Kamlapati Trivedi

Vs

State of Bengal

Criminal Appeal No. 45 of 1972

(Jaswant Singh, P. S. Kailasam, A.D. Koshal JJ)

13.12.1978

JUDGMENT

JASWANT SINGH, J. –

1. I have had the advantage of going through the judgments prepared by my esteemed Brothers Kailasam and Koshal while I find myself unable to agree with view expressed by my learned Brother Kailasam, I am inclined to agree with the opinion of and the conclusion arrived at by my learned Brother Koshal.

KAILASAM, J. –

This appeal is filed by special leave by Kamlapati Trivedi against the judgment of the Calcutta High Court In Criminal Revision No. 1006 of 1970 by which it refused to quash the proceedings which were taken cognizance of by the magistrate, on a complaint given by one Satya Narayan Pathak.

2. Satya Narayan Pathak is the Secretary of Bhartiya Primary School in Howrah. The appellant before us, Kamlapati Trivedi, was a Head Teacher of the Bhartiya Primary School. On April 18, 1970 Satya Narayan Pathak served a notice on the appellant calling upon him to show cause why he should not be found guilty of negligence of duty. On receipt of the Notice, the appellant attempted to remove certain records from the school but he was prevented. On the same day, that is, on April 18, 1970 the appellant complained in writing to the officer in-charge of Bally Police Station, Howrah at 21.40 hours that Satya Narayan Pathak and others criminally trespassed, assaulted and abused him in filthy language and committed theft of money and valuable documents of the school. The police treating the complaint of the appellant as First Information Report took cognizance of an offence under Section 147, 488 and 379 IPC and registered it. A warrant of arrest was issued against Satya Narayan Pathak and others. Satya Narayan Pathak attended the Court on May 21, 1970 and July 21, 1970 the dates fixed for submission of the police report. The Police Officer who investigated the case on finding no evidence against Satya Narayan Pathak and others, named as accused, submitted a final report and the Magistrate agreeing with the report discharged all the accused.

3. As Satya Narayan Pathak felt that the appellant instituted criminal proceeding with intent to cause injury to him and others, for offences under Sections 147, 448 and 379 knowing that there was no just or lawful ground and had caused pecuniary loss and agony to him, he preferred a complaint against the appellant for offences under Sections 211 and 182 of the IPC on October 20, 1970. The learned Magistrate took cognizance of the case and summoned the appellant under Section 211 of the Indian Penal Code, fixing December 10, 1970 for appearance of the appellant. On November 16,

1970 the appellant appeared in the court and was released on bail. The appellant moved the High Court of Calcutta for quashing the proceedings of the Magistrate on the ground that the cognizance taken by the Magistrate was bad and without jurisdiction for non-compliance of the provisions of Section 195(1)(b) of Criminal Procedure Code. The learned Judge refused to quash the proceedings and discharged the accused, by judgment dated August 18, 1971. Against the order of the Single Judge of the High Court, the present appeal to this Court has been filed.

4. The main ground of attack in this appeal is that the High Court failed to appreciate the meaning of the words "in relation to any proceedings in any court" in Section 195(1)(b) of the Code of Criminal Procedure. It is submitted that when a final report was submitted by the Police under Section 173 of Criminal Procedure Code and the Magistrate passed an order it would be a judicial order and the bar under Section 195(1)(b) would be attracted.

5. The question that arises for consideration is whether on the facts of the case the bar against taking cognizance in Section 195(1)(b) is attracted. Section 195(1)(b) so far as it is relevant for the purpose of this case may be extracted :

> 195(1) No court shall take cognizance
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> (b) of any offence punishable under any of the following sections of the same Code, namely, Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or some other Court to which such Court is subordinate; or
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> (2) in clauses (b) and (c) sub-section (1), the term "Court" includes Civil, Revenue or Criminal Court but does not include a Registrar Sub-Registrar under the Indian Registration Act, 1877.

6. While Section 190 of the Criminal Procedure Code enumerates the conditions requisite for initiation of proceedings, Section 195 bars taking cognizance of certain offences except on complaint by authorities specified in the Section 195(1)(a) requires that the complaint should be by a public servant if the offences complained of are under Section 172 to 188 of the India Penal Code. Sub-section (1)(b) refers to offences under Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228 and requires the complaint in writing of the court before whom the offence is alleged to have been committed in or in relation to any proceeding in any Court. Sub-section (c) relates to offences under Section 463, 471, 475 or 476 when the offence is committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding a complaint in writing by the court is required. Section 172 to 190 of the Indian Penal Code deals with offences constituting contempt of lawful authority of public servants. The bar to taking cognizance of offences under Sections 172 to 188 except on complaint by the public servants is laid down in Section 195(1)(a) of the Code of Criminal Procedure. Chapter XI of the Indian Penal Code relates to false evidence and offences against public justice. The cases of offence such was as under Section 463, 471, 475 or 476 alleged to have been committed by a party in a proceeding in any court in respect of a document produced or given in evidence in such proceeding, the complaint in writing of such court is required. The police behind the bar for institution of criminal proceedings by a private party is that when offences are committed against lawful authority or false evidence given or offence committed against public justice, it should be the concerned authority that should prefer a complaint and no one else.

7. In this appeal we are concerned with the question whether the offence under Section 211 IPC is "committed in or in relation to any proceeding in any Court". Before I deal with the question whether the offence is committed in or in relation to any proceeding in any court, I have to determine the meaning of the word 'court' for the purpose of this section. Sub-section (2) to Section 195 states that in clauses (b) and (c) of sub-section (1), the term "court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or sub-Registrar under the Indian Registration Act, 1877. It may be noted that the word 'includes' was introduced by an amendment to sub-clause by Act 18 of 1923 instead of the words "means". In the Criminal Procedure Code, 1973 the word 'means' has been introduced in the place of 'includes'. To some extent the use of the word 'includes' may widen the scope of the definition. In Halsbury's Laws of England, third edition, volume 9 at page 342, the meaning of court is given. At page 343 it is stated : "Many bodies are not courts, although they have to decide questions, and in so doing have to act judicially in the sense that the proceedings must be conducted with fairness and impartiality". Lord Sankey in Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation ((1931) AC 275, 296, 297 : 144 LT 421 (PC)) has enumerated some negative propositions as to when a Tribunal is not a court. The learned Judge observed : "The authorities are clear to show that there are Tribunals with many of the trappings of a court which nevertheless are not courts in the strict sense of exercising judicial power". In enumerating the propositions Lord Sankey observed :

In that connection it may be useful to enumerate some negative propositions on this subject : (1) A tribunal is not necessarily a Court in this strict sense because it gives a final decision. (2) Nor because it hears witness on oath. (3) Nor because two or more contending parties appear before it between whom it had to decide. (4) Nor because it gives decisions which affect the right of subjects. (5) Nor because it is a body to which a matter is referred by another body.

8. In enumerating the negative propositions the learned Judge relied on the decision in Rex. v. Commissioners ((1924) 1 KB 171 : 130 LT 164).

9. In Shri Virindar Kumar Satyawadi v. The State of Punjab ((1955) 2 SCR 1013 : AIR 1956 SC 153 : 1956 Cri LJ 326) Venkatarama Aiyar, J. speaking to this Court quoted with approval the decision in Shell Co. of Australia (supra) and observed that the distinction between Courts and tribunals exercising quasi-judicial functions is well established, though the whether an authority constituted by a particular enactment falls within one category or the other may, on the provisions of that enactment, be open to argument. After referring to the various decisions, the learned judge observed : "It may be stated broadly that what distinction a Court from quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. It also imparts an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law.

10. This view was accepted by the Supreme Court in Smt. Ujjam Bai v. State of Uttar Pradesh ((1963) 1 SCR 778 : AIR 1962 SC 1921) where Justice Hidayatullah observed that though the taxing authorities follow a pattern of action which is considered judicial, they are not converted into courts of civil judicature and they still remain instrumentalities of the State and are within the definition of the State.

11. The answer to the question as to what is 'court' in the Criminal Procedure Code is not free from difficulty for in many places the word Magistrate as well as court is used in identical situations.

Section 6 of the Criminal Procedure Code states that besides the High Courts and the courts constituted under any law other than this Code for the time being in force there should be five classes of Criminal Courts in India, namely : (i) Courts of Session; (ii) Presidency Magistrate; (iii) Magistrates of the first class; (iv) Magistrate of the second class; (v) Magistrate of the third class. Criminal courts according to this section therefore, consist of courts specified besides the High Court and courts that are constituted under any other law other than Criminal Procedure Code. The Code of Criminal Procedure provides not merely judicial inquiry into or trial of alleged offences but also for prior investigation thereof. Section 5 of the Code provides that all offences under Indian Penal Code shall be investigated, inquired into and tried and otherwise dealt with in accordance with the provisions hereinafter contained. For the purposes of investigation offences are divided into two categories "cognizable" and 'non-congnizable'. When information of the commission of a congnizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on investigation. In case of non-congnizable offence the officer shall not investigate without the order of a competent Magistrate. According to the scheme of the Code investigation is preliminary to a case being put up for trial for a congnizable offence. Investigation starts on an information relating to commission of an offence given to an officer incharge of police station and recorded under Section 154 of the Code. Investigation consists generally of various steps, namely proceeding to the spot, ascertainment of facts and circumstances of the case, discovery and arrest of suspected offender, collection of evidence relating to the commission of the offence which may consists of examination of various persons including the accused, and the reduction of the statement into writing such as places and seizure of things and formation of opinion as to whether on material collected there is a case to place the accused before the Magistrate for trial and filing of the charge-sheet under Section 173 of the Criminal Procedure Code. After the investigation is completed and a charge-sheet is filed under Section 173 of the Criminal Procedure Code the question of taking congnizance arises. Section 190 of the Criminal Procedure Code lays down conditions necessary for initiation of proceedings. It provides for that any Presidency Magistrate, District Magistrate or sub-Divisional Magistrate or any other Magistrate specially empowered in this behalf may take congnizance of any offence

> (a) upon receiving a complaint of facts which constitute such offence;
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> (b) upon a report in writing of such facts made by any police officer; and
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> (c) upon information received from any person other than a police officer or upon his own knowledge or suspicion, that such offence has been committed.

12. One mode of taking congnizance by the Magistrate is upon a report in writing of such facts made by any police officer. This stage is reached when the police officer submits a report under Section 173. When the police officer upon investigation forms an opinion that there is sufficient evidence or reasonable ground he shall forward the case to the Magistrate empowered to take congnizance of the offence upon a police report. Under Section 190 of the Criminal Procedure Code, if the Magistrate to whom the report is sent by the police officer, agrees with the opinion of the police officer, he proceeds to take cognizance, and issues process under Section 204. The judicial opinion is unanimous that when once Magistrate taking congnizance of an offence finds that there is sufficient ground for proceedings and issues summons or warrant as the case maybe, he takes congnizance, and the trial begins, and further proceedings will be undoubtedly before a criminal court.

13. In Jamuna Singh v. Bhadai Sah ((1964) 5 SCR 37 : AIR 1964 SC 1541 : (1964) 2 Cri LJ 468),

Das Gupta, J. observed : "The Code does not contain any definition of the words 'institution of a case'. It is clear, however, and indeed not disputed, that a case can be said to be instituted in a court only when the court takes congnizance of the offence alleged therein". When once this stage is reached the requirement of Section 211 of the Indian Penal Code "institutes or causes to be instituted any criminal proceeding" is satisfied. The second part of Section 211 IPC refers to falsely charging a person with having committed an offence. A person falsely charging another of a cognizance another of a cognizance offence before a police officer will come within the mischief of the second part of the section.

14. The crucial question that arises in this case is whether it can be said that when a person falsely charges another person of a cognizance offence before a police officer and when the police officer upon investigation finds that there is no sufficient evidence or reasonable ground for suspicion to justify the forwarding of the accused to the Magistrate under Section 169 and the Magistrate agrees with him, an offence under Section 211 is 'committed in or in relation to any proceeding in any court'. It is settled law that when a Magistrate applies his mind under Chapter XVI that is on complaints, he must be held to have taken cognizance of the offence mentioned in the complaint but when he applies his mind not for such purpose but for purpose of ordering investigation under Section 156(3) or issues a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence vide R. R. Chari v. State of U. P. ((1951) SCR 312 : AIR 1951 SC 207 : 52 Cri LJ 775) and in Gopal Das v. State of Assam (AIR 1961 SC 986 : (1961) 1 SCJ 573 : (1961) 2 Cri LJ 39). When the Magistrate receives a report under Section 169 of the Criminal Procedure Code that there is not sufficient evidence or reasonable ground for suspicion and agrees with it, he may be doing so in exercise of his judicial function but the question is whether he is acting as a court.

15. In Abhinandan Jha v. Dinesh Mishra ((1967) 3 SCR 668 : AIR 1968 SC 117 : 1968 Cri LJ 97) this Court has pointed out the difference between the report by the police filed under Section 170 of the Criminal Procedure Code which is referred to as a charge-sheet and a report sent under Section 169 which is termed variously in different States as either 'referred charge', 'final report' or 'summary'. This Court observed that when the police submitted a report that no case has been made out for sending up accused for trial it is not open to the Magistrate to direct the police officer to file a charge-sheet. In such circumstances the Magistrate is not powerless as it is open to him to take cognizance of an offence on the report submitted by the police under Section 190(1)(c) of the Criminal Procedure Code. Dealing with the position of the Magistrate when a report is submitted by the police that no case is made out for sending a case for trail the court observed that it is open to the Magistrate to agree with the report and close the proceedings. Equally it will be open to the Magistrate if he takes a different view to give directions to the police under Section 163(1) to make further investigations. After receiving a report from the police on further investigation if the Magistrate forms an opinion on the fact that it constitutes an offence he may take cognizance of an offence under Section 190(1)(c) notwithstanding the opinion of the police expressed in final report. This Court held in conclusion that there is no power expressly or impliedly conferred on the Magistrate under the Code to call upon the police to submit a charge-sheet when they have sent a report under Section 169 of the Code that there is no case made out for sending the case for trail. The same view is expressed in the decision in Kamla Prasad Singh v. Hari Nath Singh ((1967) 3 SCR 828 : AIR 1968 SC 19 : 1968 Cri Lj 86). In R. N. Chatterji v. Havildar Kuer Singh ((1970) 3 SCR 716 : (1970) 1 SCC 496), A. N. Ray, J. as he then was, followed the decision in Abhinandan Jha v. Dinesh Mishra (supra) and held that the provision of the Criminal Procedure Code do not empower the Magistrate to direct the police officer to submit a charge-sheet but if he is of the opinion that the report submitted by the police requires further investigation, the Magistrate may

order investigation, under Section 163 of the Criminal Procedure Code. It was held that directing further inquiry is entirely different from asking police to submit a charge-sheet. The only source open for the Magistrate if he is not satisfied with the police report under Section 169 is to take cognizance of an offence under Section 190(1)(c) of Criminal Procedure Code. It may be noted that in M. L. Sethi v. R. P. Kapur ((1967) 1 SCR 520 : AIR 1967 SC 528 : 1967 Cri LJ 528), it was held that if the Magistrate disagrees with the opinion of the police he may proceed to take cognizance on the facts stated in the police report under Section 190(1)(b).

16. It is clear that when a Magistrate applies his mind to the contents of a compliant before him for the purpose of proceeding under Section 200 and the other provisions of the Code following it, he is taking cognizance of an offence as held by five Judges Bench decision of this Court in Mowu v. The Superintendent, Special Jai, Nowgong, Assam ((1971) 3 SCC 936 : 1972 SCC (Cri) 184). The position regarding the case in which Magistrate accepts a report under Section 169 Criminal Procedure Code is different. On an analysis of the various sections, it appears that a report under Section 169 of the CrPC and the Magistrate agreeing with it, are proceedings under Chapter XIV which relates to information to the police and their power to investigate. The Chapter provides for supervision by the Magistrates of the investigation by the police. It has been laid down that Magistrate has no option except to agree with the report of the police officer unless he proceeds to take cognizance of the offence under Section 190(1)(c). Though the Magistrate in deciding whether to accept the report or not may be exercising his judicial mind, it cannot be said that he is acting as a court. The Magistrate acting at this stage cannot be said to fulfil the positive requirements enumerated by Venkatarama Aiyar, J. in Shri Virindar Kumar Satyawadi V. State of Punjab (supra). To be classified as court it must be charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment and to decide in a judicial manner. It involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it and an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. As pointed out by Lord Sankey in Shell Co. case (supra) though there may be some of the trappings of the court the magistrate at this stage cannot be termed as a court within the provisions of Section 195(2) CrPC. The Magistrate may be decide the question finally which may affect parties but that is not enough. Even when a tribunal hears witness on oath and decides rights of parties and right of appeal is provided, it may not, as observed by Lord Sankey, become a court. Most of requirements of a court are lacking when the Magistrate agrees with the report of the police officer under Section 169. At this stage the rights of the parties are not finally decided as the complainant is entitled to file a complaint directly to the Magistrate. The persons accused are not before the Magistrate and neither the complainant nor the accused are entitled to be heard or to adduce evidence before the Magistrate at this stage. It cannot be said that the Magistrate has a duty to decide the matter on a consideration of the evidence adduced before him.

17. Taking into account the scheme of the Criminal Procedure Code, the function of the Magistrate in agreeing with a report under Section 169 can only be said to be in the course of investigation by the police. In Chapter XIV which relates to information to the police and their powers to investigate, the Magistrate having jurisdiction over the area and empowered to take cognizance is given certain supervisory powers. Thus the police officer incharge of police station is required to refer the informant to the Magistrate when information as to a non-cognizable offence is received by him. The police officer shall not investigate a non-cognizable case without the orders of the Magistrate though the police officer is entitled to investigate a cognizance offence without the order of the Magistrate. The Magistrate under Section 190 is entitled to order an investigation into a cognizable offence. Section 157 CrPC requires the officer incharge of the police station to send a report to the

Magistrate empowered to take cognizance of the offence of which he has received information. Under Section 159 CrPC the Magistrate receiving a report under Section 157 may proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case. Section 164 empowers Presidency Magistrate or any Magistrate of first class or any Magistrate of second class specially empowered by the State Government to record a statement or confession made to him in the course of an investigation under this Chapter. When a search is conducted by a police officer, he is required to send copies of the record to the nearest Magistrate empowered to take cognizance. Section 167 of the CrPC requires that when investigation cannot be completed within 24 hours and when there are grounds for believing that the accusation or information is well-founded, the officer incharge of the police station shall transmit to the nearest Magistrate the copy of the entries in the diary relating to the case and forward the accused to such Magistrate. The Magistrate to whom the accused is forwarded is empowered to authorise the detention of the accused in such custody as he thinks fit for a term not exceeding 15 days. If the period is to exceed 15 days he is required to forward the accused to the Magistrate having jurisdiction. When an investigation is completed and when the police officer is of the opinion that there is sufficient evidence, he shall forward the accused to the Magistrate along with his report. The final report of the police officer is to be submitted under Section 173. It may be noticed that Section 169 does not require the police officer to send a report as he is required under Section 170 when he is of the opinion that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate. The only precaution he has to take is to take steps to ensure the appearance of the accused in the event of the Magistrate empowered to take cognizance wanting his presence. A perusal of the various sections under Chapter XIV shows that the Magistrate is associated with the investigation by the Police in a supervisory capacity. It has been laid down that when the Magistrate applies his mind for ordering an investigation under Section 156(3) of the CrPC or for issue of a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence. The Magistrate during this stage functions as a Magistrate during investigation. As the trail has yet to commence it cannot be said that he is acting as a court.

18. Before leaving this aspect of the case I would refer to some of the decisions which were cited before us on this point. Strong reliance was placed by the learned counsel for the appellant on a decision in J. D. Boywalla v. Sorab Rustomji Engineer (1941 Bom LR 529 : AIR 1941 Bom 294 : 42 Cri LJ 814). Boywalla, the appellant in the case, lodged a complaint with the police against the respondent Sorab Rustomji Engineer for cheating in respect of three rupees. The police after investigation submitted a report stating that no offence has been disclosed against him with a request that he may be discharged and his bail bond cancelled. On receipt of the report the Magistrate discharged the accused and canceled the bail bond. Sorab Rustomji Engineer, against whom the complaint was filed, filed a case under Section 211 of the IPC alleging that the appellant Boywalla instituted criminal proceeding against him knowing that there is no just or lawful ground for such proceedings. The appellant contended that it is the Magistrate who can lodge a complaint under Section 195(1)(b) of the Cr. P.C. and that no court shall take cognizance of the offence punishable under Section 211 of the IPC when such offence is alleged to have been committed in or in relation to any proceeding in a court except on a complaint in writing of such court. John Beaumont, C.J. held that in doing what he had done the Magistrate had taken cognizance of the case and therefore under Section 195(1)(b) CrPC it was the Magistrate alone who could lodge a compliant. Two reasons were given by the Chief Justice. The second ground with which we are concerned at the moment deals as to the capacity in which Magistrate acted when he accepted the police report under Section 169 and discharged the accused. The Chief Justice expressed that after considering the

report if the Magistrate thinks that there is no sufficient ground of proceeding he may discharge the accused and though the Code does not expressly provide there can be no doubt that the Magistrate can act upon the report of the police officer and discharge an accused person without further inquiry only by acting in his judicial capacity which should be open to review by the High Court. The learned Chief Justice proceeded on the basis that before a Magistrate passed orders on the report of the police under Section 169 he should take cognizance of the offence. The Chief Justice thus took the view that (1) the Magistrate before discharging the accused in pursuance of a police report under Section 169 takes cognizance and (2) acts in his judicial capacity. While there could be no doubt that the Magistrate is acting judicially, I am unable to hold that before a Magistrate discharges an accused with the report of the police under Section 169 CrPC, he takes cognizance. This court has held that the stage of taking cognizance arises only when he acts under Section 190(1)(b). Further this court has taken the view that if the Magistrate does not agree with a police report under Section 169 CrPC he can only proceed under Section 190(1)(c). The facts of the case were the accused was arrested and later after the order of discharge the bail bond was canceled. The circumstances of the arrest of the accused, his being released on bail during investigation and his discharge after the police report were the reason for the learned Chief Justice coming to the conclusion that the Magistrate was acting in a Judicial capacity. The learned judge observed : "Indeed it is a novelty to me to hear it suggested that there is any authority which can make an administrative order discharging the arrested person from judicial capacity". But as he has pointed out acting in a judicial capacity alone is not enough. The Supreme Court in M. L. Sethi's case (supra) expressed its dissent from the view taken in Ghulam Rasul v. Emperor (AIR 1936 Lah 238 : 37 Cri LJ 426) where the learned judge held that a complaint by criminal court is necessary when a false report is made in an investigation by the police. The facts of the case are that Ghulam Rasul made a report to the police that a certain person stole his watch from his car. On investigation the police came to the conclusion that the report was false and that the watch had been removed by the petitioner himself. The case was reported to the Magistrate for cancellation. A complaint was given against Ghulam Rasul for offence under Sections 193 and 211 IPC and the Magistrate took cognizance and recorded the evidence of the prosecution witnesses and framed charge against him. Accepting the contention on behalf of the Ghulam Rasul the High Court held that in view of Section 195(1)(b), Criminal Procedure Code, the Magistrate's taking cognizance of the offence was illegal. The Court observed : "I am clear that the words in this sub-section 'in relation to any proceeding in any court' apply to this case of a false report or a false statement made in an investigation by the police with the intention that there shall in consequences of this, be a trial in the Criminal Court". The facts of the case show that a report under Section 169, Criminal Procedure Code was submitted was by the police for cancellation and the Magistrate dropped further proceedings. The Supreme Court referring to the view of the High Court observed : "He appears to have held the view that the Magistrate having passed an order of concellation, it was necessary that the complaint should be filed by the Magistrate, because Section 195(1)(b) had become inapplicable. If the learned Judge intended to say that without any proceeding being taken by the Magistrate in the case which was investigated by the police it was still essential that a complaint should be filed by the Magistrate simply because a subsequent proceeding following the police investigation was contemplated we consider that his decision cannot be excepted as correct". This decision makes it clear that even though the Magistrate passed an order of cancellation on the report by the police under Section 169 if the Magistrate has not taken any proceeding, a complaint by the Magistrate in not necessary. The decision of the Supreme Court covers the facts of the present case so far as the discharge of the accused on a police report under Section 169, Criminal Procedure Code, is concerned. Referring to the Bombay decision, the Supreme Court observed that" the decision of the Bombay High Court in J. D. Boywalla v. Sorab Rustomji Engineer (Supra) is also inapplicable because in that case also orders

were passed by a Magistrate on the final report made by the police after investigation of the facts in the report, in respect of which complaint under Section 211 IPC was filed" In Sethi's case (supra) at the stage when the complaint was filed by the respondent under Section 211 IPC, the police were inquiring into the appellant's report. When there is no proceeding pending before any court at the time when the applicability of Section 195(1)(b) is to be determined, a complaint by the court is not necessary. The decision in Bombay case is therefore not applicable to the facts in Sethi's case as in the Bombay case orders were passed by the Magistrate on the final report of the police.

19. There is conflict between various High Court as to whether a complaint is necessary when on a police report under Section 169 the Magistrate does not take any further action. The Bombay, Saurashtra and Andhra Pradesh High Courts in 1946 Bombay 7(11), 1952 Saurashtra 67(68) and 1969 AP 281(287) held that a Magistrate passing an order on a final report of police under Section 173 referring the case as false should be deemed to be a Court passing a judicial order disappointing of the information to the police, and that in such a case, the complaint of the Magistrate is necessary for the prosecution of the informant under Section 211 of the IPC. The Madras, Punjab and Calcutta High Courts in AIR 1934 Madras 175, AIR 1948 Lahore 184 (Corrected as per His Lordship's letter dated 28-2-1980) Full Bench and (1917) 18 Cri LJ 13 (Corrected as per His Lordship's letter dated 28-2-1980) following AIR 1921 Patna 302 and AIR 1917 Calcutta 593 have held the other view. For the reason already stated I hold that when no further proceedings are taken by the Magistrate on receipt of a police report under Section 169 there is no proceeding in or in relation to any court and, therefore, no complaint by the court is necessary.

20. The next question which arises in this case is that whether a complaint by the court is necessary because of the arrest and release on bail of the accused Satya Narayan Pathak in consequence of the complaint given by the appellant. The police after taking cognizance of the complaint by Kamlapati Trivedi, the appellant in this case, took cognizance under Sections 147, 448 and 379 IPC, registered a case and issued a warrant of arrest against Satya Narayan Pathak and five others. They all surrendered in court on May 6, 1970 and were released in bail on a bond of Rs. 200 each. They attended court on May 21, 1970 and July 21, 1970 when the police report was expected to be filed. The High Court found that there was a police investigation and during investigation Satya Narayan Pathak surrendered before the Magistrate who released him on bail and police submitted a final report and the Magistrate discharged him from his bail bond. On this evidence the High Court came to the conclusion that the proceedings before the court become a criminal proceeding only when the court takes cognizance and not before. On these facts the question arises whether the proceedings when accused were released on bail after the receipt of the report from the police they were discharged would be in or in relation to a court. It was submitted that when in pursuance of a complaint the accused was arrested and remand and bail proceedings were subsequently taken before a Magistrate in connection with the report to the police, they were proceedings in court and complaint by the court was necessary. In support of the proposition a decision in Badri v. State (ILR (1963) 2 All 359 : (1963) 2 Cri LJ 64) was relied upon. In that case the Allahabad High Court held that an offence under Section 211, Indian Penal Code, alleged to have been committed by the appellant by making a false report against the complainant and others to the police, was an offence in relation to the remand proceeding and the bail proceedings because those proceeding were a direct consequence of the making of the report and the subsequent arrest and, therefore, the case is governed by Section 195(1)(b) of Code of Criminal Procedure. The Supreme Court in Sethi's case (supra) at page 538 did not consider it necessary to express any opinion whether remand and bail proceedings before the Magistrate can be held to be proceedings in a court nor did they consider the question whether the charge of making a false report could be rightly held to be in relation to these proceedings. The position, therefore, is the question whether remand and bail proceedings before

the Magistrate in pursuance of information given to the police of a cognizable offence are proceedings in or relation to a court is left open.

21. To determine whether the remand or bail proceedings are proceedings in a court it is useful to refer again to Chapter XIV of the Criminal Procedure Code. On a complaint by an informant relating to a commission of a cognizable offence the investigation starts. The information may not be against any person. When an investigation cannot be completed in 24 hours after the arrest of the accused and when the officer is of the view that there are grounds for believing that the accusation or information is well-founded the officer is required to transmit to the nearest Magistrate a copy of the entries in the diary and to forward the accused to the Magistrate. When the accused is produced the Magistrate is required to act under Section 167(2) of the Criminal Procedure Code. The Magistrate to whom the accused is produced can from time to time authorise detention of accused in such custody as such Magistrate thinks fir for a term not exceeding 15 days in whole. If he has not the jurisdiction to try the case or commit it for trial but considers further detention is necessary, he may order the accused to be forwarded to a Magistrate having jurisdiction. We have seen that in investigation by the police the Magistrate is associated in a supervisory capacity. The action taken by the Magistrate cannot be taken to be that of a court for the Magistrate who has no jurisdiction to try the case has a limited power. Even the Magistrate who has jurisdiction to try the accused when acting under the section is not acting as a court for the words used are 'the Magistrate having jurisdiction'. The trial commences only after the offence has been taken cognizance of. The proceedings under Section 167, is during investigation. But it has to be noted that when the bail and remand proceedings are before the Magistrate, he has to act judicially. If the accused applies for bail the Magistrate has to act judicially and take into account the facts of the case before he decides to release the accused on bail or refuse bail. Chapter XXXIII CrPC deals with bail. Section 496 provides as to when bail may be taken in non-bailable offences. The provisions of Sections 496 and 497 speak of an accused person in custody charged with a non-bailable offence being produced before court at any stage of the proceedings. The section deals with the exercise of the power of a court at any stage of proceedings when the accused is brought before a court while in the custody of the police officer. According to the wording of section, the bail proceedings would be before a court even though the accused is produced while in custody of a police officer. Even though the word 'court' is used in Sections 496 and 497, we have to consider whether proceedings can be said to be taken before a court as defined in Section 195(2) of CrPC. In deciding the question we have to bear in mind the restricted meaning given to the word in the observations of Lord Sankey in Shell Company's case reported in Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation (supra) and the tests laid down by Venkatarama Aiyar, J. in Shri Virindar Kumar Satyawadi v. The State of Punjab and Hidayatullah, J. in Smt. Ujjam Bai. v. State of Uttar Pradesh (supra). Though there may be some trappings of the court and the section itself mentions the words 'court', I feel that the requirements for being a court for the purpose of Section 195(2) have not been satisfied. The intention of the legislature in prescribing a bar when a offence under Chapter XI of IPC is committed, that is, when false evidence is given or offence against public justice is committed is that the court should decide whether a complaint should be given for an offence committed before it and if satisfied should prefer the complaint of prima facie case is made out and that is in the interest of justice that a complaint should be lodged. The purpose, therefore, is that a private party should not be permitted to make a complaint regarding offences committed in or in relation to court proceedings. In an investigation by the police the complainant is only in the background. He might have not mentioned the name any person as being involved in the crime. Taking all the circumstances into account, I am, in the absence of the complainant, under to hold that remand and bail proceedings before cognizance of the offence is taken could be held to be proceedings before

court bearing in mind the restricted meaning given to the word 'court'.

22. The second question is whether the charge of making of the false report could be rightly held to be in relation to proceedings in court. When an information is given of a commission of a cognizable offence, the police register a case and start investigation. For facilitating the investigation provision for remand is provided for. If the investigation is not completed within 24 hours the police may ask for further remand the court may grant according to provisions of Section 167 Criminal Procedure Code. At this stage though the remand and bail proceedings arise as a consequence of a complaint given, it cannot be said that it is the direct result of a false report to a court for no one might have been mentioned in the complaint as a suspect. Further, it will be seen that the complainant is not entitled to appear in court and oppose grant of bail. The court dealing with the remand or bail proceedings cannot be said to fulfil the condition laid down by Venkatarama Aiyar as the parties are not entitled as a matter of right to be heard in support of their claim and adduce evidence in proof in it.

23. The Magistrate dealing with remand proceedings or a bail petition does not here the complainant. He acts on the material that is placed before him by the police during investigation. The complainant has no opportunity of substantiating or presenting his case before the Magistrate at this stage. If the action of the Magistrate in agreeing with report under Section 169 CrPc and the proceedings taken during investigation by way of remand or bail are understood to be proceeding in or in relation to court a complaint may be preferred by the Magistrate without giving an opportunity to the complainant to satisfy the Magistrate about the truth of his case. In this connection, it is useful to refer to the Section 476 of the CrPc. The section provides that when any Civil Revenue or Criminal Court is whether on application made to it in this behalf or otherwise, of opinion that it expedient in the interest of justice that an inquiry should be made into any offence referred to in Section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceedings in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction. Before making a complaint a preliminary inquiry is contemplated. Normally, it would mean that the person against a whom a complaint is preferred has an opportunity to show why a complaint should not be preferred against him. These stages not reached in a case when Magistrate has still to take cognizance of an offence. The restricted meaning gives to the Court in Section 195(2) CrPc read along with the conditions to be specified before a complaint is preferred by the court, inclines me to hold that the proceedings before a Magistrate in which he agrees with the report by the police under Section 169, Criminal Procedure Code, and the proceedings in remand or bail applications during investigation will not amount to proceedings in or in relation to court.

24. In the result I agree with High Court that there was no proceeding in or in relation to a court, and therefore, Section 195(1)(b) of Criminal Procedure Code is not attracted. The appeal is dismissed.

KOSHAL, J. –

I have had the advantage of going through the judgment prepared by my learned brother, Kailasam J. Having given it my best consideration, I regret that I have to differ with him.

26. The facts giving rise to this appeal lie in a narrow compass and may be stated in brief. The appellant before us is one Kamlapati Trivedi (hereinafter called Trivedi) on whose complaint a case

was registered under Section 147, 448 and 379 of the Indian Penal Code at the Bally Police Station on April 18, 1970 against six persons including one Satya Narayan Pathak (called Pathak hereinafter). Warrants were issued for the arrest of the accused, all of whom surrendered on May 6, 1970 in the Court of the Sub-Divisional Judicial Magistrate, Howrah (referred to later herein as SDJM) who was magistrate having jurisdiction and who passed an order releasing them on bail.

27. The police held an investigation culminating in a report dated July 25, 1970 which was submitted to the SDJM under Section 173 of the Code of Criminal Procedure, 1898 (the Code, for short). The contents of the report made out the complaint to be false and included a prayer that the accused "may be released from charge". On July 31, 1970, the SDJM, agreeing with the report, passed an order discharging the accused.

28. On October 20, 1970 Pathak filed a complaint before the SDJM accusing Trivedi of the commission of offences under Section 211 and 182 of the Indian Penal Code by reason of the latter having lodged with the police the false complaint dated April 18, 1970. Trivedi appeared in the court of the SDJM on November 16, 1970 in response to a summons issued by the latter only in respect of an offence under Section 211 of the Indian Penal Code and was allowed a fortnight to furnish security while the case itself was adjourned to December 10, 1970.

29. It was then that Trivedi Presented a petition dated December 23, 1970 to the High Court at Calcutta praying that the proceedings pending against him before the SDJM be quashed inasmuch as the latter was debarred from taking cognizance of the offence under Section 211 of the Indian Penal Code in the absence of the complaint in writing of the SDJM himself in view of the provisions of clause (b) of sub Section (1) of Section 195 of the Code. Sub-sections (1) and (2) of that section may be reproduced here for ready reference :

> 195. (1) No court shall take cognizance -
>
> (a) Of any offence under Section 172 to 180 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;
>
> (b) of any offence punishable under any of the following sections of the same Code, namely, Section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or
>
> (c) of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.
>
> (2) In clauses (b) and (c) of sub-section (1), the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or sub-Registrar under the Indian Registration Act, 1877.

30. It was argued before the High Court that part of the proceedings which started with the registration of the case by the police on April 18, 1970 at the instance of Trivedi and culminated in

the order dated July 31, 1970 discharging Pathak and his five co-accused constituted proceedings before a Court, that the offence under Section 211 of the Indian Penal Code attributed to Trivedi was committed in or, in any case, in relation to such part and therefore the case against Trivedi fell within the ambit of clause (b) above extracted. The argument did not find favour with the High Court and the learned Single Judge before whom it was made rejected it with the following observations :

The police submitted a final report and so Magistrate discharged him from his bail bond there was no criminal proceeding before the Court against Satya Narayan. The proceeding before the Court becomes a criminal proceeding only when a Court takes a cognizance and not before. Whatever the view of the other High Court may be, the consistent view of this High Court is that so long as cognizance is not taken it cannot be said that there was a proceeding pending in the Court in respect of that offence and since no proceeding was pending before the Court Section 195(1)(b) of the Code is not attracted.

31. It is against the order of the High Court (which is dated August 18, 1971) that Trivedi has instituted this appeal by special leave.

32. Before us the argument which was put forward on behalf of Trivedi for the consideration of the High Court has been repeated and it has been urged strenuously by this learned counsel that in so far as the SDJM passed an order on May 6, 1970 releasing him on bail and them another on July 31, 1970 discharging him, the SDJM acted judicially and therefore as a Court, that it cannot but be held that these orders were passed in proceedings in relation to which the offence under Section 211 of the Indian Penal Code was alleged to have been committed and that consequently the SDJM had on jurisdiction to take cognizance of that offence.

33. The points requiring determination therefore are :

> (a) Whether the SDJM acted as a Court when he passed the orders dated May 6, 1970 and July 31, 1970 or any of them ?
>
> (b) If the answer to question (a) is in the affirmative, whether the offence under Section 211 of the Indian Penal Code attributed to Trivedi could be regarded as having been committed in relation to the proceedings culminating in either or both of the said orders ?

34. In finding an answer to question (a) I attach quite some importance to the provisions of Section 6, 496 and 497 of the Code. These sections are extracted below :

6. Besides the High Court and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in India, namely :-

> I. Courts of Session;
>
> II. Presidency Magistrates;
>
> III. Magistrates of the first class;
>
> IV. Magistrates of the second class;

V. Magistrates of the third class.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail : Provided that such officer or Court, If he or it thinks it fit, may, instead of taking bail from such person, discharging him on his executing a bond without sureties for his appearance as hereinafter provided :

Provided, further, that nothing in this section shall be deemed to affect the provisions of Section 107, sub-section (4), or Section 117, sub-section (3).

497. (1) When any person accused of or suspected of the commission of any non-balance offence is arrested or detained without warrant by an officer in charge of police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life :

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to such or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into this guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reason for so doing.

(3-A) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall released the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

35. Magistrates are specifically labeled as Courts by the statutory provisions of Section 6 and therefore have to be regarded as such. It is no doubt true that the Code assigns to a Magistrate

various functions which do not fall within the sphere of judicial duties and are, on the other hand, functions of an executive nature such as the exercise of supervisory jurisdiction in relation to investigation carried out by the police or work done on the administrative side; and it may plausibly be argued that in the discharge of such functions a Magistrate does not act as a Court. But then in my opinion a Magistrate cannot but be regarded as a Court when he acts judicially. This follows from the provisions of Section 6 itself. The Code does not contain any provision to the effect that no functions performed by a Magistrate in relation to criminal proceedings whether handled by him or dealt with by the police would be regarded as functions performed by a Court unless they are posterior in point of time to the stage when he acts under Section 190 of the Code. On the contrary, Sections 496 and 497 which embrace bail matters specifically describe a Magistrate while dealing there with as a Court and these sections operate fully at all stages of a case including that when the investigation has just started. There is nothing in the context in which the word 'Court' is used in these two sections and Section 195 which would provide an indication that it has been used in two different senses therein, and in such a situation the legislature must be deemed to have used it in one and the same sense whether it occurs in the Code. While deciding the question of bail, therefore, a Magistrate must be held to be acting as a Court and not in any other capacity, irrespective of the stage which the case has reached by then, that is, whether it is still under investigation by the police or has progressed to the stage of an inquiry or trail by the Magistrate. It at once follows that the takings of the cognizance of any offence by a Magistrate under Section 190 of the Code is not a condition precedent for him to be regarded as a Court.

36. Nor do I feel that the opinions expressed by Halsbury and Lord Sankey lay down any different principle. Those opinions appear to me to cover only cases of tribunals which perform quasi-judicial functions but are not statutorily recognised as Courts'. At page 342 of Volume 9 of Halsbury's Laws of England (third edition) appears the following passage in para 809 :

Originally the term "Court" meant, among other meanings, the Sovereign's palace; it has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either immediately or mediately from the Sovereign. All tribunals, however, are not courts, in the sense in which the term is here employed, namely, to denote such tribunals as exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to their jurisdiction. Thus, arbitrators, committees of clubs, and the like, although they may be tribunals exercising judicial functions, are not "Courts" in this sense of that term. On the other hand, a tribunal may be a court in the strict sense of the term although the chief part of its duties is not judicial. Parliament is a court, its duties are mainly deliberative and legislative : the judicial duties are only part of its functions. A coroner's court is a true court although its essential function is investigation.

37. In para 810 the learned author proceeds to lay down the criteria which determine when a tribunal would be regarded as a Court. In his opinion, the elements to be considered are :

> (1) the requirement for a public hearing, subject to a power to exclude the public in a proper case, and
>
> (2) a provision that a member of the tribunal shall not take part in any decision in which he is personally interested, or unless he has been present throughout the proceedings.

38. The learned author then quotes Lord Sankey's observations in Shell & Co. of Australia Ltd. v.

Federal Commissioner of Taxation ((1931) AC 275, 296, 297 : 144 LT 421(PC)) and then gives numerous examples of tribunals which are not regarded as Courts. One common feature of such tribunals is that they are not described as Courts by statute and are charged with performance of administrative or executive functions as distinguished from functions.

39. Paragraph 812 on page 344 of the same volume deals with the subject of creation of Courts and lays down :

> Courts are created by the authority of the Sovereign as the fountain of justice. This authority is exercised by statute, charter, letters patent, or Order in Council. In some cases, a court is held by prescription, as having existed from time immemorial, with the implication that there was at some time a grant of the Court by the Sovereign, which has been lost.

An Act of Parliament is necessary to create a court which does not proceed according to the common law.

40. Reference may usefully be made to Section 6 of the same Chapter in which the above paragraphs occur. That section is headed "Magistrates Courts". The relevant part of paragraph 1041 with which section begins is to the following effect :

A magistrate's court consists of a justice or justices of the peace acting under any enactment or by virtue of his their commission or under common law (otherwise than as a court or committee of quarter sessions or a purely administrative tribunal), or of a stipendiary magistrate.

41. The combined effect of the various paragraphs forming part of the treatise and noticed above would be that a Court may be created by a statute and that when such a Court performs judicial functions, it will be deemed to act as a Court and, further that Magistrates' Courts are regarded as such unless performing executive or administrative functions. That is how the position stands in England and there is nothing in the case so Shell Company of Australia Ltd. v. Federal Commissioner of Taxation (supra) which runs to the contrary. It may be noted that in that case the question for decision was as to whether the Board of Review which had been constituted under the Australian Income tax Assessment Act to review the decisions of the Commissioner of Taxation was or was not a Court and it was in that context that Lord Sankey expressed his opinion. Obviously he was not dealing with the functions of tribunal which had been statutorily labelled as a Court.

42. What I have said of Lord Sankey's opinion is true of the decisions of this Court in Virindar Kumar Satyawadi v. The State of Punjab ((1955) 2 SCR 1013 : AIR 1956 SC 153 : 1956 Cri LJ 326) and Smt. Ujjam Bai v. State of Uttar Pradesh ((1963) 1 SCR 778 : AIR 1962 SC 1621). In the former the question for decision was as to whether a returning officer discharging functions under the Representation of the People Act, 1951 was a Court and in answering the same the Court referred to the case of Shell Company of Australia (supra) and other English and Australian authorities and then observed :

It is unnecessary to traverse the same ground once again. It may be stated Broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the

authority to decide the matter on a consideration of the evidence and accordance with the law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

43. In Ujjam Bai's case (supra) this Court was resolving a question as to whether an officer of the income tax department was a court and replied in the negative, broadly for the reason that even though taxing authorities follow a pattern of action which is considered judicial, they are not converted into Courts of civil judicature and that their actions are executive in nature.

43a. Neither of these cases deals with an authority on which the status of a court is conferred by statute, nor with one forming part of the judiciary, such as a Magistrate in whose case the opinion of this Court would surely have been different as is apparent from judgment of Hidayatullah, in Ujjam Bai's case (supra) which quotes the following passage from Gullapalli Nageswara v. State of Andhra Pradesh (1959 Supp 1 SCR 319, 353, 354 : AIR 1959 SC 308)

> "The concept of a quasi-judicial act implies that the act is not wholly judicial it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power."

and then proceeds :

> The taxing departments are instrumentalities of the State. They are not a part of the legislature; nor are they a part of the judiciary. Their functions are the assessment and collection of taxes, and in the process of assuming taxes they have to follow a pattern of action, which is considered judicial. They are not thereby converted into Courts of civil judicature. They still remain the instrumentalities of the State and are within the definition of 'State' in Article 12. In this view of the matter; their actions must be regarded, in the ultimate analysis, as executive in nature, since their determinations result in the demand of tax which neither the legislature nor the judiciary can collect. Thus, the actions of these quasi-judicial bodies may be open to challenge on the ground of breach of fundamental rights.

44. It is thus clear that the source of power exercised by the authority, that is, whether it is an executive power, would make all the difference in the determination of the question as to whether the authority acts as a Court or merely as quasi-judicial tribunal not functioning as a Court. In this connection a reference may also be made to Section 19 of the Indian Penal Code coupled with illustration (b) appended thereto and Section 20 thereof :

Section 19 :

> The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person
>
> who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which if confirmed by some other authority, would be definitive, or
>
> who is one of a body of persons which body of person is empowered by law to give

such a judgment.

Illustration (b) :

A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fire or imprisonment, with or without appeal, is a Judge.

Section 20 :

The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

45. Although we are not here concerned with the terms "Judge" and "Court of Justice" properly so called, the provisions above extracted do give a definite indication of the attributes of a Court as used in criminal law generally. It may be noted that the Code and the Indian Penal Code are the main statutes operating in Indian relation to the dispensation of criminal justice and may in a sense be regarded as supplementary to each other, the Code forming the procedural link of the same chain of which the Indian Penal Code constitutes the link of substantive law. This relation between the two enactments is further strengthened by the provisions contained in sub-section (2) of Section 4 (the definition clause) of the Code which runs thus :

4(2) Words which refer to acts done, extend also to illegal omissions; and

all words and expressions used herein and defined in the Indian Penal Code, and not hereinabove defined, shall be deemed to have the meanings respectively attributed to them by the Code.

46. It is no doubt true that the expression "Court of Justice" does not appear to have been used in the Code (although the expression "Judge" does find a place in Section 197 thereof), but then there is no escape from the conclusion that when a "Judge" (including a Magistrate) who is empowered to act judicially does so act he constitutes not merely a Court but a Court of Justice.

47. Now I proceed to examine the relevant provisions contained in Chapter XIV of the Code which carries caption "INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE". It may be stated at once that although the Chapter is headed as stated, it is not confined to matters which are strictly concerned with the investigation stage but also deals with situations which arise after the investigation has been finalized. Reference may be made in this behalf to sub-section (2) of section 172 of the Code which reads thus :

Any criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are refereed to by the Court, but, if they are used by the police officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of the Indian Evidence Act, 1872, Section 161 or Section 145, as the case may be, shall apply.

48. The sub-section clearly deals with the use of police diaries at an inquiry or trial which a Magistrate holds not in his administrative or executive capacity but undoubtedly as a Court. The caption of the Chapter therefore is not decisive of the question as to whether a particular provision

contained therein is limited to the supervisory jurisdiction of the Magistrate in relation to the investigation being conducted by the police or deals with his judicial functions as a Court.

49. The contents of Section 169, 170 and 173 of the Code may now be scrutinised. They are reproduced below :

> 169. If, upon an investigation under this chapter, it appears to the officer in charge of the police station or to the police officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.
>
> 170. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.
>
> (2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes securities for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article, which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the person who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrates thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.
>
> (3) If the Court of the District Magistrate or sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.
>
> 173. (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police station shall -
>
> (a) forward to a Magistrate empowered to take cognizance of the offence on a police report a report, in the form prescribed by the State Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released in his bond, and, if so, whether with or without sureties, and
>
> (b) communicate, in such manner as may be prescribed by the state Government, the

action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under Section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) After forwarding a report under section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or case to be furnished to the accused, free of cost, copy of the report forwarded under sub-section (1) and of the first information report recorded under Section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under Section 164 and the statements recorded under sub-section (3) of Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(5) Notwithstanding anything contained in sub-section (4), if the police officer is of opinion that any part of any statement recorded under sub-section (3) of Section 161 is not relevant to the subject matter of the inquiry or trial or that is disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall exclude such part from the copy of the statement furnished to the accused and is such a case, he shall make report to the Magistrate stating its reasons for excluding such part :

Provided that at the commencement of the inquiry or trial, the Magistrate shall, after perusing the part so excluded and considering the report of the police officer, pass such orders as he thinks fit and if he so directs, a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused.

50. Section 169 and 170 do not talk of the submission of any report by the police to the Magistrate, although they do not state what the police has to do short of such submission when it finds at the conclusion of the investigation (1) that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate (Section 169) or (2) that there is sufficient evidence or reasonable ground as aforesaid (Section 170). In either case the final report of the police is to be submitted to the Magistrate under sub-section (1) of Section 173. Sub-section (3) of that section further provides that in the case of a report by the police that the accused has been released on his bond (which is the situation envisaged by Section 169), the Magistrate shall make "such order for the discharge of such bond or otherwise as he thinks fit". Now what are the courses open to the Magistrate in such a situation ? He may, as held by this Court in Abhinandan Jha v. Dinesh Mishra ((1967) 3 SCR 668 : AIR 1968 SC 117 : 1968 Cri LJ 97) :

(1) agree with the report of the police and file the proceedings; or

(2) not agree with the police report and

(a) order further investigation, or

(b) hold that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and take cognizance of the offence complained of.

52. The appropriate course has to be decided upon after a consideration of the report and the application of the mind of the Magistrate to the contents thereof. But then the problem to be solved is whether the order passed by the Magistrate pertains to his executive or judicial capacity. In my opinion, the only order which can be regarded as having been passed by the Magistrate in his capacity as the supervisory authority in relation to the investigation carried out by the police is the one covered by the course 2(a). The order passed by the Magistrate in each of the other two courses, that is, (1) and (2), follows a conclusion of the investigation and is a judicial order determining the rights of the parties (the State on the one hand and the accused on the other) after the application of his mind. And if that be so, the order passed by the Magistrate in the proceeding before us must be characterised as a judicial act therefore as one performed in his capacity as Court.

53. The reasons which have weighed with me in coming to the conclusion arrived at in the last paragraph are equally applicable to the consideration of the question whether an order of bail passed by a Magistrate calls for the performance by him of his judicial functions. Such an order also decides the rights of the State and the accused and is made by the Magistrate after the application of his mind and therefore in the discharge of his judicial duties, which factor constitute it an act of a Court.

54. For a tribunal to be acting as a Court, it is not necessary that the parties must have a right of hearing or adducing evidence at every stage of the proceedings before it. This is specially true of Courts constituted as such by the legislature. Reference may here be made to interlocutory orders issuing temporary injections or staying proceedings in a subordinate Courts or dispossession of a party by civil Courts at the instance of a plaintiff or appellant and in the absence of the opposite party which comes into the picture later on after it served with a notice. And even subsequent to the appearance of the party adversely affected, the existence of a prima facie case would tilt the scales against it so that the order earlier passed in favour of the other party is confirmed till the conclusion of the case on merits, even though the case may finally be decided otherwise and the interlocutory order found to be unjust and then vacated. And yet it can hardly be argued that the presiding officer of the Court does not act as a Court when passing such an order. Really, the Right to adduce evidence and be heard is to be taken into consideration as being available at one stage of the proceedings or the other. Thus in the case of an order passed by a Magistrate under sub-section (3) of Section 173 of the Code in agreement with the police report does not call for any hearing or the production of any evidence on the part of the accused, as it goes in his favour. If the Magistrate, on the other hand, disagrees with the report submitted by the police and takes cognizance of the offence, the accused comes into the picture and thereafter shall have the right to be heard and the adduce evidence in support of his innocence. Viewed in this context, all orders passed by a Magistrate acting judicially [such orders of bail and those passed under sub-section (3) of Section 173 of the Code discharging an accused or orders taking cognizance of the offence complained of] are parts of an integral whole which may end with a definitive judgment after an inquiry or trial, or earlier according to the exigencies of the situation obtaining at a particular stage, and which involves, if need be, the adducing of evidence and the decision of the Magistrate on an appreciation thereof. They cannot be viewed in isolation and given a character different from the entire judicial

process of which they are intended to form a part.

55. In the view that I have taken of the matter, I do not consider it necessary to go into the details of the conflicts of opinion amongst the High Courts in India in relation thereto but I would touch briefly thereupon. In J. D Boywalla v. Sorab Rustomji Engineer ((1941) 43 Bom LR 529 : AIR 1941 Bom 294) Beaumont, C.J., speaking for himself and Macklin, J., emphatically held that a Magistrate while passing an order releasing an accused person on bail or discharging him in pursuance of a report submitted by the police to the effect that the evidence was insufficient to sustain the charge, acts judicially and therefore as a Court within the meaning of that term as used in clause (b) of sub-section (1) of Section 195 of the Code. That decision was followed by a Division Bench Consisting of Shah, C.J., and Baxi, J., in State v. Vipra Khimji Gangaram (AIR 1952 Sau 67 : 1952 Cri LJ 1084) in so far as an order discharging an accused person as aforesaid is concerned. Beaumont, C.J.'s view in regard to orders of bail was accepted as correct by M. C. Desai, C.J. and Misra, J., in Badri v. State (ILR (1963) 2 All 359 : (1963) 2 Cri LJ 64).

56. These three decisions, in my opinion, lay down the correct law on the point and the view expressed to the contrary by the Madras, Calcutta and Patna High Courts also by Full Bench of the Allahabad High Court in Hanwant v. Emperor (AIR 1948 All 184) and by a full Bench of the Lahore High Court in Emperor v. Hayat Fateh Din (AIR 1948 Lah 184) merits rejection for the reasons stated above.

57. In so far this Court is concerned, the point debated before us has not been the subject-matter of any decision and was expressly left open M. L. Sethi v. R. P. Kapur ((1967) 1 SCR 520 : AIR 1967 SC 528 : 1967 Cri LJ 528). In that case the appellant had lodged a report with the police charging the respondents with certain cognizable offences. While the police were investigating into the report, the respondent filed a complaint in the Magistrate's Court alleging that the appellant had committed an offence under Section 211 of the Indian Penal Code by falsely charging the respondent with having committed an offence. The Magistrate took cognizance of the respondent's complaint under Section 190 of the Code. At the stage there were no proceedings in any Court nor any order by any Magistrate for arrest, remand or bail of the respondent in connection with the appellant's report to the police. Later, however, the police arrested the respondent in connection with the appellant's report and filed a charge-sheet against him, but the case ended in an order of discharge. Thereafter, the appellant raised an objection in the Court of the Magistrate to the effect that cognizance of the offence under Section 211 of the Indian Penal Code could not be taken in view of the provisions of clause (b) of sun-section (1) of Section 195 of the Code. The Magistrate rejected the contention and the order was confirmed by the Sessions Court and the High Court. While dismissing the appeal, this Court held that the compliant filed by the respondent was competent and that clause (b) aforesaid did not stand in the way of the Magistrate taking cognizance, inasmuch as, there had been no proceedings of any kind whatsoever before the Magistrate in relation to the report lodged by the appellant with the police till the complaint was filed by the respondent. Reliance was placed on behalf of the appellant in that case on Badri v. State (supra) and J. D. Boywalla v. Sorab Rustomji Engineer (supra) but the points decided in those cases were held not to arise in the case then before the Court which made the following observations in relation thereto :

In the case of Badri v. State, where an offence under Section 211, I.P.C., was alleged to have been committed by the person making a false report against the complainant and others to the police, it was held that it was an offence in relation to the remand proceedings and the bail proceedings which were subsequently taken before a Magistrate in connection with that report to the police, and,

therefore, the case was governed by Section 195(1)(b), CrPC, and no cognizance of the offence could be taken except on a complaint by the Magistrate who held the remand and bail proceedings. We do not consider it necessary to express any opinion whether the remand and bail proceedings before Magistrate could be held to be proceedings in a Court, nor need we consider the question whether the charge of making of the false report could be rightly held to be in relation to those proceedings. That aspect need not detain us, because, in the case before us, the facts are different. The complaint for the offence under Section 211, I.P.C. was taken cognizance of by the Judicial Magistrate at Chandigarh at a stage when there had been no proceedings for arrest, remand or bail of the respondent and the case was still entirely in the hands of the police. There was, in fact, no order by any Magistrate in the proceedings being taken by the police on the report lodged by the appellant up to the stage when the question of applying the provisions of Section 195(1)(b), Cr. P.C. arose. These two cases are also, therefore, of no assistance to the appellant. On the same ground, the decision of the Bombay High Court, in J. D. Boywalla v. Sorab Rustomji Engineer is also inapplicable, because in that case also orders were passed by a Magistrate on the final report made by the police after the investigation of the facts in the report in respect of which the complaint under Section 211, I.P.C. was sought to be filed

58. In another part of the judgment deciding M. L. Sethi v. R. P. Kapur (supra) this Court disagreed with the view expressed in Ghulam Rasul v. Emperor (AIR 1936 Lah 238 : 37 Cri LJ 426) wherein Blacker, J., made the following observations :

> I am clear that the words in this sub-section "in relation to any proceedings in any Court apply to the case a false report or a false statement made be in the investigation by the police with the intention that there shall in consequence of this be a trial in the Criminal Court, and I find support for this view in the case reported as Chuhermal Nihalmal v. Emperor (AIR 1929 Sind 132).

58a. This view of Blacker, J., was repelled by this Court thus :

> The decision in the words in which the learned judge expressed himself appears to support the arguments of learned counsel for the appellant in the present case; but we think that very likely in that case the learned judge was influenced by the circumstances that the case had been reported by the police to the Magistrate for cancellation. He appears to have held the view that the Magistrate having passed an order of cancellation, it was necessary that the complaint should be filled by the Magistrate, because Section 195(1)(b) had become applicable. If the learned Judge intended to say that without any proceeding being taken by the Magistrate in the case which was investigated by the police, it was still essential that a complaint should be filed by the Magistrate simply because a subsequent proceeding following the police investigation was contemplated, we consider that his decision cannot be accepted as correct.

59. These observation cannot be held to mean that if an order of cancellation of a case has actually been passed by a Magistrate in agreement with the report of the police to the effect that no sufficient evidence was available against the accused, such order could not be regarded as a judicial proceeding and the Magistrate passing it could not be given the status of a Court. This is apparent from the last sentence of the passage just above extracted which indicates that all that was meant was that if Blacker, J., meant to say that even though no proceeding at all had been taken by the Magistrate, clause (b) of sub-section (1) of Section 195 of the Code would be attracted merely for

the reason that the police had held an investigation which would at a later point of time result in any proceedings before the Magistrate this Court should not agree with him. Another fact which may be noted in this connection is that the judgment in Ghulam Rasul v. Emperor (supra) does not state in unmistakable terms that any order of cancellation of the case was passed by the concerned Magistrate and all that is mentioned is that the police had reported the case for "cancellation", which may well mean that really no order of cancellation had in fact been made by the Magistrate.

60. As the order releasing Trivedi on bail and the one ultimately discharging him of the offence complained of amount to proceedings before a Court, all that remains to be seen is whether the offence under Section 211 of the Indian Penal Code which is the subject-matter of the complaint against Trivedi can be said to have been committed "in relation to" those proceedings. Both the orders resulted directly from the information lodged by Trivedi with the police against Pathak and in this situation there is no getting out of the conclusion that the said offence must be regarded as one committed in relation to those proceedings. This requirement of clause (b) aforementioned is also therefore fully satisfied.

61. For the reasons stated, I hold that the complaint against Trivedi is in respect of an offence alleged to have been committed in relation to a proceeding in Court and that in taking cognizance of it the SDJM acted in contravention of the bar contained in the said clause (b), as there was no complaint in writing either of the SDJM or of a superior Court. In the result, therefore, I accept the appeal and, setting aside the order of the High Court, quash the proceedings taken by the SDJM against Trivedi.

ORDER##

62. In accordance with the opinion of the majority, the appeal is allowed, the order of the High Court is set aside and the proceedings taken by the Sub-Divisional Judicial Magistrate against the appellant, Kamlapati Trivedi, are quashed.

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