

**Raj Singh Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/689037](http://sooperkanoon.com/689037)

**Court :** Delhi

**Decided On :** Feb-21-1984

**Reported in :** 1984(1)Crimes755; 26(1984)DLT173; 1984(6)DRJ284; 1984RLR397

**Judge :** M.L. Jain, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167(5); [Indian Penal Code \(IPC\), 1860](#) - Sections 279

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 823 of 1983

**Appellant :** Raj Singh

**Respondent :** State

**Advocate for Pet/Ap. :** R.K. Naseem and; Bharati Anand, Advs

**Judgement :**

**M.L. Jain, J.**

(1) F.I.R. in this case was lodged on 26-5-1978 for offences under Sections 279, 337 and 338 Indian Penal Code . The accused appears to have been arrested the same day. But the challan was filed on 15-11-1979. The accused was summoned on 7-3-1980. Since the M.L.C. filed with the challan did not disclose the nature of the injuries the challan was returned on 19-9-1980 to the Sho directing him to

further investigate the case. The challan was again put up on 26-11-1981, by the SHO with the report that the duplicate of the MLC was not available, but Dr. Anil Gupta had deposed in the accident claims case that Dr. Arun Goel had found multiple fractures on various parts of the body of the injured. Thereupon, the accused was again summoned and the case stood for proceedings under Section 251 Cr. P.C. It was contended then before the learned Magistrate that ;-

(1) on 15-11-1979, the Magistrate cannot be said to have taken cognizance because he could not do so on an incomplete challan, and he in fact took cognizance on 26-11-1981, and by then the limitation provided in Section 468 Cr. P.C. had expired in respect of all the offences;

(2) Even if it were held that the learned Magistrate took cognizance on 15-11-1979, he did not do so in respect of an offence under Section 338 because the nature of the injuries were not known. He shall be deemed to have taken cognizance only under Sections 279/337 IPC. That was also barred by limitations on that date under Section 468 Cr. P.C.

(2) The learned Magistrate by his order of 27-1-1983 held that neither the investigation nor the charge sheet filed in the case on 15-11-1979 was incomplete and the court had taken cognizance on 15-11-1979. Once the court takes cognizance, it shall continue until the decision of the case. In that view of the matter. Section 468 Cr.P.C. was not attracted. He rejected the contention.

(3) An application was then moved on 12-5-1983 under Section 258 Cr. P.C. praying that the investigation was required to be stopped under Section 167(5) Cr. P.C. after expiry of six months from the date of arrest of the accused if the investigation is not concluded within that period, and where the investigation continues after expiry of the said period and the court takes cognizance of a case instituted on such investigation, such cognizance is bad in law. The accused should be discharged. The learned Magistrate rejected the application. Hence, the present petition.

(4) The learned counsel for the accused disputes all the propositions of the learned Magistrate. As regards the first contention, I agree with the learned

Magistrate that the court shall be deemed to have taken cognizance on 15-11-1979 of all the offences. There was no need to return the Challan for the purpose of re-submitting it with the medical opinion as to the nature of the injuries and the act of the Magistrate in doing so was unwarranted. The opinion could be obtained even later on. He could even himself form the opinion whether the injuries were grievous or not. Yet it cannot be said that he could not or did not take cognizance. The objection regarding Section 468 Cr. P.C. was, therefore, rightly rejected.

(5) As to the other matter, it appears that Sub-section (5) was added to Section 167 by the joint Committee of Parliament vide page xvi of its report to prevent the chronic malady of protracted investigation. It: said :-

'Author provision has been made in the newly added Sub-section (5) to the effect that if the investigation is not completed within a period of six months from the date on which the accused was arrested in a case where the offence is not punishable with imprisonment for more than two years, the Magistrate may pass on order stopping further investigation and discharging the accused unless the investigation officer satisfied the Magistrate that there are special reasons for continuance of the investigation in the interest of justice.'

Sub-section (5) that was inserted reads as follows :-

'IF in any case triable by a Magistrate as a summons case the investigations not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice, the continuation of the investigation beyond the period of six months is necessary.'

(6) The Joint Committee's report shows the accused may be discharged if the investigation, is not concluded within six months and there are no special reasons for continuing the investigation further and the sub-section also casts a duty on the police and the Magistrate to stop investigation after six months of the arrest of the accused, unless otherwise directed by the Magistrate. But it does not provide for a discharge nor does it create a bar to taking cognizance under Section 190 Cr. P.C.

However, in *Ram Kumar v. State* 1981 Cr. L.J. 1288, it was held that in a summons case the continuation of investigation beyond the period of six months is in contravention of law, and therefore, illegal and cognizance taken by the Magistrate on such investigation was bad. The subsequent proceedings are all without jurisdiction. Relying upon this decision in *Jai Shankar Jha v. State* 1982 Cr.LJ. 44, it was held that it was obligatory on the Magistrate to stop further investigation if it continues beyond the period of six months from the date of arrest. The accused is not required to raise any such objection. The illegality remains illegality. The question of delay or failure on the part of the accused to raise an objection or the question whether the accused had been prejudiced or not are considerations all wholly irrelevant. In *Babulal v. State of Rajasthan* 1982 Cr. L.J. 1001, it was held that Section 167(5) is mandatory in character and it is the duty enjoined upon the magistrate to see that no investigation is continued in a summons case beyond the period of six months from the date of arrest of the accused without his permission, if continued then the accused has got to be released. But the learned Magistrate did not seem to follow these observations. He observed that if this view is accepted, then certain anomalies will ensue firstly, it will create a new period of limitation of six months and the provisions of Section 468 Cr. P.C. will be rendered redundant; and secondly, while in a case investigated by the police beyond six months, the Magistrate shall have no power to take cognizance, but if complaint on the same facts is filed, then, the Magistrate will be bound to take cognizance of the case. He concluded that where no specific order has been passed by the Magistrate to stop investigation, the police has a right to continue the investigation. Such an investigation even after a report under Section 173 Cr. P.C. has been filed is not precluded. Section 167 falls in a Chapter which deals with information to the police and their powers to investigate, while Section 190 deals with conditions requisite for initiation of proceedings. Section 190 is not controlled by Section 165(5). He further pointed out that if due to inadvertence or collusion, the police did not complete their investigation, within, the prescribed period and the court refuses to take cognizance justice shall stand denied to the victim. Lastly, it was an irregularity, which was curable under Section 460 Cr. P.C.

(7) It seems to me that it is not correct to think that Section 167(5) prescribe a period limitation apart from Section 468 Cr. P.C. I also see no anomaly in taking a cognizance after six months on a private complaint. What the law seems to protect is the accused from harassment by the police in summons cases.

(8) If the investigation is not complete within six months, the option available to the police is to seek permission from the Magistrate to continue investigation and if he refuses, then to approach the court of Sessions for such permission and if such permission is refused, then on the basis of the investigation so far made to submit a report under Section 169 or under Section 173 Cr. P.C. The Magistrate can in any of these situations, drop the proceedings if no offence is made out or take cognizance if he is satisfied that there is a case that should go for trial. If the police does not do so and without permission, from the court continues investigation, such investigation is bad in law as the provisions of Sub-section (5) of Section 167 are mandatory and the Magistrate cannot take cognizance on a report submitted on such an investigation and should discharge the accused. It is not a mere irregularity but an illegality which does not seem to be curable under Section 460 or Section 465 of the Code. The cognizance taken in this case was, therefore, bad in law.

(9) Consequently, I accept this petition and the application of the accused under Section 258 Cr. P.C. quash the proceedings pending before the Magistrate and discharge the accused.