Before S. S. Sandhawalia, C.J. *and* Madan Mohan Punchhi, J.

NASIB SINGH,—*Petitioner.*

versus

MAMAN and others,—*Respondents.*

Criminal Revision No. 396 *of* 1979.

November 1, 1979.

Code of Criminal Procedure (2 *of* 1974)—*Sections* 169, 173 *and* 190—*Investigation of a case disclosing no offence—Police submitting report to a Magistrate under section* 169 *for cancellation of the case—Such Magistrate—Whether competent to take cognizance of the offence under section* 190(1)(*a*) *and* (*b*) *and issue process against the accused.*

Held, that a Magistrate can take cognizance of an offence under section 190(1)(c) of the Code of Criminal Procedure 1973 when he has knowledge of the same. That knowledge can be derived by the Magistrate from or without a police report so as to bring the foundation of cognizance under section 190(1)(c) of the new Code. The same object can even be achieved under clause (b) of sub-section (1) of section 190 of the Code when a police report is submitted under section 173(2) for that report has to particularize whether any offence appears to have been committed besides mentioning other particulars. The police report may postulate that an offence has or has not been committed and on the placing of it before the Magistrate requesting him to apply his judicial mind thereon, the Magistrate is said to have taken cognizance of the matter.

(Para 10).

Mst. Ido v. *Gainda Singh etc.* A.I.R. 1952 Pepsu 38.

Harbir Singh v. *The State and another,* A.I.R. 1952 Pepsu 29.

OVERRULED.

Case referred by Hon'ble Mr. Justice A. S. Bains, on 24th September, 1979 *to a Division Bench for decision of an important question of law involved in the case. The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, & Hon'ble Mr. Justice M. M. Punchhi finally decided the case on* 1st *November,* 1979, *on merits.*

Petition Under Section 401 *Cr. P. C. read with Section* 397(3) *Cr. P. C. for revision of the Order of Sh. Ram Saran Bhatia, Addl. Justice M. M. Punchhi finally decided the case on* 1st *November, of Sh. V. P. Chaudhry, Judicial Magistrate* 1st *Class, Safidon, dated*

12*th May*, 1978 *summoning the accused under sections* 467, 468, 420, 474, 471/120-*B of the Indian Penal Code.*

K. C. Jain, Advocate, *for the Petitioner.*

P. S. Jain, Advocate, *for the Respondent.*

M. R. Agnihotri, Advocate, *for Respondent No.* 4.

JUDGMENT

Madan Mohan Punchhi, J.

(1) In this petition, an order of the Additional Sessions Judge, Jind, dated February 16, 1979, whereby he set aside the order of the Judicial Magistrate, 1st Class, Safidon, dated May 12, 1978 and quashed the proceedings, has been challenged. Initially the matter came up before A. S. Bains J., who doubted the correctness of the ratio laid down in *Mst. Ido* v. *Gainda Singh, etc.*, (1). Finding that the matter was not free from difficulty the case was recommended to be referred to a larger Bench. It is in this manner that the matter has been placed before us.

(2) The rule laid down in *Mst. Ido's case* (supra) came to be employed in the following situation:—

(3) Nasib Singh, resident of village Gogripur got lodged a first information report No. 173, dated 18th August, 1977 at Police Station, Safidon, complaining that a will had been forged by the present respondents, purporting to have been made by one Bhartha who had died on the night intervening 20/21st September, 1976. Maman, respondent No. 1, was the brother of Bhartha deceased and he was the father of the legatees under the forged will. Sheetal Parkash respondent was the petition-writer; Jaswant Singh was the Sub-Registrar and Shri Jai Dev Singh, Advocate, was the other accessory and co-conspirator in the forging of the will so as to deprive Smt. Shanti and Smt. Gogri, the daughters of the deceased Bhartha, the benefit of natural succession. These two women, he claimed, were his daughters-in-law. The police after investigating the matter submitted a report under section 169, Criminal Procedure Code, requesting for the cancellation of the case. The Judicial Magistrate thereupon sent a notice to the first informant, and the aforementioned Smt. Shanti and Smt. Gogri, if they had any grouse over the proposed cancellation of the case. On appearance of these persons, the learned Magistrate recorded their statements and also of Baru and the Vigilance Inspector Bhajan Singh. Then he,— *vide* his

(1) A.I.R. 1952 Pepsu 38.

order, dated 12th May, 1978 directed the present respondents to be summoned as accused persons to answer the accusations under sections 467, 468, 420, 474, 471 read with section 120-B of the Indian Penal Code. The said order was challenged in revision by the respondents successfully before the Additional Sessions Judge, Jind who,—*vide* his judgment, dated 16th February, 1979 set aside the order and suggested that despite his decision, the first informant could file a private complaint if it was so maintainable under the law. The principal reason which weighed with him was that in view of the decision in *Mst. Ido* v. *Gainda Singh, etc.* (1 supra), in which reliance was placed on a Division Bench judgment of the same Court reported as *Harbir Singh* v. *The State and another* (2), the Judicial Magistrate had no power to summon the accused respondents when the Investigating Officer had made a report for cancellation of the case. Sustenance to the view was also sought from *Sona Devi* v. *The State, etc.* (3). Further revision has been filed by the first informant challenging the order of the learned Additional Sessions Judge which is based on *Mst. Ido's case* (supra) and hence we are required to examine the correctness of the foundation of the same.

(4) The learned counsel for the informant-petitioner laid claim that the matter was not *res integra* and it stood finally settled by the ratio of the Supreme Court in *Abhinandan Jha and others* v. *Dinesh Mishra* (4). Their Lordships have elaborately examined the scope in the operative field of Chaper XIV of the Criminal Procedure Code, 1898 and also of section 190 occurring in Chapter XV. That section is to be found under heading 'conditions requisite for initiation of proceedings' and sub-section (1) therefore as in the Code of 1898 and also under the Code of 1973 is as follows:—

"*Code of Criminal Procedure*, 1898:

190. *Cognizance of offences by Magistrates.*

(1) Except as hereinafter provided any Chief Judicial Magistrate and any other Judicial Magistrate specially empowered in this behalf, may take cognizance of any offence:—

(a) upon receiving a complaint of facts which constitute such offence;

(2) A.I.R. 1952 Pepsu 29.

(3) 1972 Current Law Journal 955.

(4) A.I.R. 1968 S.C. 117.

(b) upon a report in writing of such facts made by any police-officer;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

Code of Criminal Procedure, 1973:

190. *Cognizance of offences by Magistrates.*

(1) Subject to the provisions of this chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2). may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

"(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

(5) Before adverting to the Supreme Court decision in *Abhinandan Jha's case* (supra), a comparative reading of section 190 of the Old and New Code becomes necessary. Two significant changes have been brought about in clauses (b) and (c) of sub-section (1). The language has been changed apparently for a specific purpose.

(6) The Law Commission in its 41st Report had observed thus on this provision:—

"15.74. At first sight, of course the difference in meaning between a 'police report' and "the report of a police-officer" may seem slight, but authoritative decisions show that

the expression 'police report', which was in fact the expression used in clause (b) of section 190(1) before 1923, has a technical connotation, limited to a report made by an investigating officer under section 173 of the Code. Such an investigation can only be of a cognizable offence, or if made into a non-cognizable offence, it must be with the permission of a Magistrate required by section 155. We, therefore, consider it important that Magistrates should be readily able to distinguish a case instituted on a 'police report' from any other kind of case; and to facilitate this, we propose, that the expression 'police report' should be clearly defined in the Code itself, and the definition should follow judicial decisions, limiting it to a report made under section 173. For the same reasons, we propose that clause (b) of section 190, sub-section (1) should mention only a 'police report', leaving other kinds of reports by a police officer to be treated as complaints. We have already proposed the necessary verbal alteration in the definition of 'complaint' now contained in section 4.

(7) It is to carry out that object and reason that the present clause (b) of sub-section (1) of section 190 has come into being. As a corollary, the expression 'police report' has now been aptly defined in section 2(r) of the New Code which is reproduced here:—

" 'police report' means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173."

On 'police report' being now confined only to a report within the meaning of sub-section (2) of section 173, the word 'complaint' necessarily has to undergo a change. That change has been effected by a new definition of 'complaint' as given in section 2(d) of the said Code. It reads:

" 'complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence but does not include a police report.

Explanation: A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint,

and the police officer by whom such report is made shall be deemed to be the complainant".

(8) With regard to the change effected in clause (c) of sub-section (1) of section 190, the expression 'or suspicion' has significantly been omitted. The object and reason for this omission is also indicative from the aforesaid 41st Report of the Law Commission in the following words:—

"15.79.....It wil be noticed that section 190 provides that certain Magistrate 'may' take cognizance of offences if certain conditions are satisfied. It has at times been argued in Courts and the argument accepted, that, despite the use of the word 'may' a Magistrate is bound to take cognizance of an offence if there is before him a proper complaint, or a proper police report. At other times, as in a recent case in the Supreme Court it has been observed that a Magistrate has ample discretion in this respect and if on looking at a police report he finds that there has not been a thorough investigation he can, without taking cognizance, order further investigation. We take it, therefore, that a Magistrate has a certain discretion in this connection but as this discretion is judicial in nature, it is limited in its scope, and that is how it should be. We, therefore, do not propose to disturb the language of the section".

(9) The Supreme Court judgment which the Law Commission had perhaps in view was *Abhinandan Jha's case* (supra). Their Lordships of the Supreme Court in that case, while considering the scope of sub-sections (b) and (c) of section 190 of the Code of Criminal Procedure (Old) observed as under:—

"In these two appeals, which are from the State of Bihar, the reports, under section 169, are referred to as 'final report'. Now, the question as to what exactly is to be done by a Magistrate, on receiving a report, under section 173, will have to be considered. That report may be in respect of a case, coming under section 170, or one coming under Section 169. We have already referred to section 190, which is the first section in the group of sections headed 'Conditions requisite for Initiation of Proceedings'. Sub-section (1), of this section, will cover

a report sent, under section 173. The use of the words 'may take cognizance of any offence' in sub-section (1) of section 190, in our opinion, imports the exercise of a 'judicial discretion', and the Magistrate, who receives the report, under section 173, will have to consider the said report and judicially take a decision, whether or not to take cognizance of the offence. From this it follows, that it is not as if, that the Magistrate is bound to accept the opinion of the police that there is a case for placing the accused, on trial. It is open to the Magistrate to take the view that the facts, disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify an accused being put on trial. On either of these grounds, the Magistrate will be perfectly justified in declining to take cognizance of an offence, irrespective of the opinion of the police. On the other hand, if the Magistrate agrees with the report, which is a charge-sheet submitted by the police, no difficulty whatsoever is caused, because he will have full jurisdiction to take cognizance of the offence, under section 190(1)(b) of the Code. This will be the position, when the report, under section 173, is a charge-sheet.

Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated is called in the area in question, as a 'final report' ? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under section 156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to

make further investigation, under section 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under section 190(1)(b), notwithstanding the contrary opinion of the police, expressed in the final report.

In this connection, the provisions of section 169 of the Code, are relevant. They specifically provide that even though, on investigation, a police officer, or other investigating officer, is of the opinion that there is no case for proceeding against the accused, he is bound, while releasing the accused, to take a bond from him to appear, if and when required before a Magistrate. This provision is obviously to meet a contingency of the Magistrate, when he considers the report of the investigating officer, and judicially takes a view different from the police.

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There is certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance, under section 190(1)(c) of the Code. That provision in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through *bona fide* error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under section 190(1)(c), on the ground that, after having due regard to the final report

and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report".

(10) Even under the New Code, the law as laid down by their Lordships of the Supreme Court remains unexceptionable except that it is no longer open to the magistrate to take cognizance of an offence under section 190(1)(c) of the new Code on the basis of suspicion. That cognizance can only be taken upon knowledge of the Magistrate. That knowledge the Magistrate may derive from or without a police report so as to bring the foundation of cognizance under section 190(1)(c) of the new Code. The same object can even be achieved under clause (b) of sub-section (1) of section 190 of the new Code when a police report is submitted under section 173(2) for that report has to particularise whether any offence appears to have been committed besides mentioning other particulars. The police report may postulate that an offence has or has not been committed and on the placing of it before the Magistrate requesting him to apply his judicial mind thereon, the Magistrate is taken to have taken cognizance of the matter.

(11) The view taken by the Pepsu High Court in *Mst. Ido's case* (supra) and *Harbir Singh's case* (supra) to the effect that the Magistrate cannot take recourse to section 190(1)(c) of the Code of Criminal Procedure and take cognizance on the information supplied did run counter to the dictum of the Supreme Court in *Abhinandan Jha's case* (supra) but in view of the amendment in the law, the ratio in *Mst. Ido's case* stands partially rejuvenated to the extent that the Magistrate cannot on suspicion take cognizance under clause (c) of sub-section (1) of section 190 of the new Code. *Mst. Ido's case* with regard to the power of the Magistrate under clause (b) of sub-section (1) of section 190 also does not lay down correct law in view of *Abhinandan Jha's case* of the Supreme Court and the recent amendment. The Magistrate is not as helpless as it was considered by Chopra J. in that case or the Division Bench did in *Harbir Singh's case*. In view of the authoritative pronouncement of the Supreme Court and the amended law, the judgments reported *in Mst. Ido* v. *Gainda Singh etc.* (1 supra), and *Harbir Singh* v. *The State and another,* (2 supra), should be taken to be overruled and no longer good and applicable law.

(12) The learned counsel for the respondents then submitted that it is the mandate of law, and has also been laid down by the Supreme Court in *Abhinandan Jha's case* (supra), that the procedure to be followed by the Magistrate on taking cognizance under section 190(1)(c) is that of a complaint. For that purpose it was contended that it should be pinpointed as to when did the Magistrate take cognizance into the matter. Reliance was placed on *Devarapalli Laksnminarayana Reddy and others* v. *Narayana Reddy and others* (5). Whether the Magistrate has or has not taken cognizance obviously will depend upon the circumstances of the particular case including the mode in which the case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate. In the instant case, ,when the matter was brought before the Magistrate under section 169, Criminal Procedure Code, for cancellation of the case and on the application of mind he decided not to accept the report of the Investigating Officer and having chosen to examine the complainant and others, he is taken to have applied his mind and taken cognizance of the matter. It would be wholly immaterial to determine the exact point of time or stage as to when cognizance started. The information derived from the report submitted to him by the police, if proceeded with in the manner of a complaint, required examination of preliminary evidence and this has been done in the present case by the Magistrate before summoning the accused-respondents. He will thenceforth follow the procedure as enjoined upon him under section 244 of the Code of Criminal Procedure on the appearance of the accused-respondents before him. The trial will take its course as warranted by law. The order of the Additional Sessions Judge is patently illegal and is thus set aside.

(13) Resultantly, the petition is allowed, the Magistrate will proceed in the light of the observations made above. Parties through their counsel are directed to appear before the trial Court on November 22, 1979.

S. S. Sandhawalia, C.J.—*I agree.*

H.S.B.

(5) A.I.R. 1976 S.C. 1672.