

FIR No.129/20
u/s 392/394/397/411/120-B/34 IPC
PS Punjabi Bagh
State vs. Deepak etc.

21.08.2020

File taken up at request of Ld. APP for the State and Ld. Counsel for the accused whose bail application is pending before the Court.

Present: Ld. APP for the State is present through Cisco webex meet application.
Sh. Ajay Kumar Khawal, ld. Counsel for the accused / applicant Krishan connected through Cisco webex meet application.

Other accused persons are stated to be in JC.

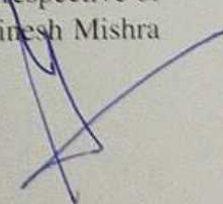
Matter is at the stage of consideration of chargesheet and Ld. APP for the State requests that as long time elapsed due to lockdown since filing of chargesheet the chargesheet should also be considered.

Ld. APP for the state has submitted that as per statement recorded under section 161 Cr.P.C. of the complainant, he has clearly specified the role and acts of the accused persons. It is also submitted that on the basis of the entire record, the offences as invoked under the charge sheet are clearly made out. Ld. APP for the State has relied on the judgment of Hon'ble Supreme Court in the matter of Ajay Kumar Parmar Vs. State of Rajasthan (2012) 12 SCC 406 and pressed that the Hon'ble Supreme Court has held that when the offence is exclusively triable by Ld. Sessions Courts, the court of Ld. Magistrate cannot probe into the matter. The court of Magistrate has to commit the matter to the Ld. Sessions Court which as per law is mandatory.

Heard. Perused the file.

The expression "cognizance of the offence" in it's broad and literal sense, means taking notice of an offence and would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. For taking cognizance prima facie case needs to be established meticulous examination of probabilities and improbabilities is not required. Upon receipt of police report under section 173(2), a Magistrate is entitled to take cognizance of an offence under section 190(1)(b) of the Code.

Basically, cognizance is taken of an offence and not as against an offender. Cognizance is the point when a Magistrate first takes judicial notice of an offence and it does not necessarily denote mean the commencement of proceedings. Taking cognizance, is a judicial as well as mental act. Now, The words 'may take cognizance' in section 190(1) of Cr.P.C. impart exercise of such judicial discretion. Upon filing of report under section 173(2) of Cr.P.C. it is open to the Magistrate after exercise of his judicial discretion to take the view that the facts disclosed in report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify an accused being put on trial. On either of these grounds the Magistrate will be perfectly justified in declining to take cognizance irrespective of the opinion of the police. Reliance is placed upon *Abhinandan Jha v. Dinesh Mishra*



1968 SC 117, Kuli Singh v. State of Bihar AIR 1978 Pat. 298. Even, the committing Magistrate has to perform judicial function as he has to be satisfied that an offence is prima facie disclosed and is exclusively triable by a court of session. If no offence as such triable by court of sessions is disclosed he may refuse to take cognizance of, if the remaining offence disclosed of is not triable exclusively by a court of session he may proceed to deal with it. Reliance is placed upon Rajender Kumar Jain v. State AIR 1980 SC 1510.

Now, in the present case perusal of the record shows that complainant has failed to identify the accused persons during the course of test identification parade. In these circumstances and in the light of above detailed discussion, I declined to take cognizance of the offences punishable under section 394/397 IPC, however, I take cognizance of the remaining offences. Copy of charge sheet be supplied to the other accused persons through Jail Superintendent.

Be put up on 04.09.2020.

The next date earlier given i.e. 25.09.2020 stands cancelled.

(MANU VEDWAN)

MM-01(West)/THC:Delhi:21.08.2020