CALCUTTA HIGH COURT

R.C. Pollard

Vs

Satya Gopal Mazumdar

(Derbyshire ,C.J.)

24.08.1943

JUDGMENT

Derbyshire, C.J.

1. On 25th May 1948 this Court issued a rule upon the District Magistrate of Murshidabad and upon the complainant to show cause why the conviction of the accusedPollard under Section 355, Penal Code (assault with intent to dishonour a person) and the sentence passed upon him to pay a fine of RS. 200 should not be set aside on the grounds that no previous sanction for the prosecution had been obtained under Section 197, Criminal P.C. or Section 270, Government of India Act, 1935, and that in the circumstances the accused was entitled to treat the complainant as a trespasser and thereby protected by the right of private defence. On 19th July 1943 the accused Pollard made a further application to this Court alleging that his trial was held in an atmosphere of prejudice rendering the proceedings ' illegal and void. In the second application the accused set out from his recollection certain parts of letters which he alleged were written by the then Chief Minister of Bengal, Mr. A.K. Fazlul Huq, to the District Magistrate during the pendency of the proceedings which prejudiced the proceed, ings and asked the Court to issue a rule upon the Government of Bengal to produce these letters. The second rule was granted and the Government of Bengal through the Deputy Legal Remembrancer produced the said letters in a sealed cover and deposited them with the Registrar of the appellate side of this Court. In view of the nature of the allegations made in the second application, the matter was reported to me by Lodge J. who presided over the Court which issued the rule and I caused the sealed envelope to be opened and the letters examined. Farther, in view of the matters disclosed by those letters this Special Bench was constituted to hear the application.

2. The short story of the facts relating to the assault case in which the accused was convicted are as follows : The accused is the Superintendent of Police, Berhampore, in the District of Murshidabad. On 9th September 1942, there were disturbances in the civil Court buildings at Berhampore as a result of which the District Judge sent for the Superintendent of Police, namely, the accused who arrived with several policemen and arrested four youths who were concerned in

the disturbances. We are not told of the precise nature of the disturbances, but it has been alleged during the proceedings that they involved an attempt to set fire to the Court building. There were many disturbances at that time. The accused with his pose of police took the youths from the Court in the direction of the thana. He, however, did not proceed to the thana but intead went with his prisoners to his bungalow which is on the road to the thana. In the compound of his bungalow is an office used by the Intelligence Branch of the police. The accused left the youths in the charge of some of his subordinate police officers in his com-pound and went into his bungalow. A little while after the complainant, who is a pleader in the local Court, arrived and entered the compound. At the time there was a crowd of people, estimated by some witnesses at thirty and by others at eighty, outside the bungalow on the road. The complainant who was dressed in pleader's garb - black coat with trousers - proceeded towards the prisoners. One of them was his nephew. The complainant spoke to the police officers and, according to them, also to his nephew. The complainant says that his purpose was to ascertain under what provision of law the youths had been arrested and, if possible, to get bail for his nephew. The police officers told the complainant that they did not know under what provision of law the boys were arrested and according to them the complainant spoke to the boys, although the complainant denies this. There is no evidence to show that the complainant intended to do anything else other than what he says he came for. Shortly afterwards, the accused came out from his bungalow dressed not in police uniform but in a jersey and short trousers and asked what the complainant was doing there. One of the subordinate police officers told him and the complainant who thereupon walked towards the accused either spoke to him or had the intention of speaking to him. The accused thereupon waived his hand in the direction of the gate and said "get out." The complainant continued to approach the accused and the accused thereupon laid hands, on him. The complainant says the accused fisted and kicked him, turned him round and pushed him roughly in the direction towards the gate. The accused said that he merely seized the complainant by the shoulder with one hand and put the other on his face and turned him round and pushed him towards the gate. At the same time the crowd shouted slogans such as "Bande Mataram" and "Inqilab Zindabad" and the accused ordered the police to clear them away from the gate. The complainant went out of the compound and reported the matter to the District Magistrate as well as to the Local Bar Association. Thereafter these proceedings were started.

3. The complaint was heard by a First Class Magistrate, Mr. S. Choudhury, who decided that the assault was committed whilst the accused was acting or purporting to act in the discharge of his official duties and that therefore the accused could not be prosecuted without the previous sanction of the Local Government under Section 197, Criminal P.C. At this stage no evidence other than that of the complainant was heard by the Magistrate. The complainant thereupon moved the District and Sessions Judge of Murshidabad for a further inquiry into his complaint.

No further evidence was heard by the Sessions Judge but he made this comment:It seems to me, however, that if the facts be as stated in the petition of complaint and in the initial deposition to say that the Superintendent acted or purported to act in the discharge of his official duty is nothing short of preposterous, because that is exactly what he did not do. His duty was to see the pleader and to inquire of him what he had to say and then to deal with him. Instead he seems to have acted on the spur of the moment under an irrational impulse caused by some momentary annoyance with which the complainant had nothing to do, and he just acted in his capacity as a private individual in a passion and forgot for the moment the duty and obligations attaching to his office as a servant of the Crown. In my view neither Section 197, Criminal P.C. nor Section 270, Government of India Act, has any application to the facts of this case and that therefore the learned Magistrate should have issued process at least under Section 352, Penal Code, and so given the accused an opportunity to make amends which opportunity - I expect he would welcome now (provided of course the facts are as stated). I direct further inquiry into this.

4. At this time only the complaint of the complainant had been heard - the accused's version had not been given. The matter then went back to the Magistrate who held a preliminary inquiry under Section 202, Criminal P.C., heard three of complainant's witnesses, took further evidence from the complainant and then issued process and tried the accused under Section 355, Penal Code, and heard the witnesses for the defence. He found that the accused committed the offence complained of and fined him Rs. 200 out of which Rs. 50 was to go to the complainant. The accused was not defended by any advocate or pleader up to this stage and conducted his own defence. Prom this conviction the accused appealed asking for a transfer of the case from the Court of the Sessions Judge of Murshidabad to that of the Sessions Judge of the neighbouring district, namely, Nadia. The High Court ordered the transfer and the Sessions Judge of Nadia upheld the conviction. It is in respect of this conviction that the present proceedings are brought. The original grounds on which this Court was asked to exercise its re visional jurisdiction are as set out above, namely, the sanction of the Government first was not obtained and that the two Courts - the Magistrate and the Sessions Judge - had not given effect to the accused defence. Had the matter remained there this Court would have dealt with it on the pleas put forward. But the production of the letters has raised an entirely new situation - one which as far as I am concerned is unique.

5. To understand the letters, it is necessary to refer to another case which was pending at the same time in the same district. It is the case of Emperor v. Sadhu Majhi, Kumar Singh Chajjore and others. The facts of this second case shortly are as follows : One Ebrahim Hossain Chowdhury was a rice contractor living in Azimganj within the police station area of Jiaganj in Murshidabad, a few miles away from Berhampore. Ebrahim had a contract to supply 1000 maunds rice to the

Berhampore Special Jail. On 19th August 1942, Ebrahim took 59 bags of rice from his house at Azimganj in bullock carts to Badarighat from where be loaded the bags into two boats at about 8-30 p. M. on a moonlit night. When he was loading the first instalment of rice into a boat he met a certain Satya Kinkar Bandhu, at one time one of the accused in the second case, who asked him where the rice was going. Ebrahim told him that the rice was being sent to Berhampore. It was in fact intended for the Berhampore Special Jail. Satya Kinkar asked a man who was crossing the river by ferry to inform the people of Jiaganj that a large quantity of rice was being exported from Azimganj to Berhampore. It is alleged that the Sub-divisional Officer (Mr. Nag) had visited the rice shops in the district the same day or the day before and asked people not to send rice out of the area. In his evidence Mr. Nag says that he did not pass an order prohibiting the export of rice from his district but he did tell shop-keepers and others verbally not to export it without his permit. Ebrahim went on with the loading of the rice. When the boats were about to start, four or, five boats came from the opposite bank containing twenty-five or thirty men and surrounded Ebrahim's boats. Some of these men asked where the rice was going and in reply Ebrahim said the rice "was going to Berhampore to supply the Special Jail." Some one from amongst the twenty-five men told Ebrahim that without the order of the Sub-divisional Officer no rice could be sent (presumably from the district). These men also told Ebrahim that they would deposit the bags of rice at the Thana. Ebrahim said that if they wanted to take the rice to the Thana he would go with them. However one of the accused, Kumar Singh Chajjore, gave orders to take the rice away and a number of men, also accused in the same case, took away nineteen bags of rice and loaded them into two of their boats saying that they were taking them to the Thana which is quarter of a mile away. They asked Ebrahim to follow them but prevented him going with them. These men went in their boats with the rice towards the Thana which is on the opposite side of the river. Ebrahim remained behind to count up the bags which remained in the other boat. He then went off in a boat to the Thana but did not see the rice there and got no information about it. The next morning Ebrahim went to the Thana but found no rice there. He found some rice lying scattered at Nimtolaghat which is on the opposite side. That rice was of the same kind as that which he put in the boat the night before. Whilst he was at the Thana the next morning, the head constable brought a bag of rice together with one of the accused in the same case who were said to be found in possession of it. Ebrahim identified the rice as belonging to him and lodged a complaint. Apart from this one bag of rice Ebra him never saw his rice again and it has not been traced. The rice as stated before was intended for the Berhampore Special Jail.

6. One of the accused in the second case, Kumar Singh Chajjore, is a Municipal Commissioner of the Azimganj-Jiaganj Municipality and a man of some position. This removal of rice occurred within the area over which the present accused, Mr. Pollard; was Superintendent of Police, and the accused busied himself in the investigation of the matter. The Jiaganj rice looting case came

up before Mr. I.B. Nag, the Sub-divisional Officer of Lalbagh, which is a few miles from Berhampore and within the jurisdiction of the District Magistrate of Murshidabad, Mr. S.K. Chatterjee. Mr. Nag began the hearing of the case on 21st October 1942 and admitted most of the accused in the rice looting case to bail between 21st to 2Sth September. At this stage the letters referred to become important. These letters are four in number-three of them purporting to have been written by Mr. A.K. Fazlul Huq who was then the Chief Minister of Bengal but resigned his office in March 1943. These letters were produced in this Court on 9th August 1943 - the day on which the hearing of this application began. The signatures of Mr. Fazlul Huq were proved on oath by Mr. T.H. Ellis the Registrar of the appellate side of this Court who, in the course of his duties, had c correspondence with Mr. Gazlul Huq-some of which was produced for the purpose of comparison. Mr. Ellis proved that the signatures on the letters of 29fch September, 28th October and 3rd November 1942 were the signatures of Mr. Fazlul Huq. The letters were then read out in Court by Mr. Ellis.

7. It was stated during the argument that these letters had been taken from Mr. Chatterjee by the Commissioner of the Presidency Division in which Berhampore lies. In order to verify this the Court requested Mr. Olaus LacLeod Martin, Commissioner of the Presidency Division, to attend Court. He did so during the hearing and on oath stated that as a result of information he received in the course of his duties, he visited Berhampore on 25th, 26fch and 27th April 1943, and received the letters from Mr. Chatterjee who produced them from his office at his house and handed them over to Mr. Martin who forwarded them to the Chief Secretary to the Government of Bengal. Mr. Martin also gave evidence that he was familiar with the signatures of Mr. A.K. Fazlul Huq and Mr. S.K. Chatterjee and that those letters of 29th September, 28th October and 3rd November 1942, were signed by Blr. Fazlul Huq. He also stated that the copy letters of 10th October 1942, contained the initials of Mr. S.K. Chatterjee. He further stated that the note on the letter of 28th October 1942, namely, "Mr. Badruddoja has seen me. File. S.K.C. 28-10-42" was in the handwriting of Mr. S.K. Chatterjee and that the note on the letter of 3rd November 1942, namely, "Brought to me by Mr. Badruddoja. File. S.K.C. 4 11-42" was in the handwriting also of Mr. S.K. Chatterjee. These four letters were reproduced in the Calcutta Newspapers of 10th August 1943. They must inevitably have been seen by Mr. Huq. He has not come forward to disclaim them. The first letter which is dated 29th September 1942 is headed "Personal and confidential" and addressed to Mr. S.K. Chatterjee, Collector of Murshidabad, who is also the District Magistrate of Murshidabad. It reads as follows:

Dear Mr. Chatterjee, It has been brought to my notice that there is some political importance in the case Emperor v. Kumar Singh Chajjore and Ors. which is now pending in the Court of the Sub-Divisional Magistrate, Lalbagh. As I am very busy with the Assembly Sessions, and I have

very little time to spare, I could not go through the papers of the case. I understand the date of the case is fixed for the 1st of October. I would very much like that the case be adjourned to some later date, say, after the Pujahs, so that I can go through the papers and decide whether Government should have any say in the matter.

8. In the ordinary way that letter would have reached Mr. Chatterjee on 30th September or 1st October 1942. On 1st October 1942 there occurs this note in Mr. Nag's file in the Jiaganj case.

All the accused were "present. C.S.I. presses for a remand on the ground that the Court Inspector will conduct the prosecution. The case is adjourned to 2-11-42 and 3-11-42 (Pujah holidays intervening). Accused as before.

9. It is evident that Mr. Fazlul Huq's wish with regard to this case had been granted and it was postponed over the Pujah holidays. That it had been granted as a result of Mr. Fazlul Huq's intervention is clear from the next letter which is dated 10th October 1942 and is a copy of the original and signed by "S.K.C." the initials of Mr. S.K. Chatterjee, the District Magistrate. It reads as follows:

My dear Mr. Huq, Please refer to your confidential letter No. nil, dated the 29th September 1942, in which you requested the adjournment of the case Emperor v. Kumar Singh Chajore and Ors. to some date after the Pujah holidays in order that you might go through the papers and decide whether Government should have any say in the matter. I communicated your desire to the S.D.O. Lalbagh, in whose file the case was pending and he adjourned the case to 2nd 9 November 1942.

Thereafter the Superintendent of Police has sent a report to the D.I.G. a copy of which has been forwarded to me. I quote the following extract from it.

'Since the peculiar behaviour of the Sub-Divisional Officer and the favour shown to the accused, there is definitely an impression in Jiaganj and Lalbagh that higher authority is unwilling for this case to proceed.... I am making a complaint to the District Magistrate. Meanwhile I ask the Deputy Inspector General of Police kindly to instruct me as to whether this case should be prosecuted or not. The Circle Inspector and I are both disgusted with this continuous obstruction of justice by the Court out of deference to the moneyed Marwaris of Jiaganj and it is very bad for the morale of the police to find their Attempts to prevent offences and carry out ft Government instructions being frustrated by superior officers of the same Government. If the Government for the superior officers do not with these cases to be properly prosecuted, let them say so honestly and not interfere in this underhand manner. The police have other important work to do and do not wish to waste their time.' The strictures against the Sub-divisional Officer and the superior

officers were unjustified. I propose to tell the Superintendent of Police that the case was adjourned at your instance in order that you may have an opportunity of going through the papers of the case.

10. It is evident that Mr. Chatterjee had done what the Chief Minister desired of him in this matter. The second part of the letter which contains an extract of a report which Mr. Pollard-Superintendent of Police-the accused in the present case, wrote to the, Deputy Inspector General of Police speaks for itself. The last paragraph of the letter shows that Mr. Pollard had criticised what had been done in the Jiaganj case. The next letter ia one by Mr. Fazlnl Huq, the Chief Minister, to Mr. S.K. Chatterjee, dated 28th October 1942. It reads as follows:

My dear Chatterjee, This is to introduce to yon Mr. Syed Badruddoja M.A, B.L., M.L.A., Secretary of the Progressive Coalition Party. He ia going to see you about various matters connected with the question of price of jute and of the high rise in the price of foodstuffs generally. He will also discuss with you the question of nominations and various other matters in which the present Cabinet is interested. He is one of our principal supporters and a prominent member of the Bengal Legislative Assembly.

There is one particular matter regarding which he will speak to you and I hope you will hear him fully and help him to the best possible extent. I am referring to the case with regard to which that "Imperial Officer" has made those stupid remarks and objectionable comments. You have done well to tell him that it was I who is responsible for the step that haw been taken. I have told the I.G of Police everything, and let us hope that when the time comes, I will be able to give him a good ducking.

I do not wish to say much in detail, because Mr. Badruddoja will be able to put our case completely before yon. I trust you are keeping well. My Bijoya greetings to you.

Yours sincerely, A.K. Fuzlul Huq.

11. The first half of the letter introduces Mr. Syed Badruddoja, Secretary of the Progressive Coalition Party, and is described as one of Mr. Fazlul Huq's supporters in the Bengal Legislative Assembly. The second part of the letter speaks for itself and evidently refers to Mr. Pollard whom Mr. Fazlul Huq says "I will he able to give him a clucking." The third part of the letter suggests that Mr. Syed Badruddoja would be able to put "our case completely before you" (the District Magistrate). "Our case" would appear to refer to something connected with the Jiaganj case. The letter purports to introduce Mr Badrnddoja and there is a note on it by Mr. Chatterjee in these words : "Mr. Badruddoja has seen me. Pile. S.K.C. SO-10-1942." Prom the file of Mr Nag, who was then trying the Jiaganj case, it appears that on 2nd November 1942, he had heard two

witnesses give evidence. The same "file under the date 3rd November 1942, there is the following note:

Prosecution files a petition under Rule 528, Criminal P.C. from which it appears that the District Magistrate has passed orders withdrawing the case from my file....

12. The next letter is one dated 3rd November 1942 from Mr. Fazlul Huq to Mr. Chatterjee. It is in these terms:

My dear Chatterjee,e I am again Bending Mr. Syed Badruddoja to you. I am told that the S.P. is adopting most autocratic methods in order to bring about the conviction of the accused. The police are at liberty to collect as much evidence as possible in support of the charges, but this must be done legitimately, and dishonest attempts to pile up facts and circumstances against the accused must be severely condemned. In the case of this particular officer, nothing seems to be strange. I will not say much about him because all his doings may form the subject-matter of departmental proceedings. I am somewhat concerned about the manner in which he is alleged to be persecuting the accused in this case. This should not be allowed. The S.D.O. should assert himself and not yield to threats. After all, the S.P. is not the Government, nor is the S.P. the repository of all power. So long as the S.D.O. does his duties honestly and uprightly, he has got nothing to fear. As a matter of taut, if he thinks that the evidence does not justify the commitment and that the facts and the circumstances justify a discharge of the accused, he should not hesitate to do so, because of the consequences which his orders might have on the S.P. I can give him this assurance through you that Government will stand by him and support him in what he does. I have asked Mr. Syed Badruddoja to explain to you what I would very much wish to see should be done. I do not like to put those things on paper.

This letter is meant for you only and I hope you will destroy it after perusal.

Yours sincerely, A.K. Fuzlul Huq.

13. On this letter there is a note by Mr. Chatterjee as follows : "Brought to me by Mr. Badruddoja. Pile. S.K. C. 4-U-42." This letter speaks for itself and it is obviously a direction by the Chief Minister to the District Magistrate as to what he desires to be dope with the Jiaganj case and as the letter says:

I have asked Mr. Badruddoja to explain to you what I would very much wish to see should be done. I do not like to put those things on paper. This letter is meant for you only and I hope you will destroy it after perusal.

14. On 7th November 1942, the District Magistrate made an order transferring the case to his own file and then to that of Mr. S. Choudhury, a First Class Magistrate of Berhampore, to try the case as a Special Magistrate under Ordinance 2 of 1942. The next order in the Jiaganj case is dated 11th November 1942 made by Mr. S. Choudhury the same Magistrate who tried the present accused Mr. Pollard. He was the Magistrate sitting at Berhampore. The note reads "Seen the order of the District Magistrate. The case has been transferred to my file to be tried by me as a Special Magistrate under Ordinance 2 of 1942." The effect of this case being tried by a Special Magistrate under Ordinance 2 of 1942 was that as the law stood then if the Magistrate passed a sentence which was less than two years imprisonment there was no appeal from it either by the prosecution or the accused and it was completely withdrawn from the jurisdiction of the High Court. On 22nd April 1913, in Emperor v. Benoari Lal Sharma this Court decided that Sections 5, 10 and 16 of Ordinance 2 of 1942 which enabled District Magistrates to send cases for trial by Special Magistrates under the Ordinance were invalid. We quashed the convictions and ordered the accused to be retried in the ordinary Courts according to the ordinary process of law. On 4th June 1943 the Federal Court upheld that decision Emperor v. Benoari Lall see On 5th June 1943 Ordinance 19 of 1943 was passed which repealed Ordinance 2 of 1942 and gave appellate and re visional jurisdiction to the High Courts over convictions under Ordinance 2 of 1942. The position thus is that we are now able to send for the record in the Jiaganj case and we have done so. A Special Bench of this Court held in Emperor v. Sushil Kumar Bose that these convictions under the Ordinance by Special Magistrates ought to be set aside without entering upon the merits of the case and a retrial ordered in proper cases. It was argued by counsel for the accused in the Jiaganj case that this Court has no power to interfere with the convictions and sentences passed by the Special Magistrates in the Jiaganj case since they were passed under Ordinance 2 of 1942 and that Ordinance 19 of 1943 gave power only to the convicted persons to bring their cases before the Court. He further argued that we had no power to order a retrial. There is no substance in those contentions. We have our ordinary powers of revision and under the inherent jurisdiction of the Court conferred to us in Section 561A, Criminal P.C. we have powers "to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." If there were any doubt as to our jurisdiction to use those powers here it is set at rest by Sections (2) and 4 of Ordinance 19 of 1943.

15. In view of the interference that has unquestionably taken place in Jiaganj case we have examined the record in that case. The charges against the Jiaganj accused were under Section 395, Penal Code, dacoity. The Magistrate trying the Jiaganj case found that the action of the accused fell within the definition of dacoity but that there was no e dishonesty on the part of the accused at the time of taking of the rice and proceeded to give his reasons why the dacoity charge

should fail, and convicted the accused of the offence of criminal misappropriation (Section 403, Penal Code). I am unable to follow the reasoning by which this decision was arrived at. The accused were sentenced to pay Rs. 50 each to Ebrahim. At the same time that this Magistrate, Mr. S. Chowdhury, was sitting as a Special Magistrate trying the Jiaganj case he was sitting as an ordinary. Magistrate trying the case against Mr. Pollard. The Pollard case began on 9th September 1942 and the Magistrate gave his decision on 5th January 1943. The Jiaganj case was taken up by the same Magistrate on nth November 1942 and finished by him on 19th January 1943. Mr. Pollard had been made the subject of a vehement attack by the Chief Minister in his letters of 28th October and 3rd November 1942, to the District Magistrate with regard to his conduct in the Jiaganj case. There is no direct evidence in the papers before us that the Chief Minister's attack upon Mr. Pollard was communicated by the District Magistrate to Mr. Chowdhury. However, having regard to the fact that the District Magistrate complied with the Chief Minister's request asking for the rice looting case to be held up over the Pujahs, and having regard to the outcome of the Jiaganj case, there is a suspicion-and not a mild one-that the District Magistrate conveyed the Chief Minister's wishes to Mr. Choudhury at a time when Mr. Choudhury was trying the case against Mr. Pollard. I regret to say that recently we have had to call attention to the improper conduct of District Magistrates in communicating to Magistrates subordinate to them the desire of Government in cases. In Emperor v. Ebrahim , there was the clearest evidence that the District Magistrate of that place had communicated the desire of Government with regard to the adjournment of a case which this Court ultimately ordered the trying Magistrate to proceed with it after ordering it to be adjourned sine die. In that case, delivering the judgment of the Court which consisted of Bartley J., and myself, I observed as follows:

This order was made as a result of the letter of the Public Prosecutor dated 5th March 1941 which has been get out previously. Now, the manner in which this order has been procured is open to the gravest possible objection. It is clear from that letter and the letter of the District Magistrate that the Government requested the District Magistrate to obtain that order. The District Magistrate passed on the order of the Government to the Sub-Divisional Officer who communicated it to the Public Prosecutor. The Public Prosecutor then requested the Magistrate to make this order, which is an illegal order, because the Government wished it and because the Sub-Divisional Officer had advised him that the Government wished it.

The Government may have certain functions in connexion with prosecutions and for the purpose of the Government conducting prosecutions, under Section 492, Criminal P.C. the office of Public Prosecutor was created. A public prosecutor represents the Crown in prosecutions. If the Government desire to put in a petition or request to the Court they can do so directly through the

Public Prosecutor who is the proper officer to put the matter before the Court. But in this instance a request was made to the Court stating that the Sub-Divisional Officer had advised the Public Prosecutor that the Government desired a certain thing. The Sub-Divisional Officer had obviously acted upon instructions from the District Magistrate. Both the District Magistrate and the Sub-Divisional Officer are Superior Officers of the Magistrate who was trying the case.

Under Section 528, Criminal P.C. it is competent for the Magistrate or the Sub-Divisional Officer to withdraw a case from the officer trying it. The officer trying it is clearly subordinate to the Magistrate and the Sub-Divisional Officer. But whenever the trying Magistrate is dealing with a criminal case he must deal with it according to law. In matters of procedure he must follow the Criminal Procedure Code; in matters of evidence he must follow the Evidence Act, and when he has ascertained the facts according to the provisions of the Criminal Procedure Code and the Evidence Act, he must apply the provisions of the Indian Penal Code to those facts and decide the case in accordance with law. Through, out, the Magistrate who is trying the case is to act judicially just as much as if he were a Judge in the High Court. He ought to be subjected to nothing which could savour of an instruction from an outside source. When he is told that the Government wish a certain thing and express their wish through his superior officers, it is very difficult for him, unless he is a very strong minded person, to deal with the matter strictly in accordance with law.

The procedure which has been adopted in this case of sending instructions from the Government through the District Magistrate and the Sub-Divisional Officer to the Public Prosecutor and having those instructions reported in the Court of the trying Magistrate who is subordinate to the District Magistrate and the Sub-Divisional Officer is open to the gravest objection. It is not a procedure contemplated by the Criminal Procedure Code. In my view those who issue instructions in that way, those who forward those instructions, and those who obey them do not act according to law. I wish these remarks should be noted by those who are concerned in matters of this kind.

16. That judgment received considerable publicity. After perusing the record in the Jiaganj rice looting case the Court on its own motion issued a rule upon the District Magistrate of Murshidabad and upon the convicted persons in the Jiaganj case to show cause why the convictions should not be set aside and the matter dealt with according to law. In answer to the rule the District Magistrate sent two letters of explanation-one dated 14th August and the other dated 15th August 1948. He deals with the withdrawal of the case from the Special Magistrate at Lalbagh and its transfer to the file of Mr. S. Chowdhury. He states that the Sub-Divisional Officer (Mr. Nag) at Lalbagh and his subordinate were both to be called as witnesses in the case and that therefore Mr. Nag could not try it. He states that it was proper in the circumstances to transfer it

to the file of Mr. Chowdhury at Berham-pore sitting as a Special Magistrate. If nothing else had happened, then those reasons could be accepted as satisfactory without comment. He, however, deals with an allegation in Mr. Pollard's affidavit about the first letter of the Chief Minister: that is the letter of 29th September 1942 and says : This letter had nothing to do with the merits of the case but the Chief Minister wrote in the name of Government for an adjournment in order that he might look into the papers to see if Government would have any say in the matter. It was not known to me why Government should look into the matter. Information may be obtained from the late Chief Minister. I requested an adjournment because the letter of the Chief Minister was in the name of the Government. Government have the right to look into the records of any case.

17. I cannot accept that explanation as given. The Chief Minister did not write in the name of Government for an adjournment - he wrote on his own behalf a personal and confidential letter to Mr. Chatterjee. That letter was not written through the usual channels which would be through some Secretary of the Home-Department. When Mr. Chatterjee says "it was not known to me why the Government should look into the matter," that statement is clearly false because the opening sentence of the Chief Minister's letter reads "It has been brought to my notice that there is some political importance in the case." When Mr. Chatterjee writes "Government have a right to look into the records of any case" he is clearly wrong as the following case, of which he either knew or ought to have known, - will show, namely Debendra Kumar v. Yar Bakht Chaudhury . This case was decided by this Court on 8th December 1938. In that case the Government of Assam had procured the withdrawal of a case by the Public Prosecutor under Section 494, Criminal P.C. in the interest, it was alleged, of some relatives of members of the then Assam Cabinet. The matter cams before us who directed the case to be sent back and heard and determined according to law. In delivering the judgment of the Special Bench which consisted of myself and Bartley and Henderson JJ., I used these words:

There is one other matter upon which it is my duty to say something; it is the action of the Government in calling for the records of the case from the Magistrate whilst it was still proceeding, and retaining them for six months. It is obvious that if that can be done and is done, the due course of justice is interfered with. There is no provision in the criminal law by which such interference can be, made. It was quite illegal and utterly improper. The Magistrate found himself faced, I can see, with a demand such as he had not met before, and sent the papers to the District Magistrate and in the course of events they found their way to the Government. That ought not to have been done and ought never to be done again.

18. I can only regard Mr. Chatterjee's explanation in para. 6 as disingenuous. In para. 7 of his explanation Mr. Chatterjee says:

My grievance is that in Mr. Pollard's affidavit no mention is made of the fact that no action was taken with regard to the two subsequent letters of the Chief Minister. No replies were even given. The letters were merely filed. It is not possible for any District Magistrate to prevent Ministers from writing letters to Magistrates containing improper or untenable requests or unparliamentary language.... The real point is whether improper request had been granted. No such request was granted by the District Magistrate or the trying Magistrate.

19. The statement that no replies were even given is again disingenuous, because "the two subsequent letters" were clearly brought by Mr. Badruddoja personally on behalf of Mr. A.K. Fazlul Huq to Mr. Chatterjee, as the letters and Mr. Chatterjee's endorsement on them show. Mr. Chatterjee clearly had two interviews with Mr. Badruddoja - Mr. Fazlul Huq's emissary. Nowhere in his letter of explanation does Mr. Chatterjee mention what was said in either of those interviews. That is a very striking omission. It is a fair inference from the letters, and Mr. Chatterjee's endorsement thereon, that something was said to Mr. Chatterjee by Mr. Badruddoja about those letters which referred to the Jiagurjj case and contained threats to Mr. Pollard. I cannot accept Mr. Chatterjee's statement that the letters were merely filed. In para. 8 of his explanation the District Magistrate says:

No extra judicial influence has been brought to bear upon Mr. S. Chowdhury - the trying Magistrate. There has been no correspondence between him and the District Magistrate regarding the Jiaganj or Mr. Pollard's case. Judicial determination of the issues were insisted upon. It is not a mere assertion but is capable of demonstration. The following facts may be noted.

20. He then refers to the correspondence between himself and Mr. Pollard. If the District Magistrate had said clearly and plainly that he never mentioned those letters and Mr. Badruddoja's visit to Mr. Chowdhury, I should have placed more reliance upon his statement. But he does not say so. Mr. Chatterjee goes on to say that a case for withdrawal under Section 494, Criminal P.C. was presented whilst the case was pending before Mr. S. Chowdbury. It was presented by the accused in the Jiagunj case. The order which he

quotes

is as follows:

The prayer for withdrawal cannot be considered as there is no special reason why a distinction should be made between a man of ordinary position and the accused who hold influential positions in society. There shall be a judicial determination of the allegations made against the accused.

21. The judicial determination of those cages was a very curious one as I have pointed out. Mr. Chatterjee then goes on to discuss the case himself and argues that the decision was a correct one. I can only regard his argument as faulty. What the District Magistrate ignores is that the charge was dacoity and in law there was evidence to support that charge. Offences of dacoity are always punished severely, generally with three to five years rigorous imprisonment. As it was 9 the offence of misappropriation which is regarded as less serious was found and fines of Rs. 50/- only were inflicted upon each of the accused.

22. In the second letter of explanation which is really a continuation of the first, Mr. Chatterjee is concerned to show that he had no animus against Mr. Pollard. He points out that he offered Mr. Pollard the services of the District Public Prosecutor to conduct the case and that Mr. Pollard declined to have those services. Mr. Pollard may have had good reasons for declining them. Mr. Chatterjee then goes on to refer to other cases in which charges have been brought against Mr. Pollard in connection with other alleged offences. This introduces extraneous matter which introduction may or may not be justified. I am unable to accept the District Magistrate's contention that no extra judicial influence was brought to bear upon the trying Magistrate for these reasons : (1) It is clear that when Mr. Fazlul Huq wrote the first letter of 28th September 1942, the District Magistrate yielded at once to Mr. Huq's request and had the case stayed and com. municated Mr. Huq's desire to the then trying Magistrate - Mr. Nag. If he does it once it is a fair inference that he would do it again when greater pressure is brought to bear upon him : (2) The decision of the trying Magistrate was clearly contrary to law on the facts as set out by the trying Magistrate : and (3) The effect of the Magistrate's decision and sentence was one which would make it easier for the Government of Bengal to keep Kumar Singh Chajjore in office in the Azimganj-Jiaganj Municipality under Section 22, Bengal Municipal Act. If all this was an accident, it is a most remarkable accident and remarkably fortunate for Kumar Singh Chajjore - Mr. Huq's protege, and certainly could have some political consequences. It is difficult to believe that it was all an accident, and it raises the gravest suspicion that Mr. Fazlul Huq's interference had been successful.

23. In the Jiaganj rice looting case, Pollard was the protagonist for the Crown. When one finds the case for the Crown so fortunately disposed of in favour of the defence and one finds that at the same time the Magistrate is trying the case brought against Pollard, who is disliked and threatened by the same Minister, one cannot avoid a suspicion - and a strong one - that the same influence as was brought to bear in the Jiaganj case may also have been brought to bear or at any rate have operated in the Pollard case. Had the Haq - Chatterjee letters been brought to the knowledge of this Court when Mr. Chowdhury was trying the Pollard case we should certainly have ordered that case to be transferred to some other Magistrate in another district and tried by

him. The accused in the Jiaganj case showed cause before us at the end of the hearing in the Pollard case. The Jiaganj accused's contention was that whatever Mr. Fazlul Haq may have done, it had no bearing upon the result in the Jiaganj case, and there is no evidence of it. It is not necessary that it should be proved that that interference, which was undoubted, was the cause of the verdict. The position has been stated by Lord Hewart C.J. in Rex v. Sussex Justices; Ex. Parte McCarthy (1924) 1 K.B. 256. In that case the clerk of the justices, on hearing the summons against a defendant for dangerous driving of a motor car, was a member of the firm which was acting for the injured party in a civil suit against the defendant for damages. When the justices retired to conceder their verdict, the clerk retired with them without taking any part in the discussion. The defendant was convicted and moved to quash the conviction. Lord Hewart in delivering the judgment said:

A long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done but should be manifestly and undoubtedly seen to be done. The question therefore is not whether the deputy clerk made any observation or offered any criticism which he might not have properly made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justice in the criminal matter. The answer to that question depends not upon what actually was done but on what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference of the course of justice. Speaking for myself, I accept the statements contained in the justices' affidavit, but they show very clearly that the deputy clerk was connected with the case in a capacity which made it right that ' be should scrupulously abstain from referring to the matter in any way, although he retired with the justices; in other words, his position was such that he could not, if he had been required to do so, discharge the duties which his other position involved. His twofold position was a manifest contradiction In those circumstances I. am satisfied that this conviction must be quashed, unless it can be shown that the applicant or his solicitor was aware of the point that might be taken, refrained from taking it, and took his chance of an acquittal on the facts, and then, on a conviction being recorded, decided to take the point.

24. Counsel for the convicted persons in the Jiaganj case adopted the argument that there was no evidence of improper interference and 9 the convictions and sentences in the Special Court should stand Another line adopted by counsel on behalf of Kumar Singh Chajjore was to make a fierce attack upon Mr. Pollard for things he was alleged to have done in the case and also in other cases which had no relation whatever to any of the cases which have been mentioned so far. That information must have been supplied for the purpose and with the intention of attacking Pollard. But it has nothing to do with the question of interference.

25. The other line of argument adopted by Mr. S.N. Banerji, counsel for the other respondents, is clearly an improvisation. It was this and I will deal with it in full. "If justice is not only to be done by the present Bench but seen to be done, Lodge J., ought not to be sitting on the Bench because he is a friend of Pollard." Mr Banerji stated that Lodge J., when he granted the rule for the production of the letters between Mr. Fazlul Huq and Mr. Chatterjee, had stated that he was a friend of Pollard and did not wish to try the case. When Mr. Banerji said this Lodge J. stated at once that it was not his recollection that he said that he was a friend of Pollard; he had known Mr. Pollard many years ago when he, Lodge J., was District Judge of Mymensingh and Mr. Pollard a junior police officer, and that he had not spoken to Mr. Pollard for ten years. Mr. Banerji persisted that he had heard Lodge J. say he was a friend of Pollard. I accept Lodge J.'s statement. When Lodge J. reported this case to me a few weeks ago, as I stated above, he told me that he had known Mr. Pollard many years ago and did not wish to sit on the case although there was no reason why he should not sit. Lodge J. further informed me that both Mr. Taluqdar, who was counsel for the complainant in the Pollard case, and Mr. Carden Noad, who was counsel for Pollard, had expressed the hope that he would sit. I considered the matter very carefully.

26. This is an important case in which it is essential that at least one Judge with a wide experience in the administration of criminal law both in this Court and in the mofussil should sit. Lodge J., in addition to sitting on the criminal benches of this Court for many years past had experience both as a District Magistrate and a District and Sessions Judge. I was satisfied that there Vas nothing in Lodge J.'s contacts with Pollard beyond the ordinary official contacts and that they had ceased many years ago. Lodge J. at Mymensingh was a District Judge and at the top of the official hierarchy, whereas Mr. Pollard was a junior police officer somewhere near the bottom of it. The gulf between them both in age and status was very wide, and there was nothing but official contacts such as most senior District Judges have had some time or another with police officers in the Province. I informed Lodge J., that I wished him to sit and that I consider it his duty to do so in order that this Bench could have the benefit of his experience and knowledge. He thereupon agreed. I myself have met Mr. Fazlul Huq on many official and semi-official occasions and had no desire to sit on this Bench where his conduct was in question. But where it is my duty, as in this case, to do so, that duty has to be performed, whether I knew Mr. Fazlul Huq before or not. Judges frequently find themselves in a position in which they have to try persons with whom they have had contacts previously, and al-though it may be distasteful to them and they would prefer not to sit, they have to perform their" duty. That is Mr. Lodge J.'s position and that is my position. Mr. Banerji's objection is ill-founded. Furthermore, - Mr. Banerji is not engaged in Pollard's case where Pollard's conduct is in question directly, but in the Jiaganj case where the conduct of Mr. Fazlul Huq and the District I Magistrate are in question.

27. Mr. Taluqdar who appeared for the complainant in the case against Mr. Pollard raised no objection to Lodge J., sitting, nor could he have done so because of the facts, and also because of his own expressed desire that Lodge J., should sit in the case. On the facts of this case I have not the slightest hesitation in saying that there was interference by Mr. Fazlul Huq in the Jiaganj case and powerful pressure exerted by him upon the District Magistrate in the Jiaganj case in order to influence both the District Magistrate and the trying Magistrate in favour of the accused and against Pollard. I have the strongest suspicion, that interference has had a considerable effect both upon the Jiaganj case and Mr. Pollard's case. If these two convictions were to be allowed to stand in the circumstances that have been revealed, no one would have confidence in the administration of criminal justice in this Province. In my opinion, both these convictions, namely, in the Jiaganj case and in Pollard's case should be set aside on the ground of improper interference with the course of justice. I am of the opinion that both these cases should be retried by some other Magistrate or Magistrates in some other district.

28. I think it would be unfortunate if the bar of Section 197, Criminal P.C. were maintained in Pollard's case But that is a matter for the Government and not for me. The complainant in the Pollard case is unfortunate very unfortunate. He had nothing to do with the interference by the Chief Minister and the subsequent events which have made it impossible to sustain the conviction. It may be that hereafter he will have some redress though that may depend upon whether the circumstances are such that he may pursue his prosecution without the permission of the Government. That is a matter upon which I do not propose to say anything since in my opinion the whole of the evidence in these two cases must go with the convictions. It is a very serious matter at all times for the course of justice to be interfered with or for even an attempt to be made to interfere with the course of justice. It is very serious indeed when such an attempt is made by the Chief Minister of the Province who possesses great power and influence. In this case it is clear that Mr. Fazlul Huq who at all material times was until April of this year the Chief Minister, used his position to influence the course of it justice in the Jiaganj case for political consideration. When Mr. Fazlul Huq took office as Chief Minister on 12feh December 1941, he took the following oath of office as prescribed by the Instrument of Instructions issued by the Crown to the Governor of this Province. The written record of that oath was produced before us at my request from the Government Secretariat. It was signed by Mr. Fazlul Huq whose signature was verified on oath by Mr. Ellis. It is set out here:

I Abdul Kasem Fazlul Huq do solemnly affirm that I will well and truly serve out Sovereign, King George the Sixth, Emperor of India, and that I will do right to all manner of people after the laws and usages of India without fear or favour, affection or ill-will.

A.K. Fazlul Huq.

29. In writing the letters set out above to Mr. Chatterjee and sending Mr. Badruddoja with two of them to instruct Mr. Chatterjee, Mr. Fazlul Huq broke his oath. It is not as if he were an ignorant man who did not know the nature of the oath he took. He is a man of great experience in public affairs and for a great part of his life he has practised as an advocate in this Court. Apart from this solemn oath, he knew that interference with the course of justice was wrong. If there were any possibility of his forgetting this - and I see no reason why he should have forgotten - he was reminded of it very definitely by the judgment in Emperor v. Ebrahim quoted above which was delivered on 7th May 1941 when he was the Chief Minister. There is another aspect of the matter. The Jiaganj case arose out of criminal interference with the legitimate transport of rice, the staple food of the province, of which there was at that time and still is a scarcity. If the legitimate and proper transport of food can be interfered with and the male-factors protected by the Chief Minister of the province when they are brought before the Courts of law, there is an end of law and order in the province. The result is that instead of the orderly distribution of food there is a scramble for it in which the weakest suffer. Mr. Fuzlul Huq was Minister for the Home Department at the time this rice looting took place. The looted rice was intended for the Berhampore Jail. The administration of jails is a matter with which the Home Department is charged. But neither the solemn oath nor public responsibility prevented him from doing this nefarious work.

30. A person who takes on oath or makes an affirmation to tell the truth in a judicial proceeding and breaks it is guilty of perjury fl and may be punished at law by the Courts. A person, however, who on taking up an office is required by law to take an oath of office that he will faithfully perform the duties of that office takes what is called a promissory oath : see Halsbury's Laws of England, 2nd (Edn.), vol. 9, p. 342. The breach of a promissory oath in the absence of a special provision of law to that effect is not punishable at law. As far as I am aware there is no punishment in law for the breaking of the promissory oath taken by Mr. Fazlul Huq when he assumed office as Chief Minister. But the clear violation of it brands a man as unfit for public office. If solemn promissory oaths by persons who take high office in the State are to be disregarded as mere formalities there is no possibility of good government. Mr. Huq is left to the contemplation and judgment of his fellowmen. Mr. Chatterjee, the District Magistrate, who on one occasion at least carried out Mr. Fazlul Huq's wishes, knew full well that he was doing wrong in so doing. I cannot imagine that he was unaware of the judgment in Emperor v. Ebrahim since this judgment which was of particular concern to District Magistrates-received a certain 5 amount of prominence in the legal press. It was the plain duty of Mr. Chatterjee when he received from Mr. Huq the letter of 29th September, to tell Mr. Huq that he was asking him to do something contrary to his duty and to firmly refuse to interfere. But he seems to have been more anxious to oblige Mr. Huq than to do his duty. He ought to have prevented all attempts at

interference with the Magistracy under his control. In my view he is not fit to exercise supervision over judicial officers and he should be transferred to some other branch of the public service where plasticity may possibly; be an advantage and not a danger to the community.

31. This case is not only unsavoury, it is disquieting. In the case cited above, Debendra Kumar v. Yar Bakht Chaudhury ('39) 26 A.I.R. 1939 Cal. 384 this Court commented adversely on the action of the Government of Assam in interfering with the course of justice apparently in the interest of relatives of members of the Cabinet. In 1941, in Emperor v. Ebrahim cited above, this Court commented upon the conduct of the Government of Bengal in interfering with the course of justice. The present case is worse than either of these and is, in fact, the worst I have ever known. It is a matter for those concerned with the constitution of this country to consider whether the law should not be altered so as to provide a firm deterrent for this sort of thing. In the meantime it is left to those who are called upon to aid and assist the Governor of a Province, namely, members of the Cabinet, to comply faithfully and conscientiously with their oaths of office, and to use the words of Oliver Cromwell "to make some conscience of what they do." If it should so happen that similar interference is attempted in future it is the duty of those judicial officers affected whether they be District Magistrates or Magistrates subordinate to them or any other judicial officers at once to resist firmly any pressure or influence such as has been exerted in this case. Further, it is the duty of those officers and judges affected to inform the High Court at once so that the High Court may deal with the matter and take steps to protect them in the faithful discharge of their duties in the administration of justice. This Court which has been put in an independent position under the constitution will devote all its power to protect those who are subjected to such wrongful and illegal interference.

Khundkar, J.

32. As regards Cr. Revn. Case No. 418 of 1943, Satya Gopal Mazumdar v. R.C. Pollard, I agree with my Lord the Chief Justice in the view that the trial oat of which this rule has arisen, was held under circumstances such as to engender a strong suspicion that extra-judicial influences may have been brought to bear in such a way as to affect the result. Applying the rule laid down by Lord He wart, to which my Lord the Chief Justice has referred, whether justice was done or not, it cannot be said with confidence that it was seen to be done. The trial must therefore be set aside. Regarding the question whether the accused can now be put upon his trial without the sanction of the Local Government under Section 197, Criminal P.C. I have had the advantage of seeing the judgment which my brother Lodge J, is about to deliver. As pointed out by him, the trial was not one which was held without jurisdiction, and it is therefore permissible to consider the evidence for purposes ancillary to the trial. One such purpose affects the question whether Section 197, Criminal P.C. applies to the facts disclosed. The evidence now before us makes it

plain that it does. I agree with my learned brother that the offence which the accused was charged with committing was one alleged to have been committed by him while acting or purporting to act in the discharge of his official duty as a police officer within the meaning of Section 197, Criminal P.C. As regards Cr. Revn. Case No. 706 of 1943, Emperor v. Sadhu Majhi and Ors., here also I agree with my Lord the Chief Justice, that the trial was held in an atmosphere tainted by extra-judicial influences, and that the finding of law recorded by the trying Magistrate in itself goes far to show that it was brought about by considerations which were not confined to the evidence in the case. The finding of law was that the accused had committed not dacoity, but criminal misappropriation. This finding followed certain findings of fact. The learned Magistrate found upon the evidence that all the ingredients of dacoity were present save one, viz., theft, and he arrived at such a result by first concluding that at the time when the accused took away the rice, they had no dishonest intention. This is what the Magistrate said:

P.W. 3 is the Sub-Divisional Officer of Lalbagh. He stated that there was scarcity of rice at Jiaganj and Azimganj and for that from 18th August 1942, or 19th August 1942, he began to make inventory of the stock of rice at Jiaganj and Azimganj; that be went from shop to shop and asked the shop-keepers not to sell rice without his permit; that in doing this he was accompanied by Rai Bahadur S.N. Sinha and the accused Kumar Singh Chajjor; that he told the shop-keepers and others not to remove any rice 9 from Azimganj and Jiaganj of which he made an inventory, without his permit; that he also asked the people to give him information if anyone removed rice of which inventory was not made yet; and that he might have told the people to persuade persons who might try to remove rice, not to do it. Thus it appears that it was the order of the Sub-Divisional Officer which acted upon the mind of the accused at the time of taking away the rice.

33. It could certainly not have been the order of the Sub-Divisional Officer which acted upon the mind of the accused, because the accused had been informed that the rice was a consignment intended for the Berhampore Jail and was then on its way there, and it surely could never have been the wish of the Sub-Divisional Officer that a Government consignment should be stopped in this manner. In the face of the other facts established by the evidence and found by the Magistrate, it is quite impossible to follow the Magistrate's reasoning. If it was really "the order of the Sub-Divisional Officer which acted upon the mind of the accused at the time of taking away the rice," the rice which was a part of Government supplies, would not have disappeared, and the accused would not have denied that they had had anything to do with the taking. I shall quote some further lines in the judgment:

The accused Kumar Singh Chajjor is a Commissioner at Jiaganj Azimganj Municipality. He is a member of the Lalbagh Special D. Section Board. He is also a member of the Jiaganj H.E. School. He is a respectable gentleman.... Before taking the rice the accused said that it was the

order of the Sub-Divisional Officer not to remove rice without his permission, and that they would take it to the Thana and deposit it there. It is in evidence of both the complainant and his karmachari that the accused Gopi Souragi told them after the occurrence that all the rice should be taken to him in the morning and that he would pay off the price. Gopi Souragi is a merchant at Jiaganj. P.Ws. 7 and 8, the cartmen, stated that before taking away the rice, the accused said that they would not allow removal of rice from Jiaganj and that they would purchase it.

34. Later on the learned Magistrate makes the following observation:

So it is evident from all these facts that the accused did not intend to take dishonestly the rice when they removed it. Their intention was to keep the rice within their town and to pay off the price or to deposit the rice at the Thana as desired by the Sub-Divisional Officer. Dishonesty might arise in the mind of the accused later on but not at the time of taking the rice.

35. To no section of the populace could the sophistries of this Magistrate be more welcome than to the enterprising community which lives by dacoity. For people of that persuasion, there opens a vista of happy hunting grounds and of the islands of the blest. All these amiable gentry have to do is to include within their number a local

celebrity

or person of some substance, and then to say to their victims; we are taking your chattels not for the benefit of our pockets, but for the good of the community because you are not using or disposing of your belongings in the best possible manner. We shall take them to the Police Station, or if you prefer it, we will purchase them from you tomorrow morning." They can then decamp with the loot in perfect safety so far as Section 395, Penal Code, is concerned. If and when caught, they may deny all knowledge of the occurrence, and they will be convicted of criminal misappropriation under Section 408, Penal Code. This sort of judicial determination only serves to bring the administration of justice into derision. I find it difficult to believe that it was made by a Magistrate who was thinking only of his duty as a judicial officer, and of the evidence before him. In conclusion, I would like to say, that I hope our judgment in these two cases will bring home to all executive authorities, be they high or humble, the gravity of attempting to tamper in any way with the independence of judicial officers, and will cause them to realise that this Court is determined to deal ruthlessly with every instance brought to its notice of executive interference with the administration of justice, the strict impartiality of judicial officers, and the functioning of the judiciary in accordance with law.

Lodge, J.

36. I was one of the Judges who issued the rule on the Government of Bengal on 19th July : and at that time I stated in open Court that I personally would not hear the matter, but I do not

remember the exact words I used. I took the first opportunity of informing my Lord the Chief Justice that I had been formerly in the same Mofussil Station as Mr. Pollard and had, therefore, had the ordinary contacts with him. On 22nd July when the letters were produced by the Government of Bengal, Mr. Carden Noad, counsel for Mr. Pollard reminded me that it was nearly ten years since I had been in the same station with Mr. Pollard and that at that time Mr. Pollard was a very junior police officer whereas I was even then a fairly senior Judge. I was stationed in Mymensingh at that time and though Mr. Pollard and I were both members of a very small European community in the station and met from time to time, there was no friendship between us. I left Mymensingh in 1934 and to the beat of my recollection I have not spoken to Mr. Pollard since. When these facts were revealed in Court, Mr. Talukdar, advocate for the complainant in the Pollard case, assured me that his client would be very glad if I were one of the Judges who should hear the rule. Mr. Carden Noad, counsel for Mr. Pollard, gave me the same assurance. In view of these assurances and in view of the fact that there had not in fact been any friendship between Mr. Pollard and myself I contented myself with placing all the facts before my Lord the Chief Justice and leaving the matter in his hands.

37. The material questions for consideration in the Pollard case are two: (1) Was the Court entitled to take cognizance of the alleged offence in view of the provisions of Section 197, Criminal P.C. (2) Has the accused had a fair trial? The Courts below have taken the view that the question whether Section 197, Criminal P.C. is applicable or not must be decided by reference only to the statements made in the petition of complaint. Mr. Talukdar for the respondent has stoutly supported the view and has cited the case in Ganga Prasad Sinha v. Brindaban Chandra Das in support thereof. If this view is correct, any complainant can evade the provisions of Section 197, Criminal P.C. by suppressing material facts when making his complaint, and so render the section of no effect. I cannot believe that such was the intention of the Legislature. It seems to me that the phrase "take cognizance" in Section 197, Criminal P.C., must be the same as "hear and determine," and that consequently as soon as a Court is satisfied that the alleged offence was committed (if at all) while the (officer was acting or purporting to act in the (discharge of his official duty he shall drop the proceedings. I am unable to agree with the decision in Ganga Prasad Sinha v. Brindaban Chandra Das . In my opinion the Courts below should have determined this question on a consideration of the whole evidence and also of certain additional facts which were so notorious that the Courts ought to have taken judicial notice of them. In my opinion the Courts below failed to consider all the material facts and indeed failed to apply judicial minds to the determination of this case.

38. The defence alleged that after the arrested students were taken to the compound of the Superintendent of Police's bungalow, the complainant tried to enter into conversation with them.

He was told to desist but persisted. He was told to leave the premises, but instead of doing so, he approached Mr. Pollard. When Mr. Pollard told him to go away, the crowd began to demonstrate, shouting "Khabardar," "Bande Mataram," "Zindabad Inquilab" and throwing stones. Thereupon Mr. Pollard rushed out, seized the complainant and hustled him away. The defence denied that Mr. Pollard slapped or kicked the complainant. To prove his case, the complainant examined four other eye-witnesses besides himself. The defence also examined eye-witnesses. The learned Sessions Judge observed that some of the defence witnesses were police officers, and another of them was also a Government servant of another department. The learned Judge discarded the evidence of these witnesses on the ground that they were partisans. The learned Judge however omitted to remark on the facts that the four prosecution eye-witnesses were all students, that the arrested persons were students arrested for a political crime, that the demonstrating mob outside the compound was composed largely of students, and that though the complainant immediately after the occurrence took the names of shop-keepers and others as eye-witnesses, he selected only students to give evidence as such. In my opinion the learned Sessions Judge had no more justification for regarding the defence witnesses as partisans than for regarding the prosecution witnesses in that light.

39. The learned Sessions Judge noted that one defence witness said that cries of "maro" " "maro" came from the mob, and he rejected the evidence of this witness on the ground that he was "plus royaliste que le roi". One of the prosecution witnesses went further than the complainant and said that Mr. Pollard shouted "nonsense, kick him out". But being a prosecution witness the criticism "plus royaliste que le roi" was not applied to this witness who was regarded as wholly reliable. In short, it seems to me that the learned Sessions Judge applied entirely different standards to the two sides and his findings of fact are therefore is my opinion unconvincing.

40. If, however, this was the only defect I should be reluctant to hold that this Court would be justified in interfering in revision. But there is the additional fact that the learned Sessions Judge shut his eyes to notorious facts which were relevant in determining whether section 197, Criminal P.C., was applicable. The learned Sessions Judge treated the matter as though times were normal, and ordinary prisoners were being detained, and as though the mob outside was a mere crowd of sightseers shouting comparatively harmless slogans. This is such a travesty of the true state of affairs that I am unable to understand the learned Sessions Judge's outlook. The undoubted facts are that in September 1942 there was open rebellion in parts of the country, that Government buildings were being attacked and Government officers murdered not many miles distant from Berhampore. In many places where Government officers hesitated to take firm action, gruesome tragedies occurred.

41. The attempt on the District Judge's buildings on 9th September by students shouting

revolutionary slogans must have seemed to the local police to be part of that rebellious movement. The fact that the crowd followed the police after the arrest of the students, and at once began to demonstrate when the Superintendent of Police ordered the complainant away must have tended to confirm that view; and it must have seemed to the police that weakness at that time was likely to have dangerous consequences. I have no desire to suggest that the complainant's con-duet was illegal, or that an assault on the complainant was justified under any of the provisions contained in chap, 7, Penal Code. On the other hand, the complainant's insistence on remaining in the compound after being told to go, was ill considered and untimely, and did in fact operate to excite the mob further. His continued presence was undoubtedly an embarrassment to the police, and I have no doubt that the police would have been justified in forcing him to go if necessary. I do not suggest that the police would have been justified in slapping and kicking him. The complainant has never suggested that Mr. Pollard had any private grudge against him or was wreaking any private vengeance. Indeed, the complainant's clear case is that Mr. Pollard, as a policeman, resented the complainant's insistence on making representations about the arrested persons, and put an end to those insistent representations by an unprovoked and un-warranted assault. It seems to me clear that however unjustified Mr. Pollard's conduct may have been, there can be no doubt that he was not acting in any private capacity but was acting in discharge of his official duties. The argument before us was that it was not Mr. Pollard's duty to assault the complainant, and therefore Mr. Pollard was not acting in discharge of his duty when he assaulted him. I am unable to accept this view. This argument seems to me to confuse Section 197, Criminal P.C. with Section 79, Penal Code. Section 197, Criminal P.C. bars a prosecution in respect of an offence and therefore applies when an offence has been committed. That is to say, it applies when the public officer does something more than his duty-some-thing which is not his duty - provided that he does it while he is acting or purporting to act in the discharge of his official duties. It has further been argued that if the whole trial has been vitiated owing to the fact that pressure was exerted from outside and may have influenced the Magistrate in his decision, the evidence on record should be entirely ignored and the case sent back for retrial and for reconsideration of the question whether Section 197, Criminal P.C. is applicable. This argument seems to me unsound. Even if the proceedings are set aside, the fact remains that the Magistrate had jurisdiction to record evidence for the purpose of determining whether section 197, Criminal P.C. was applicable. The evidence was presumably read over to the witnesses and admitted by them to have been correctly recorded. The complainant has contended before this Court that there was a fair trial -in other words, that the evidence on record represents accurately what the witnesses said. It is obvious, therefore, that the evidence on record does represent accurately the complainant's case and furnishes material on which the Court is entitled to decide whether Section 197, Criminal P.C. is applicable or not. Lam definitely of opinion that, assuming that the prosecution evidence is accepted, the present case is one governed by the provisions of

Section 197, Criminal P.C. and that the Magistrate had no jurisdiction to hear and determine the matter in the absence of a sanction from the Local Government, and that the learned Sessions Judge was wrong in law in holding that Section 197, Criminal P.C. was not applicable.

42. With regard to the question whether or not the accused had a fair trial in this case I agree entirely with the judgment given by my Lord the Chief Justice. In the result therefore in my opinion this rule should be made absolute, the conviction and sentence should be set aside and no further proceedings should be taken in regard to the prosecution unless and until the Local Government gives sanction. With regard to the Jiaganj case I agree that for the reasons given by my Lord the Chief Justice the convictions and sentences should be set aside and a re-trial ordered.