ANDHRA PRADESH HIGH COURT

E. Pedda Subba Reddy

Vs.

State

Criminal Revn. Case No. 847 of 1965 and Criminal Rev. Petn. No. 757 of 1965

(Sharfuddin Ahmed and Obul Reddi, JJ.)

31.07.1967

JUDGMENT

Obul Reddi, J.

1. This Criminal Revision Case is before us as it has been referred to a Division Bench by Narasimham J., on the question "whether cognizance can be taken of an offence under Section 211, Indian Penal Code on a private complaint". The controversy relates to the interpretation of the words, "when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court" occurring in Section 195 (1) (b), Criminal Procedure Code. Before we proceed to deal with the question referred to the Bench, it may be necessary to set out the relevant facts leading to the filing of the revision case.

2. A complaint was filed by the second respondent against the revision petitioners in the Court of the Judicial Second Class Magistrate, Jammalamadugu under Sections 193, 194, 195 and 211 of the Indian Penal Code. The first petitioner gave a report to the Village Munsif, Ulappalli, alleging that the second respondent who was armed with a gun shot one Udala Pedda Subba Reddi on 17-2-64 at about 9 A.M. and some other assailants caused injuries, which resulted in the death of Pedda Subba Reddi. This led to the second respondent being taken into custody by the Village Munsif and later by the Investigating Officer who arrived subsequently on the scene for investigation. The second respondent gave a petition to the investigating Officer representing that he had nothing to do with the offence of murder, that he was beaten up and his gun also was seized and that he has been falsely implicated. The Investigating Officer then produced the second respondent before the Judicial Second Class Magistrate, Jammalamadugu who remanded him to the judicial custody in the sub-jail at Jammalamadugu for about a week. In short, it was the case of the second respondent that taking advantage of the murder of Pedda Subba Reddy, the revision petitioners implicated him falsely, although he was innocent and had nothing to do with the crime. The petitioners 1, 3 and 4 who were examined at the inquest on 17-2-64 also made statements against the second respondent alleging that he shot the deceased Subba Reddy with a gun. The Medical Officer who conducted the post mortem examination did not find any gun shot injury on the body of the deceased Subba Reddy, and in the opinion of the Medical Officer, the deceased Subba Reddy died due to an explosion of a country bomb and not due to any gun shot

injury. The C. I. D. Police made an elaborate investigation and being satisfied that the second respondent was not concerned with the murder of the deceased Subba Reddy in any manner filed an application on 27-2-64 in the Court of the Judicial Second Class Magistrate to release him, as there was nothing to show his complicity in the crime. The second respondent was therefore released and later the Inspector of Police (C. I. D.) filed a charge-sheet against the first revision petitioner and others for causing injuries to the second respondent. The second respondent, therefore, filed a private complaint in the Court of the judicial Second Class Magistrate alleging that he has been falsely implicated by the petitioners in a murder case by making false statements and therefore the petitioners are liable to be punished under Sections 193, 194, 195 and 211 Indian Penal Code. The Magistrate took the private complaint of the second respondent on file under Section 200 Criminal Procedure Code and recorded his sworn statement. He also recorded the statement of one of the witnesses cited in the complaint and registered the case as P. R. C. 14/64. The Magistrate also caused an enquiry under Section 202 Criminal Procedure Code and called for a report from the Inspector of Police, C. I. D. Crime Branch. The Police report disclosed that the statements made by the petitioners in the course of investigation of the crime relating to the murder of Subba Reddy did not contain the whole truth, but however the Police did not consider that any action against them could be taken under Sections 193 to 195 and 211 Indian Penal Code as the trial relating to the murder of Subba Reddy was pending and the entire matter was sub judice. The Magistrate was of the opinion that the statements made by the petitioners at different stages of investigation were for the purpose of being used in the subsequent judicial proceedings and hence the statements made were in relation to the proceedings of the Court and therefore Section 195 (1) (b), Criminal Procedure Code operates as a bar for taking cognizance of the case on a private complaint preferred by a party. In this view of the matter, he dismissed the complaint under Section 203 Criminal Procedure Code. The second respondent went up in revision under Sections 435 and 436, Criminal Procedure Code and the Sessions Judge, Cuddapah reversed the order of the Magistrate and directed him "to make further enquiry into the complaint of the petitioner". It is against that order, the petitioners have come up in revision to the High Court.

3. Mr. Padmanabha Reddy appearing for the petitioners has argued that the Sessions Judge was in error in setting aside the order of the Magistrate and directing further enquiry and had failed to appreciate the correct position that the Court has no jurisdiction to take cognizance when any offence punishable under Sections 193, 194, 195 and 211 Indian Penal Code 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. In short, it is his contention that the offences referred to in the complaint filed by the second respondent were in relation to the proceedings in Court and as such the private complaint filed by the complainant (second respondent) was properly and correctly dismissed by the Magistrate. The learned Public Prosecutor has urged before us that any proceeding in any Court occurring in Section 195 (1) (b) of the Criminal Procedure Code relates to judicial proceedings in a Court and the alleged offence should be in relation to a judicial proceeding and it is only then that the cognizance of the Court is barred and not otherwise if it is not in relation to a judicial proceeding in Court.

4. Section 195 (1) (b), Criminal Procedure Code is in the following terms :

> "No Court shall take cognizance 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 of some other court to which such court is subordinate".

The sub-section lays down that cognizance of the court of offences enumerated therein shall be barred when they are committed in certain circumstances, viz., in relation to any proceeding in any Court. The offences detailed in the subsection occur in Chapter XI of the Indian Penal Code; Of False Evidence and Offences against Public Justice. The object of Section 195 (1) (b) appears to be to save time of Criminal Courts being wasted and the accused persons being needlessly harassed by protecting or safeguarding them against baseless and vexatious prosecutions for the offences specified. Therefore the question is whether the offences alleged against the petitioners were committed by the petitioners in, or in relation, to any proceeding in any Court.

5. We may in this connection also notice section 190 (1) Criminal Procedure Code which specifies the conditions requisite for initiation of proceedings. Section 190 (1) :

"Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence :-
(a) upon receiving a complaint of facts which constitute such offence;
(b) upon a report in writing of such facts made by any Police officer;
(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".

The word "cognizance" occurring in the section indicates the point of time when a criminal Court first takes notice of an offence. Taking cognizance of course is not the same thing as initiation of the proceedings, as cognizance is taken of the case and not of the persons. It is so for the reason that even where the offenders are not known, a Magistrate takes cognizance of a case and in theory there is nothing to prevent a Magistrate from taking cognizance of a case. Therefore, taking cognizance of an offence by a Magistrate does not necessarily lead to the conclusion that judicial proceedings against any offender have been started. Though Section 190 (1) (a) empowers the Magistrate to take cognizance of an offence upon receiving the complaint of facts which constitute such an offence, Section 195 (1) (b) lays an embargo or a restriction on his power if such alleged offence is committed in, or in relation to, any proceeding in any Court. Therefore, the question is which is the stage when the proceeding could be called a judicial proceeding in a Court within the scope of Section 195 (1) (b).

"Judicial proceeding" is defined in Section 4 (m) of the Code of Criminal Procedure. "Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath. Therefore, to constitute a 'Judicial proceeding' evidence need not have necessarily been taken. It is sufficient if evidence is contemplated to be taken on oath. What happened in this case was, on the complaint given by the first petitioner to the Village Munsif alleging that the second respondent shot the deceased Pedda Subba Reddy, he was taken into custody by the Village Munsif and later by the Sub Inspector of

Police who arrested him and sent him for remand. While making investigation, the Police also examined the other Petitioners at the inquest who alleged similarly against the 2nd respondent. In this connection we may notice relevant provision, Section 167, Criminal Procedure Code. Section 167 (1) lays down :

"(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the Police station or the Police Officer making the investigation if he is not below the rank of Sub-Inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the Third Class, and no Magistrate of the second Class not specially empowered in this behalf by the State Government shall authorize detention in the custody of the Police.

(3) A Magistrate authorizing under this section detention in the custody of the Police shall record his reasons for so doing....."

The object of the section is that an accused person should be brought before the nearest Magistrate with as little delay as possible and not detained for more than 24 hours in the absence of a special order from a Magistrate. The Magistrate has to decide prima facie on the material contained in the diary relating to the offence whether or not the detention of the accused person in prison is necessary and in coming to the conclusion he has to exercise his judicial mind. It is for this reason that the entries in the diary are also to be forwarded to the Magistrate, when the accused is produced before him for remand. Under Section 167 (3), if a Magistrate orders detention of a prisoner in the custody of the police he has to exercise his judicial mind and see from the materials placed whether such a course is warranted and record his reasons for entrusting the prisoner to the custody of the police. In the absence of the entries referred to in the section, it would be difficult for a Magistrate to decide whether further detention was authorized or necessary. In this case, after completing investigation the investigating officer submitted a report to the Magistrate who was competent to take cognizance of the offence, that the second respondent was not concerned with the murder and that there was no material to connect him with the offence and therefore, he may be released, and the Magistrate after a scrutiny of the report submitted by the Investigating Officer directed release of the second respondent. Therefore, the question is whether the proceedings of the Magistrate were judicial proceedings and whether the offences alleged against the petitioners were committed in, or in relation to, such proceedings.

6. Bhide, J., in the Lahore High Court in *Sundar Singh v. Emperor*[1], opined:

> "A Magistrate acting under Section 167 Criminal Procedure Code has to weigh evidence to decide whether the prisoner would be detained in custody or not. Weighing of such evidence is essentially a judicial function. A Magistrate under Section 167 cannot therefore be said to be acting in executive capacity".

A Division Bench of the Bombay High Court consisting of Beaumont, C. J. and Macklin, J., in *J. D. Boyawalla v. Sorab Rustomji*[2], held that "that the Magistrate could act upon the report of a Police Officer without further inquiry and that the order of the Magistrate was a judicial order, and that therefore the alleged false charge was made in or in relation to a proceeding in Court, and for proceeding against the complainant under Section 211, Penal Code, a complaint by the Magistrate was necessary". What happened in that case was this. On receipt of a complaint, the Police commenced investigation and arrested a person and released him on bail and subsequently applied to the Court to have the bail enlarged and order to that effect was made. The Police then investigated further into the matter, and eventually made a report to the Magistrate saying that, as no offence has been disclosed against the person, he be discharged and his bail bond cancelled, and on that the Magistrate passed an order discharging him. The learned Chief Justice who rendered the decision observed that the Magistrate acted and intended to act as a Magistrate in his judicial capacity and the Magistrate alone was competent to release him from custody or enlarge him on bail.

7. In this context we may recall the observations of the Supreme Court in *State of Punjab v. Ajaib Singh*[3],

> "There can be no manner of doubt that arrests without warrants issued by a Court call for greater protection than do arrests under such warrants. The provision that the arrested person should within 24 hours be produced before the nearest Magistrate is particularly desirable in the case of arrest otherwise than under a warrant issued by the Court, for it ensures the immediate application of a judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted by him. In the case of arrest under a warrant issued by a Court, the judicial mind had already been applied to the case when the warrant was issued and, therefore, there is less reason for making such production in that case a matter of a substantive fundamental right."

A Division Bench of the Allahabad High Court in *Bir Bhadra Pratap Singh v. D. M. Azamgarh*[4], relying on the observations made by the Supreme Court in, AIR 1953 Supreme Court 10 held that "the provisions of Article 22 (2) of the Constitution of India and Sections 61 and 167 of Criminal Procedure Code clearly indicate that the purpose of producing an accused before a Magistrate is to ensure that the arrest and the detention of the accused person is, at any rate, prima facie justified. The law apparently did not rely on the judgment of the Police for purpose of accepting that the charge that was being leveled against a person was, even prima facie, sustainable. Therefore, that obligation the law

[1] AIR 1930 Lah 945 [3] AIR 1953 SC 10 at p. 15

[2] AIR 1941 Bom 294 [4] AIR 1959 All384

placed on the Magistrate. It is for the Magistrate to decide though prima facie, on certain material placed before him namely, the material contained in the diary relating to the case, whether or not the detention in prison of an accused is necessary. In coming to his conclusion, the Magistrate has to exercise his mind - his judicial mind - and only when the Magistrate does apply the mind that it can be said that the order made by the Magistrate for the detention in prison of a person was a valid order". In an earlier case - *Swami Hariharnand Saraswati v. Jailor*[5], - a Division Bench of the same High Court held :

> "The provisions of Section 167 (1) Criminal Procedure Code indicate that the policy of the law is to bring an independent judgment to bear on the matter for, it is provided in that Section that the Magistrate before whom an arrested person is produced is also to have before him 'a copy of the entries in the diary '. That means that the Magistrate before whom the production has to be made has to scrutinize the act of others and to see whether the act was legal and proper and further whether the formalities required by law had been complied with".

Thadani, C. J. of the Assam High Court in *Prabhat Malla v. D. C. Kamrup*[6], held that :

> "An order of remand can only be passed by a Magistrate sitting as a Court. It is immaterial where such a Magistrate was sitting at the time of the passing of the order. Neither Article 22 of the Constitution nor Section 167, Criminal Procedure Code requires production of an accused person before a Magistrate on the occasion of a subsequent remand".

Shah, J., sitting with Naik, J., in *State v. Murlidhar Goverdhan* [7], dealing with the scope of Sections 173 and 190, Criminal Procedure Code observed :

> "At every stage of investigation by a Police Officer in a cognizable offence, the Magistrate has the opportunity of supervising the investigation. When a report is submitted to a Magistrate under Section 173 of the Code of Criminal Procedure by a Police Officer praying that a summary of the nature described in Rule 203 of the Bombay Police Manual may be issued the Magistrate must act judicially and pass such order on the report as the circumstances may warrant. The Magistrate is not bound to issue the summary which is asked for nor is he at all bound to issue a summary. In such a case the Magistrate can call for a charge-sheet from the Investigating Officer who has asked for a summary after investigating a cognizable case. However a Magistrate may not, even though he has the power, lightly pass an order that a charge-sheet be filed. It is only after a careful consideration of the materials placed by a Police Officer in his report if a Magistrate is satisfied that there are sufficiently compelling grounds which require him to disagree with the opinion of the Police Officer and to reject the prayer for a summary asked for that he will be justified in calling for a charge-sheet."

At para 13 of the judgment, it was observed :

[5] AIR 1954 All 601 [7] AIR 1960 Bom 240

[6] AIR 1952 Ass 167

> "In our view, the power to call for a charge-sheet from the investigating officer who has asked for a summary after investigating a cognizable case is vested in the Magistrate because the Magistrate is required by law to deal with the report made by him judicially and also because the Magistrate has supervisory control over the investigation by a police officer in the course of the investigation of an offence."

8. The learned Public Prosecutor relied on the following decisions in support of his argument. A Full Bench of the Madras High Court in Registrar, *High Court v. Kodangi*[8], had occasion to explain the meaning of the words "in relation to." The following passage has been relied upon by the learned Public Prosecutor in support of his contention.

> "Here there is no question of an offence having been committed in the court and the point is whether the words "in relation to any proceeding in any court" are wide enough to cover the case stated. The "false" complaint was in a telegram to the District Superintendent of Police charging four persons with stabbing another. The police investigated and charged only one of these four with the stabbing and the trial of that charge is the relevant "proceeding" in the court, as the charge of stabbing against the other three was not brought before the Court and did not properly form the subject-matter of any inquiry or trial before the Court.

The combined effect of Sections 195(b) and 476 is restrictive. In so far as the matter to be dealt with under the various sections mentioned in Section 195 (b) is in relation to a proceeding in a Court, the unrestricted authority of the police to arrest for and charge a cognizable offence is taken away. In a case under Section 211, when the Police or the complainant or any one else brings the charge, which is the subject-matter of the offence, to trial in a court then it may be fairly contended that the offence has been committed in relation to a proceeding in the Court. But where neither the complainant nor the police nor any one also brings it into Court we can see no sound reason why the Court should interpret Sections 195 and 476 so as to hamper the otherwise unrestricted right of any one to complain direct of the offence under Section 211. We do not think that the fact that the trial was the effect of the complaint ipso facto brings all matters mentioned in the complaint "in relation to" the trial, or in fact brings any matters mentioned in the complaint into that relation except those which are relevant to the charge being tried in the trial itself. It is not difficult to conceive of cases where false matters might be stated in a complaint to the police but are not made matters of charge or trial because they were wholly separable from the subject of the proceeding in Court and have no real relation to it." The Full Bench was concerned with a case where false accusations were stated in the complaint to the police and the police on investigation found that the charge against three of the accused persons was false. No remand report was sent in that case under Section 167, Criminal Procedure Code to the Court and therefore the Full Bench was only concerned with a case where only a report was lodged with the police making false accusation.

9. In *Rangaswami v. Emperor*[9], the accused made a complaint to the police charging certain

persons in connection with murder. The police investigated the matter and certified the complaint to be false. The report that the case was false was put before the

[8] AIR 1932 Mad 363 at p. 367

[9] AIR 1934 Mad175

Sub-Magistrate and notice was given to the appellant to appear and show cause why his complaint should not be struck off, but he did not appear. The report of the police was accepted by the Sub Magistrate, who ordered further investigation to be stopped. The Police preferred a complaint for an offence under Section 211, Indian Penal Code. It was contended for the accused that the police were not entitled to do so but that it was a matter for the Magistrate under Section 195, Criminal Procedure Code. The learned Judges held that the Magistrate had not taken any judicial notice nor was the proceeding a judicial proceeding and that the police were entitled to prefer the complaint. That was also a case where the persons against whom false accusation was made were not sent up for remand with a report under Section 167, Criminal Procedure Code. The police upon investigation certified the complaint to be false and therefore, it was a case where no further proceedings were taken on the strength of a report which was lodged with the Police and found to be false in the course of investigation.

10. A Full Bench of the Lahore High Court in *Emperor v. Hayat Fateh Din*[10], held:

> "The term 'Court' in Section 195, Criminal Procedure Code means the same thing as "Court of justice" in the Penal Code and a Magistrate constitutes "Court" only when he acts judicially.

Thus where the police after investigation finds that the report of offence made to it is false, and recommends to a Magistrate for cancellation of the report and the Magistrate cancels the report under Section 173, the Magistrate acts merely as an administrative or ministerial officer and not as a "Court". To such a case Section 195 has no application."

It was further observed that "When a report is made to the police charging another person with the commission of an offence and the police after investigation finds that the report is false and has the case cancelled by the Magistrate under Section 173, the charge made by the complainant in the report not being the subject-matter of any judicial proceedings in Court, action by the Magistrate under Section 173 being only administrative and not judicial and consequently Section 195(l)(b) not applying to the case, it is open to the police to prosecute the maker of the report under Section 211, Penal Code, for making a false charge". This Full Bench case is relied on for showing that unless the Magistrate acts judicially, he will not constitute a 'Court' and cancelling the report under Section 173 is only an administrative or ministerial act and not that of court, and therefore Section 195 (1) (b) has no application when the Magistrate merely cancels a report under Section 173, Criminal Procedure Code. Chhangani, J., in *Pukhraj v. Seshmal*[11], expressed his view thus :

> "When a report is made to the Police charging any person with the commission of the offence and the police after investigation finds that the report is false and gets the report cancelled under the provisions of Section 173, Criminal Procedure Code the Magistrate receiving the information and accepting it does not act as a Court and the act of the Magistrate in accepting the police report does not give rise to judicial proceedings. The offence of false charge preferred against the informant in respect of such report cannot be

in relation to proceedings of a Court and a complaint of the Court is not necessary for his prosecution under Section 211,

[10] AIR 1948 Lah 184 (FB)

[11] AIR 1961 Raj 231

Indian Penal Code"

Basi Reddy, J., sitting with Anantanarayana Ayyar, J. in *Bandi Kotayya v. State*[12], dealing with the question when does a Magistrate take cognizance of an offence, whether it is upon a preliminary charge-sheet or upon the final charge-sheet expressed thus :

"Before it can be said that any Magistrate has taken cognizance of any offence under Section 190(l)(b) he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding, in a particular way, as indicated in the subsequent provisions of Section 207-A. The necessary consequence is that until the Magistrate has before him a police report as envisaged by Section 173 of the Code, he cannot take cognizance of the offence in respect of which he is to hold an enquiry..... ....

This would be the position notwithstanding that a preliminary charge-sheet had been presented to the Magistrate earlier and he had taken the case on file and given it a number for statistical purposes, remanded the accused produced before him, and issued non-bailable warrants in respect of the absconding accused. All these steps are taken with a view to facilitate the completion of the investigation and not because he had taken cognizance of the offence with a view to conduct a preliminary inquiry against the accused named in the preliminary charge-sheet. During the period the Magistrate cannot be said to have taken cognizance of the offence. He takes cognizance of the offence only when the final charge-sheet is filed by the Police and he commences the preliminary inquiry only against such persons as are shown as accused in that charge-sheet which is in fact and in law a report under Section 173 (1), Criminal Procedure Code." The Supreme Court held in *R. R. Chari v. State of U. P*[13]*.,* that "in the case of a cognizable offence, the Magistrate takes cognizance when the police have completed their investigation and come to the Magistrate for the issue of a process". That was a case arising under the Prevention of Corruption Act and having regard to the wording of the proviso to Section 3 of the Prevention of Corruption Act, it was held that "the stage at which a warrant is asked for under the proviso to Section 3 of the Act is not on cognizance of the offence by the Magistrate as contemplated by the other three sections." In *Tara Singh v. The State*[14]*,* dealing with the scope of Section 173 (1) (a), Criminal Procedure Code the Supreme Court held that: "where therefore, the first report made by the police to a Magistrate, though called incomplete challan, contains all these particulars and a second report called a supplementary challan is filed subsequently, giving the names of certain witnesses who are merely formal witnesses, the first report is in fact, a complete report as required by Section 173 (l)(a) and it is not necessarily vitiated by the mere fact that a supplementary challan is subsequently filed". Therefore, having regard to the pronouncement of the Supreme Court, the Magistrate takes cognizance of an offence only when the police complete their investigation and go to him for the issue of a process. What we have to consider in this case is whether the Magistrate till he issues a process

on filing of the police report acts only as a ministerial officer making executive orders or acts judicially under Section 167 Criminal Procedure Code. When the Police Officer sends the arrested person for being detained either in the Judicial custody or for detention in the Police

[12] AIR 1966 And Prad 377 [14] AIR 1951 SC 441

[13] AIR 1951 SC 207

custody he must submit a copy of the entries in the diary relating to the case and the Magistrate after perusal either remands him to judicial custody or releases him for detention in the custody of the police, or may find no material for either detention in the police custody or for remanding him to judicial custody. The Supreme Court as has already been pointed out in AIR 1953 Supreme Court 10 has observed that the production of the accused person within 24 hours before the nearest Magistrate is particularly desirable in the case of arrest otherwise than under a warrant issued by the Court, for it ensures the immediate application of a judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted by him. Therefore what the Magistrate has been called upon to exercise is a judicial mind whether on the strength of the entries in the case diary the accused person could be remanded to judicial custody or detained in police custody or released if there is no material warranting his detention. It is difficult to say having regard to what has been stated by the Supreme Court that the Magistrate does not bear to bring in judicial mind or in other words act judicially on the report submitted by the Police under Section 167, Criminal Procedure Code when the accused is produced for remand. The Supreme Court in *Virindar Kumar v. State of Punjab*[15], had occasion to determine what constitutes the words 'Court' and "judicial proceedings'. The question that cropped up in that case was whether the returning officer possessed the attributes of a 'Court' while acting under Section 36 (2), Representation of the People Act. It was observed :

> "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 adduced and in accordance with 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..... .... There is no 'lis', in which persons with opposing claims are entitled to have their rights adjudicated in a judicial manner, but an enquiry such as is usually conducted by an 'ad hoc' tribunal entrusted with a quasi-judicial power. In other words, the function of the returning officer, acting under Section 36 is judicial in character, but he is not to act judicially in discharging it."

11. 'Court' is defined in Section 3 of the Evidence Act. "Court" includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence. The Magistrate discharges the functions enjoined on him under the Criminal Procedure Code and is presumed to exercise his judicial mind in the discharge of his duties. The Supreme Court though was not prepared to accept in the case referred to above that the Returning Officer was a ministerial officer the true view, according to the Supreme Court, is that the Returning Officer

partakes of both the characters, that for determining the objections to the nomination papers he is a Judicial Officer, but it however took the view that though his function as returning officer under Section 36(2) of the Representation of the People

[15] AIR 1956 SC 153

Act was of judicial character he was not acting judicially in discharging his duties, as in exercising that power he was authorized to come to a decision "after such summary enquiry, if any as he thinks necessary". That means that the parties have no right to insist on producing evidence that they may desire to adduce in support of their case. Therefore a Magistrate has to act in accordance with the provisions of law and no option is given to decide in a summary manner. When a prisoner is produced before him with entries of a case diary under Section 167, Criminal Procedure Code, he is entitled to ask for bail seeking the assistance of a legal adviser and he has a right of being heard. Therefore, his right to insist on being hearer or make an application for being enlarged on bail clearly brings out that the Magistrate has to act judicially in discharging his duties and not as an executive officer. Therefore, when a Magistrate acts judicially, it becomes a judicial proceeding. Section 195 (1) (b), Criminal Procedure Code applies when an offence is committed in or in relation to any proceeding in Court. Their Lordships of the Supreme Court observed in *Jaswant Singh v. State of Punjab*[16], that "the sanction under the Prevention of Corruption Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness". The Supreme Court in *State of M. P. v. Mubarak Ali*[17], dealing with a case arising again under the Prevention of Corruption Act observed :

> "Applying the said two principles we must hold that in a case where an officer other than the designated officer seeks to make an investigation he should get the order of a Magistrate empowering him to do so before he proceeds to investigate and it is desirable that the order giving the permission should ordinarily on the face of it disclose the reasons for giving the permission. For one reason or other, if the said salutary practice is not adopted in a particular case, it is the duty of the prosecution to establish, if that fact is denied that the Magistrate in fact has taken into consideration the relevant circumstances before granting the permission to a subordinate police officer to investigate the case".

Therefore, the principle deducible from the aforesaid decisions is that the Magistrate when he remands the prisoner exercises his judicial mind under Section 167, Criminal Procedure Code having regard to the facts and circumstances placed before him by the Investigating Officer. The action of the Magistrate in such cases is not to be treated as a mere matter of routine or ministerial work but it is a judicial act done in exercise of his judicial function, having regard to the powers conferred upon him under the Statute.

12. The learned Public Prosecutor also relied on the Full Bench decision of the Kerala High Court in *Albert v. State of Kerala*[18], to show that criminal proceedings are not necessarily judicial proceedings. What came to be considered in that case was the word 'Proceedings' occurring in Section 211, Indian Penal Code. It was held that the word "Proceedings" is used in Section 211, Indian Penal Code in the ordinary sense of a prescribed mode of action for prosecuting a right or redressing a wrong and that it is not used in the technical sense of a proceeding taken in a court of law".

13. The Supreme Court in *M. L. Sethi v. R. P. Kapur*[19], referred to three stages or three situations in proceedings in any Court. Para 13 of the judgment brings out the three situations referred to therein :

[16] AIR 1958 SC 124
[17] AIR 1959 SC 707, 710
[18] AIR 1966 Ker 11
[19] AIR 1967 SC 528, 532

> "In this case, as we have already indicated when enumerating the facts, the complaint of which cognizance was taken by the Judicial Magistrate at Chandigarh was filed on April 11, 1959, and at that stage, the only proceeding that was going on was investigation by the Police on the basis of the First Information Report lodged by the appellant before the Inspector-General of Police on December 10, 1958. There is no mention at all that there was at that stage, any proceeding in any Court in respect of that F. I. R. When examining the question whether there is any proceeding in any Court, there are three situations that can be envisaged. One is that there may be no proceeding in any Court at all. The second is that a proceeding in Court may actually be pending at the point of time when cognizance is sought to be taken of the offence under Section 211, Indian Penal Code. The third is that, though there may be no proceeding pending in any Court in which or in relation to which the offence under Section 211, Indian Penal Code could have been committed, there may have been a proceeding which had already concluded and the offence under Section 211 may be alleged to have been committed in, or in relation to that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under Section 195(1) (b) would come into operation. If there be a proceeding actually pending in any Court and the offence under Section 211, Indian Penal Code is alleged to have been committed in relation to that proceeding. Section 195 (1) would clearly apply. Even if there be a case where there was at one stage a proceeding in any Court which may have concluded by the time the question of applying the provisions of Section 195 (1) (b) arises, the bar under that provision would apply if it is alleged that the offence under Section 211, Indian Penal Code was committed in or in relation to that proceeding. The fact that the proceeding had concluded would be immaterial because Section 195(1)(b) does not require that the proceeding in any Court must actually be pending at the time when the question of applying this bar arises."

14. Their Lordships were dealing only with the first category of cases where the first information report alone was lodged and nothing more was done. The case on hand according to Mr. Padmanabha Reddy, comes under the third situation or category as the proceedings have terminated after the police report was filed deleting the second respondent from the list of accused persons. It is argued by Mr. Padmanabha Reddy that the alleged offences said to have been committed by the petitioners were committed in or in relation to that proceeding which terminated with the deletion of the name of the second respondent from the array of the accused persons and therefore Section 195 (1) (b) is attracted and operates as a bar. The learned Public Prosecutor has also relied on a passage occurring in Para 31 at page 539 of the same judgment :

> "For purposes of considering the effect of these cases in the case before us, it is not at all

> necessary to express any opinion on the correctness of the view that the order passed under Section 173, Cr, P. C. by the Magistrate is a Judicial order when he either discharges the bond under sub-section (3) of Section 173 or takes cognizance under Section 190(1)(b) Criminal Procedure Code. Even if it be accepted that the final orders to be made by the Magistrate are judicial orders, the only conclusion that follows is that at the last stage, on receipt of the report under Section 173, the Magistrate has to act in his judicial capacity. Until that stage is reached, there is no intervention by the Magistrate in his judicial capacity or as a Court. Consequently, until some occasion arises for a Magistrate to make a judicial order in connection with an investigation of a cognizable offence by the police no question can arise of the Magistrate having the power of filing a complaint under Section 195 (1) (b), Criminal Procedure Code in such circumstances, if a private person, aggrieved by the information given to the police, files a complaint for commission of an offence under Section 211, Indian Penal Code at any stage before a judicial order has been made by a Magistrate, there can be no question, on the date on which cognizance of that complaint is taken by the Court, of the provisions of Section 195(1) (b) being attracted, because, on that date, there would be no proceeding in any Court in existence in relation to which the offence under Section 211, Indian Penal Code can be said to have been committed".

Although their Lordships refrained from expressing opinion, as they were only concerned with a case where the first information was lodged by the Police, it is doubtless clear that once the Magistrate makes a judicial order in connection with the investigation of a cognizable offence, then the provisions of Section 195 (1) (b) are attracted. In the case before us, on receipt of the report, under Section 173, Criminal Procedure Code, the Magistrate acted judicially in releasing the accused from judicial custody. Therefore, there is no doubt that he functioned as a Court and his intervention was in his judicial capacity.

15. Sulaiman, C. J. and Bajpai, J., in *Har Narain v. Hoshiar Singh*[20], held :

> "A Magistrate under Section 164, Criminal Procedure Code, does not act mechanically merely as a ministerial officer. He can record a statement or confession made to him in the course of an investigation as well as before the commencement of an enquiry or trial. A Magistrate recording statements under Section 164, Criminal Procedure Code is a Court within the meaning of Section 195 of the Code. Consequently when an offence punishable under Section 193, Penal Code, is alleged to have been committed in respect of previous statements made by them under Section 164 Criminal Procedure Code cognizance of the offence cannot be taken without a complaint in writing of such court or some other Court to which it is subordinate".

In Re Vasudeo Ramachandra Joshi[21], it was held :

> "the words "in relation to" in Section 195(b) are very general, and are wide enough to cover a proceeding in contemplation before a Criminal Court though it may not have

begun at the date when the offence was committed."

16. In *Chuharmal v. Emperor*[22], Sind Judicial Commissioner relied upon 24 Bom LR 1153 : (AIR 1923 Bombay 105) and observed :

[20]36 Cri LJ 1505 : (AIR 1935 All 341)
[21]24 Bom LR 1153 : AIR 1923 Bom 105
[22]30 Cri LJ 732 : (AIR 1929 Sind 132)

> "When a false information is given to the Police and at the same time a complaint is made to a Magistrate on the same facts and the same charge, a complaint in writing by such Magistrate, under Section 195, Criminal Procedure Code is essential, for the prosecution of the complainant even though the Magistrate may have taken no further proceedings on the complaint presented to him subsequent to the information to the police. Under such circumstances, a trial without such sanction is bad."

17. *Ghulam Rasul v. Emperor*[23], the Lahore High Court interpreted the words "in relation to any proceeding in any Court" thus :

> "The words in Section 195 (1), Criminal Procedure Code "in relation to any proceedings in any Court" apply to the case of a false report or a false statement made in an investigation by the Police with the intention that there shall in consequence of this be a trial in the Criminal Court (*Chuhar Mal Nihat Mal v. Emperor*[24], relied on)." Mr. Justice Kumarayya in *Brahmayya v. Ramachandrayya*[25], interpreted the words "in relation to" thus : "The words in relation" are of very wide import..... The Section, therefore, covers cases where false evidence is fabricated for a contemplated suit. All that is necessary to attract the provisions is that the offence should have relation to such proceedings. In other words, it should have designed to affect or must have affected the proceedings though that offence might have come to light in the course of the proceedings itself .....That Section (195, Criminal Procedure Code) would certainly apply if the proceedings in the court in or in relation to which the offence is alleged to have been committed have started and the complaint must be by the Court in which those proceedings are pending. Even if the Civil proceeding is disposed of by the order of the Court before the prosecution is launched Section 195, Criminal Procedure Code, will still have its application. It is so even where the suit has ended, as a result of withdrawal, without being heard."

18. In *Badri v. State*[26], a Division Bench of the Allahabad High Court opined "the word "Proceeding" in Section 195(1)(b) is used in a wider sense than "judicial proceeding." Proceeding that comes into existence after cognizance of an offence has been taken by a Magistrate is not the only proceeding contemplated by Section 195 (1)(b) and a proceeding held by a Magistrate on receipt of an investigating officer's report made under Section 167(1) is a proceeding within the meaning of Section 195(1)(b). It comes into existence when the Magistrate passes a remand order or passes orders on an application for bail". It is therefore plain that it is not necessary that to constitute a proceeding a regular enquiry or trial must have commenced. The remand report of the police under Section 167 or a report filed under Section 173 and the orders made thereon

would cover proceedings contemplated in Section 195 (1) (b). Criminal Procedure Code.

19. There is no doubt that the words, "in relation to" are of wide import, but in view of what has been expressed by the Supreme Court in the case of AIR 1967 Supreme Court 528 they are not of such wide amplitude as to cover a proceeding in contemplation before

[23]37 Cri LJ 426 : (AIR 1936 Lah 238)
[24]30 Cri LJ 732 : (AIR 1929 Sind 132)
[25](1958) 2 Mad LJ (Cri) (AP) 854
[26]1963 (2) Cri LJ 64 (All)

a Criminal Court. But, we are, however, of the opinion that the proceedings in the present case in so far as the second respondent is concerned came to termination in view of the report filed by the police under Section 173, Criminal Procedure Code. Therefore, the Magistrate acted in his judicial capacity in ordering the release of the accused (second respondent). The alleged false charge was thus made in, or in relation to a proceeding in a court and for proceeding against the petitioners who made the false accusations against the second respondent a complaint by the Magistrate is necessary. Therefore, the bar to taking cognizance under Section 195 (1) (b) would come into operation.

20. In view of what has been expressed by us, the order of the learned Sessions Judge, directing further enquiry is set aside and the revision allowed.
Petition allowed.