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

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

S. S. Sandhawalia, C.J.—*I agree.*

H.S.B.

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

Before M. M. Punchhi. J.

H. S. BAINS,—*Petitioner.*

versus

U. T. CHANDIGARH and another,—*Respondents.*

Criminal Misc. No. 26-M of 1980.

April 18, 1980.

Code of Criminal Procedure (2 of 1974)—*Sections* 169, 173 (2) *and* 190—*Police report under section* 173 (2) *recommending cancellation of the case—Magistrate differing from the report—Whether can take cognizance of the offence and issue process against the accused.*

Held, that an information relating to the commission of a cognizable offence given by a person to an Officer Incharge of a police station under section 154 of the Code of Criminal Procedure 1973 has got to be reduced into writing and signed by the person giving it and the substance thereof to be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. The lodging of the information *per se* does not *ipso facto* commence investigation till such time the Officer Incharge of the Police Station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate. Therefrom starts building the edifice culminating into a police report, whether be it of the nature of section 169 or section 170. The information given by a person to an Officer Incharge of the Police Station remains unsoiled by investigation and the information worked upon being an information from a person other than a Police Officer, the same can be used by a Magistrate to take cognizance of the offence disclosed therein under section 190 (1) (c) of the Code and for that purpose the procedure applicable has to be that of a complaint case since it would be a case instituted otherwise than on a police report. The information lodged with the police can be rescued from the debris of the investigation like a complaint could be so rescued from an investigation conducted under section 156(3) of the Code. But cognizance under sub-clause (c) apart the Magistrate can straightway on police report issue process if he chooses to do so. Thus, on receipt of a police report, whether be it directly on a First Information Report or on a complaint forwarded under section 156 (3), the Magistrate differing from the police report can straightway issue process against the accused. (Para 18).

Application under section 482 *of Cr.P.C. read with section* 379 ibid *and Article* 227 *of the Constitution of India praying that the order of the learned Magistrate dated* 23*rd November*, 1979 *and the proceedings before the Magistrate may be quashed and in the meantime the proceedings pending before the learned Magistrate may kindly be stayed.*

H. L. Sibal, Senior Advocate and Karampal Singh Sandhu and P. S. Kang, Advocates with him.

H. S. Brar, Advocate, *for respondent No. 1.*

Kuldip Singh and M. S. Dhillon, Advocates, *for respondent No. 2.*

JUDGMENT

Madan Mohan Punchhi, J.

The question of law which falls for consideration in these two petitions—Crl. Misc. No. 26-M of 1980 (*H. S. Bains* v. *Union Territory of Chandigarh and another*) and Crl. Revision No. 755 of 1977 (*Rattan Chand and others* v. *The State of Punjab*) mainly under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), is by no means simple. It requires spelling out from the provisions of the Code, as to what is a Magistrate entitled to do, if he differs from the police report prepared under section 173(2) of the Code and placed before him by the police, after investigation of a crime reported.

2. The first case in hand is Crl. Misc. No. 26-M of 1980. The petitioner, H. S. Bains, Director, Small Saving-cum-Deputy Secretary, Finance, Punjab, Chandigarh, prays for quashing of the order dated November 23, 1979, passed by Shri B. C. Rajput, Judicial Magistrate 1st Class, Chandigarh, whereby the learned Magistrate took cognizance of offences under sections 448/451/506 of the Indian Penal Code against the petitioner in exercise of his powers under section 190(1) of the Code, differing with the line of investigation. Broad facts were that Gurnam Singh complainant-respondent filed a complaint on August 13, 1979, against the petitioner for the aforesaid offences under the Penal Code before the Judicial Magistrate 1st Class, Chandigarh, alleging that the accused-petitioner had come in his car on the morning of August 11, 1979, to the residential house of the complainant at Chandigarh, effected criminal trespass and threatened to kill him and his natural son, who had been taken in adoption by the complainant's sister. This lady was stated to be the widow of the deceased brother of the accused-petitioner and the adoption was to his distaste. The complaint was referred to the local police by the Magistrate under section 156(3) for investigation and registration of the case. The police conducted the investigation, during the course of which, it came to be handled by two police officers, one after the other. The police investigation

disclosed that the accused had an *alibi* in the statement of Shri Jai Singh, I.A.S. District Magistrate-cum-Deputy Commissioner, Amritsar, who claimed that the accused-petitioner was with him at Amritsar at the relevant time when the alleged offence took place. Thus, the police came to the conclusion that the case against the accused was false and while submitting report under Section 173(2) of the Code, recommended the case to be dropped. The Judicial Magistrate differed from the report and issued process against the petitioner by observing as follows:—

> "I am constrained to observe on the basis of the record that the police in this case has been greatly influenced by the status of the accused and the statement of the District Magistrate and took this uncalled for stand. The proper course for the police was to seek the judicial verdict when the commission of the offence was apparent from the record and it was for the accused to take up the plea of *alibi* and prove the same in the court. Every one is equal before the law. The courts are meant to do justice not only when two parties are equal but also when two parties are unequal in their status. Therefore, I do not adopt the line of investigation. This is a fit case for taking cognizance and I take cognizance of the offence under section 190(1) in order that the accused be summoned for facing the trial under sections 448/451/506 of the Indian Penal Code. The summons be issued for his appearance for 17th December, 1979."

3. The second case in hand is Crl. Revision No. 755 of 1976, which arose out of a First Information Report lodged by P. S. Dewan, Assistant Excise and Taxation Officer, Ludhiana, at Police Station Division No. 2, Ludhiana. Broadly stated, the said Shri P. S. Dewan alleged therein that in the normal exercise of his duties, he came to the business premises of Messrs Oswal Woollen Mills, Ludhiana, and while he had impounded accounts books of the said firm, Rattan Chand and Vijay Kumar petitioners, along with five or ten other persons over-powered him and forcibly snatched the impounded documents from him. On the basis of the said First Information Report, the police investigated the case and submitted a police report under Section 173(2) of the Code before Shri Sharnagat Singh, Judicial Magistrate Ist Class,

Ludhiana, indicating therein that Vijay Kumar and Ashok Kumar petitioners were participants in the crime and that Rattan Chand petitioner had an established *alibi* in Delhi, and thus the police had not sent up a challan against him. The learned Magistrate, differing with the police report, ordered Rattan Chand petitioner to be summoned as well, as an accused, along with Ashok Kumar and Vijay Kumar petitioners. Besides the individual grouse of Rattan Chand petitioner, as to why he was summoned, all the three petitioners lay emphasis in their petition that the proceedings could not go on against them as the entry of the Assistant Excise and Taxation Officer was illegal and in excess of his powers, and hence so case under Section 352 or 353 of the Indian Penal Code was made out against the petitioners in view of the dictum of this Court in *Parshotam Dass Lajja Ram and others* v. *The State* (1). However, at the bar arguments alone were confined to the powers of the Magistrate to issue process against Rattan Chand, and thus the debate remained common in both the cases.

4. Mr H. L. Sibal, the learned counsel for the petitioners in both the cases, contended that the respective Magistrates in both the cases had to jurisdiction to issue straightway process against the affected petitioners, differing with the views expressed and reported to them by the police in their police reports. It was his firm stand that the Magistrates could not take cognizance of the offences in either of the sub-clauses of Section 190(1) of the Code, which is in the following terms:—

"190. *Cognizance of offences by Magistrates.*

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

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

(b) upon a police report of such facts;

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

(1) A.I.R. 1965 Pb. 264.

5. It would be essential to note some history of the section not only in the legislative, but the judicial field as well. Prior to the Code, which came into operation with effect from 1st April, 1974, the old Code of Criminal Procedure, 1898 (hereinafter referred to as the Old Code), was operative and Section 190(1) of the said Code read as follows:—

"190. *Cognizance of offence by Magistrates.*

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

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

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

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

A comparative reading of the two makes it plain that there is no change in clause (a), whereas changes have come in clauses (b) and (c). In clause (c) the word "suspicion" has been omitted and that clause now is meant to confine to the taking of cognizance by a Magistrate, of an offence upon information received from any person (other than a police officer) or upon the Magistrate's own knowledge that such offence has been committed, and, in clause (b) for "a report in writing" the expression "police report" has been substituted and the words "by any police officer" have been omitted. The significant changes in clauses (b) and (c) are so read by the learned counsel for the petitioners to mean, that a police report placed before a Magistrate can only be accepted by him for the reasons suggested by the police and the Magistrate cannot, while differing with the report, issue straightway process to the accused. This deserves closer scrutiny in the light of the decisions cited at the bar.

6. In *Abhinandan Jha* v. *Dinesh Mishra*, (2), their Lordships of the Supreme Court considered the import of various sections including Section 173 of the Old Code of 1898. While dealing with the

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

Police report under Section 169 of the Old Code referred to as "final report" recommending the discharge of the accused. Vaidialingam, J. speaking for the Court observed thus :—

> "Now, the question as to what exactly is to be done by a Magistrate on receiving a report, under Section 173, will have to be considered. That report may be in respect of a case, coming under Section 170, or one coming under Section 169. We have already referred section 190, which is the first section in the group of sections headed "Conditions requisite for initiation of Proceedings". Sub-section (1) of this section will cover a report sent under Section 173. The use of the words "may take cognizance of any offence", in sub-section (1) of Section 190, in our opinion, imports the exercise of a 'judicial discretion', and the Magistrate who receives the report, under Section 173 will have to consider the said report and judicially take a decision, whether or not to take cognizance of the offence."

7. Then again while dealing with Section 169 of the Code, the learned Judge observed thus:

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

8. Again while dealing with the report submitted by the police under Section 173 of the Code that no case is made out for sending up an accused for the trial the learned Judge observed:—

> ".....Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the

final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under S. 156(3) to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156(3). The police, after such further investigation may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under section 190(1)(b), notwithstanding the contrary opinion of the police, expressed in the final report."

9. In the afore-mentioned paragraph, the quotation has been borrowed from paragraph 15 of that judgment, but instead of Section 190(1)(b), it has to be read as Section 190(1)(c) as pointed out by the printer in *Ramchandra and others* v. *State of Uttar Pradesh and another,* (3).

10. Relying on the afore-quoted judgment of the Supreme Court, a Full Bench of the Delhi High Court in *Narayan Ramchandra Karambelkar* v. *The State,* (4), held that the nature of the order will remain the same whether the Magistrate decides to accept the report submitted by the police or takes a view different from the one taken by the police, and it would be a judicial order disposing of the information given to the police. Somewhat, akin was the view of this Court in *S. P. Jaiswal* v. *The State,* (5).

11. Before proceeding further, it would be essential to take notice, as to what was required to be contained in a report under Section 173, which is meant to be placed before a Magistrate. Under

(3) A.I.R. 1971 Allahabad 155 (156).
(4) 1972 Cr. L.J. 1446.
(5) A.I.R. 1953 Pb. 149.

Section 173(1)(a) of the Old Code the report was required to be in the form prescribed by the State Government stating forth the names of the parties, the nature of the information and the names of the persons who appeared to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and if so, whether with or without sureties. Now in the new Code, Section 173(2) not only requires a report in the same terms and particulars as provided in Section 173(1)(a) of the Old Code, but carries an additional particular under heading "(d)":

> "(d) whether any offence appears to have been committed and, if so, by whom;"

Besides the added particular, sub-section (4) and (5) of Section 173 of the New Code, meaningfully provide:—

> "(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.
>
> (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report:—
>
> (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
>
> (b) the statement recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

12. It would seem therefrom that a report under Section 173(2), called the "police report" is required to be in a form, to be filled in by the Officer Incharge of the Police Station, providing necessary particulars required therein, but in case it relates to a case to which Section 170 applies, on the existence of sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate, the report must carry along with it, documents mentioned in Sub-section (5). Thus, a "police report", which has now been

defined in the Code under Section 2(r) to mean a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173, is a document placed before a Magistrate to be dealt with by him judicially who could take cognizance of an offence under clause (b) of Section 190(1) of the Code. The said police report may disclose that no offence appears to have been committed, and if committed, not by persons who were named or suspected during investigation, so as to satisfy the requirements of clause (d) of Section 173(2) of the Code. Obviously, the difference in the 'charge report' or 'final report' or 'summary', seems to have vanished in the New Code by a comprehensive report, required to be prepared by the Officer Incharge of a Police Station after an investigation carried out, revealing results of Section 169 or Section 170 of the Code. When such police report is placed before the Magistrate, with a view to his taking cognizance of the offence (and not the case or the accused) he would be taking cognizance upon a police report on facts, which constitute such offence.

13. In *Abhinandan Jha's case* (supra), before the Supreme Court were two cases, placed before the respective Magistrates upon such reports with the opinions that the cases were false or disclosed no offences. The protest petitions made by the complainants, after the receipt of the reports under Section 173 of the Code, had not been taken as complaints by the Magistrates to independently take cognizance of the offences under Section 190(1)(a), but directions were given by the Magistrates to the police to submit charge-sheets, contrary to the opinion of the police. It is in that context that the Court held that the Magistrate had no such power, in law, and he could not direct the police to submit a charge-sheet when the police had submitted a report that no case was made out for sending the accused for trial. It was pointed out that the functions of the Magistrate and the police were entirely different, and though the Magistrate could refuse to accept the report, as submitted before him by the police, and take suitable action accordingly, he could not impinge upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view. The Court observed:—

> ".....Under these circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance, under Section 190(1)(c) of the Code. That provision in our

opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through *bona fide* error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under Section 190(1)(c) on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed....."

14. It was contended by the learned counsel for the petitioners that by the omission of the word "suspicion" from Section 190(1)(c) of the Code, the law laid down in *Abhinandan Jha's case* (supra) quoted in the foregoing paragraph, would no longer be available to a Magistrate to take aid of Section 190(1)(c). It was also contended that the information derived from a police report would be information received by him from a Police Officer and obviously would not be a case of an offence to be taken cognizance of upon his own knowledge, so as to come within the purview of Section 190(1)(c) of the Code. This contention of learned counsel deserves to be shelved for the moment till two other precedents are taken note of.

15. In *Nasib Singh* v. *Maman and others*, (6) (decided by a Division Bench of this Court to which I was a member) the Bench had the occasion to deal with a matter in which a First Information Report recorded at the Police Station was investigated upon and the police report submitted to the Magistrate recommended cancellation of the case. The learned Magistrate called for the complainant and other witnesses, examined them and thereupon issued process to the accused. The learned Additional Sessions Judge, on revision before him, upset 'that order and suggested the complainant to file a regular complaint, if permissible. The view of the learned Additional Sessions Judge was

(6) Cr. R. 396 of 1979 decided on 1st November, 1979.

challenged before us and in dealing with that matter, we took in aid the changes brought in by the New Code, the relevant extracts of the 41st report of the Law Commission and the law laid down in *Abhinandan Jha's case* (supra) by the Supreme Court. Oblivious of the printers's error pointed out in the earlier part of this judgment, we held as follows:—

> "Even under the New Code, the law as laid down by their Lordships of the Supreme Court remains unexceptionable except that is no longer open to the Magistrate to take cognizance of an offence under section 190(1)(c) of the new Code on the basis of suspicion. That cognizance can only be taken upon knowledge of the Magistrate. That knowledge the Magistrate may derive from or without a police report so as to bring the foundation of cognizance under section 190(1)(c) of the new Code. The same object can even be achieved under clause (b) of subsection (1) of section 173 of the new Code when a police report is submitted under section 173(2) for that report has to particularise whether any offence appears to have been committed besides mentioning other particulars. The police report may postulate that an offence has or has not been committed and on the placing of it before the Magistrate requesting him to apply his judicial mind thereon, the Magistrate is taken to have taken cognizance of the matter.
>
> ... ...
> ... ...
>
> In the instant case, when the matter was brought before the Magistrate under section 169, Criminal Procedure Code, for cancellation of the case and on the application of mind he decided not to accept the report of the Investigating Officer and having chosen to examine the complainant and others, he is taken to have applied his mind and taken cognizance of the matter. It would be wholly immaterial to determine the exact point of time or stage as to when cognizance started. The Information derived from the report submitted to him by the police, if proceeded with in the manner of a complaint, required examination of preliminary evidence and this has been

done in the present case by the Magistrate before summoning the accused-respondents".

16. In *Tula Ram and others* v. *Kishore Singh*, (7), the Supreme Court was seized of a case in which a complaint was filed before a Magistrate, who ordered the police to investigate it under Section 156(3) of the Code. The police, after investigation reported that no case was made out. The Magistrate thereupon took cognizance of the complaint and proceeded to examine the complainant. Thereafter, the Magistrate issued process against the accused, which too was the subject of challenge in this Court as well as in the Supreme Court. The stand taken was that the complaint got merged in the police report and was thus incapable of being revived, when it had already been dealt with by the Magistrate at the stage of Section 156(3). Their Lordships of the Supreme Court held that stage was one of pre-congnizance, and the stage when the complaint was taken cognizance of was at a time when the police report was placed before the Magistrate. The Court also quoted approvingly observations from *Abhindan Jha's case* (supra) to lay down that the Magistrate was not absolutely powerless and it was in that situation open to him to take cognizance of an offence and proceed according to law. Out of the four legal propositions settled, the fourth one is relevant to the instant case:—

> Where a Magistrate orders investigation by the police before taking cognizance under Section 156(2) of the Code and receives a report thereupon, he can act on the report and discharge the accused, or straightway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190, as described above.

17. Placing reliance on the aforesaid two judicial precedents, the contention of the learned counsel was that despite a First Information Report recorded and a report recommending for cancellation thereof, the Magistrate in *Nasib Singh's case* (supra) took cognizance by following the procedure of a complaint by examining the complainant and his witnesses before issuing process to the accused. In the same strain, the Magistrate in *Tula Ram's case* (supra) again followed the procedure applicable to a complaint case when the police report was placed before him, though the case

(7) A.I.R. 1977 S.C. 2401.

came to be registered under orders of a Magistrate under Section 156(3) on a complaint. In nutshell, it is contended that the Magistrates in the instant two cases could not have straightway issued process, but should have followed the procedure of a complaint case, in Crl. Misc. No. 26-M of 1980, since the First Information Report came to be registered after a complaint was forwarded under section 156(3), in view of *Tula Ram's case* (supra), and again by an adoption of complaint procedure in Criminal Revision No. 755 of 1977, even when the case was registered directly by the police, in view of the law interpreted by this Court in *Nasib Singh's case* (supra). It was maintained that since in both cases the procedure of complaint had not been followed and processes have been issued straightway, the proceedings before the respective Magistrates against the petitioners, deserved to be quashed.

18. In view of what has been said by this Court in *Nasib Singh's case* (supra), it would appear to me that the contention of the learned counsel must fail with the added reasoning available from *Tula Ram's case* (supra), which decision is said to be only applicable to complaints ultimately getting registered as First Information Reports under Section 156(3) and not First Information Reports *per se*. It would appear that an information relating to the commission of a cognizable offence given by a person to an Officer Incharge of the Police Station under Section 154, has got to be reduced in writing and signed by the person giving it and the substance thereof to be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. The lodging of the information, *per se*, does not *ipso facto* commence investigation till such time the Officer Incharge of a Police Station has reason to suspect the commission of an offence, which he is empowered under Section 156 to investigate—(Section 157 of the Code). Therefrom starts building the edifice culminating into a police report, whether be it of the nature of Section 169 or Section 170. In *Tula Ram's case* (supra) the complaint was left unsoiled by the investigation of the police and the offence involved therein was taken cognizance of by the Magistrate under Section 190(1)(a). On the same reasoning, the information given by a person to an Officer Incharge of the Police Station remains unsoiled by investigation, and the information worked upon being an information from a person other than a Police Officer, the same can be used by a Magistrate to take cognizance of the offence disclosed therein under Section 190(1)(c) of the

Code and for that purpose the procedure applicable has to be that of a complaint case since it would be a case instituted otherwise than on a police report. That is what we permitted to be done in *Nasib Singh's case* (supra) since the Information lodged was rescued from the debris of the investigation, like the complaint was done in *Tula Ram's case* (supra). But cognizance under sub-clause (c) apart, it was clearly held in *Nasib Singh's case* (supra) that the Magistrate could have straightway on police report issued process if he chose so to do, and that is what has been held as a whole by the Supreme Court in *Tula Ram's case* (supra) in legal exposition No. 4. Even in that case, as held by the Court, straightway process could be issued against the accused on the receipt of the police report. The view thus taken by this Court in *Nasib Singh's case* (supra) is in accord with the view taken by the Supreme Court in *Tula Ram's* case (supra), and it stands clearly spelled out that on the receipt of a police report, whether be it directly on a First Information Report or on a complaint forwarded under Section 156(3), the Magistrate differing from the police report can straightway issue process against the accused. On the aforesaid understanding of law, the orders and action in both the cases are perfectly legal and call for no interference by this Court presently.

19. No other point was raised in these petitions.

20. As a result, these petitions fail and are hereby dismissed.

N.K.S.

Before Harbans Lal, J.

SARWAN RAM,—*Petitioner.*

versus

AMAR NATH and another.—*Respondents.*

Civil Revision No. 1941 *of* 1978.

November 2, 1979.

Code of Civil Procedure (V of 1908)—Section 151—Donor making a gift of his entire property—Suit filed by donor against donees claiming future maintenance—Application under section 151 interim maintenance also filed—Such application—Whether maintainable.

Held, that it is evident that section 151 of the Code of Civil Procedure 1908 confers only a procedural jurisdiction on the court Unless the parties can show the existence of some substance right, inherent powers of the Court under section 151 of the Code cannot be invoked to issue any interim order relating to such substantive rights the existence of which has yet to be determined. Keeping in view this settled principle of law, it has to be held that the court has no jurisdiction to grant interim maintenance to the parties under the purported exercise of the inherent jurisdiction under section 151 of the Code even if equitable consideration regarding maintenance is in favour of the party who has parted with all his property by way of gift. (Para 13).

Petition under section 115 of Code of Civil Procedure for revision of the order of the court of Shri D. S. Chhina, Sub Judge 1st Class, Garhshankar, dated 2nd September, 1978 awarding a sum of Rupees 75 per month to the applicant as maintenance pendente lite, from the date of this order against the respondent.

V. K. Sharma, Advocate, *for the Petitioner.*

I. S. Karewal, Advocate.

Balwant Singh Guliani, Advocate, *for the Respondents.*

JUDGMENT

Harbans Lal, J.

(1) Amar Nath, respondent, transferred immovable property comprising of a house and agricultural land in favour of the petitioner and respondent No. 2, by means of a registered gift deed, dated February 20, 1962. Thereafter, in 1976, he filed a suit for maintenance at the rate of Rs. 200 per mensem in *forma pauperis* against the donees. The application for permission to file the suit as a pauper has yet not been disposed of and the suit has not been registered as a regular suit. During the pendency of this pauper petition, an application for grant of interim maintenance during the pendency of the suit, was allowed by the trial Court,—*vide* the impugned order and the donees were held liable to pay maintenance to the plaintiff—respondent at the rate of Rs. 75 per month during the pendency of the suit. The present revision petition is directed against the said order.

(2) According to the learned counsel for the petitioner, the trial Court had no jurisdiction to grant interim maintenance even in the exercise of its inherent jurisdiction, under section 151, Code of Civil

Procedure, (hereinafter called the Code), and that as yet, even the right of the plaintiff—respondent to get maintenance from the petitioner and his brother, respondent No. 2, is to be determined and there was no term of the gift deed as to the grant of maintenance to the plaintiff—respondent by the donees, though the latter who are collaterals of the former had been maintaining him till the filing of the suit and were even now prepared to maintain him if he lived with them in their house. It was also stressed that the observation of the trial Court in the impugned order that the donees must have given undertaking to the plaintiff—respondent at the time of the gift deed to maintain him, is tantamount to pre-judging the issue before the trial of the suit. Reliance has been placed on a number of decisions of various High Courts to canvass the proposition that section 151 of the Code, does not confer any right on the Court to grant interim maintenance and that the said provision was only procedural one whereas the right of maintenance, whether on permanent basis or of an interim nature, during the pendency of the suit, was in the domain of substantive rights for which the reliance must be placed on some statute.

(3) Admittedly, the plaintiff—respondent, who gifted his entire property in favour of the petitioner and respondent No. 2, is only a collateral of the donees and as such, the provisions of the Hindu Adoptions and Maintenance Act, (hereinafter called the Act), for the purpose of grant of maintenance are not attracted. The suit out of which the present revision petition has arisen, has also not been instituted for the purpose of setting aside the gift deed, in dispute. In this suit, only future maintenance has been claimed. Thus, whether the plaintiff—respondent is entitled to maintenance as of right under trial Court. In these circumstances, the important question to be determined is whether it is within the jurisdiction of the Court to grant interim maintenance under section 151 of the Code on the analogy that where a case for interim attachment or interim injunction as provided under Order XXXVIII or Order XXXIX of the Code, is not made out, the Court is competent to grant relief relating to interim attachment or interim injunction, as the case may be, in the exercise of its inherent jurisdiction under section 151 of the Code?

(4) It was held by a Division Bench of the Madras High Court In *Mahomed Abdul Rahman* v. *Tajunnissa Begum and another*, (1)

(1) A.I.R. 1953, Madras 420.

that in a suit for maintenance by the wife where the claim is hotly contested, the order of payment of interim maintenance is without jurisdiction and that there is no inherent jurisdiction vested in Courts to grant interim relief regarding maintenance which properly ought to be granted only by a decree after determination of the points in controversy.

(5) In *Gorivali Appanna* v. *Gorivelli Seethamma,* (2), the wife filed a suit for past and future maintenance against her husband under the provisions of the Act. During its pendency, an application under section 151 of the Code and section 18 of the Act, for the grant of Rs. 150 per month as maintenance was filed. The trial Court awarded interim maintenance at the rate of Rs. 30 per mensem. The said order was challenged in revision. The Division Bench therein held,—

> "The inherent powers recognised by section 151 cannot extend to matters other than procedural. The Court cannot resort to the provisions of section 151 to encroach upon substantive rights of parties, or in an interlocutary application, upon matters which await adjudication in the suit. No order under section 151, Civil P. C. can be made except 'in aid of the suit.'"

The contention on the opposite side that interim maintenance can be granted under section 18 of the Act, was also repelled and it was held,—

> "Section 18 of Hindu Adoptions and Maintenance Act does not authorise the award of interim maintenance pending decision of suit in which the very claim to maintenance is in contest. The right of the wife to be maintained by the husband should not be confused with the power of the Court to award interim maintenance pending an action for maintenance where such right is in dispute. The Court has no power unless statute expressly confers such a power on it."

(6) In *Sodagar Singh* v. *Smt. Harbhajan Kaur and others,* (3), Narula, C.J., held to the same effect that section 151 of the Code

(2) A.I.R. 1972, Andhra Pradesh 62.
(3) 1977 P.L.R. 506.

is not a substantive provision conferring any right to get any relief and that the Act does not authorise the passing of any order for interim maintenance or litigation expenses.

(7) On behalf of the plaintiff—respondent, reliance has been placed on a number of decisions of the various High Courts, discussed below, which however, do not have much relevance and do not lend support to his case in any manner.

(8) In *Totaram Ichharam Wani and others* v. *Dattu Mangu Wanti and another*, (4), the plaintiffs had filed a suit for partition in *forma pauperis*. Before the application for leave to sue in *forma pauperis* had been considered, *ex parte* Commission under Order XXXIX, rule 7 of the Code had been appointed by the trial Court. The said order having been challenged in revision, the contention raised was that till the suit was registered in a regular manner after the final disposal of the pauper application, interim order under Order XXXIX rule 7 could not be passed. It was held, that the pauper application was a continuation of the suit and the plaintiffs had the right to seek interim relief by way of injunction or the appointment of a receiver with regard to the property in dispute, before the pauper application was finally adjudicated upon. It is obvious, that the Court had the jurisdiction to grant interim injunction or to appoint receiver during the pendency of the suit under Order XXXIX rule 7 of the Code.

(9) In *Ramappa Parappa Khot and others* v. *Gourwwa*, (5), a suit had been filed by the wife for setting aside three gift deeds executed by her husband in favour of his brother's sons and sister's son, and also for maintenance. The suit had been filed in *forma pauperis*. The pauper application had not yet been decided when the interim maintenance was allowed by the trial Court. The High Court of Mysore held that the jurisdiction of the civil Court to grant interim relief was not barred during the pendency of the pauper application. In regard to the right of maintenance to the wife, it was held in paragraph 18 of the judgment, that the counsel for the defendants had not disputed the liability of the defendants to pay maintenance unless the defendants succeeded in their contention that the donor had made sufficient provision for the maintenance of his

(4) A.I.R. 1943, Bombay 143.
(5) A.I.R. 1968 Mysore 270.

wife while executing the gift deeds. Thus, the order for interim maintenance was upheld in view of the peculiar facts of that case and that cannot serve as a precedent for holding that the civil Court has the jurisdiction to grant interim maintenance in a suit for maintenance.

(10) In *Jyoti Prakash Banerjee* v. *Chameli Banerjee and another*, (6), a suit for maintenance had been filed by the wife and her minor children against the husband. Interim maintenance was allowed under section 151 of the Code. It was held that the plaintiffs had a substantive right of maintenance under sections 18 and 20 of the Act and as such, interim maintenance could be allowed during the pendency of the pauper application.

(11) In *Vijay Partap* v. *Dukh Haran Nath*, (7), the only question for consideration was the scope and ambit of Order XXXIII, rule 5 of the Code for the purpose of disposal of the application to sue in *forma pauperis*. No question regarding issuance of any interim order was involved.

(12) In *Padam Sen and another* v. *The State of Uttar Pradesh*, (8), during the pendency of the suit for the recovery of money, the defendants apprehending that the plaintiff would fabricate his books of account with respect to the payments made by them, applied for the seizure of the account books of the plaintiff. The trial Court appointed a Commissioner to seize those books of account. In pursuance thereof, the account books were seized. Thereafter, the plaintiff was convicted by the Special Judge, under section 165-A, Indian Penal Code, for having offered bribe to the Commissioner for being allowed an opportunity to tamper with those books of account. The conviction was upheld by the High Court. In the criminal appeal before the Supreme Court, it was held by their Lordships that the civil Court had no inherent powers under section 151 of the Code to appoint a Commissioner to seize the books of account in possession of the plaintiff. It was further held,—

> "Powers saved by section 151 are not powers over substantive rights which a litigant possesses. Party has full rights over his acount books. Court cannot seize them forcibly."

(6) A.I.R. 1975 Calcutta 260.
(7) A.I.R. 1962 S.C. 941.
(8) A.I.R. 1961 S.C. 218.