

-(1)- MCRC No. 18779/2017
Sumit Jaiswal & Anr. vs. Smt. Bhawana Jaiswal

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(Single Bench)

MCRC NO. 18779 OF 2017

SUMIT JAISWAL & ANR. PETITIONERS
Versus
SMT. BHAWANA JAISWALRESPONDENT

CORAM

Hon. Shri Justice Rajeev Kumar Shrivastava

Appearance

Shri Vikash Saxena, learned counsel for the Petitioners.
Smt. Sudha Shrivastava, learned counsel for the respondent.

Whether approved for Reporting : Yes

Reserved on : 10.4.2019

Whether approved for reporting : Yes

Law laid down	Relevant paras
<i>1. As per Section 190 of CrPC, cognizance means it indicates the the point where the Court or Magistrate takes judicial notice of the offence with a view to initiate proceedings in respect of such offence said to have been committed by someone. Further, it is entirely a different thing from initiation of proceedings, rather it is the condition precedent to the initiation of proceeding by the Magistrate or the Judge. The cognizance is taken of</i>	Para 10

<i>cases and not of persons.</i>	
<i>2. The Protection Officer is legally authorized officer and his duties are defined in Domestic Violence Act. Therefore, it cannot be said that if on the basis of DIR any cognizance has been taken by the Magistrate, the same would be unlawful.</i>	Para 11

ORDER

(Passed on 19th June, 2019)

The present petition has been preferred by the petitioners under Section 482 of CrPC against the order dated 02/6/2017 passed by the Judicial Magistrate First Class, Gwalior in MJC-R No.975/2017, whereby cognizance has been taken against the petitioners for the offence punishable under Section 12 of Protection of Women from Domestic Violence Act.

3. Learned counsel for the petitioners has submitted that the cognizance is taken only on the basis of Domestic Incident Report (DIR) preferred by the Project Officer/Protection Officer, Integrated Child Development Project, Urban No.1, District Gwalior, in which there is no sufficient evidence showing involvement of the present petitioners in any manner.

The present petitioners are brother-in-law and sister-in-law of the respondent. There were disputes and quarrels between the respondent and her husband. One information was also published with regard to dissolution of relations between the respondent and her husband in the daily newspaper Dainik Bhaskar. Despite that, present petitioners have been falsely implicated in this case. Therefore, prayed for quashing of the proceedings pending against the present petitioners.

4. On the contrary, learned counsel for the respondent prays for dismissal of the petition on the ground that sufficient material is available against the petitioners to connect them with the offence.

5. Heard learned counsel for the rival parties and perused the material available on record.

6. In the present case, an objection is raised that the case was registered on the basis of Domestic Incident Report (DIR) only produced by the person appointed by the State Government, whose primary duty is to help the Magistrate in the protection of women from domestic violence. He also helps victims lodging complaint in proper format which is

known as Domestic Incident Report or DIR. Besides the same, the Protection Officer shall prepare a list of shelter homes having liaseu with the local police station for compliance of any order/protection of victims, getting proper medical attention to the victims. DIR is prepared in a format which is provided under the Act. Domestic Violence may be of physical abuse, economic abuse or sexual abuse. That means any act or conduct shall constitute domestic violence that harms or creates danger for life, limb or health of the complainant or relates to emotional abuse as insult, torture, taunting etc, which creates havoc with the victim would be emotional abuse whereas economic abuse can be deprivation of economic or financial resources and not giving enough money to run house held expenses and even preventing the woman from earning. It also includes prohibition or restriction to access to resources or use facilitates which the aggrieved person is entitled to by virtue of the domestic relationship with the respondent.

7. The “Domestic Incident Report” is defined in sub-Section (e) of Section 2 of Domestic Violence Act. “Domestic Incident Report” means a report made in the prescribed form

on receipt of a complaint of domestic violence from an aggrieved person.

8. Section 9 of Domestic Violence Act runs as under:-

“9. Duties and functions of Protection Officers. - (1)

It shall be the duty of the Protection Officer—

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in

accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.”

9. Section 190 of CrPC runs as under:-

“190. Cognizance of offences by Magistrates.

(1) 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-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

10. As per Section 190 of CrPC, cognizance means it indicates the the point where the Court or Magistrate takes judicial notice of the offence with a view to initiate proceedings in respect of such offence said to have been committed by someone. Further, it is entirely a different thing from initiation of proceedings, rather it is the condition precedent to the initiation of proceeding by the Magistrate or the Judge. The cognizance is taken of cases and not of

persons. [(kindly see **Bhushan Kumar. vs. State (NCT of Delhi), (AIR 2012 SC 1747)**)].

11. In the present case, the Protection Officer is legally authorized officer and his duties are defined in Domestic Violence Act. Therefore, it cannot be said that if on the basis of DIR any cognizance has been taken by the Magistrate, the same would be unlawful.

In view of the above, no perversity in impugned order is found. Hence, the petition stands dismissed and the order dated 02/6/2017 passed by the Judicial Magistrate First Class, Gwalior in MJC-R No.975/2017 is hereby affirmed.

AKS

**(Rajeev Kumar Shrivastava)
Judge.**