IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH

ON THE 23rd OF AUGUST, 2022

MISC. CRIMINAL CASE No. 41296 of 2021

Between:-

1. **RAKESH S/O RAMESH CHANDRA KABRA OCCUPATION: TEACHER PIPLIYAMANDI, MANDSAUR (MADHYA PRADESH)**
2. **PRASHANT S/O ASHOK GARG PIPLIYAMANDI, MANDSAUR, DISTT. MANDSAUR (MADHYA PRADESH)**
3. **ASHOK S/O SHANKARLAL GARG PIPLIYAMANDI, MANDSAUR, DISTT. MANDSAUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI POURUSH RANKA, ADVOCATE)

AND

1. **ISMAIL S/O IBRAHIM MEWATI, AGED ABOUT 44 YEARS, OCCUPATION: AGRICULTURE DAUDKHEDI, P.S. VAYDINAGAR, MANDSAUR (MADHYA PRADESH)**
2. **RAIS S/O UNKNOWN, AGED ABOUT 30 YEARS, OCCUPATION: STAMP VENDOR MADARPURA, MANDSAUR (MADHYA PRADESH)**
3. **SMT. PUSHPA KHABIYA OCCUPATION: NOTARY COURT PREMISES, MANDSAUR (MADHYA PRADESH)**
4. **STATE OF M.P. THROUGH P.S. NAI ABADI P.S. NAI ABADI, MANDSAUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI R.S.BAIS, GOVT.ADVOCATE FOR RESPONDENT No.4/STATE)

This application coming on for order this day, the court passed the following:

ORDER

This petition has been filed under Section 482 of Cr.P.C. for quashing the order dated 26.7.2021, passed by the Court of 2nd Additional Sessions Judge, Mandsaur in Criminal Revision No. 87/2018, whereby the order dated 11.7.2018 passed by the Court of Judicial Magistrate First Class [in short JMFC], Mandsaur in Criminal complaint No.0/2018 "Ismail Vs. Raees and others" rejecting the unregistered criminal complaint filed by the respondent No.1 against the applicants and respondents No. 2 & 3 under Section 200 of Cr.P.C. for the offences punishable under Section 420, 465, 467, 468, 471 and 120-B of IPC was set aside and the matter was remanded back to the Court of JMFC, Mandsaur for adjudicating the same on merits.

2. Brief facts giving rise to this petition are that Respondent No.1/complainant Ismail S/O Ibrahim filed an application before the Court of Tehsildar Mandsaur for cancellation of an order of mutation, passed in respect of land bearing survey No.154/2 (0.540 hectares) situated in village Tigariya, Tehsil & District Mandsaur, stating therein that Anwar prepared a forged Hibanama of his deceased brother Ibrahim s/O Ibrahim for taking advantage of the same name of the respondent No.1 and on the basis of the said Hibanama, he with the help of Liyakat, Shakeel and Raees Mansoori got the above land mutated in his name. On the basis of said complaint, Tehsildar vide

order dated 17.8.2017 cancelled the aforesaid order of mutation passed in favour of Anwar and directed the Police to take appropriate action in the matter. In pursuance of which on the basis of the written complaint made by respondent no. 1, an FIR bearing Crime No.123/2007 was registered at P.S. Nai Abadi, Mandsaur against Anwar, Liyakat, Shakeel, and Raees Mansoori. After completion of the investigation charge sheet was filed before the Court of JMFC against all the above four accused persons for the offences punishable under Section 420, 467, 468, 120-B of IPC, and thereafter, the case was committed to the Court of 2nd Additional Sessions Judge, Mandsaur.

3. Respondent No.1 thereafter filed a criminal complaint u/S 200 of Cr.P.C. before the Court of JMFC, Mandsaur against the applicants as well as respondents No.2 & 3 for impleading them as accused in the aforesaid criminal case stating therein that applicants, as well as respondents No. 2 & 3, were assisted accused persons in preparing forged Hibbanama and getting the land mutated in accused Anwar's name and were involved in the crime and police intentionally not taking any action against them. Learned JMFC, vide order dated 11.7.2018 dismissed his complaint on the ground that cognizance of offence cannot be taken twice. Being aggrieved by the said order respondent No.1 preferred a criminal revision bearing No.87/2018 before the Court of 2nd Additional Sessions Judge, Mandsaur, which was allowed vide order dated 26.7.2021 and after setting aside the

order passed by the Court of Judicial Magistrate First Class, the matter was remanded back to the Court of JMFC, with a direction that Magistrate should decide the criminal complaint on merits. Being aggrieved by the same this petition under Section 482 of Cr.P.C.has been filed.

4. Learned counsel for the applicants submits that the Court of JMFC, Mandsaur taking cognizance in the matter has committed the case to the Court of Sessions Judge, then the Court of JMFC cannot take cognizance again. Learned revisional Court without appreciating the judgment passed by the Full Bench of Hon'ble Supreme Court in the case of ***Dharmpal and others Vs. State of Haryana (2014) 3 SCC 306*****,** has passed the impugned order, which is not sustainable. Respondent No.1 ought to have filed the protest petition before the Judicial Magistrate instead of filing a separate private complaint. He further submits that at the present stage only remedy is to approach the Sessions Court under Section 319 of Cr.P.C. Hence, the present petition is liable to be allowed.

5. Learned counsel for the respondent No.4/State has opposed the prayer and submits that as stated in the impugned order that summoning other persons would only be a part of the process taking cognizance, therefore, it cannot be said that the Court of JMFC cannot summon the applicants and respondents No.2 & 3 in the matter, wherein cognizance was taken earlier. The petition is devoid of merits and liable to be dismissed.

6. Heard learned counsel for both the parties and perused the record.

7. There is no doubt that it is a well settled position of law that cognizance of an offence can only be taken once and perusal of the order dated 11.07.2018, passed by the learned Court of JMFC, indicates that in the instant case initially the cognizance of the offence was taken by the Court of JMFC itself. Hence, it cannot be said that the Court of JMFC had played a "passive role" while committing the case to the Court of Session. In such a scenario the proceeding with regard to issuance of summons to other persons, involved in the crime has to be conducted by the same Court i.e. the Court of JMFC, who had taken the cognizance in the matter as cognizance of the same offence can not be deemed to be taken a second time by the Sessions Court. In this regard judgment passed by the Honorable Apex Court in the case of ***Balveer Singh and Anr. Vs. State of Rajasthan (2016) 6 S.C.C. 680*** is relevant, wherein the Apex Court considering the judgment passed in the case of ***Dharmpal and others Vs. State of Haryana (Supra)*****,** held as *follows:-*

> **13.** A bare reading of Section 190 of the Code which uses the expression "any offence" amply shows that no restriction is imposed on the Magistrate that the Magistrate can take cognizance only for the offence triable by the Magistrate Court and not in respect of the offence triable by a Court of Session. Thus, he has the power to take cognizance of an offence which is triable by the Court of Session. If it is so, the question is as to what meaning is to be assigned to the words "as a court of original jurisdiction" occurring in

Section 193 of the Code when the Court of Session takes cognizance of any offence. To put it otherwise, when the Magistrate has taken cognizance and thereafter only committed the case to the Court of Session, whether the Court of Session is not empowered to take cognizance of an offence again under Section 193 of the Code or it still has power to take cognizance acting as court of original jurisdiction. In order to find the answer, we now advert to the appraisal of ***Dharam Pal*** *case*[1].

14. In *Dharam Pal case*[1], an FIR was registered against one *N* and the appellants for the commission of offences under Sections 307 and 323 read with Section 34 IPC. The police after investigation submitted its report under Section 173(2) of the Code before the Magistrate sending only *N* for trial while including the names of the appellants in Column 2 of the report. On receipt of such police report, the Magistrate did not, straightaway, commit the case to the Sessions Court but, on an objection being raised by the complainant, issued summons to the appellants therein to face trial with the other accused *N* as the Magistrate was convinced that a prima facie case to go for trial had been made out against the appellants as well. Further, while doing so, the Magistrate did not hold any further inquiry, as contemplated under Sections 190, 200 or even 202 of the Code, but proceeded to issue summons on the basis of the police report only. In this background, the following questions arose for the consideration by the Constitution Bench[1]: (**SCC p. 312, para 7**)

> "*7.1*. Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?
>
> *7.2*. If the Magistrate disagrees with the police report and is convinced that a case had also been made out for

trial against the persons who had been placed in Column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?

7.3. Having decided to issue summons against the appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?

7.4. Can the Sessions Judge issue summons under Section 193 CrPC as a court of original jurisdiction?

7.5. Upon the case being committed to the Court of Session, could the Sessions Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was reached in order to take recourse thereto?

7.6. Was ***Ranjit Singh*** **v.** ***State of Punjab***[5], which set aside the decision in ***Kishun Singh*** **v.** ***State of Bihar***[6], rightly decided or not?"

15. Answering the reference, the Constitution Bench in ***Dharam Pal*** *case*[1] held that: **(SCC pp. 318-19, paras 34-36)**

15.1. The Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons dehors the police report. The Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) of the

Code. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being prima facie satisfied that a case had been made out to proceed against the persons named in Column 2 of the report, he may proceed to try the said persons or if he is satisfied that a case had been made out which was triable by the Court of Session, he must commit the case to the Court of Session to proceed further in the matter. Further, if the Magistrate decides to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same is found to be triable by the Sessions Court.

15.2. The Sessions Judge is entitled to issue summons under Section 193 of the Code upon the case being committed to him by the Magistrate. Section 193 speaks of cognizance of offences by the Court of Session. The key words in the section are that: (*Dharam Pal case*[1], SCC p. 319, para 38)

> "*38. … 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*."

The provision of Section 193 entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. The submission that the cognizance indicated in Section 193 deals not with

cognizance of an offence but of the commitment order passed by the Magistrate, was specifically rejected in view of the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section.

> **15.3.** Cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceeding to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 of the Code will, therefore, have to be understood as the Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the Sessions Judge.

8. In view of the aforesaid legal position it is clear that the process of summoning other persons, involved in the crime is only a part of the process of taking cognizance and if a Private Criminal Complaint u/S 200 of Cr.P.C. has been filed for impleading other persons as accused making allegations that the police is intentionally not taking action against them, then certainly the same can only be considered by the Court of JMFC, who had taken the cognizance in the matter. In the instant case initially, the cognizance was taken by the Court of JMFC,

Mandsaur, therefore learned revisional court has not committed any error in setting aside the order dated 11.07.2018, passed by the Court of JMFC, Mandsaur, and remanding the matter back to the said Court, for adjudicating the same on merits, but so far as direction to the applicants to remain present alongwith respondents No.1 to 3 on 12.8.2021 before the trial Court i.e. the Court of Judicial Magistrate First Class, Mandsaur is concerned, the same cannot be upheld as order to summon the applicants has not yet been passed by the trial Court.

9. Hence, in view of the aforesaid discussion this petition is partly allowed only to the extent that direction given to the applicants to remain present before the trial Court on 12.8.2021 and the impugned order passed by the revisional Court in this regard is set aside. So far as the rest part of the impugned order is concerned, this Court is of the considered view that there is no illegality or jurisdictional error warranting interference of this Court under Section 482 of Cr.P.C., therefore, the petition in this regard stands dismissed with a direction that the learned trial Court shall decide the criminal complaint filed by the respondent No.1 on merit as per law.

Patil

(SATYENDRA KUMAR SINGH)
JUDGE