made in respect of agriculturists, etc., in clause (ccc) is only a consequence of clause (c) whereunder their houses (i.e., even more than one) already stand exempted. Therefore, there can be no inconsistency between the two provisions contained in clause (e) and (ccc) under S. 60(1) of the C.P.C. In this view of the matter, the petition fails and is dismissed, with no order as to costs.

N.K.S.

Before: M. M. Punchhi, J.

ROVINDERPAL SINGH,—*Petitioner.*

versus

UNION TERRITORY, CHANDIGARH,—*Respondent*

Criminal Misc. No. 5926-M of 1985.

November 29, 1985

Code of Criminal Procedure (II of 1974)—Section 167(5)—Accused sought to be tried in a summons case—Investigation not concluded within six months from the date of arrest of the accused—Continuance of investigation after the expiry of six months without permission of the Magistrate—Whether makes the entire investigation bad in law—Magistrate—Whether could take cognizance of the case—Accused—Whether entitled to discharge—Provision of Section 167(5)—True import and significance of—Stated.

Held, that if investigation is not completed within six months from the date of arrest of the accused, one of the options available to the police is to seek permission from the Magistrate to continue the investigation and on his refusal, to obtain from the Court of Session and if permission was finally refused, then the second option was to submit a report on the basis of the investigation so far made. In any of these situations, the Magistrate can either drop the proceedings, if no offence has been made out or take cognizance if he is satisfied that there is a case that should go for trial. If the police continues investigation without permission from the Court, then only that part of the investigation which has been continued without the permission of the Court which would be bad in law and the Magistrate cannot make use of it in order to determine whether he would drop the proceedings or take cognizance. In no event does the investigation in entirely become bad in law and if the investigaof the pre-six months period is good enough to take cognizance there

is no reason why the accused had to be discharged merely because more investigation has been undertaken without the permission of the Court under Section 167(5) of the Code of Criminal Procedure. What is important is that the mere fact of investigation having continued beyond a period of six months without the permission of the Magistrate does not automatically nullify the continuance of the trial. The only result in that case is that the Magistrate will only look into the material which had been collected within a period of six months and will ignore the other material and then decide whether to take cognizance or not. So the question of prejudice being occasioned would not arise because cognizance would be on the basis of investigation which had been conducted legally and within the time permitted.

(Paras 5 and 7)

1. Ram Kumar *vs.* State, 1981 Cr. L.J. 1288.

2. Jay Sankar Jha *vs.* State, 1982, Cr. L.J. 544.

3. Babu Lal *vs.* State of Rajasthan, 1982, Cr. L.J. 1001.

DISSENTED FROM

Application under section 482 *of the Code of Criminal Procedure praying that the impugned order of the Chief Judicial Magistrate, Union Territory, Chandigarh, dated* 18*th September,* 1985, *may kindly be quashed and the petitioner may be discharged in the case. It is also prayed that further proceedings before the Lower Court may be stayed meanwhile.*

J. P. S. Sandhu, Advocate, *for the Petitioner.*

H. S. Brar, Standing Counsel, Chandigarh Administration and Mr. P. S. Teji, Advocate with him, *for the Respondent.*

JUDGMENT

M. M. Punchhi, J.—

(1) What is the true import and significance of sub-section (5) of section 167, Criminal Procedure Code, requires to be ascertained in this petition invoking inherent jurisdiction of this Court for quashing of proceedings.

(2) The petitioner was accused of offence under sections 279/304-A, Indian Penal Code. The first information in that regard was registered at Police Station Central, Sector 17, Chandigarh. The petitioner was arrested on 14th January, 1984. The investigating

agency prepared a challan for filing it in Court and handed it over to the concerned District Attorney. On 11th October, 1984, the challan was received back by the investigation on his raising some objections. On 13th October, 1984, an application for grant of permission to investigate further was made to the concerned Magistrate under the provisions of sub-section (5) of section 167, Criminal Procedure Code. On that date itself, the permission was granted. After completing investigation, the challan was presented on 20th October, 1984. The petitioner challenged the continuance of proceedings on the plea that he could not be put to trial beyond a period of six months from the date of his arrest for it was in a summons case he was sought to be tried. The learned Magistrate in the presence of the grant of permission in favour of the investigation dated 13th October, 1984, dismissed the application, which has given rise to the petitioner to knock the doors of this Court. The provision in question is in the following terms:—

> "167(5) If in any case triable by a Magistrate as a summons-case, the investigation is 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."

(3) This provision has engaged attention of the Courts in the country with opinions diversified. To begin with, a Division Bench of Calcutta High Court in *Ram Kumar* v. *The State* (1), took the view that the Magistrate could permit continuance of investigation beyond the period of six months only before the expiry of six months and any direction for continuation after the statutory period would be without jurisdiction. Then again the same Division Bench in *Jay Sankar Jha* v. *The State* (2), in furtherance of its earlier view, observed that where in a summons case, the investigation continues beyond the period of six months from the date of arrest, it is obligatory on the part of the Magistrate to stop further investigation and the accused is not required to raise any such objection. It was further observed that an illegality would remain an illegality and the

(1) 1981 Cr. Law Journal 1288.
(2) 1982 Cr. Law Journal 744.

delay or failure on the part of the accused to point out the same will not make it otherwise—the question of prejudice to the accused being totally irrelevant. Sequally, the Bench took the view that cognizance taken by the Magistrate in contravention of such provisions was bad in law and the subsequent proceedings were without jurisdiction.

(4) In *Babu Lal* v. *State of Rajasthan* (3), it was held that section 167 (5), Criminal Procedure Code, was mandatory in character and it is a 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 the arrest of the accused without his permission. If continued, then the accused has to be released.

(5) A Single Bench of Delhi High Court in *Raj Singh* v. *The State (Delhi Administration)* (4) taking stock of the aforesaid decisions of Calcutta and Rajasthan High Courts, viewed the provision from a different angle. It was held that it was not correct to think that section 167(5), Criminal Procedure Code, prescribed a period of limitation apart from section 468, Criminal Procedure Code. When cognizance could be taken after six months on a private complaint, the learned Judge was of the view that the provision seemed to protect the accused from harassment by the police in summons cases. It was observed that if the investigation is not complete within six months, one of the options available to the police was to seek permission from the Magistrate to continue the investigation and on his refusal, to obtain it from the Court of Session. And if permission was finally refused, then the second option was to submit a report on the basis of the investigation so far made. I am in respectful agreement up to this point but I regret my inability to subscribe to his further view perhaps expressed unwittingly that the report of the police necessarily has to be one under section 169 and not under section 170 read with section 173, Criminal Procedure Code. In the next breath, the view taken, with which I am respectful agreement is that in any of these situations, the Magistrate can either drop the proceedings, if no offence has been made out or take cognizance if he is satisfied that there is a case that should go for trial. Further still it has been held that if the police does not do so and without

(3) 1982 Cr. Law Journal 1001.
(4) 1984 (2) Ch. Law Reporter 388.

permission from the Court continues investigation, such an investigation is bad in law as the provisions of sub-seition (5) of section 167, Criminal Procedure Code, are mandatory and the Magistrate cannot take cognizance on the report so submitted and should discharge the accused. As is obvious, this is a contradiction in terms. It is only that part of the investigation, which has been continued without the permission of the Court, which would be had in law and the Magistrate cannot make use of it in order to determine whether he would drop the proceedings or take cognizance. In no event does the investigation in entirety become bad in law. And if the investigation of the pre-six months period is good enough to take cognizance, I see no reason why the accused has to be discharged merely because more investigation has been undertaken without the permission of the Court under section 167(5), Criminal Procedure Code. Understood in this light, alone can the apparent contradiction be resolved. Such view at this Courts end requires to be expressed, as on relying on *Raj Singh's case* (supra), an Hon'ble Single Bench of this Court in *Dr. J. S. Parwana* v. *The State* (5), discharged the accused. It was specifically ruled on the understanding of *Raj Singh's case* (supra) that if a challan was presented by the police after six month after the arrest of the accused in a summons case and the investigating agency had not taken permission of the Magistrate to continue investigation after six months from the date of the arrest of the accused, the Magistrate was not competent to take cognizance of the case. And thus the order of the Magistrate framing charge against the petitioner on that sole ground was quashed.

(6) The correctness of the view taken in *Raj Singh's case* (supra) was examined by a Division Bench of Delhi High Court consisting of Rajinder Sachar and Malik Sharief-Ud-Din JJ., in *The State* v. *Jai Bhagwan* (6), and the view was not accepted. The Division Bench, while referring to *Raj Singh's case* (supra) observed as follows:—

> "With respect we are unable to agree. The learned Judge makes a distinction between an irregularity and invalid investigation and the former only being curable under the Cr. P. C. This goes contrary to the Supreme Court decision in *H. N. Rishbud* v. *State of Delhi* (supra) which

(5) 1985 Cr. Law Times 189.
(6) 1985 Cr. Law Journal 932.

has held that even an invalid investigation against the mandatory provisions would not vitiate the continuance of trial once cognizance has been taken. We may in passing observe that even this authority recognises that trial can proceed on the basis of an investigation which had taken place within a period of six months from the date of arrest. Thus even on this limited point, of course, we shall indicate in the judgment that there is no bar in seeking the permission from the Magistrate to continue investigation even if a period of six months has run out. The decision of the Magistrate quashing the proceedings without first trying to find out as to whether the material collected by the investigating agency within a period of six months was sufficient to go for trial (sic)."

Unfortunately, the Hon'ble Singh Judge of this Court deciding *Dr. J. S. Parwana's case* (supra) was not made aware that *Raj Singh's case* (supra) was no longer good law in Delhi High Court itself in view of the later Division Bench decision in *Jai Bhagwan's case* (supra).

(7) Additionally, the view of the Division Bench of Delhi High Court when rubbed against the views of Calcutta and Rajasthan High Courts appears to me more acceptable, especially for the conviction those views carry. Some extracts, therefrom, can form part of this judgment with usefulness and efficacy:—

"But what is important emphasis is that the mere fact of investigation having continued beyond a period of six months without the permission of the Magistrate does not automatically nullify the continuance of the trial. The only result in that case is that the Magistrate will only look into the material which had been collected within a period of six months and will ignore the other material and then decide whether to take cognizance or not. So the question of prejudice being occasioned would not arise because cognizance would be on the basis of investigation which had been conducted legally and within the time permitted.

* * * *

This would show that that the Supreme Court accepts that the Magistrate has jurisdiction under section 167 (5), Cr. P.Cfl to permit the investigation to continue beyond a

period of six months even if an application for this purpose is moved by the prosecution beyond this period. It also shows that even if permission is not granted it is open to the prosecution to file a charge-sheet if the investigation conducted till then warrants such a course. This authoritative pronouncement clearly shows that the course adopted by the Magistrate in the present case in straightway acquitting the respondents because the investigation had continued beyond a period of six months is completely unsupportable in law and precedent.

* * * *

It must be recognised that two competing public interests are involved, the liberty of the citizen and the mandate of law that normally investigation should be completed within a period of six months. But equally public interest demands that violation of penal provision endangering the lives of ordinary citizen should not escape the arm of law on supposedly hypertechnical and also unsubstantial grounds. So, normally unless it is in the interest of justice and sufficient reasons are made out by the prosecution extension by the Magistrate will not be available but there is also another competing public interest to see that because of the negligence or apathy or collusion of the investigating agency the administration of criminal jurisprudence is not reduced to total ineffectiveness which will breed dissatisfaction amongst the public. In the present case, even the trial Court has accepted the serious consequences of the view that he was taking. Here is a person who is said to have driven rashly and negligently resulting in the death of three persons and causing hurt to two persons and he is being ordered to be acquitted without trial simply because the prosecution did not put the charge-sheet within six months. The public interest also mandates against this extreme result which would permit the proceedings to be thrown out, at the threshold, without the decision on merits."

(8) These are weighty observations of the Division Bench of Delhi High Court with which I respectfully concur. The petitioner

is not entitled to any relief even if he was not heard before the extension of time was granted by the learned Magistrate. He in fact need not have been heard at that stage for that was between the Magistrate and the investigation. The learned Magistrate had *ex-facie* given reasons for permitting continuance of investigation and those orders as such are not the subject matter of challenge in these proceedings, keeping apart whether the petitioner was heard at that stage or not. It is only the later order whereby the learned Magistrate refused to discharge the accused that was challenged in these proceedings. The view of the learned Magisrtate being in accordance with law is unassailable and his order is thus upheld.

(9) For what has been said and noticed above, there is obviously no merit in this petition which fails and is accordingly dismissed.

N.K.S.

Before : P. C. Jain, C. J. and I. S. Tiwana, J.

DASHMESH BUS SERVICE (REGD.), RAIKOT,—*Appellant.*

versus

JAGIR KAUR AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 760 of 1983

December 11, 1985.

Motor Vehicles Act (IV of 1939)—Section 110-A—Workmen's Compensation Act (VIII of 1923) as amended by Act (LXV of 1976) —Section 3 & 22—Code of Civil Procedure (V of 1908)—Order 23, Rule 1—Punjab Motor Accident Claims Tribunal Rules, 1964—Rule 20—Application for compensation filed under the provisions of Section 110-A—Such application got dismissed as withdrawn by the claimants—Another application for compensation filed under the provisions of Section 22 of the Workmen's Compensation Act—Such application—Whether maintainable.

Held, that even if it be presumed that the provisions of Order 23, Rule 1 of the Code of Civil Procedure, 1908, are applicable to the proceedings under the Motor Vehicles Act, 1939, the same may well debar a claimant from instituting fresh proceedings on the