Sec. 190 (1) (a), Cr. P.C., 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 provision i.e., proceedings under Section 200, and thereafter sending it for inquiry and report under Section 202. It can be said that before a Magistrate takes cognizance of an offence, he must have applied his mind for the purpose of proceeding in a particular way as indicated in the subsequent provision. When a Magistrate applies his mind not for the purpose of proceeding under the subsequent sections but for taking action of some other kind, e.g., ordering an investigation under Section 156 (3) or issuing a search warrant for purposes of investigation, he cannot be said to have taken cognizance of. As to when a cognizance is taken will depend upon the facts and circumstances of each case and it is not possible to define what is meant by it. It is only when a Magistrate applies his mind for purposes of proceeding under Section 200 and subsequent sections of Chapter XV (XVI old) or under Sec. 204 of Chapter XVI (XVII old) of the Code that it can be positively stated that he has applied his mind and, therefore, he has taken cognizance [16].
- Expression of indefinite import. Being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by 'taking cognizance; Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender [17]
- Magistrate not bound by opinion of Investigating Officer. One of the courses open to the Magistrate is that instead of exercising his discretion and taking cognizance of a cognizable offence and following the procedure laid down under Section 200 or Section 202 of the Code, he may order an investigation to be made by the police under Section 156(3) of the Code, which the learned Magistrate did in the instant case. When such an order is made, the police is obliged to investigate the case and submit a report under Section 173 (2) of the Code. On receiving the police report, if the Magistrate is satisfied that on the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence, he may take cognizance of the offence under Section 190 (l)(b) of the Code and issue process straightway to the accused. However, Section 190 (l) (b) of the Code does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation makes out a case against

the accused. Undoubtedly, the Magistrate can ignore the conclusion (s) arrived at by the investigating officer. Thus, it is trite that the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion in this behalf, irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. This is because the purpose of the police report under Section 173 (2) of the Code, which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material refereed therein, a case or cognizance is made out or not [18].

- Magistrate not required to weigh evidence in detail. The Magistrate while taking cognizance of offence is not required to weigh the evidence in detail but is required to see whether *prima facie* offence is made out or not. He need not give the reasons in detail for purpose of taking cognizance but has to record his satisfaction on perusal of records. The impugned order shows that the Magistrate after perusing complainant. S.A. of the complainant, the evidence of P.Ws and materials on record took cognizance and summoned the accused to face trial. As such the court does not find any illegality in the impugned order [19].
- Without condoning delay in terms of requirements of Section 173. Since the offender was known on the very day of the alleged occurrence, it is clear that in the case at hand, the period of limitation commenced on the alleged date of the offence itself, i.e. on 21-7-1998. Viewed thus, it was clear that cognizance, in the instant case, could not have been ordinarily taken under Section 468 (2) (c) beyond the period of three years commencing from 21-7-1998. Hence, the last date for taking of the cognizance was 20-7-2001. But, the charge-sheet was submitted on 20.1.2001. This shows that when the charge-sheet was laid, the taking of the cognizance already stood barred by the prescribed period of limitation. The Court could not have, taken cognizance of the offence without condoning the delay in terms of requirements of Section 473. The taking of cognizance was barred by limitation [20].

Validity of supplementary charge-sheet for cognizance of offence

Where cognizance was initially taken under section 307, 324, 323 of Indian penal code. For causing grievous injuries with sharp weapon. Victim died after about one month due to head injury caused in the same incident. Held, that aby subsequent addition or deletion in the section, the accused could be made subsequent to the taking of cognizance. The subsequent supplementary charge-sheet under section 302, I.P.C. shall be deemed to have been merged with the case, the cognizance of which was already taken. Therefore, session court had no jurisdiction to take cognizance on subsequent charge-sheet [21].

Where the certified copy of order of high court was not part of judicial record then cognizance taken by magistrate before whom it was produced, is just and proper [22].

Since cognizance of offence taken by magistrate against persons separately discharged is not proper hence order issuing summon, not justified [23].

Interference by high court

The High Court should not ordinarily interfere with an order taking co passed by a competent court of law accept in a proper case [24] Where the Magistrate has territorial jurisdiction Court can deal with cases under SC/ ST Act but only upto pre-trial stage after that he has to transfer to special Court for grating speedy justice to them [25].

A comparative study of bare provision of cognizance under Cr PC

Scope of section: 190

1. The power to take cognizance, under sub-sec. (l) has been taken away from Executive Magistrate and vested in (a) Judicial Magistrate of the First Class; (b) any Second Class Judicial Magistrate, as may be specially empowered in this behalf, by the Chief Judicial Magistrate (instead of by the State Government), under sub-sec.(2).
2. In clause (b) of sub-sec. (l), for the words 'a report in writing... by any Police officer' the words 'a Police report of such facts' have been substituted. The effects of this substitution will be explained hereafter.
3. In clause (c), the words 'or suspicion' have been omitted, with the result that a Magistrate shall no longer have any power to take cognizance on his suspicion, though his power to take cognizance on his knowledge as well as information from any person other than a Police officer has been retained.

The only modes under which a Magistrate may take cognizance under the Code are laid down in section 190 [26]. Where the conditions laid down in this section and the succeeding provisions of this Chapter are not fulfilled, the Magistrate does not obtain jurisdiction to try the offence [27]. But the three clause (a), (b) and (c) of sub-section. (1) are not mutually exclusive [28].

Section- 190 and 156(3): Section 156 is placed in Chapter XII which deals with the powers of the Police to investigate a crime, while section 190 occurs in Chapter XIV which deals with the initiation of proceedings against an accused person by a Magistrate. The provisions in section 190 and 156 (3) are thus mutually exclusive and operate in entirely different spheres. In the result, even if a Magistrate receives a complaint under section 190, he can under section 156(3) provided he does not take cognizance [29]. Once he takes cognizance under section 190, he cannot resort to section 156(3), [30] if he wants investigation, he may then proceed under section 202 [31].

Section 190 and 193: While section 193 deals with the power of Magistrate to take cognizance of offences, section 193 deals with the power of a Court of Session to take cognizance of an offence for trial. The special feature of this provision is that the Court of Session cannot take cognizance unless the case has been 'committed' to it by a Magistrate, in accordance with s. 209, or the Code provides otherwise

Section 190 and 195-199: Though a magistrate may have power to take cognizance under section 190(1), his jurisdiction may be taken away or subjected to conditions by the provisions in section 195-199 [32]. At the time of taking cognizance, therefore, he must examine the facts of the

complaint, etc. and determine whether his jurisdiction to take cognizance has been taken away by any of these latter provisions [33].

The main purpose behind section 190(1) (b) is to ensure freedom and safety of the subject by giving him a right to approach the Court if he considers that a wrong has been done to him [34]. That freedom is curtailed by section 195 when the offence complained of is against public justice or the authority of public servants. Hence, before taking cognizance, the Magistrate must determine whether his power is barred by any other provision, e.g., 195 (1) [35].

Section 190 and 345: While section 190 provides for the cognizance of cognizable or non-cognizable offences by a Magistrate, section 345 is a special provision limited to the cognizance of a specific offence, namely, 'contempt *ex facie'*, relating to section 175, 178, 179, 180 and 228, I.P.C., and empowers any 'Civil; Criminal or Revenue Court' in whose presence such offence may have been committed, to take cognizance of it. Section 345, again, is a self-contained provision which provides for a summary hearing and punishment of the offender guilty of the offence.

Law relating to Cognizance: Chapter XIV of the Code of Criminal Procedure (hereinafter referred as 'Code') under the caption 'Conditions requisite for initiation of proceedings' employs the word 'cognizance'. Sections 190 and 193 provide for methods for taking cognizance under the Code. For better analysis of the scope of cognizance and the consequences arising there from, it is worthwhile to highlight the scheme of relevant provisions in the Code and the case laws touching the same.

Cognizance of offence by the magistrate

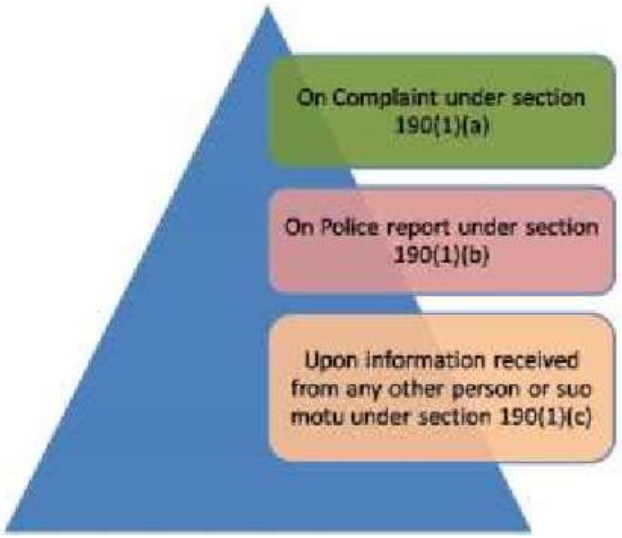

Fig 1

Section 190 of the Code outlines as to how cognizance of offences will be taken by a Magistrate on a complaint, or on a police report or upon information from any other person or *suo motu* [36]. Section 191 takes care of the situations where the Magistrate himself is a complainant. The said provision removes any doubt as to the scope for prejudice or malice on the part of the Magistrate by allowing the Chief Judicial Magistrate to transfer the case to any other Magistrate. By virtue of section 192, a Chief Judicial Magistrate, who takes cognizance of an offence, by passing administrative order, may make over the case to any other Magistrate subordinate to him for inquiry or trial.

Under section 190(1) (a), a Magistrate can take cognizance upon receiving a complaint. But the question as to whether the Magistrate has taken cognizance of the offence depends upon the steps taken afterwards. If he applies his mind to proceed with the complaint under sections 200 to 203, he must be said to have taken cognizance; whereas if he applies his mind to the complaint and proceed under section 156(3) or section 93, he cannot be said to have taken cognizance of the offence [37].

This position was strengthened in Tula Ram v. Kishore Singh [38] where the Supreme Court has held that in complaint cases if the Magistrate does not proceed as per sections 200, 202 or 203 and has ordered investigation under section 156(3), or issues a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence.

Recently, in Vasanti Dubey v State of M.P [39]**.** The Supreme Court has reiterated the position and held that in cases where police has submitted an adverse report under section 156(3) to the Magistrate, he has no power to direct the police officer to submit the challan. Though, the Magistrate is empowered to i) reject such adverse police report and direct an inquiry under section 202 or ii) he can take cognizance under section 190 at once.

The Magistrate may also take cognizance of an offence under section 190(1) (b) on receiving the police report. If he is of the opinion that prima facie the case is made out, he may straightaway issue a process. The Magistrate is not bound by the conclusion reached by the police and it is open to him to take cognizance on the basis of the police report, even though the police might have recommended in their report that no case is made out [40].

Cognizance is taken of the offence and not of the offender. Therefore, the power of Magistrate to take cognizance includes those persons who have not been arrayed by the police but there is sufficient evidence to make out their involvement in the alleged offence. A Magistrate can take cognizance of offence only within the time limits prescribed by law for this purpose under sections 467 to 473.

Where any Magistrate who is not empowered to take cognizance of an offence under clauses (a) and (b) of section 190(1), takes cognizance of such an offence under any such clause, his proceedings shall not be bad in law merely on the ground of his not being competent to do so [41]. On the other hand, if a Magistrate, not empowered to take cognizance, takes cognizance of an offence on the basis of an information received or suo-motu under section 190(1) (c) and proceeds further, his proceedings shall be void and will be of no effect as per section 461(k).

Determination for taking cognizance

Taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a *prima facie* case is made out [42].

In such circumstances Section 196(1-A), Cr PC can have no

application at all and the High Court clearly erred in quashing the proceedings on the ground that previous sanction of the Central Government of the State Government or of the District Magistrate had not been obtained. It is important to note that on the view taken by the High Court, no person accused of an offence, which is of the nature which requires previous sanction of a specified authority before taking of cognizance by the Court, can ever be arrested nor such an offence can be investigated by the police. The specified authority empowered to grant sanction does so after applying his mind to the material collected during the course of investigation. There is no occasion for grant of sanction soon after the FIR is lodged nor such a power can be exercised before completion of investigation and collection of evidence. Therefore, the whole premise on the basis of which the proceedings have been quashed by the High Court is wholly erroneous in law and is liable to be set aside [43].

If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A), Cr PC and no illegality of any kind would be committed [44].

Bar created by said phrase is only against taking cognizance by Court but not against registration of criminal case or investigation by police or submission of a report by the police on completion of Investigation. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) Criminal Procedure Code and no illegality of any kind would be committed.

Order taking cognizance of offence-accused proceeding photo copies

A revision petition photocopies of documents produced by the accused for the first time, could not be entertained and make a basis for setting aside an order passed by the trial Court and dismissing a complaint which otherwise made out the commission of an offence. The accused is doubtless entitled to set up his defence before the trial Court at the proper stage, confront the witnesses appearing before the Court with any document relevant to the controversy and have the documents brought on record as evidence to enable the trial Court to take a proper view regarding the effect thereof. But no such document, the genuineness whereof was not admitted by the parties to the proceedings, could be introduced by the accused in the manner [45].

"May take cognizance"

Magistrate is not bond to take cognizance as soon as complaint is filed. He may without taking cognizance directs investigation under section 156(3), Cr P.C [46].

No reason need be assigned by magistrate for his directing investigation without examining complainant [47].

There is no hard and fast rule as to where the Magistrate should refer the complaint to police investigation under Section 166(3), Cr. P.C. or where the Magistrate should enquire himself after taking cognizance under Section 202, Cr. P.C. But as a general rule it cannot be said that in all cases as soon as something is required to be investigate in a complaint, the Magistrate should refer the complaint to the police for investigation. If the Court is satisfied that the facts alleged in the complaint necessitate the investigation by the police and in the absence of such investigation the material evidence cannot be gathered. Then he may direct investigation under Section 156(3), Cr. P.C. But in those cases where the complainant is in possession of necessary materials, investigation under Section 156(3) should not be ordered. In private complaint of cheating or criminal breach of trust or trespass where all the incrimination materials are with the complaint investigation under Section 156(3) Cr. P.C. order should be avoided [48].

Cognizance of offence by the Court of Sessions

Section 193- cognizance of offences by Court of Session

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this code.

Scope and applicability of this section

This section contemplates commitment of case and not accused. The session court can add certain person as accused even though they were not included in the committal order [49].

The entire proceeding against the accused were held liable to be vitiated where the session judge took cognizance of offence without the case being committed by magistrate [50].

The session court has no jurisdiction to add new person of its own. Unless he has been sent for trail through the committal order passed by the magistrate [51].

Special court in view of section 193, Cr PC committal order as must and unless it is strictly made clear in the special enactment that committal order as not required, then only the special court can take cognizance [52].

Once the case has been committed to Court of Session the bar of section 193 is lifted and the session judge had unfettered jurisdiction of the court of original jurisdiction. He can summon any person other than the person facing trial before him if it comes to the conclusion from the material on record that some other person is also involved in the crime [53].

Cognizance of offences by Court of Session

Section 193 of the Code provides for cognizance of offence by Court of Session. On a plain reading of the aforesaid provision, it is clear that no Court of Session can take cognizance of any offence as a court of original jurisdiction except as otherwise expressly provided by the Code or any other law for the time being in force. Section 26 read with First Schedule of the Code requires a Magistrate taking cognizance of an offence, exclusively triable by the Court of Sessions, to commit the case for trial to the Court of Sessions as per section 209. The idea is that the Court of Session is not required to perform all the preliminary formalities under sections 207-209 of the Code which the Magistrate have to do before the case is committed to the Court of Session. However, the Court of Session may take cognizance without commitment by the Magistrate if so expressly provided by the Code or by any other law for the time being in force. In this context, an example can be cited that of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 where Special Judge-Sessions Judge is specified to take cognizance of the offences under it instead of the Magistrate.

In this regard, the Supreme Court in Rattiram v. State of M.P [54]. Has come across an interesting question as to the validity of a trial by Sessions Court where the cognizance was directly taken by the Sessions Judge without the case being committed to it by the Magistrate as required under section 193 of the Code. It was observed by the Court that the opinion was divided on this issue at the apex level. On one hand in Moly v. State of Kerala [55] and Vidyadharan v. State of Kerala [56] it has been held that the conviction by the Special Court is not sustainable if it has suo-motu taken cognizance of the complaint directly without the case being committed to it, whereas on the other hand in State of M.P. v. Bhooraj [57] it was opined that the ground that the court has taken cognizance without the committal proceeding shall not affect the trial and subsequent conviction unless it is proved that the same gives rise to failure of justice.

Limitation on power to take cognizance of an offence

Section 195-199 are exception to the general rule contained in section 190 regarding taking cognizance of an offence. The analysis of section 195-199 will bring out the following points.

1. Prosecution for contempt of lawful authority of public servant

No court shall take cognizance

a. of any offence punishable under section 172-188, penal code 1860 (IPC), or
b. of any abatement of, or attempt to commit, such offence; or
c. of any criminal conspiracy to commit such offence,

The object of this provision is to save the accused person from vexatious or baseless prosecution prompted by vindictive feeling on the part of the private complainants [58].

2. Prosecution for offence against public justice and for offence relating to documents given in evidence.

No court shall take cognizance

a. of any offence punishable under any of the following section of IPC, namely, section 193-196, 200,205-211, and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court; or
b. of nay offence described in section 463, or punishable under section 471, section 475 or section 476 IPC when such offence is alleged to been committed in respect of a document produced or given in evidence in proceeding in any court; or
c. of any criminal conspiracy to commit or attempt to commit, or the abetement of any, offence specified in sub-clause(a) or sub-clause(b);

Except on the complaint in writing of the court, or of some other court to which the court is subordinate. [Section 195(I)(b)]

3. Prosecution for offences against the state

No court shall take cognizance of-----

(a) any offence punishable under VI or under section 153-A, 153-B, 195-A or section 505 IPC; or
(b) a criminal conspiracy to commit such offence; or

Except with the previous sanction of the central Government or the state Government. [Section 196(I)]

4. Prosecution for the offence of criminal conspiracy

No court shall take cognizance of the offence of criminal conspiracy punishable under section 120-B IPC, other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two year or upward, unless the state Government or the district magistrate has consented in writing to the initiation of the proceeding. [Section 196(2)] However, no such consent shall be necessary if the criminal conspiracy is one to which the provision of section 195 apply [proviso to section 196(2)]; because, in case of such conspiracies the complaint of the concerned public servant or of the appropriate court will be necessary to initiate the proceeding [59].

5. Prosecution of judges and public servant

According to section 197(I), no court shall take cognizance of any offence alleged to have been committed by a person who is or was a judge or magistrate or a public servant, except with the previous sanction of the appropriate state or central Government. In order to attract this restrictive rule, the provision requires that

a. The judge, Magistrate or the public servant is or was one not removable from his office save by or with the sanction of the appropriate government.
b. the alleged offence must have been committed by him while acting or purporting to act in the discharge of his official duty;
c. the previous sanction must have been given by the central government if, at the time of the commission of the alleged offence the accused person is or was employed in connection with the affair of the union of India; and similarly if the accused person is or was employed in connection with the affairs of a state, such previous sanction would have to accorded by the state Government.

6. Prosecution of member of armed forces

No court shall take cognizance of any offence alleged to have been committed by any member of the armed forces of the union while action or purporting act in the discharge of his official duty, except with the previous sanction of the central government. [Section 197(2)]

7. Prosecution for offence against marriage

No court shall take cognizance of any offence punishable under chapter XX of the IPC except upon a complaint by some person aggrieved by the offence. [Section 198 (I)]

8. Prosecution of husband for rape

No court shall take cognizance of an offence under section 376 IPC (Rape), where such offence consist of sexual intercourse by a man with his own wife, the wife being under 15 year of age, if more than one year has elapsed from the date of commission of the offence. [Section 198(6)] No court shall take cognizance of an offence under section 376-B (rape by husband of the victim women, when they are living separately), except upon a complaint by wife against husband unless the court satisfied, prima facie of the facts constituting the offence. [Section 198-B] [60]

Conclusion & suggestion

The expression "to take cognizance" has not been defined in the code, nor does the code prescribed any special form of taking cognizance. The word "cognizance" is however, used in the code to indicate the point when the magistrate or judge takes judicial notice of an offence. It is a word of infinite import, and is perhaps not always used in exactly the same sense.

The expression 'cognizance' merely means 'become aware of' and when used with the reverence to a court or judge, it connotes 'to take notice judicially'. It indicates the point when the court or a magistrate takes judicial notice of an offence with a view to point initiate proceeding in respect of such offence said to have been committed by someone. "Taking cognizance" means cognizance of an offence and not of an offender. Once the magistrate takes cognizance of an offence. it is the duty to find who the offender really are and once he comes to the conclusion that apart from the person sent up by the police some other person are involved, it is his duty to proceed against those person.

The author is of the opinion that it can be seen from the discussion so far that the Code confers power to take cognizance both on Magistrate and Sessions Court. The Magistrate is given powers in cases where he decides not to take cognizance and want to further satisfy himself whether there is a prima facie case or not. It is also seen that some special statues confer extraordinary powers on Sessions Court to take cognizance directly without the committal of the case by the Magistrate. On the other hand code also restricts on the power to take cognizance of offence. Section 195-199 are exception to general rule contained in section 190 regarding taking cognizance of an offence.

To conclude, as remarked by the Supreme Court, there is no special charm or any magical formula in the expression 'taking cognizance' which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to take further judicial action.

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34. Patel V. state of Gujrat, (1971) 2 SCC 376 (Para 4)
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    a. 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—
    b. upon receiving a complaint of facts which constitute such offence;
    c. upon a police report of such facts;
    d. Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
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