Magistrate did not consider the evidence on merit. Under section 258, he could only acquit the accused if he found him not guilty of the offence. That finding was not given. Rather the learned Magistrate chose to discharge the accused under section 251-A but that he could only do if the charge was found to be groundless. That could not be the case either, in the present situation.

(7) Had the accused taken his stand right in the beginning that the investigation was irregular, perhaps, the Magistrate would have set right that irregularity. This he has not done. On the other hand, he has taken his chance by standing to a trial and after the evidence was over that he took up the plea regarding jurisdiction of the S.H.O., Sirhali to conduct the investigation. In such a situation, whatever defect was pointed out in the investigation was curable under sub-section (2) of section 156 of the Code. The decision of the learned Magistrate was, therefore, illegal and will have to be set aside. The case be sent back to the learned Magistrate for a fresh trial and decision in accordance with the law. The appeal is, therefore, allowed and the order of the acquittal by the learned Magistrate is set aside, with a direction that he would decide the case on merit in the light of our observations made above.

D. S. Tewatia, J.—I agree.

K. T. S.

FULL BENCH

Before D. S. Tewatia, B. S. Dhillon and Gurnam Singh, JJ.

STATE OF HARYANA,—*Applicant-Appellant.*

versus

MEHAL SINGH AND ANOTHER,—*Respondents.*

Criminal Misc. No. 4766-M of 1977

April 12, 1978.

Code of Criminal Procedure (2 of 1974)—*Sections* 2(*h*) *and* (*r*),91, 161, 167(2) *proviso*, 173, 190(1) (b) *and* 309—*Report by police under Section* 173(2) *filed in Court within sixty days of the arrest without experts' reports*—*Investigation when to be considered complete*—*Such report*—*Whether a 'police report' in terms of section*

State of Haryana *v.* Mehal Singh and another (D. S. Tewatia, J.)
proviso to section 167(2)—*Proviso—Object of—Stated.*

190(1) (*b*)—*Accused—Whether can claim release on bail under proviso to Section* 167(2)—*Proviso—Object of—Stated.*

Held, that sub-section (5) of section 173 of the Code of Criminal Procedure 1973, in terms, envisages a report to be a 'police *report*' without the statements and documents referred to therein. If the report is in respect of a case to which section 170 of the Code applies, then a duty is cast on the police officer to tag with his report the statements and documents referred to in sub-section (5) of section 173. Since a report to qualify itself to be a 'police report' is required to contain only such facts as are mentioned in sub-section (2) of section 173, so if once it is found that the police report contained all those facts, then so far as the investigation is concerned the same has to be considered to have been completed. It is no doubt true that the definition of 'investigation' in terms conceives within its scope the collection of the evidence and formation of the opinion by the investigating officer, but the collection of evidence does not necessarily envisage that the investigating officer must record the statements of the witnesses who are to be cited to prove the prosecution case or that he must receive the reports of the experts which reports are admissible in evidence. It is, indeed, not incumbent on the investigating officer to reduce in writing the statements of witnesses as, he may merely include their names in the list of witnesses in support of the prosecution case when submitting the charge sheet. So far as the investigation part of the job of the investigating officer is concerned, it is complete when he has collected all evidence and facts that are detailed in sub-section (2) of section 173 of the Code and from the evidence thus collected he is satisfied that the case deserves to be initiated against the accused. Even if the investigating officer had not received the report of the expert, so far as his job of collecting of evidence is concerned, that is over the moment he despatches the material for the opinion of the expert and incidentally cites him as a witness if he relies on his testimony. Similarly, a charge-sheet would be a police report of the requisite kind even if the statements of the witnesses under section 161(3) either by design or by inadvertence are not appended with the report and the investigation of the case for that reason alone would not be considered to be incomplete thus entitling the accused to claim release on bail in view of the proviso to sub-section (2) of section 167 of the Code if his detention had exceeded sixty days.

(Paras 13, 14 & 15)

Hari Chand and another v. *The State,* 1977 *Cr. L.J.* (*NOC* 262) 156

Suresh Singh v. *The State and others,* 1978 Cr. L.J. (NOC 58) 30

Dissented from

Criminal Misc. No. 2287-*M of* 1976 (Kanahiya *v.* State of *Haryana*) *decided on May* 12, 1976.

Overruled.

Held, that the object of the proviso to sub-section (2) of Section 167 of the Code is merely to ensure that an accused is not kept under detention during an investigation for more than sixty days and that on expiry of the said period if the investigation is not completed and the enquiry or trial, as the case may be, against the accused is not initiated, the accused is to be released on bail by the Magistrate, as after sixty days the Magistrate would have no jurisdiction to remand him to the judicial custody during investigation. In other words, it can be said that if the Magistrate cannot legally take cognizance of the offence after the expiry of the period of sixty days, he has no option but to order the release of the accused; but where the Magistrate can legally take cognizance of the offence and start with the enquiry or the trial, then he acquires jurisdiction to detain the accused as an undertrial to face the enquiry or the trial, as the case may be, if it is considered necessary, and the accused can be remanded to judicial custody in accordance with the provisions of section 309

(Para 17)

Case referred by the Single Bench consisting of Hon'ble Mr. Justice Bhopinder Singh Dhillon to a larger Bench for the decision of an important question of law involved in the case. Now the Full Bench consisting of Hon'ble Mr. Justice D. S. Tewatia, Hon'ble Mr. Justice Bhopinder Singh Dhillon, and Hon'ble Mr. Justice Gurnam Singh, has finally decided the case on merits on 12*th April,* 1978.

Application under section 439(2) *Cr. P.C. praying that the order of the learned Court below be set aside and the petition be allowed and accused-respondents be committed to custody during the trial of the case.*

Naubat Singh, D.A.G. Hy., and H. S. Gill, D.A., Hy., *for the petitioner.*

K. L. Jagga, Advocate, Bahadur Singh, for Jang Bahadur Singh, H. N. Mehtani, D. S. Bali and K. D. Singh, Advocates, *for the respondent.*

JUDGMENT

D. S. Tewatia, J—(1) The short question that falls for determination, which is common to all the five Criminal Miscellaneous

Petitions Nos 4766-M, 5812-M and 6077-M of 1977, and 169-M and 293-M of 1978 before us, is as to whether investigation of an offence would be considered complete in terms of section 173(2) of the Criminal Procedure Code (hereinafter referred to as the Code), although the police officer investigating the case had not received the reports of such experts as the Chemical Examiner, the Serologist, the Ballistic Expert or the Finger Print Expert, etc., whose reports are made admissible in law under section 293 of the Code, without these being proved by the said experts in the witness-box; and whether a charge-sheet minus the aforesaid documents, when submitted to a Magistrate, would qualify to be termed a police report in terms of section 190(1)(b) of the Code and enable the Magistrate to take cognizance of the offence disclosed therein.

(2) The afresaid question arises for consideration in the wake of a claim made by all the petitioners except in Criminal Misc. No. 4766-M of 1977 (for facility of reference the accused-petitioners in these petitions are referred to as the petitioners) for their release on bail in view of the proviso to sub-section (2) of section 167 of the Code, which envisages that during the investigation a Magistrate is not competent to keep an accused in custody, police or judicial, exceeding sixty days. In other words, if in this period the investigation is not concluded, the Magistrate would have no option but to order the release of such an accused on bail.

Before embarking upon the consideration of the legal question aforesaid, a few words on facts may be stated herein.

(3) In Criminal Miscellaneous Petitions Nos 5812-M and 6077-M of 1977 and 169-M and 293-M of 1978, the petitioners have applied to this Court for being released in view of the proviso to sub-section (2) of section 167 of the Code, while in Criminal Miscellaneous Petition No. 4766-M of 1977 the accused-respondents had been released by the Additional Sessions Judge in view of the application of the proviso to sub-section (2) of section 167 of the Code to the case and the State has challenged that order in this Court. Criminal Misc. Petition No. 5812-M of 1977 came up for hearing before me and finding myself in respectful disagreement with the view taken by the Delhi High Court in *Hari Chand and another* v. *The State* (1), and the view taken by A. D. Koshal, A.C.J., (as my Lord

(1) 1977 Cr. L.J. (NDC 262) 156.

the Chief Justice then was) in (2) *Kanahiya* v. *State of Haryana* (2), I referred the matter to the larger Bench. In the wake of that reference order, the other criminal miscellaneous petitions by separate orders recorded by the learned Judges concerned, also came to be similarly referred to the larger Bench, to be dealt with along with Criminal Misc. Petition No. 5812-M of 1977, which I had referred to the larger Bench and that is how these petitions have been placed before us. A common judgment is, therefore, proposed for all the five petitions.

(4) It is not in dispute that the charge-sheet, which is being termed as 'incomplete charge-sheet' on behalf of the accused, had in all cases been submitted to the Magistrates empowered to take cognizance of the offences in question well within the period of sixty days from the date of arrest. It is also not in dispute that the report of one or of the other kind of the expert had either not been submitted or came to be submitted after the expiry of the period of sixty days from the date of the arrest of the accused-petitioners in all these cases.

(5) There is no dispute about the proposition that the detention of a person accused of commission of a crime when arrested would fall in three categories (1) detention during investigation of the offence, (2) detention as an undertrial for the purpose of enquiry and trial, and (3) detention to undergo the sentence after conviction, if any sentence of imprisonment is imposed.

(6) Proviso to sub-section (2) of section 167 of the Code, which is in the following terms, leaves no manner of doubt that during the investigation of the crime, an accused cannot be detained beyond a period of sixty days:

> "167(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary,

(2) Cr. Misc. 2287-M of 76 decided on May 12, 1976.

he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that—

(a) the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail; and every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter."

If during this period the investigation is not completed, the Magistrate has no jurisdiction to remand the accused for further detention, unless he had taken cognizance of the offence in which case he could order remand of the accused for the purpose of enquiry or the trial, as the case may be. The question, therefore, that arises for consideration is as to when can an investigation be considered complete.

(7) The expression 'investigation' is defined by section 2(h) of the Code in the following terms :

"2. In this Code, unless the context otherwise requires;

* * * * *

(h) 'investigation' includes all the proceedings under this Code for the collection of evidence conducted by a public officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

Section 173 of the Code, which envisages the submission of a report to the Magistrate after the completion of the investigation for the

purpose of enabling him to take cognizance of the offence, is as follows:—

"173. (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

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

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(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 alongwith 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 statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

Section 190 of the Code prescribed three different modes of taking cognizance of an offence. Relevant portion thereof reads:

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

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

(b) upon a police report of such facts;

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

(8) It is clause (b) of sub-section (1) of section 190 of the Code, which envisages the taking of cognizance of an offence by the Magistrate on a police report. The expression 'police report' is defined by section 2(r) of the Code as follows:

"2. In this Code, unless the context otherwise requires—

* * * * * *

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

The definition of the 'police report' noticed above identifies that report to be a 'police report' which is forwarded by the police officer to a Magistrate under sub-section (2) of section 173.

(9) The stand taken on behalf of the accused-petitioners is that a report shall be a 'police report' in terms of section 173(2) of the Code only if it is accompanied by such documents and statements as are referred to in sub-section (5) of section 173 of the Code. This argument is sought to be sustained with the decision of the Delhi High Court in *Hari Chand's case* (supra) and a Division Bench decision of the Patna High Court reported in *Suresh Singh* v. *The State and others,* (3), besides that of A. D. Koshal, A.C.J. (as my Lord the Chief Justice then was) in *Kanahiya's case* (supra).

(3) 1978 Cr. L. J. (N:D:C: 58) 30:

(10) Before proceeding to consider the import of various provisions bearing upon the question, I may at the outset deal with the aforesaid three decisions that have been relied upon on behalf of the accused persons.

(11) In *Kanahiya's case* (supra), no reasons for the conclusion are given.

(12) In the two decisions one of the Delhi High Court and the other of the Patna High Court—the learned Judges had proceeded on the assumption that the police report, which in police parlance is called 'challan', was admittedly incomplete. As to why the challan was incomplete has not been mentioned. Obviously, the Code does not envisage any interim report, but what it envisages is a 'police report' which may enable a Magistrate to take cognizance of the offence. The learned Judges, without going into the question as to why the police challan was termed to be an incomplete challan, assumed that the investigation of the case could not have been completed as the police report was incomplete. There cannot be any doubt that what is sought to be described as a 'police report' is not a 'police report', for a police report can be submitted only on the completion of the investigation, but then it is far from saying that even if a report after the completion of the investigation is submitted to the Magistrate, that would not be considered a 'police report' if the same did not include such statements and documents as are referred to in sub-section (5) of section 173 of the Code.

(13) Sub-section (5) of section 173 of the Code, in terms, itself envisages a report to be a 'police report' without the statements and documents referred to therein. It only envisages that if the report is in respect of a case, to which section 170 of the Code applies, then a duty is cast on the police officer to tag with his report the statements and documents referred to in sub-section (5) of section 173.

(14) Since a report to qualify itself to be a 'police report' is required to contain only such facts as are mentioned in sub-section (2) of section 173, so if once it is found that the police report contained all those facts, then so far as the investigation is conrerned the same has to be considered to have been completed. For this view, we receive authoritative backing from the decision of the

Supreme Court in *Tara Singh* v. *The State*, (4). That was a case in which the accused was arrested on September 30, on the very day of occurrence, he was produced before a Magistrate. On October 1, the police was granted police remand till October 2. The accused was produced on October 3 before the Magistrate, on which date the police handed over to the Magistrate what they called an 'incomplete challan' dated October 2, 1949, and also produced certain prosecution witnesses. Among the witnesses so produced were witnesses who were said to have witnessed the occurrence. The Magistrate examined those witnesses and recorded their statements, although the accused at that time was not represented by a counsel. On October 5 the police put in what they called a 'complete challan' and on the 19th they put in a supplementary challan. The Magistrate committed the accused for trial on November 12, 1949. It was argued in the first instance on behalf of the accused that the Magistrate on October 3, had no power to take cognizance of the case. It was contended that cognizance of an offence could only be taken on a police report of the kind envisaged in clause (b) of sub-section (1) of section 190 of the old Code. It was urged, on the strength of the provisions of section 173(1) of the Old Code, which is in the following terms and which is also *pari materia* with the provisions of sub-section (2) of section 173 of the New Code, that the police were not permitted to send in an incomplete report:

> "173(1) Every investigation under this Chapter shall be completed without unnecessary delay, and as soon as it is completed, the officer in charge of the police station shall:—
>
> (a) forward to a Magistrate empowered to take cognizance of the offence on a police report, a report, in the form prescribed by the State Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear 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; and
>
> (b) communicate, in snch manner as may be prescribed by the State Government, the action taken by him to the

(4) A.I.R. 1951 S.C. 441.

person, if any, by whom the information relating to the commission of the offence was first given."

Vivian Bose, J., who delivered the opinion for the Bench, without going into the question as to whether the police were entitled to submit an incomplete report or not, held that the report dated October 2, 1949, which the police referred to as an 'incomplete challan', was, in fact, a complete report within the meaning of section 190(1)(b) read with section 173(1) of the old Code. The following observations of his Lordship are instructive on the point:

"When the police drew up their challan of 2nd October, 1949 and submitted it to the Court on the 3rd, they had in fact completed their investigation except for the report of the Imperial Serologist and the drawing of a sketch map of the occurrence. It is always permissible for the Magistrate to take additional evidence not set out in the challan. Therefore, the mere fact that a second challan was put in on 5th October would not necessarily vitiate the first. All that section 173(1)(a) requires is that as soon as the police investigation under Chapter 14 of the Code is complete, there should be forwarded to the Magistrate a report in the prescribed form:

'Setting fourth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case.'

All that appears to have been done in the report of 2nd October which the police called their incomplete challan. The witnesses named in the second challan of 5th October were not witnesses who were 'acquainted with the circumstances of the case'. They were merely formal witnenses on other matters. So also in the supplementary challan of the 19th. The witnesses named are the 1st Class Magistrate, Amritsar, who recorded the dying declaration, and the Assistant Civil Surgeon. They are not witnesses who were 'acquainted with the circumstances of the case'. Accordingly, the challan which the police called an incomplete challan was in fact a completed report of the kind which section 173(1) of the Code contemplates. There is no force in

this argument, and we hold that the Magistrate took proper cognizance of the matter."

The learned counsel for the accused-petitioners, however, contended that in the Old Code the provisions, like the one contained in sub-section (5) of section 173 of the New Code, were not there and, therefore, the authority of the Supreme Court decision in Tara Singh's case (supra) would not be applicable in the context of the changed situation brought about by the incorporation in the new Code of sub-section (5) of section 173, thereof. The learned counsel for the accused-petitioners laid emphasis on the fact that the investigation in terms of the definition thereof shall not be considered complete unless the police had collected all the evidence and formed their opinion thereon and since in cases, where the expert's report was awaited, obviously it could not be said that all evidence had been collected, nor in its absence the investigating officer would be in a position to form an opinion. In order to show that the aforesaid steps are the necessary ingredients of the investigation, reliance has been placed on the following observations of Jagannadhadas, J., who delivered the judgment for the Bench in *H. N. Rishbud and another* v. *State of Delhi* (5).

"If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps, therefor under section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under section 173 of the Code in the prescribed from furnishing various details.

Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which

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

may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173."

It is no doubt true that the definition of 'investigation' in terms conceives within its scope the collection of the evidence and formation of the opinion by the investigating officer, but the question arises as to what do we mean by the 'collection of evidence and formation of opinion thereon'. Does the collection of evidence necessarily envisage that the investigating officer must record the statements of the witnesses who are to be cited to prove the prosecution case or must the investigating officer receive the reports of the experts which reports are admissible in evidence by virtue of section 293 of the Old Code? It has been authoritatively held at the highest judicial level in *Noor Khan* v. *State of Rajasthan* (6), that subsection (3) of section 161 does not oblige the police officer to reduce in writing the statements of witnesses examined by him in the course of investigation. In this regard, the following observations can be noticed with advantage:

"The object of sections 162, 173(4) and 207-A(3) is to enable the accused to obtain a clear picture of the case against him before the commencement of the inquiry. The sections impose an obligation upon the investigating officer to supply before the commencement of the inquiry copies of the statements of witnesses who are intended to be examined at the trial so that the accused may utilize those statements for cross-examining the witnesses to establish such defence as he desires to put up, and also to shake their testimony. Section 161(3) does not require a police officer to record in writing the statements of witnesses examined by him in the course of the investigation, but if he does record in writing any such statements,

(6) A.I.R. 1964 S.C. 286.

> he is obliged to make copies of those statements available to the accused before the commencement of proceedings in the Court so that the accused may know the details and particulars of the case against him and how the case is intended to be proved....."

From the above observations of their Lordships of the Supreme Court, it is clearly deducible that it is not incumbent on the investigating officer to reduce in writing the statements of the witnesses—he may merely include their names in the list of witnesses in support of the prosecution case when submitting the charge-sheet. Surely, if the charge-sheet thus submitted would be complete as enabling the Magistrate to take cognidance of the offence, there is no rational basis for holding that similar charge-sheet would not be a police report of the requisite kind if the statements of the witnesses although had been recorded under section 161(3), but either by design or by inadvertence are not appended with the report and that the investigation of the case for that reason alone would be considered to be incomplete thus entitling the accused to claim release on bail in view of the proviso to sub-section (2) of the section 167 of the Code if his detention had exceeded sixty days.

(15) In view of the above conclusion, the accused would be on still a weaker ground in canvassing that the report, which did not include the report of the experts, such as Chemical Analyst, Serologist, Ballistic Expert, Finger Print Expert etc., would not be a complete police report as envisaged in sub-section (2) of section 173 of the Code, which in terms is prepared and submitted only after the completion of the investigation. So far as the investigation part of the job of the investigating officer is concerned, it is in our opinion complete the moment he had collected all evidence and facts that are detailed in sub-section (2) of section 173 of the Code and from the evidence thus collected he is satisfied that the case deserves to be initiated against the accused. And further even if the investigating officer had not receievd the report of the expert, so far as his job of collecting of the evidence is concerned, that is over the moment he despatches the material for the opinion of the expert and incidentally cites him as a witness if he relies on his testimony.

(16) In the new Code the incorporation of sub-section (5) in section 173 of the Code has in no manner changed or affected the

content or concept of the 'police report' envisaged in the unamended Code in sub-section (1) of section 173 and, therefore, the ratio of *Tara Singh's case* (supra) applies to the facts of the present case with full force. The incorporation of sub-section (5) of section 173 of the amended Code was necessitated by the fact that under section 207 of the amended Code a duty was cast additionally on the Magistrate to make available to the accused free of cost copies of the 'police report' and, inter-alia, the documents and statements referred to in sub-section (5) of section 173 of the Code. In the unamended Code sub-section (4) of section 173 cast that duty on the police. The object of such provisions, whether the duty is cast on the police or on the Magistrate, is merely to see that the accused has in his hand the copies of statements and documents which were going to be produced or referred to in evidence against him so that he can offer whatever explanation or defence that he has to the incriminating material against him. If such statements and documents that are referred to in sub-section (5) of section 173 of the Code are not appended to with the 'police report', the result would be that at a later stage if they are sought to be produced, then apart from the fact that copies of such statements and documents shall have to be made available to the accused, it would be purely in the discretion of the Magistrate whether to allow such documents and statements to be produced or not and the prosecution cannot, as a matter of right, have them placed on the record. About this aspect a little more at an appropriate place in the later part of the judgment.

(17) The object of the proviso to sub-section (2) of section 167 was merely to ensure that an accused is not kept under detention during the investigation more than sixty days and that on the expiry of the said period if the investigation is not completed and the enquiry or the trial, as the case may be, against the accused is not initiated, then the accused is to be released on bail by the Magistrate, as after sixty days the Magistrate would have no jurisdiction to remand him to the judicial custody during investigation. In other words, it can be said that if the Magistrate cannot legally take cognizance of the offence after the expiry of the period of sixty days, he has no option but to order the release of the accused; but where the Magistrate can legally take cognizance of the offence and start with the enquiry or the trial, then he acquires jurisdiction to detain the accused as an under trial to face the enquiry or the trial if it is considered necessary, and the accused can be remanded to

judicial custody in accordance with the provisions of section 309 of the Code which is in the following terms :

"309(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them except for special reasons to be recorded in writing.

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."

(18) It would be thereafter at the discretion of the court whether to permit the prosecutor to adduce in evidence the reports of the experts of the kind. If the court permits the prosecutor to do so,

then a copy thereof shall have to be furnished to the accused. The court, under section 91 of the Code (which is reproduced below) has to determine whether to call or not for a document from a witness on the application of the police officer:

> "91. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
>
> (2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.
>
> (3) Nothing in this section shall be deemed:—
>
> (a) to affect sections 123 and 124 of the Indian Evidence Act, 1872, or the Banker's Books Act, 1891, or
>
> (b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

And the provisions of section 91 of the Code further envisage that such a person need not appear before the Court in person—he may send the document directly to the Court through some other person. The Court has also the power under section 311 of the Code to permit production of the additional evidence if it is considered in the interest of justice. However, in the exercise of its discretion, the Court has always to balance the interest of the accused in that he should not remain incarcerated for unduly long period as the concern on the part of the legislature to spare him from unduly delayed incarceration is apparent from the provisions of the proviso to sub-section (2) of section 167 of the Code. However, the interest

of justice has always to be kept in view and no prosecution evidence which have a vital bearing on the case, should be shut out.

(19) For the reasons stated, I hold that the investigation of an offence cannot be considered to be inconclusive merely for the reason that the investigating officer, when he submitted his report in terms of sub-section (2) of section 173 of the Code to the Magistrate, still awaited the reports of experts or by some chance, eihter inadvertently or by design, he failed to append to the police report such documents or the statements under section 161 of the Code, although these were available with him when he submitted the police report to the Magistrate.

(20) In the result, Criminal Miscellaneous Petitions Nos. 5812-M and 6077-M of 1977 and 169-M and 293-M of 1978 are dismissed and the bail prayed for is declined, while Criminal Miscellaneous Petition No. 4766-M of 1977 filed by the State is allowed and the order of the Additional Sessions Judge is set aside and cancelling the bail bonds of the accused—respondents therein, they are ordered to surrender to custody forthwith.

Bhopinder Singh Dhillon, J.—I agree.

Gurnam Singh, J.—I also agree.

N.K.S.

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