apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice."

It is quite true to say that the resultant "manifest injustice" is an essential wing of the requirement for issuance of the writ of *certiorari*, and no injustice having been shown to exist so far as the petitioner is concerned, the petition has also to be dismissed on that score.

This petition accordingly fails and is dismissed. There would, however, be no order as to costs.

R. S. NARULA, J.—I agree.

K.S.K.

REVISIONAL CRIMINAL

Before Gurdev Singh, J.

SHIV CHARAN,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Criminal Revision No. 844 of 1966.

October 4, 1966

Code of Criminal Procedure (Act V of 1898)—S. 207-A—Magistrate holding enquiry into a case triable by a Court of Session or High Court—Steps to be taken by him—Such magistrate—Whether can acquit an accused person—Order of discharge of an accused person—When to be made.

Held, that in conducting an enquiry under Chapter XVIII of the Code of Criminal Procedure the first step that has to be taken by the Magistrate is, when the accused appears or is brought before him, to ensure that copies of all the relevant documents under section 173 of the Criminal Procedure Code are made over to him. The next step in the case is the recording of evidence produced by the prosecution. The provision contained in sub-section (3) of section 207-A of the Criminal Procedure Code is mandatory and has to be complied with before the prosecution evidence starts.

Held, that a magistrate conducting an enquiry under section 207-A of the Criminal Procedure does not conduct trial of the case as jurisdiction to try such

cases does not vest in him. Accordingly he has no power to acquit an accused-person in the course of such an enquiry, but he has been given the authority to discharge an accused, and for that, the provision is made in sub-section (6) of section 207-A of the Code. The magistrate, however, can order the discharge of an accused only after taking the prosecution evidence referred to in sub-section (4) of section 207-A of the Criminal Procedure Code and after considering all the documents referred in section 173 and the statement of the accused, if it is considered necessary to examine him to enable him to explain any circumstances appearing in evidence against him. This sub-section (6) further requires that before discharging an accused person, the Magistrate should hear the accused as well as the prosecution, and the order of discharge will be made if "such evidence and documents disclose no ground for committing the accused person for trial." The Magistrate has the power to discharge an accused person under sub-section (3) of section 173 of the Code only if he refuses to take cognizance of the offence and before he takes any step under section 207-A of the Code. If he does not discharge the accused at that stage and deals with the case under Chapter XVIII, he can order the discharge of the accused only in accordance with sub-section (6) of section 207-A.

Petition under section 439 *of the Criminal Procedure Code for revision of the order of Shri Sarup Chand Goel, Additional Sessions Judge, Karnal, dated* 1*st September*, 1966, *affirming that of the Chief Judicial Magistrate, Karnal, dated* 26*th July*, 1966, *discharging the two respondents Raghbir Singh and Dharam Singh from their bail bonds.*

C. L. LAKHANPAL AND ISHER SINGH VIMAL, ADVOCATES, for the Petitioner.

HARPARSHAD, ADVOCATE, for the Advocate-General with A. S. ANAND, R. L. ANAND AND S. C. GOEL, ADVOCATES, for the Respondents.

JUDGMENT

GURDEV SINGH, J.—This petition for revision is directed against the order of the Chief Judicial Magistrate, Karnal, dated the 26th of July, 1966, whereby he has discharged Raghbir Singh and Dharam Singh (respondents Nos. 2 and 3), who had been arrested earlier for offences under sections 148, 188, 436, 302, 395 read with section 149 and section 120-B, Indian Penal Code, on a report lodged at Police-Station, Sadar, Panipat, by the petitioner, Shiv Charan, for burning alive his relation Dewan Chand and two others in the former's shop on the 15th of March, 1966. This order of discharge has been upheld by Shri S. C. Goyal, Additional Sessions Judge at Karnal.

To appreciate the various contentions raised by the parties it is necessary to set out the history of the case which in brief is as under :—

The incident in connection with which the respondents were arrested took place in the city of Panipat on the 15th of March, 1966.

According to the prosecution allegations a mob of about 700 or 800 persons went to the shop of Shri Dewan Chand and set fire to it resulting not only in destruction of valuable property, but also loss of three lives including that of the said Dewan Chand. On the information given by Shiv Charan, petitioner, a case against several persons including the respondents, Raghbir Singh, a local Advocate, and Dharam Singh, a member of the Municipal Committee, Panipat, was registered for various offences under sections 148, 188, 436, 302, 395 read with section 149 and section 120-B of the Indian Penal Code.

On the following day Raghbir Singh respondent was arrested and two days later, i.e., on the 18th of March, 1966, Dharam Singh surrendered in the Court and they were sent to the judicial lock up. On 22nd of March, 1966, they were, however, remanded to the police custody. On conclusion of the investigation, a police report under section 173 of the Criminal Procedure Code for the various offences referred to above, was presented to the Court of the Judicial, Magistrate, Panipat, on 10th of March, 1966. In that report, the names of the two respondents Raghbir Singh and Dharam Singh were given in column No. 2, while those of 19 others in column No. 3 and that of Gopal Das in column No. 4.

As the Judicial Magistrate, Panipat, found that he had been cited as a witness in the case, on 14th June, 1966 he brought this fact to the notice of the Chief Judicial Magistrate and pointed out that under the circumstances he was not competent to deal with the case. At the same time, the public prosecutor, Karnal, moved for the transfer of the proceedings to some other Court. This prayer was accepted by the learned Sessions Judge, Karnal, who by his order, dated 17th June, 1966, directed that the commitment proceedings in the case against the respondents and other accused be conducted by the Chief Judicial Magistrate, Karnal. Accordingly, on 23rd June, 1966, the accused including the respondents Raghbir Singh Saini and Dharam Singh appeared before the Chief Judicial Magistrate, Karnal. As till then the file of the case had not been received, the proceedings had to be adjourned to 2nd July, 1966. Before adjourning the proceedings on 23rd June, 1966, the learned Chief Judicial Magistrate, however, dealt with applications of Raghbir Singh respondent and Padam Sain, another accused, complaining that copies of statements of certain prosecution witnesses under section 161 to which they were entitled under section 173 of the Criminal Procedure Code had not been supplied to them. The learned Magistrate thereupon directed the prosecution to furnish the necessary copies.

On 2nd July, 1966, when the case was taken up, the said Raghbir Singh and Padam Sain again complained that copies of some of the statements mentioned in their earlier application had not been furnished to them. Again, the learned Magistrate directed that the necessary copies be supplied to the accused by 13th July, 1966, to which date further proceedings in the case were adjourned. On 13th again complaints were made by the accused regarding non-supply of the copies of the statements of some prosecution witnesses recorded under section 161 of the Criminal Procedure Code. The learned Magistrate heard the objections of the prosecution and passed necessary orders for supplying certain copies to the accused. On 16th July, 1966, again complaints were made to the Chief Judicial Magistrate regarding non-supply of some of the documents to which the accused were entitled under section 173 of the Criminal Procedure Code.

In defence of the conduct of the police, the Special Public Prosecutor placed a written application before the Chief Judicial Magistrate in which he stated that the accused were not entitled to copies of the statements of some of the witnesses as the prosecution did not intend to rely upon them or produce them in support of its case. This did not satisfy the accused, and, accordingly, the Chief Judicial Magistrate went into the controversy that had arisen and by his detailed order of that date rejected the objections of the prosecution, directing it to supply the copies of the statements recorded under section 161 of the Criminal Procedure Code to the accused. The learned Magistrate then adjourned the case to 26th July, 1966, for recording evidence and directed that the prosecution witnesses be summoned for 26th, 27th and 28th of July, 1966.

On this adjourned hearing 26th July, 1966, all the accused including Gopal Das and the respondents Raghbir Singh and Dharam Singh, who were on bail, appeared. As the Chief Judicial Magistrate was about to examine the prosecution evidence, the Special Public Prosecutor, Rai Bahadur Harparshad, made a verbal prayer to the Court that Raghbir Singh and Dharam Singh (respondents before me), whose names were mentioned in column 2 of the police report under section 173 of the Criminal Procedure Code be discharged and cognizance of the case so far as it related to them be not taken. Accepting this prayer, the learned Chief Judicial Magistrate promptly discharged Raghbir Singh and Dharam Singh making the following order :—

> "Before the start of the enquiry, a request has been made on behalf of the prosecution by R. B. Harparshad that in the

report under section 173 of the Code of Criminal Procedure, it has been mentioned that after the investigation Raghbir Singh and Dharam Singh who were arrested in this case are not being challaned and, therefore, they be discharged and the cognizance of the case may not be taken against them. The counsel for the accused also asserts that enquiry may not proceed against these two persons as they have not been accused of the charges for which they were arrested. I, accordingly, discharge the two accused Raghbir Singh and Dharam Singh from their bail-bonds who are already on bail. The enquiry against the remaining accused-persons will proceed."

Thereafter evidence of two prosecution witnesses was recorded. When the case was taken up on the following day, an application was made to the Magistrate by Shrimati Krishna, widow of Kranti Kumar, one of the three murdered persons, praying that Raghbir Singh and Dharam Singh be detained and proceeded against as the two eye-witnesses who had been examined by the prosecution had fully implicated them. The learned Magistrate, however, disposed of this application by merely directing that it should be placed on the file.

Feeling aggrieved by this order of discharge of the respondents Raghbir Singh and Dharam Singh, Shivcharan, who, had lodged the first information report in the case and was a close relation of Dewan Chand Takkar deceased, questioned the validity of the order of discharge in the Court of Session at Karnal. It was contended before Shri S. C. Goel, Additional Sessions Judge, who dealt with this petition, that the Magistrate had no jurisdiction to discharge any of the accused before recording evidence except in accordance with the provisions of sub-section (6) of section 207-A of the Criminal Procedure Code. The learned Judge found that the impugned order of discharge was not made under sub-section (3) of section 173 of the Criminal Procedure Code, nor under sub-section (6) of section 207-A of the Criminal Procedure Code. He, however, held this order to be valid as it was passed at the request of the prosecution and on the police report wherein it was stated the enquiries made in the course of the investigation revealed that these two accused Raghbir Singh and Dharam Singh were not guilty. The learned Additional Sessions Judge took the view that the order of discharge made in this case was not a judicial order but administrative, as it was tantamoun to acceptance of the request of the police to cancel the case against these respondents. In this view of the matter, he ruled that no petition for revision was competent, and, accordingly, declined to interfere.

Feeling still aggrieved, Shivcharan has now approached this Court under section 439 of the Criminal Procedure Code for setting aside the impugned order discharging the respondents Raghbir Singh and Dharam Singh.

The Police report made to the Magistrate under section 173 of the Criminal Procedure Code is in respect of offences under sections 148, 188, 436, 302, 395 read with section 149 and section 120-A of the Indian Penal Code. It is not disputed that the Magistrate has no jurisdiction to try these offences himself and the trial has to be conducted by a Court of session. The Magistrate had, however, to hold an enquiry under Chapter XVIII of the Code of Criminal Procedure in accordance with the procedure laid down for such cases in section 207-A, the first four sub-sections whereof, which are relevant for our purpose at this stage, run thus :—

"207-A. (1) When in any proceeding instituted on a police report, the Magistrate receives the report forwarded under section 173, he shall, for the purpose of holding an inquiry under this section, fix a date which shall be a date not later than fourteen days from the date of the receipt of the report, unless the Magistrate, for reasons to be recorded, fixes any later date.

(2) If, at any time before such date, the officer, conducting the prosecution applies to the Magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(3) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.

(4) The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged, and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any

one or more of the other witnesses for the prosecution, he may take such evidence also."

From these provisions it is evident that when the accused appears or is brought before the Magistrate for enquiry into a case triable by a Court of Session or High Court, the Magistrate at the commencement of the enquiry has to satisfy himself that the documents referred to in section 173 of the Criminal Procedure Code have been furnished to the accused, and if he finds that all the documents to which the accused is entitled have not been supplied to him, he shall make the necessary orders. It is only after he is satisfied that all the relevant documents to which the accused is entitled have been furnished to him that the Magistrate will proceed to record the evidence of the witnesses produced by the prosecution. From this, it is obvious that in conducting an enquiry under Chapter XVIII the first step that has to be taken by the Magistrate is, when the accused appears or is brought before him, to ensure that copies of all the relevant documents under section 173 of the Criminal Procedure Code are made over to him. The next step in the case is the recording of evidence produced by the prosecution. The provision contained in sub-section (3) of section 207-A of the Criminal Procedure Code is mandatory and has to be complied with before the prosecution evidence starts.

A Magistrate conducting an enquiry under section 207-A of the Criminal Procedure Code does not conduct trial of the case as jurisdiction to try such cases does not vest in him. Accordingly he has no power to acquit an accused-person in the course of such an enquiry, but he has been given the authority to discharge an accused, and for that, the provision is made in sub-section (6) of section 207-A of the Criminal Procedure Code, which is in these words :—

"When the evidence referred to in sub-section (4) has been taken and the Magistrate has considered all the documents referred to in section 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that

such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly."

A bare reading of this provision is enough to indicate that once the enquiry proceeding before a Magistrate starts, he can order the discharge of an accused only after taking the prosecution evidence referred to in sub-section (4) of section 207-A of the Criminal Procedure Code and after considering all the documents referred in section 173 and the statement of the accused, if it is considered necessary to examine him to enable him to explain any circumstance appearing in evidence against him. This sub-section (6) further requires that before discharging an accused person the Magistrate should hear the accused as well as the prosecution, and the order of discharge will be made if "such evidence and documents disclose no ground for committing the accused person for trial."

From the various provisions of the Code of Criminal Procedure referred to above it is evident that where an accused is arrested and being proceeded against in connection with offences which are triable by a Court of Session and not by a Magistrate, there is no provision for his discharge other than those contained in sub-section (3) of section 173 and sub-section (6) of section 207-A of the Criminal Procedure Code. The former relates to discharge from the bond which the accused may have furnished on his release by the police under section 169 of the Criminal Procedure Code, and such an order of discharge can be passed by the Magistrate only if he refuses to take cognizance of the offence and before he takes any step under section 207-A of the Code. If he does not discharge the accused at that stage and deals with the case under Chapter XVIII, he can order the discharge of the accused only in accordance with sub-section (6) of section 207-A.

It is common case of the parties that the impugned order of discharge was not passed under any of these provisions, viz., sub-section (3) of section 173 and sub-section (6) of section 207-A. The respondents' learned counsel, Shri R. L. Anand, has contended that this order was nothing more than an order cancelling the case against the respondents Raghbir Singh and Dharam Singh and was perfectly within the jurisdiction of the Magistrate as in dealing with a police report submitted under sub-section (1) of section 173 of the Criminal Procedure Code he had the authority not to take cognizance of the case against these two respondents and not to proceed against them

under section 207-A of the Criminal Procedure Code. He had further urged that such an order of cancellation of the case was a ministerial or administrative order and, accordingly, no petition for revision lay against it nor did the petitioner have *locus standi* to challenge this order as the case had been instituted on a police report and not on his complaint.

In support of his objection to the *locus standi* of the petitioner, Shri Anand has relied upon *Thakur Ram and others* v. *The State of Bihar* (1) wherein it has been held that in a case which has proceeded on a police report, a private party has no *locus standi*. It may, however, be pointed out that in the same authority, their Lordships of the Supreme Court recognised the fact that under the terms of section 435, the power of revision vesting in this Court and the Court of Session are very wide and they can be exercised *suo motu*. Thus the mere fact that the petition for revision has been moved by a private party and not by the State, will not preclude this Court from going into the correctness of the impugned order of the Magistrate. Of course in dealing with this matter, the Court has to keep in mind the observations of their Lordships that the criminal law is not to be used as an instrument of wreaking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it.

If the contention raised on behalf of the petitioner that Magistrate had no jurisdiction to pass the impugned order of discharge prevails, I have not the least doubt that it is a fit case requiring interference by this Court in exercise of its revisional jurisdiction, since the first information report mentions the respondents Raghbir Singh and Dharam Singh by name, and according to the prosecution itself some of the eye-witnesses had also implicated them in offences which are of grave nature including those under sections 302 and 120-B, Indian Penal Code.

Reliance is placed upon the Full Bench decision of the Lahore High Court in *Emperor* v. *Hayat Fateh Din* (2) and *Harbir Singh* v. *The State and another* (3). These cases no doubt are authority for the purpose that an order cancelling the case on receipt of the police report under sub-section (1) of section 173, Criminal Procedure Code. is an administrative order, but I am of the opinion that they do not apply to the case before us as the impugned order of discharge is

(1) A.I.R. 1966 S,C, 911,
(2) A.I.R. 1948 Lahore 184 (F,B,),
(3) A.I.R. 1952 Pepsu 29,

neither an order cancelling the case nor was made when the police report under sub-section (1) of section 173, Criminal Procedure Code, was laid before the Magistrate. From the history of the case which has been set out earlier it is abundantly clear that the impugned order was passed by the Magistrate after he had taken up the case against all the accused including the respondents Raghbir Singh and Dharam Singh in accordance with the procedure laid down and started dealing with it under section 207-A, Criminal Procedure Code, which occurs in Chapter 18 relating to "Enquiry into cases triable by Court of Sessions or High Court". This argument may be considered along with another argument by Shri R. L. Anand raised on behalf of the respondents. He argued that the respondents Raghbir Singh and Dharam Singh were not before the Judicial Magistrate as accused persons and thus the Magistrate was not competent, nor did he have jurisdiction to proceed against them under section 207-A of the Criminal Procedure Code. This argument proceeds on the fact that in the police report filed under section 173 of the Criminal Procedure Code, their names were entered in column No. 2 and not along with other 20 accused, 19 out of whom were mentioned in column No. 3 and one in column No. 4. Further it is pointed out that while giving facts of the case in the report, the police itself had stated that they were innocent. The relevant portion of the police report under section 173 runs thus:—

> "A mob collected in the hospital. It was in a state of great excitement and thereafter it committed the various offences referred to above. Though the witnesses, who had seen the occurrence, have stated that Raghbir Singh Advocate and Dharam Singh had also participated in this occurrence, yet despite best efforts, no other reliable evidence could be obtained to connect these two accused with the crimes. From the statements of the respectable persons that have been recorded and other investigation, open as well as secret, it appears that these two accused did not take part in the incident. Accordingly in the interest of justice, the names of both these persons have been entered in column No. 2. There is, however, sufficient evidence against the remaining accused. The report is accordingly submitted under sections 148, 149, 188, 436, 302, 120-B and 395 of the Indian Penal Code. The necessary proceedings may be taken. Except for Gopal Dass who is on bail, the rest of the accused are in the judicial lock-up, Karnal."

It is true that in this report the investigating officer has said that investigation had disclosed that Raghbir Singh and Dharam Singh had not taken part in the incident, yet at the same time it is specifically stated therein that some of the eye-witnesses examined did implicate them. It is further a fact that their names were mentioned in the first information report on the basis of which the investigation proceeded. It is also not disputed that both these respondents were arrested in the course of investigation, but were subsequently enlarged on bail by the learned Session Judge. They were thus accused of the various offences to which the first information report related. The Magistrate on receipt of this report under section 173(1) Cr. P.C. did not cancel the case against them, but he proceeded to deal with the case and all the accused including the two respondents appeared before him on various dates till the 26th of July, 1966, when the impugned order of discharge was passed by the Chief Judicial Magistrate.

Shri Anand has argued that since the police had stated in its report that no offence appears to have been committed by Raghbir Singh and Dharam Singh, respondents, the Magistrate could not deal with them as accused persons under section 207-A. From the perusal of the police report, made to the Magistrate under section 173, which has been reproduced above, it becomes apparent that while giving the result of its own investigation, the police at the same time disclosed to the Magistrate that some of the eye-witnesses did support the allegations against Raghbir Singh and Dharam Singh, respondents. It was in that situation that the names of these respondents were entered in column No. 2. Before the 26th of July, 1966, the police or the prosecution never asked for the cancellation of the case against these two respondents and that was for obvious reasons. They had acquainted the Court with the result of the investigation and the fact that some of the ocular evidence implicated both of them. Instead of taking the onus of deciding their guilt or innocence, they adopted the course of leaving it to the Court to judge for itself how far the allegations against Raghbir Singh and Dharam Singh, respondents were correct. This is why it was stated in the first information report that in the interest of justice, the names of these two persons had been entered into column No. 2 of the police report. Even after the police expressed an opinion, there was no evidence against these persons connecting them with the crime except the evidence of some of the eye- witnesses, they appeared before the Court not as innocent persons, but as accused since in the first information report there was definite accusations against them of having participated in the commission of grave offences. Shri Anand has referred to the

observations of their Lordships of the Privy Council in *Emperor* v. *Khwaja Nazir Ahmad* (4), that it is for the police to investigate a case and to arrive at its own conclusions. Shri Anand has argued that once the police finds that a person accused of an offence is not guilty and thus decides not to prosecute him the Court has no power to proceed against him or to conduct an enquiry under chapter 18 for the offences alleged to have been committed by him. The observations of their Lordships in *Khawaja Nazir Ahmad's* case on which the learned counsel has relied were made in a different context. Their Lordships merely emphasised that the judicial authority should not interfere with the investigation if the police is seized of the same. In the case before us, the investigation had concluded and the result of that investigation in the form of police report was placed before the Magistrate and it was for him to decide what action to take. The contention that the Magistrate has no authority to proceed against an accused person whom the police has found to be innocent, is not borne out by authority. In *Fatta and others* v. *The State* (5), a Division Bench of this Court has ruled that there is no legal impediment in the way of the trial Magistrate passing an order for summoning a person as an accused even though the police had challaned some other persons. In this connection, it was observed :—

> "Under section 190(1) when a Magistrate acts under any of the clauses of the above sub-section, he takes cognisance of an offence. The expression "takes cognizance of an offence" cannot be equated to take cognizance of an offender and the normal rule is that when a Magistrate takes cognizance of an offence, he takes cognizance of the case as a whole. As such he gets seized of the whole case and there appears to be no bar to his issuing process against aall persons who appear to be involved in the offence. The contention that when a Magistrate takes cognizance under Clause (b) of the above sub-section upon a report made by a police officer, he is restricted to issuing process only to the persons challaned by the police is not warranted by the language of the sub-section."

This view finds support in *Jageshar Singh* v. *Bachan Singh* (6). In this case, Mehar Singh, J., (as his Lordship then was) hed that under section 25-A all that is to be seen is that

(4) A.I.R. 1945 P.C. 18.
(5) I.L.R. (1964) 2 Punj. 214=A.I.R. 1964 Punj. 351.
(6) I.L.R. 1957 Punj. 802.

the case is instituted on a police report and it is not to be seen against whom the case is instituted. The learned Judge observed that a police report is made to a Magistrate under section 173 of the Code, sub-section (1) of which concerns persons who are forwarded to a Magistrate for trial and sub-section (3) refers to persons who are not so forwarded, and held that the Magistrate to whom the report is forwarded is competent to order prosecution of a person under sub-section (3) of that section even if the police has not chosen to arrest such a person and the question of his release on executing a bond under section 169 of the Code has not arisen. Such a prosecution will be considered to be a case instituted on a police report within clause (a) of section 251 of the Code and procedure followed under section 251-A of the Code is perfectly legal.

It is true that if on receipt of a police report under sub-section (1) of section 173, Criminal Procedure Code, a Magistrate finds no material to implicate an accused person, he can refuse to proceed against him and cancel the case, but if he does not choose to take such a step and proceedings against that accused commence under section 207-A, the Magistrate cannot then have recourse to his powers under sub-section (1) of section 173, Criminal Procedure Code and cancel the case against such an accused. Once action is initiated under section 207-A, Criminal Procedure Code, the only provision under which the Magistrate can discharge an accused is that contained in sub-section (6), of section 207-A. In the instant case, from the history of the proceedings that has been set out above in some detail, it will be seen that neither the Judicial Magistrate at Panipat in whose Court, the police report was first presented, nor the Chief Judicial Magistrate, Karnal, to whom the case was transferred, took any action to cancel the case against the respondents Raghbir Singh and Dharam Singh, before the latter took proceedings under section 207-A, Criminal Procedure Code. The respondents along with their co-accused had appeared before the Chief Judicial Magistrate on several hearings before the impugned order of discharge was passed on the 26th of July, 1966. At those hearings some of the accused, including Raghbir Singh, respondent, had represented that copies of the documents to which they were entitled under section 173, Criminal Procedure Code had not been supplied to them. An application was made by Raghbir Singh, for that purpose. Objections to that application were raised by the prosecution and the learned Magistrate after hearing the arguments of the counsel on both sides gave a judicial finding as to the copies of the documents which the accused, including the respondents, were entitled to

receive before the recording of the evidence could commence. The Magistrate was thus clearly complying with the provisions of section 207-A and it is obvious that the enquiry under chapter 18 regarding the commitment of the accused had started before him. What is to be considered is whether this amounts to taking of cognizance by the Magistrate because it cannot be disputed that once cognizance is taken and the proceedings for commitment have begun, the discharge of the accused can be ordered only after recording the evidence in accordance with the provisions of sub-section (4) of section 207-A, Shri Anand has vehemently argued that the Magistrate could take cognizance in this case only when he started recording the statement of the first prosecution witness and not earlier. According to him all that the Magistrate did prior to the recording of the evidence of the prosecution witnesses, was done in his administrative capacity and thus did not amount to taking cognizance of the case.

Shri Lakhanpal appearing for the respondents, has, however, urged that the initiation of proceedings under section 207-A by the Magistrate was clear evidence of his taking cognizance of the case. Counsel for both the parties have relied upon the various decisions of their Lordships of the Supreme Court in which it has been considered what amounts to taking cognizance. The basic authority on the point is *R. R. Chari* v. *The State of Uttar Pradesh* (7). It was pointed out in that case that taking of cognizance is itself based upon the initiation of proceedings by the Magistrate. This clearly implies that initiation of proceedings is not equivalent to taking cognizance, but it must precede the commencement of the proceedings. This in my opinion clearly excludes the argument that the cognizance in accordance with the provisions of section 207-A is taken by the Magistrate only when he starts recording the evidence of the first prosecution witness. In that case their Lordships approved the observations of Das Gupta, J., in *Superintendent and Remembrancer of Legal Affairs, West Bengal* v. *Abani Kumar Banerjee* (8), and said that this in their Lordships' opinion contained a correct approach to the question. The relevant observations are :—

> "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

(7) A.I.R. 1951 S.C. 207.
(8) A.I.R. 1950 Cal. 437.

> 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."

The same rule was approved in a subsequent decision of that Court in *Ajit Kumar Palit* v. *State of West Bengal and another* (9), Ayyangar, J., speaking, for the Court observed:

> "The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means-become aware of and when used with reference to a Court or Judge, to take notice of judicially. It was stated in *Gopal Marwari* v. *Emperor* (10) by the learned Judges of the Patna High Court in a passage quoted with approval by this Court in *R. R. Chari* v. *State of Uttar Pradesh* (7), at page 320 that the word "cognizance" was used in the Code to indicate the point when the Magistrate or Judge takes judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense. As observed in *Emperor* v. *Sourindra Mohan* (11), at page 416, "taking cognizance does not involve any formal action; or indeed action of any kind but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence". Where the statute prescribes the materials on which alone the judicial mind shall operate before any step is taken, obviously the statutory requirement must be fulfilled."

In *Jamuna Singh and others* v. *Bhadai Shah*, (12), it was observed that section 190(1) of the Code of Criminal Procedure contains provision for cognizance of offences by Magistrates and when a Magistrate takes cognizance of an offence upon receiving a complaint of facts which constitute offences, the case is instituted in the

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(9) A.I.R. 1963 S.C. 765.
(10) A.I.R. 1943 Pat. 245.
(11) I.L.R. 37 Cal. 412.
(12) A.I.R. 1964 S.C. 1541.

Magistrate's Court. Their Lordships further said : "If he applies his mind for proceeding under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint. When, however, he applies his mind not for such purpose but for purposes of ordering investigation under section 156(3) or issues a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence."

In the case with which we are dealing, all the accused, including the respondents Raghbir Singh and Dharam Singh, had appeared before the Chief Judicial Magistrate, the Magistrate in accordance with the provisions of section 207-A of the Code of Criminal Procedure, started the proceedings for commitment and ordered the supply of various documents and copies to which the accused were entitled. Apart from this, summons had been issued to Gopal Das, who was on bail and he had appeared before the Magistrate at the various hearings. In addition to that the Magistrate had summoned the prosecution witnesses and directed them to attend his Court for giving evidence on the 26th of July, 1966. All these steps were taken by the Magistrate under section 207-A, as preliminary to complying with the provisions of sub-section (4) of section 207-A, and recording the statements of the prosecution witnesses. In my opinion, the various steps taken by the Chief Judicial Magistrate up to the 26th of July, 1966 to enable him to start with the examination of the prosecution witnesses, do amount to his taking cognizance of the offences in connection with which the respondents Raghbir Singh and Dharam Singh and their co-accused had been arrested. Once the cognizance is taken, the proceedings had to continue in accordance with the procedure prescribed under section 207-A and the Magistrate could discharge the accused only if on conclusion of the evidence and on consideration of the other material referred in sub-section (6) of section 207-A, he found that no case for committing the accused to the Court of Session was made out.

The matter may be looked at from another angle. When the police report under section 173(1) of the Criminal Procedure Code was laid before the Magistrate, it stated that out of the 22 accused-persons there was sufficient material to warrant the trial of 20, other than the two respondents Raghbir Singh and Dharam Singh about whose participation in the incident the police did not feel satisfied but the eye-witnesses had implicated them. This single report cannot be called what is known as a negative or a referred report, and for that reason the learned Magistrate could not decline to take

cognizance especially when grave offences, according to the police itself, had been committed by at least 20 accused. In that situation, the Magistrate, in my opinion, quite rightly did not cancel the report when it was laid before him under sub-section (1) of section 173 and proceeded to deal with it in accordance with the provisions of section 207-A, of the Criminal Procedure Code. I doubt very much if he could cancel the police report in part. In fact, it has been held *in Sudhir Ranjan Roj Chowdhury* v. *N. K. Mazumdar* (13), that the ordinary rule is that when a Magistrate takes cognizance of an offence, he takes cognizance of the case as a whole, and is empowered to summon all persons against whom there appears to be any reason for their prosecution, even though their names are not mentioned for this purpose in the petition of complaint. Since against the two respondents Raghbir Singh and Dharam Singh it was specifically stated in the police report that they were being named by the eye-witnesses, the Magistrate, it appears to me, deliberately refrained from cancelling the case against them or ordering their discharge before proceeding with the case under section 207-A of the Criminal Procedure Code.

There is yet another reason for which the learned Magistrate could not refuse to proceed against the respondents Raghbir Singh and Dharam Singh. Subsequent to the submission of the police report under section 173(1), a complaint under section 188 of the Indian Penal Code was presented to the Chief Judicial Magistrate, stating that all the 22 accused who had been named earlier in the police report, including the two respondents Raghbir Singh and Dharam Singh, had committed an offence under section 188 of the Indian Penal Code. On that complaint action had to be taken against Raghbir Singh and Dharam Singh, respondents, as well. Since this very offence under section 188 of the Indian Penal Code was also included in the police report, the Magistrate could not refuse to proceed against these respondents at least for that offence. The stage at which the case could be cancelled was over long ago. The Magistrate having thereafter taken proceedings under section 207-A could not revert to that stage merely because just before the prosecution evidence was about to commence, the Public Prosecutor had stated that he did not wish to proceed against the respondents Raghbir Singh and Dharam Singh. At that stage, the only course open to the Public Prosecutor was the one provided under section 494 of the Criminal Procedure Code to withdraw from the prosecution of any person, but that was never adopted.

(13) A.I.R. 1944 Pat. 210.

In view of the foregoing discussion, I find that the order of discharge of the respondents Raghbir Singh and Dharam Singh is illegal and cannot be sustained. The petition is, accordingly, accepted and in exercise of the powers of this Court under section 436 read with section 439 of the Criminal Procedure Code, I direct that the Chief Judicial Magistrate shall proceed against the respondents Raghbir Singh and Dharam Singh along with the other accused who are already being proceeded against in his Court. Since these two respondents, are not present, their counsel is directed to cause their appearance in the Court of the Chief Judicial Magistrate, Karnal, on the 10th of October, 1966. As they were on bail when they were discharged, they shall continue to be on bail if they furnish fresh bail-bonds to the satisfaction of the Chief Judicial Magistrate.

B. R. T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and R. S. Narula, JJ.

AMAR SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 854 of 1963.

October 4, 1966.

Punjab Security of Land Tenures Act (X of 1953)—Ss. 10-A and 18—"Transfer" or "other disposition of land in S. 10-A (b)—Whether includes involuntary transfer of a part of the holding of a landowner by operation of an order under S. 18—S. 10-A(c)—"Order of another authority"—Whether includes orders passed under S. 18 which have become final—In case of conflict between S. 10-A and S. 18—Which section will prevail.

Held, that—

(1) the expression "transfer" and "other disposition of land" "in clause (b) of section 10-A of the Punjab Security of Land Tenures Act 10 of 1953, do not include completed sales effected under section 18 of the Act;

(2) in exercise of the powers conferred by clause (c) of section 10-A of the Act, the authorities under the Act cannot exclude from consideration an order of the Assistant Collector under section