Ram Lal Narang

Vs

State (Delhi Administration)

Om Prakash Narang and Another

Vs

State (Delhi Administration)

Criminal Appeal Nos. 373 and 374 of 1978

(N. L. Untwalia, O. Chinnappa Reddy JJ)

10.01.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. On the intervening night of March 31, 1967 and April 1, 1967, two sandstone pillars of great antiquity, beauty and value were stolen from Suraj Kund temple, in Village Amin (District Karnal, Haryana). They were of the Sunga period (2nd Century B.C.) and their present estimated value in the International Art Treasures' Market is said to be around five hundred thousand American dollars. A first information report (FIR 72 of 1967) was registered by the Police of Butana, District Karnal. The pillars were recovered on May 2, 1967. On completion of investigation a charge-sheet was filed on October 3, 1967 in the Court of the Ilaqa Magistrate at Karnal, against one Bali Ram Sharma and two others. The case ended in their acquittal on July 16, 1968. During the pendency of the case one Narinder Nath Malik (N. N. Malik) filed an application before the Magistrate alleging that he was a research scholar and requesting that he might be given custody of the two pillars to enable him to make a detailed study. At the instance of H. L. Mehra, the then Chief Judicial Magistrate, Karnal and a friend of N. N. Malik, the learned Ilaqa Magistrate gave custody of the two pillars to N. N. Malik on his executing a personal bond in a sum of Rs. 20,000. The order was written by H. L. Mehra himself and signed by the Ilaqa Magistrate. The pillars remained in the custody of N. N. Malik from March 1, 1968 to May 27, 1968, when N. N. Malik purported to return them to the Court of the Ilaqa Magistrate, Karnal. After the acquittal of Bali Ram Sharma and others, the pillars were handed over to the Lambardar of village Amin. Later, it came to light that the pillars returned by N. N. Malik were not the original pillars but fakes. Thereupon, FIR RC. 2/71-CIA/SPE/CBI was registered at Delhi against N. N. Malik and H. L. Mehra under Section 120-B read with Sections 406 and 420 IPC. After completing the investigation, the C.B.I. filed a charge-sheet R.C. 2 of 1971 in the Court of Special Magistrate, Ambala, against N. N. Malik and H. L. Mehra for alleged offences under Section 120-B read with Sections 406 and 420, Indian Penal Code. The charge-sheet was filed on December 30, 1972. On May 17, 1976, the learned Special Magistrate, Ambala, passed an order directing the framing of charges against N. N. Malik and H. L. Mehra. But, no charges were actually framed as the accused were not present in the Court. On April 17, 1977, the Public Prosecutor filed an application under Section 494 CrPC for permission to withdraw the case against Malik and Mehra. The learned Special Magistrate, Ambala, by his order dated May 16, 1977,

permitted the withdrawal of the case and discharged the accused.

2. Between May 1976 and May 1977 several other things happened and the Narang brothers, the appellants in the two appeals, made their appearance on the scene. It may be mentioned hers, that of the three Narang brothers, Om Prakash alias Omi Narang had been living in London since 1970, Manohar Lal alias Manu Narang had been similarly living in London since July 1974 and Ram Lal Narang alone had been living in India. Ram Lal Narang was detained first under the MISA from September 1974 till he was released under orders of the High Court, and later, under the COFEPOSA from July 1, 1975 till after the revocation of the internal Emergency in March 1977. The two genuine pillars which had been removed from Suraj Kund temple were traced and found in London in the warehouse of Messrs Spink & Co. It was suspected that Manoharlal Narang and Ramlal Narang had engaged Balkishan Rawal and Nathubhai Rawal of Delhi to make three sets of fakes and had exported the genuine pillars to London. A FIR (R.C. 4/76-CIU(A)/SPE) was registered by the Superintendent of Police, CIU (Antiquities, SPE/CBI, New Delhi) against Manohar Lal Narang and others, for alleged offences under Section 120-B IPC read with Section 411 IPC and Section 25(1) of the Antiquities and Art Treasures Act, 1972. On June 26, 1976, N. N. Malik made an application before the Chief Metropolitan Magistrate, Delhi, in case R.C. 4/76-CIU(A)/SPE, New Delhi, purporting to be under Section 306 of the Code of Criminal Procedure, 1973, Praying that he might be granted pardon. The application mentioned Sections 411, 406 and 420 IPC read with Section 120-B and Section 25(1) of the Antiquities and Art Treasures Act, 1972, as the offences involved. The application was supported by the reply filed by the Superintendent of Police, C.B.I. On July 3, 1976, the Chief Metropolitan Magistrate, Delhi, granted pardon to N. N. Malik. Before the grant of pardon the confessional statement of N. N. Malik was got recorded by the Metropolitan Magistrate, Delhi. Thereafter, on July 19, 1976, a charge-sheet (R.C. 4/1976) was filed in the Court of the Chief Judicial Magistrate, Delhi, for offences under Section 120-B IPC read with Sections 420, 411 and 406 IPC and Section 25 of the Antiquities and Art Treasures Act, 1972. The case was transferred to the Court of the additional Chief Metropolitan Magistrate. On July 20, 1976, the Additional Metropolitan Magistrate issued process for the appearance of the three Narang brothers. The learned Magistrate also issued warrants for the extradition of Omi Narang and Manu Narang who were in London. Extradition proceedings were initiated in Britain at the instance of the Government of India. The Metropolitan Magistrate, Bow Street, London ordered the detention of Omi Narang and Manu Narang pending the issue of warrants by the Secretary of State under Section 5 of the Fugitive Offenders Act. A petition for the issue of the writ of habeas corpus ad subjiciendum was filed in the High Court of Justice, Queen's Bench Division, London. The Divisional Court directed the release of Omi Narang and Manu Narang. The Government of India filed an appeal to the House of Lords and on March 24, 1977, the appeal was allowed. Omi Narang and Man Narang were finally extradited and brought to India on July 27, 1977.

3. Meanwhile internal Emergency was lifted in India in March 1977 and Ram Lal Narang was released. Almost immediately he filed a petition before the Additional Metropolitan Magistrate to drop the proceedings against him, to cancel the extradition warrants and to discharge the accused. The contention was that the entire investigation in FIR R.C. 4/76 was illegal as a case on the same facts was already pending before the Ambala Court and that the Delhi Court acted without jurisdiction in taking cognizance of the case pursuant to a report of police based upon illegal investigation. The learned Magistrate held that he was not competent to sit in judgment, as it were, over the order of his predecessor taking cognizance of the case. He, however, found that the conspiracy which was the subject-matter of the case before the court at Ambala and the conspiracy which was the subject-matter of the case before himself were one and the same, but, he held that the question as to which court should proceed with the case, was not for him to decide; it was a matter

for the High Court to decide under Section 186 CrPC. The learned Magistrate also noticed an application filed before him, after the conclusion of arguments, informing him that the case in the Court at Ambala against Malik and Mehra had since been withdrawn on May 16, 1977.

4. On June 21, 1977, two application were field in the Delhi High Court under Section 482 CrPC, one by Ramlal Narang and the other on behalf of Omi Narang and Manu Narang who were still in England awaiting extradition. The applicants sought quashing of the orders of the learned Metropolitan Magistrate issuing process to them and warrants for the extradition of Omi Narang and Manu Narang. It was also sought to be declared that the entire investigation in R.C. 4 of 1976 was illegal and the orders of the Chief Metropolitan Magistrate and the Additional Metropolitan Magistrate taking cognizance of R.C. 4 of 1976 were illegal. The grant of pardon to N. N. Malik was questioned. It was also prayed that the proceedings before the Metropolitan Magistrate might be quashed. The petitions were admitted by the Delhi High Court on June 22, 1977, but ultimately dismissed on January 10, 1978, by a common judgment. Ramlal Narang having obtained special leave from this Court has filed Criminal Appeal 373 of 1978 and Omi and Manu Narang have preferred Criminal Appeal 374 of 1978. We may mention here that on August 1, 1977, a supplemental charge-sheet was filed making Mehra an accused in the Delhi case, the case in the Ambala Court having been withdrawn on May 16, 1977, as mentioned earlier. Malik, we may add, died sometime during August, 1977. We are given to understand that Mehra also was subsequently granted pardon.

5. Shri Harjinder Singh, learned Counsel for the appellant in Criminal Appeal 373 of 1978 and Shri Ashok Sen, learned Counsel for the appellants in Criminal Appeal 374 of 1978 argued that the conspiracy and the overt acts which were the subject-matter of the two FIRs and the two charge-sheets were the same and, therefore, there was an implied bar to the power of the police to investigate into FIR R.C. 4 of 1976 and the power of the Court at Delhi to take cognizance of the case upon the report of such information. It was submitted that the mere circumstance that some more persons were mentioned as involved or the mere circumstance that the property was said to have been recovered later would not affect the legal position. It was submitted that the gist of the conspiracy in both the cases was to obtain possession of the pillars. The offence of conspiracy relating to the obtaining of the pillars having been investigated and a charge-sheet having been filed in the Ambala Court, the police had no authority in law to start a fresh investigation under the CrPC by registering another FIR and to submit a charge-sheet in the Delhi Court for the very same offence. That was an unwarranted interference by the police with the proceedings pending in the Court. The whole of the investigation subsequent to the filing of the charge-sheet in the Ambala Court was without jurisdiction and no material or fact gathered during the course of such illegal investigation could be used to found further proceedings. The Delhi Court was, therefore, in error in taking cognizance of offences which had already been investigated and which were the subject-matter of proceedings in another Court. It was also argued that the subsequent withdrawal of the case from the Ambala Court did not and could not confer jurisdiction on the Delhi Court. The withdrawal itself was an abuse of the process of the Court.

6. Shri Lalit, learned Counsel for the respondents urged that the conspiracy which was the subject-matter of the charge-sheet filed in the Delhi Court was not the same as the conspiracy which was the subject-matter of the charge-sheet filed in the Ambala Court. The circumstance that some of the conspirators were common and part of the case was the same did not make the two conspiracies identical with each other. There was, therefore, no question of any bar against the Delhi Court from taking cognizance of the case based upon the wider conspiracy merely because the Ambala Court had taken cognizance of the case based upon the narrower conspiracy. Shri Lalit also urged that the

statutory right of the police to investigate into cognizable offences was not fettered and did not end with the submission of a charge-sheet to the Court. He submitted that the police had the right and indeed, the duty, to investigate into fresh facts coming to light and to light and to appraise the Court of the same.

7. The basic submission on behalf of the appellants was that the two conspiracies alleged in the two cases were but one. The sequitur was that the investigation into and the taking of cognizance of the second case were without jurisdiction.

8. We will first examine the question whether the conspiracy which was investigated by the police and which investigation led to the filing of the charge-sheet in the Ambala case can be said to be the same as the conspiracy which was later investigated and which led to the filing of the charge-sheet in the Delhi Court. For this purpose, it is necessary to compare the FIR and the charge-sheet in the two cases.

9. The FIR relating to the case in the Ambala Court was registered against "N. N. Malik and others" for alleged offences under "Section 120-B IPC read with Section 420 and Section 406 IPC". It was stated therein that N. N. Malik applied to the Court of the Judicial Magistrate 1st Class, Karnal, and obtained possession of the two stone pillars and dishonestly substituted two fake pillars in their place and returned them to the Court. The charge-sheet which was filed on December 30, 1972 mentioned N. N. Malik and H. L. Mehra as the two accused in the case and recited that N. N. Malik was introduced by Mehra to the Magistrate as an eminent archaeologist and that he obtained possession of the pillars on the pretext that he wanted to make some research. The actual order granting custody of the pillars to Malik was written by Mehra signed by the Magistrate, R. K. Sen. It was further recited that sometime after the pillars were returned by Malik to the Court it was discovered that the pillars so returned were fakes and that N. N. Malik was not an archaeologist. It was finally said that Malik and Mehra had "thus dishonestly made misrepresentation of fact and got the delivery of the two statutes which were subsequently substituted by them" and they had "thus committed the offence under Section 120-B read with Section 420 IPC and Section 406 IPC". It is, therefore, seen from the allegations in the charge-sheet filed in the Ambala Court that the conspirators involved in the conspiracy which was its subject-matter were two, namely, Malik and Mehra, that the object of the conspiracy was to dishonestly obtain possession of the pillars by making false representation to the Magistrate and to substitute the pillars by fakes after obtaining possession of the same and that the offences committed were under Section 120-B read with Sections 420 and 406 IPC.

10. The FIR in the Delhi case was registered on May 13, 1976, and the offences mentioned were Section 120-B IPC read with Section 411 IPC and Section 25(1) of the Antiquities and Art Treasures Act, 1972. The accused mentioned in the report were Manu Narang and Ramlal Narang. After reciting that the pillars had been taken from the court by N. N. Malik and had been substituted by fake pillars, the FIR went on to recite that the genuine pillars which were stolen from Suraj Kund temple, as mentioned above, were found to be in the possession and control of Manohar Lal alias Manu Narang in London. It was further recited that Manu Narang was negotiating the sale of the pillars through some London brokers and the price expected to be fetched was approximately five hundred thousand American dollars. It was recited further that Manu Narang and his brother Ramlal Narang had commissioned two well-known sculptors of Delhi to make these sets of fake pillars. The two brothers and others, acting in conspiracy, and dishonestly received and exported the two stone pillars. The charge-sheet which followed the investigation was filed on July 19, 1976 in the Delhi Court. The charge-sheet mentioned the three Narang brothers, Ramlal Narang, Manoharlal Narang

and Om Prakash Narang, as the three accused persons sent up for trial and H. L. Mehra as a person not sent up for trial as he was already facing trial before the Special Magistrate, Ambala. The charge-sheet recited, among other facts, that the Narang brothers had come to know in or about the month of February, 1968 about the invaluable nature of the pillars and devised a stratagem to get the custody of the pillars. They discussed their stratagem with their family friend N. N. Malik, informing him that the pillars were worth a fortune. Ramlal Narang and Malik met Mehra and it was decided that Malik should file an application for temporary custody of the pillars and that Mehra should wield his influence over the Magistrate to help N. N. Malik to get such temporary custody. That was done. Temporary custody of the pillars was obtained and they were removed to Delhi in a truck at the instance of the Narang brothers to a place in Defence Colony, New Delhi. Replicas of the pillars were made by Balkrishan Rawal and Natwarlal, two eminent sculptors of Delhi under the supervision of Ramlal Narang and Omi Narang. Manu Narang also used to visit Delhi and check the progress made. The original pillars were transported to Bombay by Manu Narang and smuggled out of the country. Fake pillars were substituted and returned by N. N. Malik to the Court. Later on, suspicion was created by the discovery of two fake pillars which were also attempted to be smuggled out of the country. The two pillars returned by N. N. Malik were then got examined by experts and were found to be fakes. Malik was presented by the Narang brothers with a Fiat car, a revolving brass bed and a sum of Rs. 70,000. They also paid for two pleasure trips made by Malik and his wife to Bombay. It was recited in the charge-sheet that the facts disclosed "the commission of offences under Section 406 (criminal breach of trust), Section 411 (receiving and retaining stolen property), Section 420 (cheating) IPC and Section 25(1) of the Antiquities and Art Treasures Act, 1972, all read with Section 120-B IPC, in pursuance of criminal conspiracy to which Manoharlal Narang, Ramlal Narang and Om Prakash Narang, H. L. Mehra and N. N. Malik (already granted pardon) were partisan. It was further recited "Manoharlal Narang, Ramlal Narang and Omi Narang also abetted the commission of offences under Section 420 and Section 406 IPC by N. N. Malik, approver, and these three accused were, therefore, liable for prosecution under Section 406 and Section 420 IPC read with Section 109 IPC and they had also committed other offences under Section 411 IPC". It was further mentioned in the charge-sheet that Manoharlal Narang and Omi Narang were in London and that proceedings for their extradition were under way. It was also mentioned that H. L. Mehra was facing trial before the Special Magistrate, Ambala, for the offences committed by him and, therefore, he was not being sent up for trial in this case.

11. It is obvious that neither at the time when the FIR pertaining to the Ambala case was registered nor at the time when the charge-sheet was filed in the Ambala Court, were the Narang brothers known to be in the picture. The investigating agency was also not aware of what Malik and Mehra had done with the pillars after they had obtained possession of the pillars from the Court and substituted and returned fake pillars to the Court. The FIR and the charge-sheet were concerned primarily with the offences of conspiracy to cheat and to misappropriate committed by Malik and Mehra. At that stage, the investigating agency was not aware of any conspiracy to send the pillars out of the country. It was not known that Narang brothers were also parties to the conspiracy obtain possession of the pillars from the Court. It was much later that the pillars surfaced in London and were discovered to be in the constructive possession of Narang brothers. Even then, the precise connection between Malik and Mehra on the one side and Narang brothers on the other was not known. All that known was that the pillars which were stolen property within the definition of the expression in Section 410 IPC were found to be in the possession of Narang brothers in London. On the discovery of the genuine pillars in the possession of Narang brothers, without anything further to connect Narang brothers with Malik and Mehra, the police had no option but to register a case under Section 411 IPC against Narang brothers. That was what was done. No fault could, therefore, be

found with the police for registering a FIR against the Narang brothers for the offence of conspiracy to commit an offence under Section 411 IPC. In the case of the investigation into this offence, it transpired that the Narang brothers were also parties to the original conspiracy to obtain possession of the pillars from the Court by cheating. Facts came to light which indicated that the conspiracy, which was the subject-matter of the case pending in the Ambala Court was but part of a larger conspiracy. The fresh facts which came to light resulted in the filing of the second charge-sheet. The several facts and circumstances mentioned by us earlier and a comparison of the two FIRs and the two charge-sheets show that the conspiracy which was the subject-matter of the second case could not be said to be identical with the conspiracy which was the subject-matter of the first case. The conspirators were different. Malik and Mehra alone were stated to be the conspirators in the first case, while the three Narang brothers were alleged to be the principal conspirators in the second case. The objects of the two conspiracies were different. The alleged object of the first conspiracy was to obtain possession of the pillars from the Court by cheating and to misappropriate them. The alleged object of the second conspiracy was the disposal of the stolen property by exporting the pillars to London. The offences alleged in the first case were Section 120-B read with Section 420 and Section 406 IPC, while the offences alleged in the second case were Section 120-B read with Section 411 IPC and Section 25 of the Antiquities and Art Treasures Act, 1972. It is true that the Antiquities and Art Treasures Act had not yet come into force on the date when the FIR was registered. It is also true that Omi Narang and Manu Narang were not extradited for the offence under the Antiquities and Art Treasures Act, and, therefore, they could not be tried for that offence in India. But the question whether any of the accused may be tried for a contravention of the Antiquities and Art Treasures Act or under the corresponding provision of the earlier Act is really irrelevant in deciding whether the two conspiracies are one and the same. The trite argument that a Court takes cognizance of offences and not offenders was also advanced. This argument is again of no relevance in determining the question whether the two conspiracies which were taken cognizance of by the Ambala and the Delhi Courts were the same in substance. The question is not whether the nature and character of the conspiracy has changed by the mere inclusion of a few more conspirators as accused or by the addition of one more among the objects of the conspiracy. The question is whether the two conspiracies are in substance and truth the same. Whether the conspiracy discovered later is found to cover a much larger canvas with broader ramifications, it cannot be equated with the earlier conspiracy which covered a smaller field of narrower dimensions. We are clear, in the present case, that the conspiracies which are the subject-matter of the two cases cannot be said to be identical though the conspiracy which is the subject-matter of the first case may, perhaps, be said to have turned out to be part of the conspiracy which is the subject-matter of the second case. As we mentioned earlier, when investigation commenced in FIR R.C. 4 of 1976, apart from the circumstance that the property involved was the same, the link between the conspiracy to cheat and to misappropriate and the conspiracy to dispose of the stolen property was not known.

12. The further connected questions arising for consideration are, what was the duty of the police on discovering that the conspiracy, which was the subject-matter of the earlier case, was part of a larger conspiracy, whether the police acted without jurisdiction in investigating or in continuing to investigate into the case and whether the Delhi Court acted illegally in taking cognizance of the case ?

13. In order to answer these questions, it is necessary to refer to the relevant provisions of the CrPC. Counsel on both sides argued the questions on the basis that the old CrPC governed the situation. We proceed on that assumption without deciding whether the trial in the Delhi Court will be governed by the old Code or the new one.

14. Under the CrPC, 1898, whenever an officer in charge of the police station received information relating to the commission of a cognizable offence, he was required to enter the substance thereof in a book kept by him, for that purpose, in the prescribed form (Section 154 CrPC). Section 156, CrPC invested the Police with the power to investigate into cognizable offence without the order of a Court. If, from the information received or otherwise, the officer in charge of a police station suspected the commission of a cognizable offence, he was required to send forthwith a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and then to proceed in person or depute one of his subordinate officers to proceed to the spot, to investigate the facts and circumstances of the case and to take measures for the discovery and arrest of the offender (Section 157 CrPC). He was required to complete the investigation without unnecessary delay, and, as soon as it was completed, to forward to a Magistrate empowered to take cognizance of the offence upon a police report, a report in the prescribed form, setting forth the names of the parties, the nature of the information and the names of the persons who appeared to be acquainted with the circumstances of the case [Section 173(1) CrPC]. He was also required to state whether the accused had been forwarded in custody or had been released on bail. Upon receipt of the report submitted under Section 173(1) CrPC by the officer in charge of the police station, the Magistrate empowered to take cognizance of an offence upon a police report might take cognizance of the offence [Section 190(1)(b) CrPC]. Thereafter, if, in the opinion of the Magistrate taking cognizance of the offence, there was sufficient ground for proceeding, the Magistrate was required to issue the necessary process to secure the attendance of the accused (Section 204 CrPC). The scheme of the Code thus was that the FIR was followed by investigation, the investigation led to the submission of a report to the Magistrate, the Magistrate took cognizance of the offence on receipt of the police report and, finally, the Magistrate taking cognizance issued process to the accused.

15. The police thus had the statutory right and duty to 'register' every information relating to the commission of cognizable offence. The police also had the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence was suspected and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a police report. These statutory rights and duties of the police were not circumscribed by any power of superintendence or interference in the Magistrate; nor was any sanction required from a Magistrate to empower the Police to investigate into a cognizable offence. This position in law was well-established. In King Emperor v. Khwaja Nazir Ahmad (71 JA 203 : AIR 1945 PC 18 : 46 Cri LJ 413), the Privy Council observed as follows :

> Just as it is essential that everyone accused of a crime should have free access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which he is charged, so if it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Courts to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of Habeas Corpus. In such a case as the present,

> however, the Court's functions begin when a charge is preferred before it and not until then . . . . In the present case, the police have under Sections 154 and 156 of the Criminal Procedure Code, a statutory right to investigate a cognizable offence without requiring the sanction of the Court . . . .
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> Ordinarily, the right and duty of the police would end with the submission of a report under Section 173(1) CrPC upon receipt of which it was up to the Magistrate to take or not to take cognizance of the offence. There was no provision in the 1898 Code prescribing the procedure to be followed by the police, where, after the submission of a report under Section 173(1) CrPC and after the magistrate had taken cognizance of the offence, fresh facts came to light which required further investigation. There was, of course, no express provision prohibiting the police from launching upon an investigation into the fresh facts coming into light after the submission of the report under Section 173(1) or after the Magistrate had taken cognizance of the offence. As we shall presently point out, it was generally thought by many High Courts, though doubted by a few, that the police were not barred from further investigation by the circumstance that a report under Section 173(1) and already been submitted and a Magistrate had already taken cognizance of the offence. The Law Commission in its 41st report recognized the position and recommended that the right of the police to make further investigation should be statutorily affirmed. The Law Commission said :
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> 14.23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused.

Accordingly, In the CrPC, 1973, a new provision, Section 173(8), was introduced and it says :

> Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

16. The right of the police to make repeated investigations under the old Code was recognised by the Madras High Court as early as in 1919 in Divakar Singh v. Ramamurthy Naidu (AIR 1919 Mad 751 : 35 MLJ 127 : 19 Cri LJ 901), where Phillips and Krishnan, JJ., observed as follows :

> Another contention is put forward that when a report of investigation has been sent in under Section 173, CrPC, the police has no further powers of investigation, but this argument may be briefly met by the remark that the number of investigations into a crime is not limited by law and that when one has been completed another may be begun on further information received.

In re Palaniswami Goundan (AIR 1946 Mad 502 : (1946) 1 MLJ 406 : 47 Cri LJ 993), the Madras High Court held that notwithstanding the filing of a final charge-sheet, a police officer could still investigate and lay further charge-sheets if he got information and that there was no finality either to the investigation or to the laying of charge-sheets. In Md. Niwaz v. The Crown (48 Cr LJ 774 : 231 IC 354), a Bench of the Lahore High Court consisting of Din Mohammad and Cornelius, JJ., cited with approval the decision of the Division Bench of the Madras High Court in Divakar Singh v. A. Ramamurthi Naidu already referred to by us. In Prosecuting Inspector v. Minaketan Mahato (AIR 1952 Ori 350 : ILR 1952 Ori 104 : 53 Cri LJ 1635), the High Court of Orissa held that the police had the right to re-open investigation even after the submission of the charge-sheet under Section 173 CrPC if fresh facts came to light. In Rama Shanker v. State of U. P. (AIR 1956 All 525 : 1956 All LJ 414 : 1956 Cri LJ 1037), a Division Bench of the Allahabad High Court took the view that the submission of a charge-sheet not being a judicial act, the submission of a fresh charge-sheet after submission of a report under Section 173 CrPC was not illegal. In re State of Kerala v. State Prosecutor (1973 Cr LJ 1288 : 1972 Ker LT 901 : 1973 Mad LJ (Cri) 16), a Division Bench of the Kerala High Court thought it was well-settled law that the police had the right to re-open the investigation even after the submission of a charge-sheet under Section 173 CrPC and that there was no bar for further investigation or for filing of supplementary report.

17. In H. N. Rishbud v. State of Delhi ((1955) 1 SCR 1150 : AIR 1955 SC 196 : 1955 Cri LJ 526), this Court contemplated the possibility of further investigation even after a Court had taken cognizance of the case. While noticing that a police report resulting from an investigation was provided in Section 190 CrPC as the material on which cognizance was taken, it was pointed out that it could not be maintained that a valid and legal police report was the foundation of the jurisdiction of the court to take cognizance. It was held that where cognizance of the case had, in fact, been taken and the case had proceeded to termination, the invalidity of the precedent investigation did not vitiate the result unless miscarriage of justice had been caused thereby. It was said that a defect or illegality in investigation, however serious, had no direct bearing on the competence of the procedure relating to cognizance or trial. However, it was observed :

> It does not follow that the invalidity of the investigation is to be completely ignored by a Court during trial. When the breach of such mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for.

This decision is a clear authority for the view that further investigation is not altogether ruled out merely because cognizance of the case has been taken by the court; defective investigation coming to light during the course of a trial may be cured by a further investigation, if circumstances permit it.

18. In Tara Singh v. State (1951 SCR 729 : AIR 1951 SC 441 : 52 Cri LJ 1491), the police first submitted a report styled as "an incomplete challan", which, however, contained all the particulars

prescribed by Section 173(1). Later, two supplemental challans were submitted containing the names of certain formal witnesses. The Magistrate had taken cognizance of the case when the incomplete challan was submitted. It was urged that the Magistrate had taken cognizance of the case illegally and the statements of witnesses examined before submission of the supplemental challans should be excluded from the record. This Court held that the so-called incomplete challan was in fact a complete report of the kind contemplated by Section 173(1)(a), and, therefore, the Magistrate had properly taken cognizance of the case. The Court declined to express any opinion on the question whether the police could be permitted to send incomplete reports under Section 173(1) CrPC. This case, while neither approving nor disapproving the practice of submitting incomplete challans in the first instance, certainly notices the existence of such practice.

19. Some High Courts took the view that with the submission of a charge-sheet under Section 173 the power of the police to investigate came to an end and the Magistrate's cognizance of the offence started. It was said that any further investigation by the police would trench upon the magisterial cognizance. Vide Ram Gopal Neotia v. State of West Bengal (AIR 1969 Cal 316 : 1969 Cri LJ 723). In Hanuman v. Raj (AIR 1951 Raj 131 : 52 Cri LJ 964), it was held that when a case was pending before a Magistrate, the action of the police in resuming investigation and putting up a new challan against a person not originally an accused as a result of the further investigation was unauthorised and unlawful. In State v. Mehar Singh (ILR (1973) 2 P&H 561 : 1974 Cri LJ 970), a Full Bench of the High Court of Punjab and Haryana held that the police became functus officio once the Court took cognizance of an offence on the filing of a charge-sheet by the police and thereafter further investigation by the police was not permissible. The police, it was said, could not 'tinker' with the proceedings pending in the Court. It was, however, observed that it would be open to the Magistrate to 'suspend cognizance' and direct the police to make further investigation into the case and submit a report. The High Court of Punjab and Haryana acknowledged the existence of the practice of submitting supplemental charge-sheets, but was of the view that such practice was not sanctioned by the Code. Faced with the impracticality of banning all further investigation once cognizance of an offence was taken by the Court, the High Court tried to find a solution to the problem by suggesting the procedure of the Magistrate suspending cognizance and ordering further investigation. The procedure of 'suspending cognizance' suggested by the High Court of Punjab and Haryana does not appear to us to be warranted by the provisions of the CrPC.

20. Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate ? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the

newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

21. As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view. Notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.

22. As in the present case, occasions may arise when a second investigation started independently of the first may disclose a wide range of offences including those covered by the first investigation. Where the report of the second investigation is submitted to a Magistrate other then the Magistrate who has already taken cognizance of the first case, it is up to the prosecuting agency or the accused concerned to take necessary action by moving the appropriate superior court to have the two cases tried together. The Magistrates themselves may take action suo motu. In the present case, there is no problem since the earlier case has since been withdrawn by the prosecuting agency. It was submitted to us that the submission of a charge-sheet to the Delhi court and the withdrawal of the case in the Ambala court amounted to an abuse of the process of the court. We do not think that the prosecution acted with any oblique motive. In the charge-sheet filed in the Delhi court, it was expressly mentioned that Mehra was already facing trial in the Ambala Court and he was, therefore, not being sent for trial. In the application made to the Ambala Court under Section 494 CrPC, it was expressly mentioned that a case had been filed in the Delhi Court against Mehra and others and, therefore, it was not necessary to prosecute Mehra in the Ambala court. The Court granted its permission for the withdrawal of the case. Though the investigating agency would have done better if it had informed the Ambala Magistrate and sought his formal permission for the second investigation, we are satisfied that the investigating agency did not act out of any malice. We are also satisfied that there has been no illegality. Both the appeals are, therefore, dismissed.

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