CASE NO.:
Special Leave Petition (crl.) 662 of 2002

PETITIONER:
DHARMESH @ NANU NITINBHAI SHAH

Vs.

RESPONDENT:
STATE OF GUJARAT . RESPONDENT

DATE OF JUDGMENT: 01/08/2002

BENCH:
D.P. Mohapatra & P.Venkatarama Reddi.

JUDGMENT:

P.Venkatarama Reddi, J.

This Special Leave Petition arises out of the order passed by the learned Single Judge of the High Court of Gujarat, rejecting the revision application filed by the petitioner herein against the order of Addl. Sessions Judge, Ahmedabad. A charge-sheet for offences punishable under Sections 120-B, 121, 121-A, 122, 123, 212 and under Sections 25(1)(A) and (B), 27 of the Arms Act came to be filed by the police on 12th April, 2000 in the Court of Metropolitan Magistrate. The petitioner figures as accused No.9 therein. The case being triable exclusively by the Court of Sessions, the learned Magistrate submitted the case to the Court of City Sessions by an order dated 4.5.2000. Sanction for prosecution as required by Section 196(1) of the Criminal Procedure Code was obtained on 7th May, 2000, such sanction being necessary in view of the fact that the petitioner stands accused of some of the offences falling under Chapter VI of the Indian Penal Code viz. collection of arms for the purpose of waging war against the Government etc. Sanction accorded by the State Government was produced before the Court of Sessions before the charge was framed against the petitioner-accused. The petitioner applied to the Court of Sessions for discharge on the ground that there was no prima-facie evidence to frame the charge against him. That application was rejected by the learned Addl. Sessions Judge, Ahmedabad. Thereupon, a revision petition was filed in the High Court under S. 397/401 Cr.P.C. In that revision an additional ground was raised for the first time that the entire proceedings including committal of the case to the Court of Sessions are vitiated by illegality for want of sanction under S. 196 Cr.P.C. and, therefore, the criminal proceedings cannot go on against him. The High Court by the impugned order dated 3.11.2001 dismissed the revision application, rejecting both the grounds urged. Hence, this Special Leave Petition. After notice to the State, we have heard the learned counsel.
We are concerned here with the second ground, that is to say, the effect of non-production of sanction order before the learned Magistrate who committed the case to the Court of Sessions as that is the only point urged before us. The High Court was of the view that while committing the case to the Court of Sessions, the Magistrate cannot be said to have taken cognizance of the offence. "It cannot be laid down", observed the learned judge "that unless Magistrate takes cognizance, he cannot commit the case to the Court of Sessions". The Learned judge, after referring to the decisions of Calcutta and Kerala High Courts, observed thus: "In both the decisions relied upon on behalf of the petitioner, it has been laid down that the committal proceedings is an enquiry before the Magistrate. It is not

necessary, therefore, that during the enquiry, Magistrate is obliged to take cognizance of the offence. The glaring example is in Section 200 Crl.P.C. when Magistrate conducts enquiry before issuing process under Section 204 ". The learned Judge of the High Court therefore held that the ban under S. 196(1) is not attracted to the committal proceedings. The correctness of the view taken by the High Court has been questioned before us.

Section 196 (1) of the Code of Criminal Procedure enjoins that "no Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except with the previous sanction of the Central Government or of the State Government". The sanction of the Government is thus a pre-condition for the cognizance of the offences specified in various clauses of Section 196. Section 193 enacts a bar against the Court of Sessions taking cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the provisions of the Code. However, if the Code or any law in force expressly provides for the Court of Sessions directly taking cognizance, the fetter under Section 193 does not apply. The other provision which deserves notice is Section 209. It provides for commitment of case if it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions. In R.R. Chari Vs. State of U.P. (1951 SCR 312), this Court observed, relying on the dicta in Gopal Marwari Vs. Emperor (AIR 1943 Patna 245) that the word 'cognizance' was used in the Code to indicate a point when a Magistrate or a Judge first takes judicial notice of an offence and that it is a different thing from the initiation of proceeding. The following exposition of law by Das Gupta, J. in Superintendent and Remembrancer of Legal Affairs, West Bengal V. Abani Kumar Banerjee (AIR 1950 Cal. 437) was quoted with approval by the Supreme Court :

"What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence under section 190(1) (a), Criminal Procedure Code, 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 provisions of this Chapter-proceeding under section 200 and thereafter sending it for inquiry and report under section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

Both the learned counsel relied on the above passage to support their arguments. That apart, the learned counsel for the petitioner relying on the observations made in the decision of this Court in Rajender Kumar Jain Vs. State (1983 (1) SCC 435) and State of U.P. Vs. Lakshmi Brahman (1983 (2) SCC 372) submits that the committal, even under the new Code, is not a mechanical act, but a judicial function to be performed by the Magistrate. The Magistrate has to be satisfied that an offence is prima facie disclosed and such offence is triable exclusively by a Court of Sessions. The fact that the proceeding before the Magistrate is in the nature of an inquiry does not make any difference, according to the learned counsel. The learned counsel then submits that the inquiry culminates in making the order of commitment and thus facilitates trial before the Court of Sessions and therefore the dicta laid down by Das Gupta, J. applies with full force. The fact that the Court of Sessions is disabled from taking cognizance as a Court of original jurisdiction (vide Section 193) is a definite point that the Magistrate takes cognizance before passing an order of commitment, argues the learned counsel.

The learned counsel for the respondent State seeks support from the

judgment of the High Court and further contends that the proceedings are not vitiated merely for the reason that the sanction order was not produced at the stage of committal of the case.

Though there is considerable force in the argument of the learned counsel for the petitioner that the Magistrate does take cognizance of the offence before committing the case to the Court of Sessions, still the question remains whether the sanction order is required to be produced before the Magistrate who takes cognizance in the first instance or before the Sessions Court which has exclusive jurisdiction to try the offence. Though the Sessions Court cannot take cognizance of the offence as a Court of original jurisdiction, it has to necessarily take cognizance before commencing the trial after committal. That the Sessions Court takes cognizance of the offence irrespective of the fact whether the committal Magistrate at an anterior point of time had taken cognizance of the same offence for the purpose of committal cannot be doubted. If any authority is needed, we may refer to the following observations in Gangula Ashok Vs. State of Andhra Pradesh (2000 (2) SCC 504) :-

"The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if 'the case has been committed to it by a Magistrate', as provided in the Code."

We are not inclined to discuss the issue further and express our opinion on the question formulated in the preceding paragraph. We are of the view that it is not a fit case to interfere by granting leave in exercise of jurisdiction under Article 136. Firstly, as already noticed, the petitioner did not choose to raise the objection regarding sanction either before the Magistrate or even before the Sessions Court. The only point urged before the learned Sessions Judge in the application for discharge was that there is no evidence even prima facie to connect the accused with the offence. The contention regarding non-production of the order of sanction before the Magistrate was urged for the first time in the Revision filed in the High Court. Even then, we could have considered this contention, if substantial relief could be granted to the petitioner or if injustice could be averted. Assuming that the petitioner is right in his contention, at best, the matter has to be sent back to the Magistrate to go through a fresh process of committal after receiving the sanction order filed by the prosecution. In any case, the matter would have to come up to the Sessions Court again. The compliance with the formality would only result in further delay in holding the trial, without any corresponding advantage to the petitioner. Such a situation should not be permitted to happen while exercising the jurisdiction under Article 136, more so when the petitioner inexplicably failed to raise the objection at the earliest. Evidently, he chose to raise the objections in piecemeal without apparent justification. For these reasons, the petition is dismissed.