

State Vs. Shankar Bhaurao Khirode

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Court : Mumbai

Decided On : Oct-30-1958

Reported in : AIR1959Bom437; (1959)61BOMLR591; 1959CriLJ1153; ILR1959Bom1088

Judge : Gokhale and ;Miabhoy, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4, 7(1), 156, 157, 168, 173, 173(1), 190, 190(1), 193, 195, 200, 337, 337(1), 337(2), 337(2A), 337(2B) and 338; Criminal Law Amendment Act, 1952 - Sections 6, 6(1), 6(2), 7, 8, 8(1), 8(2), 8(3) and 10; [Prevention of Corruption Act, 1947](#) - Sections 3, 5, 5(2), 5-A and 6; [Indian Penal Code \(IPC\), 1860](#) - Sections 161, 165, 165A, 211 and 420; Code of Criminal Procedure (CrPC) (Amendment) Act, 1955 - Sections 59

Appeal No. : Criminal Ref. No. 119 of 1958

Appellant : State

Respondent : Shankar Bhaurao Khirode

Advocate for Def. : K.H. Nagrani, Adv.

Advocate for Pet/Ap. : V.H. Gumaste, Asst. Govt. Pleader

Judgement :

Gokhale, J.

1. This Criminal Reference raises a point of some importance as regards the jurisdiction of a Magistrate to take action on a report submitted to him under Section 173 of the Criminal Procedure Code, by a police officer after completing investigations with reference to offences which are exclusively triable by a Special Judge under Section 7(1) of Criminal Law Amendment Act, 1952.

2. The present reference has been made by the learned Sessions Judge, Ahmednagar in these circumstances: It appears that the Circle Police Officer, Rajur, investigated a case registered on the complaint of one Mr. Pahuja, Sub-Inspector of Po-Police, Rajur, against a constable by name Khirode. It was alleged by the Sub-Inspector that the police constable attempted to give him Rs. 100/- as a bribe, to hush up a chapter case instituted against one Bhau Mohana. A trap was set for the police constable and when the amount of Rs. 100/- was being attempted to be given to the Sub-Inspector, it was attached in the presence of the panchas. A report was made with regard to this to the District Superintendent of Police, and the Circle Police Officer was ordered to investigate the matter with regard to this complaint. On investigation, the officer, however, came to the conclusion that the panchnama made by the complainant, Sub-Inspector, Rajur, about attaching notes from the police constable Khirode was false and the complaint was also false. In accordance with these findings, the Circle Police Officer submitted a report under Section 173 of the Criminal Procedure Code to the Judicial Magistrate, First Class, Akola, and it was requested that 'B' summary may be issued in respect thereof. The learned Magistrate issued a notice to the complainant, Sub-Inspector Pahuja, who submitted a detailed report. It was contended on behalf of the complainant that the panchnama made by him on 25-11-1956 with regard to the alleged offence was true, and the two panchas had subsequently gone back on their statements later on. On these allegations, the learned Magistrate considered the question whether there was proper ground for granting 'B' summary as prayed for in the final report of the Circle Police Officer. It was contended before the learned trial Magistrate, as a preliminary ground, that he had no jurisdiction to grant 'B' summary in respect of the offence under Section 5 of the Prevention of Corruption Act. That contention about jurisdiction was negatived, and the learned Magistrate came to the conclusion that his Court had jurisdiction to grant an appropriate summary which the investigation suggested. On the merits,

the learned trial Magistrate came to the conclusion that he should not grant the 'B' type of summary which was sought by the Circle Police Officer, and that, under the circumstances of the case, it was proper to grant the 'A' type of summary. In accordance with these findings, he passed an order granting 'A' type of summary on the report. Against this order, there was an application for revision before the Sessions Court, which held that the learned trial Magistrate had no jurisdiction to pass orders on the report made by the police officer, as the offence in respect of which the report had been made was one exclusively triable by a Special Judge, and, therefore, the report under Section 173 of the Criminal Procedure Code for any type of summary could be made only to a Special Judge and not to any Magistrate. The learned Sessions Judge has, therefore, made this reference recommending to this Court that the order passed by the learned trial Magistrate granting 'A' summary should be set aside as one passed without jurisdiction.

3. Now, this reference came up for hearing before my learned brother, who ordered that it should be referred to a Division Bench, as it raised a point of some importance.

4. Before us, Mr. Gumaste, learned Assistant Government Pleader, has supported the reference, and contended that the views of the Sessions Judge, that the trial Magistrate had no jurisdiction to consider the report under Section 173 of the Criminal Procedure Code, with regard to the alleged offence, was correct. On the other hand, Mr. Nagrani, learned Advocate appearing on behalf of the complainant, has contended that the trial Magistrate had jurisdiction to consider the report of the police officer made under Section 173, Criminal Procedure Code and to grant the type of summary which, according to the Magistrate, was appropriate in the circumstances of the case.

5. Section 173 of the Criminal Procedure Code forms part of Chapter XIV of Part V relating to the subject of information to the police and their powers to investigate. Under Section 173(1) (a), as soon as every investigation under this chapter is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating the names of the persons who

appear to be acquainted with the circumstances of the case, and stating also whether the accused, if arrested, has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties. It would be obvious from the provisions of the Criminal Procedure Code, Chapter XIV, that when a police officer is investigating a case, he would be making three different kinds of reports at three different stages of the investigation. Section 156 refers to investigation into cognizable cases, and under Section 157, the officer incharge of the police station can make preliminary report to the Magistrate. Section 168 deals with the report of investigation by a sub-ordinate police officer who, if he makes an investigation under Chapter XIV, must submit his report embodying the result of such investigation to the officer in charge of the police station. Section 173 requires the submission of the final report by the police officer as soon as investigations are completed. But the report has to be forwarded to a Magistrate empowered to take cognizance of the offence on a police report. Now, the argument which found favour with the learned Sessions Judge was that the investigation by the police officer in this case being in connection with an offence under Section 161 of the I.P.C. and Section 5 of the Prevention of Corruption Act, and these offences being exclusively triable by a Special Judge under Section 7 of the Criminal Law Amendment Act, the Magistrate would not be empowered to take cognizance of these offences, and would not have the power to consider this report and act on it.

6. In order to test this argument, it is necessary to refer to the relevant provisions of the [Prevention of Corruption Act, 1947](#) as well as the Criminal Law Amendment Act, 1952. By virtue of Section 5-A of the Prevention of Corruption Act, police officers of certain ranks would be competent to investigate into cases without any sanction in the Town of Bombay; a Superintendent of Police is so competent to investigate; whereas in the mofussil, the Deputy Superintendent of Police would be similarly able to exercise powers of investigation. But police officers below the ranks of these officers shall not investigate any offence punishable under Sections 161, 165 or 165A, I.P.C. or under Sub-section (2) of Section 5 of the Prevention of Corruption Act, without the order of a presidency Magistrate or a Magistrate of the First Class, as the case may be; so that, an important pre-requisite of an investigation under Section 5-A is that an order of a Presidency Magistrate or a

Magistrate of the First Class has to be obtained by such a police officer in the first instance. There is an exception provided in the case of police officers belonging to the Delhi Special Police Establishment. But, even in that case, the police officer has not to be below the rank of an Inspector of Police and has to be specially authorized by the Inspector General of Police of the Establishment, and even then he cannot investigate the offence without an order of the Magistrate of the First Class, unless he has reasons to believe that, on account of the delay involved in obtaining the order of a Magistrate of the First Class any valuable evidence relating to such offence is likely to be destroyed or concealed; and further in every case where he makes such investigation without such an order, the police officer concerned, has to send a report as soon as possible to a Magistrate of the First Class, together with the circumstances in which the investigation was made. Under Section 6 of the Prevention of Corruption Act, no Court can take cognizance of an offence punishable under Sections 161, 164 or 165. I.P.C. or under Sub-section (2) of Section 5 of the Act alleged to have been committed by a public servant except with previous sanction of certain authorities who are mentioned in that section.

7. Under Section 6 of the Criminal Law Amendment Act, 1952, the State Government is empowered to appoint Special Judges to try offences under Sections 161, 165 or 165-A, I.P.C. and Sub-section (2) of Section 5 of the Prevention of Corruption Act, or any conspiracy to commit or any attempt to commit or any abetment of any of the offences mentioned above. Sub-section (2) of Section 6 prescribes the necessary qualifications of persons to be appointed as Special Judges. Under Section 7(1), notwithstanding anything contained in the Code of Criminal Procedure or in any other Law, the offences mentioned in Sub-section (1) of Section 6 are triable by Special Judges only. Section 8 deals with the procedure and powers of Special Judges, and Sub-section (1) of Section 8 provides that a Special Judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure for the trial of warrant cases by Magistrates. It is clear from these provisions that Special Judges appointed under Section 6 of the Criminal Law Amendment Act, are invested with exclusive jurisdiction to try offences mentioned in Section 6, and the Special

Judges are further empowered to take cognizance of these offences without the accused being committed to them for trial. Now Mr.Nagrani contends that, though a Special Judge can take cognizance of these offences, without there being any committal proceedings, Section 8 does not deprive the Magistrates of their power to take cognizance of such offences, though they would not have the power to try these offences. According to Mr. Nagrani,the stage of trial must be distinguished from the stage of taking cognizance of an offence. The argument is that so far as the question of taking cognizance of these offences is concerned, a Magistrate as well as a Special Judge can take cognizance of these offences. In this connection, he relied on *Dagdu Govindshet Wani v. Punja Wani*, 38 Bom LR 1189 : AIR 1937 Bom 55, where it was held that

'the Trial' of a criminal case means the proceeding which commences when the case is called on with the Magistrate on the bench, the accused in the dock and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case.'

In that case, the question which arose was whether in a warrant case the trial could be said to have begun with the framing of a charge, and it was held that it was not so, and that, where a warrant case was transferred from the Court of one Magistrate to that of another after a charge had been framed, it was open to the latter to hear the case de novo, and that he was not bound to recommence the proceedings from the stage of the charge. Mr. Nagrani argues that in the present case there was no question of any trial, but the Magistrate was merely considering the report submitted to him under Section 173, Criminal Procedure Code. In this connection, a reference might be made also to Section 4(b) of the Criminal Procedure Code, which defines 'investigation' as including all proceedings under the Code for the collection of evidence conducted by a police officer or by any person, other than a Magistrate, who is authorized by a Magistrate in that behalf. Section 4(k) defines an 'inquiry' as including every inquiry other than a trial conducted under the Code by a Magistrate or Court. The terms 'investigation' 'inquiry' and 'trial' would, therefore, denote three different stage in a criminal case, and Mr. Nagrani's argument is that in cases of offences falling under Section 6 of the Criminal Law Amendment Act, the stage of trial alone must be conducted by a

Special Judge, while there is concurrent jurisdiction as regards taking of cognizance of the offence which must precede the stage of trial.

8. In support of his argument, Mr. Nagrani has also relied on the provisions of Section 190(1) (b) of the Criminal Procedure Code, under which any District Magistrate or Sub-Divisional Magistrate, and any Judicial Magistrate specially empowered in this behalf, may take cognizance of any offence upon a report in writing of such facts made by any police officer, and the argument is that under this section, a Magistrate can take cognizance of even offences mentioned in Section 6 of the Criminal Law Amendment Act, upon a report submitted to him by a police officer. If that be so, Mr. Nagrani says that the learned trial Magistrate would be competent to consider and act upon the final report submitted to him by the police officer under Section 173 of the Criminal Procedure Code. In our view, this argument of Mr. Nagrani is well founded.

9. Under Section 193 of the Criminal Procedure Code, except as otherwise expressly provided by the Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of Original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf. It is true that under Section 8(3) of the Criminal Law Amendment Act, the Court of a Special Judge is deemed to be a Court of Session. But under this Sub-section (3) itself, it is mentioned that it is subject to what is provided for in Sub-section (1) of Section 8 of the Criminal Law Amendment Act, a Special Judge is entitled to take cognizance of offences covered by Section 6 without there being any committal proceedings in the Court of a Magistrate. It seems, therefore, that so far as the Court of Special Judges are concerned, though they are placed on the same footing as the Courts of Session, the procedure prescribed under Section 193 of the Criminal Procedure Code is not necessary to be followed in the case of these Courts. Under Sub-section (2) of Section 8 of the Criminal Law Amendment Act, a Special Judge is empowered to tender a pardon to a person supposed to have been directly or indirectly concerned in, or privy to, an offence, with a view to obtaining the evidence of such person. This section also makes a distinction between a Court of a Special Judge and a Court of Session, because, whilst a Special Judge can himself grant pardon

under Section 8(2) of the Criminal Law Amendment Act, under Section 338 of the Criminal Procedure Code the Sessions Court has power not only to tender a pardon, but to order the committing Magistrate or the District Magistrate to tender a pardon to any person. But, though the Court of a Special Judge has itself this power of tendering a pardon conferred on it under Section 8(2), in our opinion, that would not affect the general provisions contained in Section 337(1) of the Criminal Procedure Code, regarding tender of pardon to an accomplice. Prior to 1952, under Section 337(1), there was no provision for tender of pardon to an accomplice with regard to offences under Sections 161, 165 and 165A I.P.C. By Section 5 of the Criminal Law Amendment Act, 1952, in the first instance and subsequently by Section 59(a)(ii) of the Code of Criminal Procedure (Amendment) Act 26 of 1955 these three section were inserted in Section 337(1) of the Criminal Procedure Code, so that, after this amendment, under Section 337 of the Criminal Procedure Code any Magistrate of a First Class, at any stage of the investigation or inquiry into or trial of an offence even under these three section is empowered to tender a pardon. Under the proviso to Section 337(1) as amended in Bombay, when the offence is under enquiry or trial no Magistrate of the First Class shall exercise this power unless he is the Magistrate making the inquiry or holding the trial and when the offence is under investigation, a Magistrate can grant pardon only with the sanction of the Sessions Judge (See Section 2 of Bombay Act XXIII of 1951). Under Sub-section (2) of Section 337 every person accepting a tender under this section shall be examined as a witness in the Court of a Magistrate taking cognizance of the offence and in the subsequent trial, if any. Sub-section (2A) refers to the powers of a Magistrate, before whom the proceedings are pending, to commit the accused for trial to the Court of Session, in every case where an accomplice has accepted a tender of pardon and has been examined under Sub-section (2), provided the Magistrate is satisfied that there are reasonable grounds for believing that the accused is guilty of the offence alleged to have been committed by him. Then comes Sub-section (2B) of Section 337, which was inserted in the first instance by Section 5 of the Criminal Law Amendment Act, 1952, and subsequently by Section 59(b) of the Code of Criminal Procedure (Amendment) Act XXVI of 1955, and that Sub-section (2B) runs as follows:

'(2B) In every case where the offence is punishable under Section 161 or Section 165 or Section 165A of the Indian Penal Code (Act XLV of 1860) or Sub-section (2) of Section 5 of the [Prevention of Corruption Act, 1947](#) (II of 1947), and where a person has accepted a tender of pardon and has been examined under Sub-section (2), then, notwithstanding anything contained in Sub-section (2A), the Magistrate shall, without making any further inquiry send the case for trial to the Court of the Special Judge appointed under the Criminal Law Amendment Act, 1952 (XLVI of 1952).'

Now, this Sub-section which is newly added cannot have reference to pending cases only for which provision had been made under Section 10 of the Criminal Law Amendment Act, which provided that all cases triable by a Special Judge under Section 7 which immediately before the commencement of the Act, were pending before any Magistrate shall on such commencement, be forwarded for trial to the Special Judge having jurisdiction over such cases; so that, under Section 10, all cases which were pending before any Magistrate before the commencement of the Criminal Law Amendment Act, and which were exclusively triable by a Court of a Special Judge, were to be forwarded for trial to such Courts. Now, Sub-section (2B) of Section 337 of the Criminal Procedure Code contemplates that in cases where an offence is triable by a Court of a Special Judge, and where a pardon has been tendered to an accomplice and he has been examined under Sub-section (2), then notwithstanding the requirement of Sub-section (2A) to commit the accused for trial to the Court of Session, the Magistrate has to send the accused for trial to the Court of Special Judge without making any further inquiry. This provision is perfectly consistent with Section 8(1) of the Criminal Law Amendment Act which as already stated, enables the Court of a Special Judge to take cognizance of an offence without any committal proceedings. But the important thing to be noted is that under Sub-section (2B) of Section 337 of the Criminal Procedure Code, a Magistrate has not only the power to tender a pardon to an accomplice, but would have the power to examine him under Sub-section (2) even in respect of the offence triable exclusively by a Court of a Special Judge. This would support the contention of Mr. Nagrani that a Magistrate is not deprived of his power to take cognizance of an offence even though it is exclusively triable by a Court of a Special Judge.

10. In the Police Manual, Volume III, page 176, under Rule 202, the reports required by Section 173 of the Criminal Procedure Code to be submitted on the completion of an investigation are classified under two heads: (i) charge sheets which are to be in form C.P.C. 20, and (ii) final reports in form C.P.C. 19. Under Sub-rule (2) of Rule 202, the police are directed to send a charge-sheet to the Magistrate directly when there is sufficient evidence to justify the sending of the accused person to a Magistrate. Rule 203, at page 178, deals with the submission of final reports and provides that when there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, the Police Station Officer or the investigating officer will release the accused person on bail, if he is in custody, and submit a final report to the Magistrate requesting to classify the case and issue an appropriate summary of his order. Now, these summaries are of three kinds: 'A' type of summary would be issued where the Magistrate classified the case as true but undetected, and the Police Manual explains this as 'where there is no clue whatsoever about the culprits or property or where the accused is known but there is no evidence to justify his being sent up to the Magistrate for trial.' 'B' type of summary would be issued where the Magistrate classifies the case as maliciously false; and 'C' type of summary is issued where the case is classified as neither true nor false which is explained in the Police Manual, as for example being 'due to mistake of facts or being of a civil nature.' Now, as already stated, under Section 190 of the Criminal Procedure Code, a Magistrate specially empowered in this behalf may take cognizance of any offence upon a report in writing by any police officer. There is no dispute about the learned trial Magistrate in this case having the powers under Section 190 of the Criminal Procedure Code. If that be so, the submission of the report by the police officer in this case to the learned trial Magistrate, and his request for the issue of B summary, could not be said to be without jurisdiction.

11. But it is contended by Mr. Gumaste, learned Assistant Government Pleader, that even assuming that this submission of the final report under Section 173 of the Criminal Procedure Code to the learned trial Magistrate was not bad, the Magistrate, in fact, took cognizance of the offence in refusing to issue 'B' summary and in issuing 'A' summary, and his order, would therefore, according to Mr. Gumaste, be illegal under Section 6 of the Prevention of Corruption Act, under

which no court can take cognizance of an offence punishable under Sections 161, 164 or 165 I.P.C. or under Sub-section (2) of Section 5 of the Prevention of Corruption Act, without obtaining the requisite previous sanction of the authorities mentioned in that section. The next question, therefore, is whether, in fact, the learned trial Magistrate has taken cognizance of the offence mentioned in the report submitted by the police officer. It is true that the order passed by the learned trial Magistrate issuing the 'A' summary, as contemplated under the provisions of the Police Manual, is not an administrative order but a judicial order. See *Emperor v. Bajaj Appaji*, 47 Bom LR 664 : AIR 1946 Bom 7. But the mere fact that in issuing 'A' summary he has passed a Judicial order would not necessarily mean that he has taken cognizance of the offence referred to in the report. The police officer prayed for the issue of 'B' summary on the ground that the complaint was maliciously false. If the learned trial Magistrate had, in fact, accepted the request of the police officer and granted the 'B' summary, it is difficult to appreciate how it could have been said that he had taken cognizance of any offence. Mr. Gumaste has contended, however, that even if he had granted the 'B' summary, still, it would be taking cognizance of the offence mentioned in the report, and he further contends that the learned trial Magistrate having given the 'A' type of summary, he calcified the case as true but undetected, and, therefore, he took cognizance of the offence which was the subject matter of an investigation by the Police. In this connection, Mr. Gumaste, in support of his argument has referred to two cases. In *Emperor v. Baburao Tatyrao*, 38 Bom LR 946: AIR 1936 Bom 379, it was held that the expression 'taking cognizance of an offence' in Section 190 of the Criminal Procedure Code dealt with a matter of a purely technical nature; and that cognizance was usually taken upon complaint when process was issued, but no restricted interpretation could be given to that expression in the consideration of the character of the action of a Magistrate at any particular stage of the proceeding before him. It was further held that cognizance was taken by the Magistrate in that case upon issue of process before evidence was recorded. Reliance is also placed by Mr. Gumaste on another decision of this Court reported in *J.D. Boywalla v. Sorab Rustomji Engineer*, 43 Bom LR 529: AIR 1941 Bom 294, in which the facts were that a complaint was made to the police for an offence under Section 420, I.P.C., on which the Police started investigation, arrested the accused and

released him on bail. Subsequently, the police applied to a Magistrate to have the bail enlarged, which was done. After further investigation into the matter, a report was sent by the police to the Magistrate that no offence was disclosed, whereupon the Magistrate discharged the accused and cancelled his bail bond. Then he in his turn filed a complaint against the original complainant for the offence under Section 211, I.P.C., and it was held by this Court that, in doing what he had done (in the prior proceedings) the Magistrate had taken cognizance of the case under Section 420 of the Indian Penal Code and that, therefore, under the provisions of Section 195(b) of the Criminal Procedure Code, 1998, it was that Magistrate alone who could lodge the complaint for an offence punishable under Section 211 of the Indian Penal Code. That case, however, can be distinguished on its own facts. There, on a complaint, the accused was actually arrested and released on bail, and, subsequently, the police had applied to the Magistrate to have the bail enlarged. Upon a further report by the police, the Magistrate held that no offence was disclosed and passed an order of discharge, and this is what Sir John Beaumont, C.J. Observed at pages 532-33 (of Bom LR) : (at p. 296 of AIR) :

'When, in the case of a man who has been arrested and released on bail the police officer reports that there appears to be no case, and invites the Magistrate to discharge the man, the Magistrate is not bound to act upon the police view. He can undoubtedly say: 'I will have a further inquiry in this matter. I think the police are wrong in suggesting that the accused should be discharged.' And he may direct further investigation. On the other hand, I have no doubt that he may say: 'I have no reason for thinking that the report of this police officer, who is a responsible person, is wrong, and if he tells me that after investigation he thinks there is no case, I will do as he suggests and discharge the accused.' But in either case the Magistrate is taking cognizance of the case. He cannot discharge the accused, or direct a further investigation, unless he first takes cognizance.'

And Sir John Beaumont expressed the view that in discharging the accused, the Magistrate was making an order similar in character to the order which he could make under Section 203, Criminal Procedure Code, where he acts on a report of the police or an investigation undertaken at his request.

12. The Criminal Procedure Code has not defined the expression 'take cognizance'. But it appears clear on decided cases that taking of cognizance is a different thing from initiation of proceedings. The Magistrate may apply his mind and consider a report submitted to him by the police officer under Section 173, Criminal Procedure Code; but, before it could be said that he has taken cognizance under Section 190 of the Criminal Procedure Code, it is not sufficient that he should have applied his mind to the report, but he must do something for proceeding under the subsequent provisions of the Code, for example, under Section 200, under which the Magistrate has to examine the complainant on taking cognizance of an offence. In *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar*, : AIR1950 Cal437 , it was held that

'before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a), 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 the Chapter. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of the Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.'

Now this view of the Calcutta High Court has been approved by the Supreme Court in *R.R. Chari v. State of Uttar Pradesh* : 1951 CriLJ775 where their Lordships of the Supreme Court were concerned with a case where the police had applied for a warrant of arrest of the accused for an offence punishable under Section 161 or 165 I.P.C. Under Section 3 of the [Prevention of Corruption Act, 1947](#), such an offence is a cognizable offence for the purpose of the Criminal Procedure Code, subject to the condition that the police officers below the rank of officers mentioned in Section 5A cannot investigate without an order of the Magistrate of the First Class, or make an arrest without a warrant, and, it was held by the Supreme Court that, when the police applied for a warrant of arrest during investigation under Section 3, and the Magistrate issued a warrant, he could not be deemed to have taken cognizance of the case under Section 190 of the

Criminal Procedure Code and, therefore, the fact that sanction of Government under Section 197 of the Code had not been obtained before the warrant was issued would not vitiate the trial. That case, therefore, clearly shows that, where a Magistrate applies his mind only for ordering investigating under Section 5A of the Prevention of Corruption Act, or issue a warrant on the application by the police for the purpose of investigation, the Magistrate is not taking cognizance of the offence. In our opinion, the present case would fall within the principle laid down in this case. All that was done by the police officer here was to submit a report under Section 173 of the Criminal Procedure Code, and the police wanted the Magistrate to issue a 'B' summary, classifying the complaint as maliciously false. In fact, the officer did not want the Magistrate to take any further action on the report. It was open to the Magistrate to grant that type of summary. It was also open to the Magistrate to differ from the view of the police, and, in fact, in this case, the trial Magistrate chose to classify the case as fit for the issue of 'A' summary. But, since no further proceedings were intended to be taken, it cannot be said that the learned trial Magistrate, in issuing 'A' summary had taken cognizance of the offence. In these circumstances, the order of the trial Magistrate cannot be challenged on the ground that it was bad, as he took cognizance of an offence without any previous sanction as contemplated under section 6 of the Prevention of Corruption Act.

13. Then Mr. Gumaste has contended that the order of the learned trial Magistrate is wrong of merits. According to Mr. Gumaste, if the Magistrate, after applying his mind to the report submitted to him, came to the conclusion that the allegations were true but the offence was undetected the latter part of the finding would not be correct in the particular circumstances of this case. Now, this reference was made by the learned Sessions Judge purely on the point of law as to whether the learned trial Magistrate had jurisdiction to consider the report submitted to him under Section 173, Criminal Procedure Code. The Sessions Court has not given any consideration to the merits of the order of the trial Magistrate, which, under the rulings of this Court, is a judicial order. We do not, therefore, propose to express any opinion on the merits of the order passed by the learned trial Magistrate.

14. The result is that we do not accept the reference, but direct that the papers should be sent down to the Sessions Court to dispose of the Criminal Revision

Application on merits.

15. Reference not accepted.

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