REVISIONAL CRIMINAL

*Before Gurdev Singh and S. S. Sandhawalia, JJ.*

SARAL BEOPAR ASSOCIATION LIMITED, JAGADHRI,—*Petitioner.*

*versus*

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

**Criminal Revision No. 46-M of 1967**

December 24, 1969.

*Code of Criminal Procedure (V of 1898)—Section 561-A—High Court in exercise of its inherent jurisdiction—Whether can quash legal investigation by the police in a cognizable offence—First Information Report not disclosing the commission of such an offence—Investigation in consequence thereof—Whether can be interfered with.*

*Held,* that the High Court, in exercise of its inherent jurisdiction under section 561-A of Code of Criminal Procedure, will not interfere with the investigation of an offence of which the police is lawfully seized. This postulates that the police must have legal authority to investigate the particular case and the investigation should be conducted in accord with the relevant provisions of law. If the police has no authority to investigate an offence or is carrying on investigation in violation of any provision of law, the Court will be entitled to step in, to keep the investigating agency within the bounds of law. The police has to act within the bounds of its authority conferred by law, and if it outsteps those limits or acts in violation of the provisions relating to investigation of offences, the aggrieved party can be granted adequate relief, but even while exercising such powers, the Court has to act with utmost circumspection. Powers under section 561-A of the Code are meant to be exercised only in exceptional cases and most sparingly. In exercising such powers the Court must guard against the risk of interfering with the investigation of offence which, if allowed to proceed would result in bringing the offenders to book. (Paras 18 and 21)

*Held,* that an investigation cannot be interfered with merely because the First Information Report lodged with the police or the information on the basis of which the police commences investigation, does not make out a cognizable offence. Sections 156 and 157 of the Code do not require that before the investigation is taken in hand by the police, there must be a written report containing facts disclosing a cognizable offence. It is, therefore, incorrect to say that unless the police is able to satisfy the Court that it is in possession of information about the commission of a cognizable offence, it cannot proceed to investigate. In some cases, it is only after some investigation is conducted that the police will be in a position to find out whether a cognizable offence is committed or not. The power to stop investigation in such cases, if exercised, assuming that such power vests in the Court under section 561-A of the Code far from promoting the ends of justice may itself constitute an abuse of process of the Court thus defeating the very purposes for which the inherent powers of the Court are to be exercised. (Paras 19 and 20)

*Case referred by Hon'ble Mr. Justice S. S. Sandhawalia, on 9th Octooer, 1968, to a larger Bench for decision of an important question of law involved in this case. The Division Bench consisting of the Hon'ble Mr. Justice Gurdev Singh and the Hon'ble Mr. Justice S. S. Sandhawalia, finally decided the case on 24th December, 1969.*

*Petition under section 561-A Criminal Procedure Code praying that F.I.R. No. 197/64, dated the 18th December, 1964, u/s 17, 20-D and 21 of the Forward Contracts (Regulation) Act, 1952, be quashed and further praying that the Police, Jagadhri be ordered not to harass the petitioner, the Directors or the employees at different times by calling them at the Police Station and by interfering with their day to day work and also ordering that the records seized from the petitioners be returned to the petitioner.*

Y. P. GANDHI, ADVOCATE, for the petitioners.

K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL, for the respondents.

JUDGMENT

GURDEV SINGH, J.—In this application, we are called upon to consider the scope and the extent of the powers of this Court under section 561-A of the Criminal Procedure Code to interfere with a criminal case which is yet at the investigation stage, no complaint or report under section 173 of the Criminal Procedure Code having been submitted to a Court competent to take cognizance of the offence.

(2) The petitioner Saral Beopar Association Limited, Jagadhri, is a limited company incorporated under the Indian Companies Act. Under its Memorandum of Association, apart from other activities, it is entitled to trade and deal in non-ferrous metals, to act as *pucca Artia* and also to enter into separate agreements with its shareholders and members regarding the trade above-mentioned. On 8th October, 1964, Ram Kumar of Jagadhri made a written complaint to the Superintendent of Police charging the petitioner-company with contravention of various provisions of the Forward Contracts (Regulation) Act, 1952, on which a case was registered against the company at the police station Jagadhri under sections 17, 20 and 21 of the Act on 18th December, 1964. In the course of investigation part of the petitioner's record was seized. The investigation having remained pending for nearly three years, on 1st August, 1967, the petitioner-company has come up with the present petition involving the jurisdiction of this Court under section 561-A of the Criminal Procedure Code with the following prayer:—

> "The petition be accepted by quashing the first information report and also by ordering the return of the books or any

other appropriate order in the interests of justice may be passed, which may save the petitioner, other Members and Directors of the company."

(3) In support of this contention, it is asserted that the allegations made in the first information report are entirely false, frivolous and malicious, that even if all those allegations are taken to be correct, no offence is disclosed and that the police had been prolonging the investigation unnecessarily in order to harass the Members, Directors and employees of the company. When the matter originally came up before my learned brother Sandhawalia, J., a preliminary objection was taken on behalf of the State that the case having been registered for an offence which was congnizable, the police had statutory right to investigate the same, and the investigation could not be interfered with or stopped either under section 439 or section 561-A of the Criminal Procedure Code. Being of the opinion that the point raised was of considerable importance and likely to arise frequently, my learned brother directed that the matter be considered by a larger Bench.

(4) The question needing our consideration, formulated by Sandhawalia, J., in his order of reference, runs thus:—

"Is the High Court under section 561-A, Criminal Procedure Code, empowered in an appopriate case to interfere and quash criminal proceedings during the pendency of an investigation by the Police and before a report under section 173, Criminal Procedure Code, has been filed in a Court of competent jurisdiction?"

(5) The provisions with regard to information to the police and its power to investigate are contained in Chapter XIV of the Code of Criminal Procedure, 1898, (hereinafter referred to as the Code). This commences with section 154 which relates to the recording of what is known as first information report, on information supplied to the police regarding commission of a cognizable offence. Section 155, Criminal Procedure Code, pertains to the recording of information of an offence which is not cognizable, sub-section (2) whereof provides:—

"No police officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second

class having power to try such case or commit the same for trial, or of a Presidency Magistrate."

(6) Provision for investigation into cognizable offences is made in section 156, Criminal Procedure Code, which is in these words:—

"156.(1). Any officer in charge of a police-station may without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

(7) Provision is also made in the Code to enable the Police to undertake investigation of an offence even where no first information report has been lodged with it under section 154, Criminal Procedure Code. This is to be found under section 157 of the Criminal Procedure Code which, so far as is relevant for our purposes, is reproduced below:—

"157. (1). If from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forth-with send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers (not being below such rank as the State Government may, by general or special order, prescribe in this behalf) to proceed, to the spot, to investigate the facts and circumstances of the case (and, if necessary, to take measures) for the discovery and arrest of the offender:"

(8) Subsequent provisions in this Chapter authorise the Investigating Officer to record statements of witnesses to examine witnesses,

to conduct searches, to have the confessional statements of the accused recorded and take other steps necessary for the investigation of the case. Under Section 167 of the Criminal Procedure Code, if an accused person is arrested in the course of investigation and the investigation cannot be completed within a period of 24 hours fixed by section 61, the police officer making the investigation is required to produce the accused before the nearest Magistrate who may, from time to time, authorise the detention of the accused in such custody as he thinks fit. It is on the completion of the investigation that the officer-in-charge of the Police Station, is required to forward a report in the manner prescribed under section 173, to the Magistrate having power to take cognizance of the offence on a police report. It is thereupon that the Court takes cognizance of the case and proceeds with its enquiry or trial, as the case may be.

(9) There is no specific provision in the Code empowering the High Court, or any other Court, to stop the investigation of a case undertaken by the police in the manner laid down in Chapter XIV of the Code. It is, however, contended on behalf of the petitioner that this Court is not powerless and can in appropriate cases, such as those in which the investigation is undertaken in violation of the provisions contained in Chapter XIV of the Code, or to harass a citizen or constitutes abuse of the process of the Court, step in and stop the investigation to ensure observance of the rule of law in exercise of its inherent powers under section 561-A of the Criminal Procedure Code, which povides:—

> "Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court 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."

In *The State of Uttar Pradesh* v. *Mohammad Naim* (1), it was observed:—

> "It is now well-settled that the section confers no new powers on the High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice."

(1) A.I.R. 1964 S.C. 703.

S. K. Das, J., speaking for the Court, further said:—

> "The section provides that those powers which the Court inherently possesses shall be preserved lest it be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent powers had survived the passing of the Code (see *Jairam Das* v. *Emperor* (2), and *Emperor* v. *Nazir Ahmad* (3)".

(10) To the same effect are the observations made by that Court in *R. P. Kapur* v. *State of Punjab* (4). In that case R. P. Kapur, against whom a first information report in respect of offences under sections 420-109, 114 and 120B of the Indian Penal Code was lodged, moved the High Court under section 561-A of the Criminal Procedure Code, for quashing the proceedings initiated by that first information report. During the pendency of the application in the Court, the investigation was, however, completed and the police instituted its report under section 173 of the Code. Thus the question whether the High Court was competent to stop the investigation and quash the first information report and the proceedings taken thereon, before the case was put in Court, was not considered. It was, however, urged by the accused before their Lordships of the Supreme Court that the evidence collected against him did not disclose any offence and as it could not lead to his conviction the proceedings pending before the Magistrate should be quashed. It was in that context that Gajendragadkar, J. (as he then was) dealing with the powers of the High Court to quash such proceedings, observed as follows:—

> "It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere

(2) A.I.R. 1945 P.C. 94.

(3) A.I.R. 1945 P.C. 18.

(4) A.I.R. 1960 S.C. 866.

with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice."

(11) Among the cases in which such power can be exercised, his Lordship referred to a case in which the prior sanction, where necessary, is not obtained, as also a case in which allegations in the first information report or complaint, even if taken at their face value and accepted in their entirety, do not constitute an offence.

(12) On behalf of the petitioner, it is argued that the same principle should be applied to proceedings which are still pending investigation and if the first information report, on the basis of which the investigation is undertaken, does not disclose a cognizable offence or the investigation is unduly prolonged and kept hanging like the proverbial sword of Damocles over the head of the accused for long, this Court should step in to stop harassment of the accused and to secure interests of justice. The decision in *R. P. Kapur's* case (4), on which reliance is placed on behalf of the petitioner, as has been observed earlier, is really distinguishable, as in that case, during the pendency of the proceedings in the High Court, the investigation had been completed and the police had instituted its report under section 173 of the Code. The authority which has direct bearing on the point is the later decision of that Court in *State of West Bengal* vs. *S. N. Basak* (5), wherein it was observed as follows:—

"There was no case pending at the time excepting that the respondent had appeared before the Court, had surrendered and had been admitted to bail. The powers of investigation into cognizable offences are contained in Chapter

(5) A.I.R. 1963 S.C. 447.

XIV of the Code of Criminal Procedure. Section 154 which in that Chapter deals with information in cognizable offences and S. 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offences without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power under section 439 or under the inherent power of the Court under section 561-A of the Criminal Procedure Code."

(13) Their Lordships then referred to the Privy Council decision in *Emperor* v. *Khwaja Nazir Ahmad* (3), and observed that they were in accord with the interpretation that had been put by the Judicial Committee on the statutory duties and powers of the police and the powers of the Court. The relevant observations made by their Lordships of the Judicial Committee in *Khwaja Nazir Ahmad's* case (3), which are directly in point, are these :

"In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under section 491, Criminal Procedure Code to give directions in the nature of *habeas corpus*. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then."

(14) These observations certainly go to support the contention of the learned counsel appearing for the State to this extent that if the police is validly seized of the investigation, the Court will not

be justified in interfering with it. It has, however, been contended by the petitioner's counsel that the rule laid down by their Lordships of the Privy Council would not prevent this Court from interfering under section 561-A of the Code where the report lodged with the police *prima facie* discloses no offence or only a non-cognizable offence which the police has no authority to investigate except with the permission of a Magistrate. In support of this argument, reliance is placed upon the following sentence from the judgment of the Judicial Committee in *Khwaja Nazir Ahmad's case* (3), which immediately follows the observations from that decision that were quoted with approval by their Lordships of the Supreme Court in *S. N. Bhasak's case* (5), are reproduced:—

> "No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason Newsam J., may well have decided rightly in *M.M.S.T. Chidambaram Chettiar* v; *Shamngham Pillai* (6)".

(15) This sentence from *Khawaja Nazir Ahmad's case* (3) was not quoted in *S. N. Bhasak's case* (5), but there is nothing in that judgment to indicate that while expressing approval of the view about the extent of the powers of the High Court under section 561-A of the Criminal Procedure Code, their Lordships of the Supreme Court were not inclined to agree with the view expressed in this last sentence regarding the authority of the High Court to intervene in cases where the police has no authority to undertake the investigation.

(16) On perusal of the decision of Newsam,J., in *M. M. S. T. Chidambaram Chettiar* v. *Shanmugham Pillai* (6), to which reference is made in the above quotation from the judgment in *Khawaja Nazir Ahmad's case* (3), we find that Newsam, J., had expressed the opinion that the High Court has inherent jurisdiction under section 561-A of the Criminal Procedure Code to pass any order necessary to prevent-abuse of the process of any Court, and in exercise of such powers, the High Court can interfere to prevent specious and spiteful criminal prosecutions for actions which, though strictly dishonourable, yet do not amount to crimes. The matter for consideration before the High Court in that application

(6) A.I.R. 1938 Mad. 129.

under section 561-A of the Criminal Procedure Code arose out of a complaint that had been instituted in the Court of a Magistrate under sections 415 and 417 of the Indian Penal Code. During the pendency of that complaint, a civil suit was also instituted in respect of the same matter against the accused. It was thereupon that the accused applied to the Magistrate not to proceed with the criminal complaint on the plea that it did not disclose any offence and had been filed to coerce, harass and humiliate him. The Magistrate having refused to accede to this prayer, the accused moved the High Court under section 561-A of the Criminal Procedure Code for quashing the proceedings pending against him before the Magistrate. On examining the facts of the case before him, Newsam, J., came to the conclusion that the complaint did not "on its face show that any criminal offence had been committed" and, accordingly, allowing the petition, quashed the proceedings holding that "it was filed *in terrorem*".

(17) It is thus obvious that even this Single Bench decision of Newsam, J., that has been approvingly referred to by their Lordships of the Judicial Committee in *Khawaja Nazir Ahmad's case* (3), is distinguishable, and though it is an authority for the proposition that if no offence is disclosed in a complaint instituted in Court, the proceedings can be quashed by the High Court in exercise of its inherent powers under section 561-A of the Criminal Procedure Code, it does not lay down that even when the case is not pending in Court but is yet at the investigation stage, the High Court can step in and stop investigation if the first information report lodged with the police does not disclose any offence. The observations of the Privy Council in *Khawaja Nazir Ahmad's* case (3), viz., "No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation on the information laid before the police....." to which reference had been made above, however, to support the contention that there is no absolute bar to the High Court interfering to stop investigation where no offence is disclosed. In view of this statement of law, the extreme position, which was taken up by the learned State counsel in the initial stages of the arguments, that this Court has no power to interfere with the investigation by the police even acting under section 561-A of the Code may not seem to be unassailable.

(18) One thing, however, is abundantly clear from the decisions of their Lordships of the Judicial Committee, as well as of the Supreme Court, to which reference has been made earlier, and it is that

the High Court will not interfere with the investigation of an offence of which the police is lawfully seized. This postulates that the police must have legal authority to investigate the particular case and the investigation should be conducted in accord with the relevant provisions of law. It can thus be argued that if the police has no authority to investigate or is carrying on investigation in violation of any provision of law, the Court will be entitled to step in, to keep the investigating agency within the bounds of law. The various provisions relating to the investigation of cases clearly indicate that the investigation has to be carried out in accordance with law and to some extent under the supervision of a Magistrate. In the course of the investigation the police can obtain assistance of the Court and secure from a Magistrate or Court orders necessary for the progress of the investigation and to enable it to arrive at truth. Such assistance may be in the form of obtaining search warrants or warrant for arrest of an accused person, proceedings under section 87/88, Criminal Procedure Code, to secure the attendance of an absconder, or process for production of documents, etc. Where an accused is arrested in the course of investigation, he has to be produced before a Magistrate within 24 hours, and his remand obtained from time to time to enable the police to carry on the investigation. While seeking such assistance from the Court of a Magistrate, the police invokes the process of the Court, and if it is found that the process of the Court is being abused, either the Court concerned can refuse to issue it or the High Court, according to the language of section 561-A, Criminal Procedure Code, itself may in a fit case step in to prevent the abuse of a process of the Court or otherwise secure the ends of justice. It may, however, be noticed here that in *S. N. Basak's case* (5), their Lordships, of the Supreme Court refused to interfere despite the fact that the accused had appeared before the Court, surrendered himself and had been admitted to bail, and they reiterated the view expressed in *Khawaja Nazir Ahmad's case* (3), that under sections 154 and 156, Criminal Procedure Code, the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without any authority from a Magistrate, observing as follows:—

> "This statutory power of the police to investigate cannot be interfered with by the exercise of powers under section 439 or under the inherent powers of the Court under section 561-A of the Criminal Procedure Code."

(19) Referring to the facts of *Khawaja Nazir Ahmad's case* (3), it is, however, doubtful if the investigation can be interfered merely because the first information report lodged with the police or the information on the basis of which the police commences investigation, does not make out a cognizable offence. In the case with which their Lordships of the Privy Council were dealing, it was pointed out that the first information report recorded under section 154 of the Code did not make out an offence but subsequently some information was given to the police on which it continued the investigation. It was contended that the later information which was collected by the police could not take the place of the first information report as it was in the nature of a statement recorded under section 161, Criminal Procedure Code, and thus there was no reported cognizable offence into which the police were entitled to investigate. Their Lordships rejected the contention and observed as follows:—

> "But in any case the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. No doubt in the great majority of cases criminal prosecution are undertaken as a result of information received and recorded in this way but their Lordships see no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged. Section 157, Criminal Procedure Code, when directing that a police officer, who has reason to suspect from information or otherwise that an offence which he is empowered to investigate under section 156 has been committed shall proceed to investigate the facts and circumstances, supports this view. In truth the provisions as to an information report (commonly called a first information report) are enacted for other reasons. Its object is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotton or embelished, and it has to be remembered that the report can be put in evidence when the informant is examined if it is desired to do so."

(20) In this view of the matter, the contention that if a first information report does not disclose an offence, it must be quashed alongwith the proceedings, if any, taken thereon thus restraining the police from investigating the matter, cannot be accepted. These observations, speaking with respect, are in consonance with the provisions of sections 156 and 157 of the Code, which do not require that before the investigation is taken in hand by the police, there must be a written report containing facts disclosing a cognizable offence. A different view would lead to startling results. Take the case where the police finds a dead-body on the road without any obvious mark of injury on it. Nobody knows how the deceased had met his end. The police is informed merely about the presence of the dead-body or a police official just comes across it. Can it be contended with any seriousness that in such a case if a police official starts investigation to find out whether any offence has been committed in respect of the deceased, such investigation can be stopped or should not be allowed to proceed merely because the information on which it commences does not disclose a cognizable offence? It would be only after some investigation is conducted that the police will be in a position to find out whether it is a case of natural death, suicide or culpable homicide or murder. If the contention, that unless the police is able to satisfy the Court that it is in possession of information about the commission of a cognizable offence it cannot proceed to investigate, is accepted it would lead to the conclusion that in a case like the one that has been cited above, the Court must step in and stop the investigation. This, in my opinion, is not warranted by the provisions of section 561-A, Criminal Procedure Code, nor by any other provision of the Code. The power to stop investigation in such cases if exercised, assuming that such power vests in the Court under section 561-A, Criminal Procedure Code, far from promoting the ends of justice may itself constitute an abuse of the process of the Court thus defeating the very purposes for which the inherent powers of the Court are to be exercised.

(21) Of course in conducting the investigation of a case the police has to act within the bounds of its authority conferred by law, and if it outsteps those limits or acts in violation of the provisions relating to investigation of offences, the aggrieved party can be granted adequate relief, but even while exercising such powers, the Court has to act with utmost circumspection, and, as is well-settled, powers under section 561-A, Criminal Procedure Code, are meant to

be exercised only in exceptional cases and most sparingly. In exercising such powers the Court must guard against the risk of interfering with the investigation of offences which, if allowed to proceed would result in bringing the offenders to book.

(22) Adverting to the facts of the case before us we find that the investigation in this case had been unduly protracted and it is bound to result in harassment of the accused if it is not concluded without delay. We, however, do not agree with the learned counsel for the petitioner that the information laid before the police *prima facie* does not disclose any offence. If on investigation it is found that no offence has been committed, the police would have no authority to institute proceedings against the petitioner, but if the police, at the close of the investigation, finds that the material collected does disclose an offence, even if it be assumed that the first information report recorded by it does not disclose any cognizable offence, it will have to submit its report to the Court under section 173 of the Code of Criminal Procedure for trial of the accused.

(23) It is only in respect of a cognizable offence that the police is entitled to investigate without seeking any authority from a Magistrate. Even if the investigating officer is not validly seized of the investigation, the illegality or irregularity in the investigation would not vitiate the trial and it now appears to be well-settled that where the investigation is not conducted in accordance with law or by competent authority, the Court has the power to order re-investigation to remedy the illegality. In *H. N. Rishbud and another* v. *State of Delhi* (7) Jagannadhadas, J. speaking for the Court observed:—

> "A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in section 190, Cr. P.C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance..... Such an invalid report may still fall either under clause (a) or (b) of section 190(1) (whether it is the one or the other we need not pause to consider) and

(7) A.I.R. 1955 S.C. 196.

in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation section 537, Cr. P. C, is attracted.

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows, it, cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice."

Speaking further, his Lordship said:—

"It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified; by ordering such re-investigation as the circumstances of an individual case may call for.....

In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial, the Court will have to consider the nature and extent of the violation and pass appropriate orders for such re-investigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of section 5-A of the Act."

(24) Even in its later decision in *State of Madhya Pradesh* v. *Veereshwar Rao Agnihotri* (8), the Supreme Court reiterated that the defect in the investigation would not take away the jurisdiction of the Court to try the case. These and similar pronouncements of their Lordships of the Supreme Court clearly indicate that if the illegality in the investigation is brought to the notice of the Court before the Court proceeds with the trial of the case and at an early

(8) A.I.R. 1957 S.C. 592.

stage the Court has the power to remedy the defect by ordering that the case be re-investigated in accordance with the provisions of law applicable to that case. In this view of the matter, the broad proposition that the Court can in no case interfere with the investigation of the case does not appear to be justified. On reference to the various provisions contained in the Code of Criminal Procedure relating to the investigation into criminal offences, it will be seen that the investigation is not entirely independent of the Court but is to some extent, though limited, under the supervision of Magistrate, who can be approached not only by the investigating officer but also by the accused to issue necessary process and pass orders in aid of proper and fair investigation of the case. There can, however, be no doubt that, as ruled by their Lordships of the Supreme Court and earlier by the Privy Council in *Khawaja Nazir Ahmad's case* (3) (supra), the power of investigation so far as it vests exclusively in the police or investigating agency is not to be interfered with by the Courts, and the investigating agency should be left to carry on investigation without any interference. This, however, clearly postulates that the investigation so long as it is in accordance with the provisions of law cannot be interfered with and it does not give immunity to investigation which is not in consonance with the relevant provisions of law governing the particular case or is in breach of them.

(25) Applying the principle set out above to the facts of the case in hand, we find that no case for issue of any order or direction under section 561-A of the Criminal Procedure Code is made out as on careful consideration of the allegations contained in the first information report, we have formed the opinion that the allegations made in this report do disclose a cognizable offence which the police is entitled to investigate. We, however, cannot help observing that the investigation has been unduly protracted, and the manner in which it has been conducted was bound to create an impression in the mind of the petitioners that the police was out to harass them.

(26) For the foregoing reasons, we find no force in this application and dismiss it.

S. S. SANDHAWALIA, J.—I agree.

*R. N. M.*