

Order on Ex.04

1. The present application under Section 239 of the Code of Criminal Procedure has been filed by the accused seeking discharge from the present offence. It is submitted that the complaint in question was registered at Girgadha Police Station vide Offence Reg. No. 0155/2021 on 31/03/2021 by the Registrar, Shri S.P. Chavda, Principal Civil Court, against the present accused. Pursuant to the investigation, a charge sheet was filed on 18/12/2023, whereupon the Court issued notice and the accused appeared on 13/05/2024. The matter is presently at the stage of framing of charge, which requires the Court to take cognizance as contemplated under Section 190 of the CrPC. It is contended that all the accused are public servants within the meaning of Section 21 of the IPC and that the acts alleged were done in the course of, or in purported discharge of, their official duties. Accused No. 1, at the relevant time Deputy Engineer, PGVCL, had instituted a suit as per the directions of the Legal Department to recover damages for electricity theft. Accused Nos. 2 and 3, then Junior Engineers, had acted as members of the checking squad in compliance with orders of their superior officers. The allegation against them pertains to preparation of site panchnamas and inspection reports. It is urged that in terms of Section 197 of the CrPC, no Court can take cognizance of an offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of official duties without prior sanction from the competent authority. In the present case, no such sanction has been obtained. In the absence of sanction, the Court is legally barred from taking cognizance or proceeding further with the charge sheet. Consequently, it is submitted that the charges are groundless and the accused are entitled to discharge under Section 239 of the CrPC. Accordingly, it is prayed that, in the interest of justice, and in view of

the absence of sanction under Section 197 of the CrPC, the accused be discharged from the present proceedings.

2. The learned Assistant Public Prosecutor has opposed the present application and filed a written reply. It is contended therein that the accused do not fall within the ambit of “public servant” as defined under Section 21 of the IPC. It is submitted that the accused were employees of PGVCL, which is a corporation, and therefore does not come within the purview of the Government. The accused were not drawing their salaries from the Government, and their duties were not in the nature of public service. The acts in question were carried out on the instructions of their superior officers in furtherance of the corporation’s interests and not for the public at large. It is further alleged that the accused have fabricated false documents and have dishonestly sworn affidavits. Therefore, they cannot claim the protection of Section 197 of the CrPC. It is also pointed out that the Court has already taken cognizance of the offence; hence, at this stage, the present application is otherwise not maintainable. In support of these contentions, the learned Assistant Public Prosecutor has placed reliance upon several judicial pronouncements cited in the written reply.
3. I have heard the learned counsel of the applicant for the accused and learned APP for the prosecution.
4. Having considered the submissions advanced on behalf of both sides, it is evident that the present application has been filed by the accused under Section 239 of the Code of Criminal Procedure seeking discharge on the ground that the Court is barred from taking cognizance under Section 197 of the CrPC, as no prior sanction has been obtained and the alleged acts were committed while discharging their official duties.
5. In the case of **State of W.B. and Another v. Mohd. Khalid and Others**, reported in 1995 AIR SC 785, the Hon’ble Apex Court, while discussing

the expression “cognizance,” observed that the term has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence, or taking steps to ascertain whether there is any basis for initiating judicial proceedings, or for other purposes. The word “cognizance” indicates the point at which a Magistrate or a Judge first takes judicial notice of an offence. It is entirely different from the initiation of proceedings; rather, it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. When a police report is filed, cognizance is almost automatic. In fact, in **A.C. Aggarwal, Sub-Divisional Magistrate v. Ram Kali**, AIR 1968 SC 1; (1968) 1 SCR 205; 1968 Cri LJ 82, the Hon’ble Apex Court held that when Section 190(1)(b) of the Code uses the words “may take cognizance,” it means “must take cognizance,” and that the Magistrate has no discretion in the matter. In law, no reasons are required to be given for taking cognizance under Section 193.

6. Moreover, in **Kallu Nat alias Mayank Kumar Nagar v. State of U.P. and Anr.**, reported in 2025 INSC 930 and the Judgment delivered by Hon’ble Justice J.B.Pardiwala, it has been held in paragraph 45 that: “.....On the other hand, where a police report is received, proceedings are said to be initiated, i.e., cognizance is affirmatively said to be taken after the Magistrate has applied its mind to the contents of the police report, and thereafter he has either issued process to the accused under Section 204 of the Code, on the basis of such report, or, where the accused is present before it, either on his own or on being produced by the police, the Magistrate has complied with the requirement envisaged under Section 207 of the Code.....”
7. Moreover, it is pertinent to mention that, in a case instituted on a police report, the stage of cognizance arises after the police complete their

investigation and submit a charge sheet under Section 173(2) of the Criminal Procedure Code, 1973 (CrPC) before the Magistrate. At this stage, the Magistrate is required to apply his judicial mind to the contents of the police report to determine whether there is sufficient ground to proceed against the accused. This act of judicial application of mind constitutes “taking cognizance” under Section 190(1)(b) of the CrPC. The Hon’ble Supreme Court in **Kallu Nat alias Mayank Kumar Nagar v. State of U.P. and Anr., reported in 2025 INSC 930**, in paragraph 45, has held that cognizance is said to be affirmatively taken in case instituted on police report after the Magistrate has applied his mind to the contents of the police report and has either issued process to the accused under Section 204 of the CrPC or, where the accused is already present, complied with the requirements under Section 207 of the CrPC.

8. It is important to note that the term “cognizance” is not defined in the CrPC, but it signifies the point when the Magistrate becomes aware of the offence and decides to proceed further in accordance with law. In such cases, the Magistrate is not required to examine witnesses or the complainant under Section 200 of the CrPC, which is otherwise mandatory in complaint cases. If the Magistrate finds that an offence is made out from the police report, he may proceed to issue process under Section 204 of the CrPC by issuing summons or warrants to the accused. Alternatively, if the Magistrate disagrees with the police report or finds no sufficient ground to proceed, he may reject the charge sheet or direct further investigation. Thus, the stage of cognizance is a crucial preliminary step that sets the process of a criminal trial in motion after the conclusion of police investigation.
9. The learned advocate for the accused has placed reliance on two judgments of the Hon’ble Supreme Court, namely, R.R. Chari v. State of U.P.—wherein the warrant was issued during investigation and no question of cognizance on a police report arose—and S.R. Sukumar v. S. Sunaad

Raghuram—wherein the proceedings were based on a private complaint and there was likewise no issue of cognizance on a police report. While I respectfully concur with the principles of law enunciated in both these decisions, it is evident that they do not deal with the question of cognizance in cases instituted on a police report filed under Section 173 of the CrPC. Therefore, on the specific issue of cognizance relevant to the present case, these authorities do not advance the case of the accused.

10. In the present case, the matter is at the stage of framing of charge, and cognizance had already been taken upon the filing of the charge sheet and issuance of summons to the accused. Therefore, the provisions of Section 197 of the CrPC have no application at this stage. Consequently, the application for discharge under Section 239 of the CrPC stands rejected. The matter shall proceed for framing of charge.

Pronounced in open Court on this 13th day of August, 2025.

Date- 13/08/2025

Place- Una

(Mr. Neeraj Kumar Yadav)

2nd Additional Chief Judicial Magistrate, Una

GJ 01409