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A.F.R.

Reserved on :- 09.04.2025

Delivered on :- 21.04.2025

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 44720 of 2024

Applicant :- Nisha Kushwaha
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Ronak Chaturvedi
Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Ronak Chaturvedi, learned counsel for the applicant and Sri Pankaj Saxena, learned A.G.A. for the State.

2. The present application has been filed to partly set aside the order rejecting the protest petition dated 23.11.2024 passed by Judicial Magistrate/Civil Judge (J.D.), FTC, (CAW), Jhansi in Case No. 25936 of 2024 (Misc. Case No. 839 of 2024) (State Vs. Gaurav and others) arising out of Case Crime No. 5 of 2024 u/s 498-A, 354, 323, 504, 506 I.P.C. and 3/4 of Dowry Prohibition Act, Police Station- Mahila Thana, District-Jhansi, by which application for taking cognizance u/s 406, 376/511 I.P.C. has been rejected.

3. The issue involved in this case is that an F.I.R. was lodged by the applicant against opposite party no. 2 and other co-accused persons on 16.01.2024 u/s 498-A, 354, 323, 504, 506 I.P.C. and 3/4 of Dowry Prohibition Act. The police, after investigation, has submitted a charge-sheet against opposite party no. 2 u/s 498-A, 354, 323, 504, 506 I.P.C. and 3/4 of Dowry Prohibition Act while the charge-sheet was filed against other co-accused, Gaurav and Smt. Meera u/s 498-A, 323, 504 1.P.C. and 3/4 of Dowry Prohibition Act. The present applicant, who is the first informant,

had filed a protest petition with the plea that in her statement, she made a specific allegation of an attempt to rape and non-returning of her streedhan by the opposite party no. 2, therefore, cognizance might also be taken u/s 376/511 and 406 I.P.C. This application was rejected by the learned Magistrate by the impugned order, which is under challenge.

4. Learned counsel for the applicant has submitted that while taking cognizance of the chargesheet, the Magistrate is not bound by the conclusion of the Investigating Officer. In support of his arguments, he has relied upon the judgement of Apex Court in the case of **Pramatha Nath Mukherjee Vs. State of West Bengal, 1960 SCC Online SC 76,** judgement in the case of **Dharam Pal and others Vs. State of Haryana and Another, (2014) 3 SCC 306,** judgement in the case of **Nahar Singh Vs. State of Uttar Pradesh and Another, (2022) 5 SCC 295** and judgement in the case of **Balveer Singh and Another Vs. State of Rajasthan and Another, (2016) 6 SCC 680.** It is further submitted by learned counsel for the applicant that u/s 190(1)(b) of Cr.P.C., the Magistrate can take cognizance on the basis of fact available on the record with the police report. Therefore, the Magistrate, on the basis of material, can add or subtract the offence if material shows that the offence under other sections is also made out.

5. Per contra, Sri Pankaj Saxena, learned A.G.A. for the State has vehemently opposed the prayer on the ground that the Apex Court in the case of **State of Gujarat Vs. Girish Radhakrishnan Varde, (2014) 3 SCC 659** clearly observed in paragraphs nos.13, 14 and 16 that if charge-sheet is filed under certain sections then the Magistrate cannot include or add any section which is not mentioned in the charge-sheet. It is further submitted by learned A.G.A. that even in paragraph no. 36 of judgement in the case of **Dharam Pal (supra),** it is clearly observed by the Apex Court that if after receiving the police report, Magistrate is satisfied with the prima facie case then he has to proceed on the basis of police report itself. It is also

submitted that the issue in **Dharam Pal (supra)** was whether the Magistrate can take cognizance against the person who was mentioned as accused in the column of accused in the charge-sheet but in the present case, the issue is different whether the Magistrate can add or subtract any section after receiving the charge-sheet. Therefore, the case of **Dharam Pal (supra)** is not directly applicable to the present case.

6. Learned A.G.A. has also relied upon the recent judgement of Apex Court in the case of **Dablu Kujur Vs. State of Jharkhand, (2024) 6 SCC 758** wherein the Apex Court in paragraphs nos. 13 and 14 has observed that once the police report is submitted, the Magistrate can accept the report and take cognizance of the offence and issue process, but if he disagrees, he can direct for further investigation, or he may discharge the accused or drop the proceeding. Therefore, the Apex Court clearly observed in this case that at the time of taking cognizance, the Magistrate has to decide whether, on the basis of the charge-sheet, the offence appears to have been committed or not with regard to the offence under particular sections.

7. Learned A.G.A. has also submitted that the issues in the case of **Girish Radhakrishnan Varde (supra)** and in the case of **Dharam Pal (supra)** are totally different. Therefore, the judgement delivered by the coordinate Bench in the case of **Sadab Vs. State of U.P. and another, 2023 SCC Online All 30** while delivering the judgement in the case of **Girish Radhakrishnan Varde (supra),** the Apex Court did not consider the judgement of **Dharam Pal (supra),** appears not to be correct as the issue was totally different in both the cases.

8. After hearing the submissions of learned counsel for the parties and perusal of record, the question which arises for determination is whether the Magistrate at the time of taking cognizance can add or subtract any section regarding offences on the basis of material available along with the charge-sheet?

9. The Apex Court, in the case of **Girish Radhakrishnan Varde (supra)** has decided the issue that the Magistrate at the time of

taking cognizance cannot add or subtract the section mentioned in the charge-sheet and further observed that in case the relevant section has not been mentioned despite availability of material on record then proper course is consideration of this issue at the time of framing of charge u/s 216, 218 or 228 Cr.P.C. Paragraph nos. 14 and 15 of **Girish Radhakrishnan Varde (supra)** is being quoted as under:-

> *14. But if a case is registered by the police based on the FIR registered at the police station under Section 154 CrPC and not by way of a complaint under Section 190(1)(a) CrPC before the Magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police which alone is legally entitled to conduct the investigation and, thereafter, submit the charge-sheet unless of course a complaint before the Magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the charge-sheet, the matter goes to the Magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and the Magistrate cannot exclude or include any section into the charge-sheet after investigation has been completed and charge-sheet has been submitted by the police.*
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> *15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the charge-sheet.*

10. The Apex Court, in its earlier judgement of two Benches of Apex Court in the case of **Pramatha Nath Mukherjee (supra),** has specifically held that the Magistrate, while taking cognizance u/s 190(1)(b) Cr.P.C., can take cognizance of all offences constituted by the facts reported by the police which also include the offences which are not mentioned in the charge-sheet. Paragraph nos. 3 and 4 of **Pramatha Nath Mukherjee (supra)** is being quoted as follows:-

> *3. It is quite clear that in deciding whether action shall be taken by him under sub-section (2) or sub-section (3) of Section 251-A the Magistrate has to form an opinion whether there is any ground for presuming that an accused has committed an offence triable under Chapter XXI or there is no such ground. When his opinion is that there is ground for a presumption that the accused has committed an offence punishable under Chapter XXI which the Magistrate is competent to try and which could be adequately punished by him he shall proceed with the trial. But when he forms the opinion that there is no ground for presuming that an offence punishable under Chapter XXI has been committed by the accused his duty is to discharge the accused. The real question is, when an order of discharge is made by the Magistrate in exercise of the powers under sub-section (2) of Section 251-A is the discharge in respect of all the offences which the facts mentioned in the police report would make out? The answer must be in the negative. When the Magistrate makes an order under Section 251-A(2) he does so as, after having considered whether the charge made in the police report of the offences triable under Chapter XXI is groundless he is of opinion that the charge in respect of such offence is groundless; but the order of discharge has reference only to such offences mentioned in the charge-sheet as are triable under Chapter XXI. It very often happens that the facts mentioned in the charge-sheet constitute one or more offences triable under Chapter XXI as warrant cases and also one or more other offences triable under Chapter XX. The order of discharge being only in respect of the offences triable under Chapter XXI does not affect in any way the position that charges of offences triable under Chapter XX also are contained in the police report.*
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> *4. But, says the learned counsel for the appellant, the Magistrate cannot proceed with the trial of these other offences triable under Chapter XX because no cognizance has been taken of such other offences. He contends that only after a fresh complaint has been made in respect of these offences triable under Chapter XX that the Magistrate can take cognizance and then proceed to try them after following the procedure prescribed by law. This argument ignores the fact that when a Magistrate takes cognizance of offences under Section 190(1)(b) CrPC, he takes cognizance of all offences constituted by the facts reported by the police officer and not only of some of such offences. For example, if the facts mentioned in the police report constitute an offence under Section 379 IPC as also one under Section 426 IPC the Magistrate can take cognizance not only of the offence under Section 379 but also of the offence under Section 426. In the present case the police report stated facts which constituted an offence under Section 332 IPC but these facts necessarily constitute also a minor offence under Section 323 IPC. The Magistrate when he took cognizance under Section 190(1)(b) CrPC of the*

offence under Section 332 IPC cannot but have taken cognizance also of the minor offence under Section 323 IPC Consequently, even after the order of discharge was made in respect of the offence under Section 332 IPC the minor offence under Section 323 of which he had also taken cognizance remained for trial as there was no indication to the contrary. That being an offence triable under Chapter XX CrPC the Magistrate rightly followed the procedure under Chapter XX.

11. The process of taking cognizance has been mentioned u/s 190 Cr.P.C. (corresponding Section 210 B.N.S.S.), which prescribes that the Magistrate can take cognizance either on complaint or on police report or on the information received from any other person other than police officer or upon his own knowledge. Section 210 B.N.S.S. is being quoted as follows :- .

Section 210 in Bharatiya Nagarik Suraksha Sanhita, 2023

(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, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (submitted in any mode including electronic mode) 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.

12. The Magistrate at the time of taking cognizance on any of the three modes mentioned in Section 190 Cr.P.C. makes an opinion that there is sufficient ground for proceeding, then he issues process, i.e. summons/warrant u/s 204 Cr.P.C. for the appearance of the accused. In the present case, we are concerned with only 190(1)(b) Cr.P.C. regarding cognizance of police reports.

13. From the perusal of Section 190(1)(b) Cr.P.C., it is clear that the Magistrate takes cognizance of any offence on the basis of the fact mentioned in the police report.

14. In the case of **Fakhruddin Ahmad Vs. State of Uttaranchal and Another, (2008) 17 SCC 157,** the Apex Court observed that when the police report is submitted before the

Magistrate, the Magistrate is not bound by the opinion of the Investigating Officer, and he may take cognizance of any offence on the basis of material available with police report irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. Paragraph no. 12 of **Fakhruddin Ahmad (supra)** is being quoted as under:-

> *12. 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 referred therein, a case for cognizance is made out or not.*

15. The judgement of **Girish Radhakrishnan Varde (supra)** was delivered by the Apex Court on 25.11.2013 but prior to the delivery of this judgement, the Constitution Bench of Apex Court had also delivered its judgement in the case of **Dharam Pal (supra)** on 18.07.2013, wherein the Apex Court observed that the Magistrate, after receiving the police report, may disagree with the same and issue process and summon against the accused on the basis of material available with police report and take cognizance of offence and summon the person as accused though his name was not mentioned in the charge-sheet as accused but in column 2 of the report. It is further observed by the Constitution Bench that if the Magistrate decides to proceed against a person though he was not nominated as an accused by the police then the Magistrate would have to proceed on the basis of police report itself. Paragraph nos. 35, 36, 39, 40 of **Dharam Pal (supra)** are quoted as under:-

> *35. In our view, 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) CrPC. 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 satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the*

said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided 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 was found to be triable by the Sessions Court.

39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that 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, proceed 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 learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned 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 learned Sessions Judge.

40. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

16. In the case of **Dharam Pal (supra),** three Judge Bench, on finding the judgement of **Kishun Singh Vs. State of Bihar, (1993) 2 SCC 16** conflicting with the judgement of **Ranjit Singh Vs. State of Punjab, (1998) 7 SCC 149** regarding authority of Magistrate u/s 193 Cr.P.C. in the case triable by Sessions Court, referred the matter to larger Bench. Thereafter, a Constitution

Bench was formed, which framed six questions as mentioned in paragraph no. 7 of **Dharam Pal (supra)** which is as follows :-

> *7. The questions which require the consideration of the Constitution Bench are as follows:*
> *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 case [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554] , which set aside the decision in Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , rightly decided or not?*

17. The Constitution Bench finally held that decision in **Kishun Singh (supra)** is correct and decision in **Ranjit Singh (supra)** does not lay down correct law in respect of power of Sessions Court after committal of case to it.

18. The judgement of the Constitution Bench of **Dharam Pal (supra)** was also considered in the case of **Balveer Singh (supra)** wherein it was observed that the Magistrate, after receiving the police report, can take cognizance of an offence on the basis of material available with the police report even if the same is not mentioned in the charge-sheet. Paragraph no. 12 of **Balveer Singh (supra)** is being quoted as under:-

> *12. In view of the aforesaid provisions, the question that arises is as to whether the Magistrate can take cognizance of an offence which is triable by the Court of Session or he is to simply commit the case to the Court of Session, after completion of committal proceedings as it is the Court of*

Session which is competent to try such cases. On the one hand, Section 190 of the Code empowers the Magistrate to "take cognizance of any offence" which gives an impression that such Magistrate can take cognizance even of an offence which is triable by the Court of Session. On the other hand, when the case is committed to the Court of Session by the Magistrate, Section 193 of the Code stipulates that the Court of Session shall take cognizance "as a court of original jurisdiction" which shows that the cognizance is taken by the Court of Session as a court of original jurisdiction and, thus, it is the first time the cognizance is taken and any order passed by the Magistrate while committing the case to the Court of Session did not amount to taking cognizance of the offence which is triable by the Court of Session.

19. The Apex Court again, in the case of **Nahar Singh (supra)** after considering the five Judge Bench judgement of **Dharam Pal (supra)** as well as **Balveer Singh (supra)** observed that on receiving the police report, the Magistrate is not bound by the opinion of the Investigating Officer mentioned in the charge-sheet. He can independently apply his mind to the material available with the police report and take cognizance of an offence even against the person who was neither mentioned as an accused nor mentioned in column 2 of police report, and it was further observed that it is the duty of the Magistrate to bring a person to trial against whom there is material in the police report. Paragraphs nos. 25, 26 and 27 of **Nahar Singh (supra)** are being quoted as under:-

25. Jurisdiction of the Magistrate to take cognizance of an offence triable by a Court of Session is not in controversy before us. The course open to a Magistrate on submission of a police report has been discussed in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] . In para 39 of the Report in Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , such power or jurisdiction of the Magistrate has been spelt out. We have quoted this passage earlier in this judgment.

26. The other difference so far as this case is concerned in relation to the factual basis on which the decision of the Constitution Bench in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] as also the judgment in Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] were delivered is that in both these cases, the names of the persons arraigned as accused had figured in Column (2) of the charge-sheet. This Column, as it appears from the judgment in Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] , records the name of a person under the heading "not sent up". In that case, the

person concerned was named in the FIR. But that factor, by itself, in our opinion ought not to be considered as a reason for the Court in not summoning an accused not named in the FIR and whose name also does not feature in charge-sheet at all. These judgments were delivered in cases where the names of the persons sought to be arraigned as accused appeared in Column (2) of the police report. In our opinion, the legal proposition laid down while dealing with this point was not confined to the power to summon those persons only, whose names featured in Column (2) of the charge-sheet.

27. In Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , the second point formulated (para 7.2) related to persons named in Column (2), but the issue before the Constitution Bench related to that category of persons only. This is the position of law enunciated in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] . In the latter authority, the duty of the Court taking cognizance of an offence has been held "to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons". Such duty to proceed against other persons cannot be held to be confined to only those whose names figure in Column (2) of the charge-sheet.

20. So far as the judgement of the Apex Court in **Girish Radhakrishnan Varde (supra)** is concerned, that judgement appears to have been passed without considering the earlier judgment of the Apex Court in the case of **Pramatha Nath Mukherjee (supra)** as well as constitutional Bench judgement in the case of **Dharam Pal (supra).** The law is well settled that the judgement of a larger Bench would be binding. Similarly, the Apex Court in the case of **Union Territory of Ladakh Vs. Jammu and Kashmir National Conference, INSC 2023 (804)** has also observed that in case of conflicting judgements of equal Bench on an issue then the judgement that is earlier in time, will be binding. Therefore, judgement in the case of **Pramatha Nath Mukherjee (supra)** would be binding.

21. This issue was also considered by coordinate Bench of this Court in the case of **Sadab (supra).** In that case, His Lordship Hon'ble Sameer Jain, J. also observed that Constitution Bench of the case of **Dharam Pal (supra)** was not placed before the Bench hearing the case of **Girish Radhakrishnan Varde**

(supra). Therefore, in view of the Constitution Bench judgment of **Dharam Pal (supra),** concerned Magistrate has jurisdiction to take cognizance of any offence on the basis of material available with the police report though section of that offence may not be mentioned in the charge-sheet.

22. From the above analysis, it is clear that after receiving the police report, the Magistrate can exercise its power u/s 190(1)(b) Cr.P.C. and take cognizance of any offence against a person on the basis of material available with the police report without being influenced by the opinion of the Investigating Officer. This power of the Magistrate at the time of taking cognizance includes summoning the person who was not named as an accused in the police report, cognizance of an offence under a particular section(s) even though that section has not been mentioned in the charge-sheet or dropping a section by not taking cognizance in that section on the ground that there is no material in the police report regarding that offence.

23. In the judgement of **Dablu Kujur (supra)** relied upon by the learned A.G.A., the Apex Court also observed that at the time of taking cognizance after receiving the police report, the Magistrate may disagree with the report and may take cognizance and issue process against any person. That judgement also further supports that Magistrate is not bound by the opinion of the Investigating Officer and may take independent decision regarding cognizance of an offence on the basis of material available with the police report. Paragraphs nos. 13 and 14 of **Dablu Kujur (supra)** are being quoted as under:-

> *13. We are more concerned with Section 173(2) as we have found that the investigating officers while submitting the charge-sheet/police report do not comply with the requirements of the said provision. Though it is true that the form of the report to be submitted under Section 173(2) has to be prescribed by the State Government and each State Government has its own Police Manual to be followed by the police officers while discharging their duty, the mandatory requirements required to be complied with by such officers in the police report/charge-sheet are laid down in Section 173, more particularly sub-section (2) thereof.*

> *14. It may be noted that though there are various reports required to be submitted by the police in charge of the police station before, during and after the investigation as contemplated in Chapter XII CrPC, it is only the report forwarded by the police officer to the Magistrate under sub-section (2) of Section 173 CrPC that can form the basis for the competent court for taking cognizance thereupon. A charge-sheet is nothing but a final report of the police officer under Section 173(2)CrPC It is an opinion or intimation of the investigating officer to the court concerned that on the material collected during the course of investigation, an offence appears to have been committed by the particular person or persons, or that no offence appears to have been committed.*

24. Coming back to the facts of the case in hand, from the perusal of the impugned order, it is clear that while passing the same, learned Magistrate has considered the statement of complainant u/s 161 and 164 Cr.P.C. The opposite party no. 2 in her statement u/s 161 Cr.P.C. made allegation of outraging the modesty against her father-in-law but in her statement u/s 164 Cr.P.C., she made allegation of attempt to rape against her father-in-law with further allegation that same could be verified from CCTV camera footage but neither the police has recovered the CCTV camera footage nor the first informant has given the same to the police. In such circumstances, the Magistrate took cognizance u/s 354 Cr.P.C. on the basis of an uncontroverted allegation. Similarly, there is no allegation of beating against the sister-in-law. The only allegation against them is that they used to taunt her. So far as not taking cognizance u/s 406 I.P.C. is concerned, from the perusal of statement u/s 161 and 164 of opposite party no. 2, there is no such allegation which prima facie attracts the offence u/s 406 I.P.C.

25. Therefore, this Court does not find any illegality in the impugned order passed by the learned Magistrate by which it refused to take cognizance of the offence u/s 376, 511 and 406 I.P.C.

26. Accordingly, the present application is dismissed.

Order Date :- 21.04.2025
KS