PETITIONER:
ABHINANDAN JHA & ORS.

Vs.

RESPONDENT:
DINESH MISHRA(With Connected Appeal)

DATE OF JUDGMENT:
17/04/1967

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
HIDAYATULLAH, M.

CITATION:
1968 AIR 117 1967 SCR (3) 668
CITATOR INFO :
RF 1977 SC2401 (13)
R 1979 SC 777 (15,32)
D 1980 SC1883 (7)
RF 1981 SC 379 (38)
RF 1991 SC1260 (44)
RF 1992 SC 604 (39)

ACT:
Code of Criminal Procedure (Act 5 of 1898), ss. 169, 170, 173 and 190(1)-Report to police of cognizable offence-Report by police to magistrate after investigation that offence not made out-If magistrate can direct police to file charge-sheet.

HEADNOTE:
On the question whether a magistrate could direct the police to submit a charge-sheet, when the police, after investigation into a cognizable offence, had submitted a report of the action taken under s. 169, Cr. P.C., that there was no case made out for sending up the accused for trial,
HELD : There was no such power conferred on a magistrate either expressly or by implication.
When a cognizable offence is reported to the police they may after investigation take action under s. 169 or S. 170 Cr. P.C. If the- police :think there is not sufficient evidence against the accused, they may, under s. 169 release the accused from custody on his executing a bond to appear before a competent magistrate if and when so required; or, if the police think there is sufficient evidence, they may, under s. 170, forward the accused under custody to a competent magistrate or release the accused on bail in cases where the offences are bailable. In either case the police should submit a report of the action taken, under s. 173, to the competent magistrate who- considers it judicially under s. 190 and takes the following action :
(1) If the report is a charge-sheet under s. 170 it is open to the magistrate to agree with it and take cognizance of the offence under s. 190(1) (b); or to take the view that the facts disclosed do not make out an offence and decline to take cognizance. But he cannot call upon the police to submit a report that the accused need not be proceeded

against on the ground that there was not sufficient evidence.
(2) If the report is of the action taken under s. 169, then the magistrate may agree with the report and close the proceeding. If he disagrees with the report he can give directions to the police under s. 156(3) to make a further investigation. If the police, after further investigation submit a charge-sheet, the magistrate may follow the procedure where the charge-sheet under s. 170 is filed; but if the police are still of the opinion that there was not sufficient evidence against the accused, the magistrate may agree or disagree with it. Where he agrees, the case against the accused is closed. Where the magistrate disagrees and forms the opinion that the facts set out in the report constitute an offence, he .can take cognizance under s. 190(1)(c). The provision in s. 169 enabling the Police to take a bond for the appearance of the accused before a magistrate if so required, is to meet such a contingency of the magistrate taking cognizance of the offence notwithstanding the contrary opinion of the police. The power under s. 190(1)(c) was intended to Secure that
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offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or he police either wantonly or through a bona, fide error do not submit a charge-sheet. But the magistrate cannot direct the Police to submit a charge-sheet, because the submission of the report depends entirely upon the opinion formed by the police and not on the opinion of the magistrate. The magistrate, if he disagrees with the report of the police, can. himself take cognizance of the offence under s. 19O(1)(a) or (c), but, be cannot compel the police to form a particular opinion on investigation and submit a report according to such opinion. [672F-H; 673B; 676H; 677B-H; 678 A-H; 679A-C. E-H]
State of Gujarat v. Shah Lakhamshi, A.I.R. 1966 Gujarat 283 (F.B.); Venkatusubha v. Anjanayulu, A.I.R. 1932 Mad. 673; Abdul Rahim v. Abdul Muktadin, A.I.R. 1953 Assam 112; Amar Premanand v. State, A.I.R. 1960 M.P. 12 and A. K. Roy v. State of West Bengal, A.I.R. 1962 Cal. 135 (F.B.), approved. State v. Murlidhar Govardhan, A.I.R. 1960 Bom. 240 and Ram Wandan v. State, A.I.R. 1966 Pat. 438, disapproved.

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 218 of 1966.
Appeal by special leave from the order dated August 5, 1966 of the Patna High Court in Criminal Revision No. 1020 of 966,

AND

Criminal Appeal No. 238 of 1966.
Appeal by special leave from the judgment and order dated September 13, 1966 of the Patna High Court in Criminal Revision No. 40 of 1965.
B. P. Jha and Subhag Mal Jain, for the appellants (in Cr. A. No. 218 of 1966).
Nuruddin Ahmed and R. C. Prasad, for the appellants (in Cr. A. No. 238 of 1966).
U. P. Singh, for the respondents (in both the appeals).
The Judgment of the Court was delivered by
Vaidialingam, J. The common question, that arises for consideration, in these two criminal appeals, by special leave, is as to whether a Magistrate can direct the police to

submit a charge-sheet, when the police, after the investigation into a congnizable offence, had submitted a final report, under S. 173 of the Code of. Criminal Procedure (hereinafter called the Code). There is a conflict of opinion, on this point between the various High Courts in India. The High Courts of Madras, Calcutta, Madhya Pradesh, Assam and Gujarat have taken the view that the Magistrate has no such power, whereas, the Patna and Bombay High Courts have held a contrary view.

In Criminal Appeal No. 218 of 1966, the respondent, Dinesh Mishra, lodged a first information report, on June 3,

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1965, at the Rajoun Police Station, that he saw a thatched house, of one Uma Kant Misra, situated on the northern side of his house, burning, and the petitioners herein., running away from the scene,. The police made an investigation and submitted what is called a 'final report', under s. 173 (1) of the Code, to the effect that the offence complained of, was false. The Sub-Divisional Magistrate received this report on July 13, 1965, but, in the meanwhile, the respondent had filed what is termed 'a protest petition', challenging the correctness of the report submitted by the police. The Magistrate appears to have perused the police diary and, after hearing the counsel for the respondent and the public prosecutor, passed an order on October 27, 1965, directing the police to submit a charge-sheet, against the petitioners, herein. The petitioners challenged this order, without success, both before the learned Sessions Judge, Bhagalpur, and the Patna High Court. It was held by the High Court, following its previous decision, that the Magistrate has jurisdiction to call for a charge-sheet, when he disagrees with the report submitted by the police, under S. 173(1) of the Code. The petitioners, in this appeal, challenge these orders.

Similarly, in Criminal Appeal No. 238 of 1966, the second respondent therein, had lodged a written report, on February 24. 1.964, before the police, at Malsalami police station, that his daughter, Hiramani, was missing from February 21, 1964, and that the appellants in that appeal, had kidnapped her. A case under S. 366 I.P.C. was registered against them. The police, after investigation, submitted a final report to the Magistrate. to the effect that the girl concerned, had been recovered and that she bad stated that she had, of her own accord, eloped; and therefore the police stated that the case might be treated as closed.

The second respondent filed a 'protest petition' in Court, challenging the statements of the police and he also filed a complaint, under s. 498 I.P.C. The Magistrate, after a perusal of the case diary of the police, and hearing the lawyer for the appellants and the second respondent, as also the public prosecutor, passed an order directing the investigating officer to submit a charge-sheet, against the accused persons, under S. 366 I.P.C This order has been confirmed by the, learned Sessions Judge, as well as the Patna High Court. Here also, the Patna High Court, in accordance with its previous decision, held that the Magistrate had jurisdiction to pass the order, in question. All these orders are challenged by the appellants, in this appeal.

On behalf of the appellants, in Criminal Appeal No. 218 of 1966, Mr. Jha, learned counsel pointed out that when a final report is submitted by the police, under S. 173(1) of the Code,,

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stating that no case is made out, the Magistrate has no

jurisdiction to direct the police to file a charge-sheet. It may be open, counsel points out, to the Magistrate, to direct further investigation to be made by the police, or to treat the protest petition filed by the second respondent, as a complaint, and take cognizance of the offence and proceed, according to law., The scheme of Chapter XIV of the Code, counsel points out, clearly indicates that the formation of an opinion, as to whether or not there is a case to place the accused on trial, is that of the investigating officers, and the Magistrate cannot compel the police to form a particular opinion on the 'investigation and to submit a report, according to such opinion. In this case, there is nothing to show that the protest petition, filed by the second respondent, has befell treated as a complaint, in which case, it may be open to the Magistrate to take cognizance of the offence, but, in the absence of any such procedure being adopted according to counsel, the order of the Magistrate directing a charge-sheet to be filed, is illegal and not warranted by the provisions of the Code. These contentions have been adopted, and reiterated, by Mr. Nuruddin Ahmed, on behalf of the appellants, in Criminal Appeal No. 238 of 1966.

Both the learned counsel pressed before us, for acceptance, the views, as expressed by the Gujarat High Court, in its Full Bench judgment, reported as State of Gujarat v. Shah Lakhamshi(1). On the, other hand, Mr. U. P. Singh, learned counsel for the respondent, in Criminal Appeal No. 218 of 1966, has pointed out that the Magistrate has jurisdiction, in proper cases, when he does not agree with the final report submitted by the police, to direct them to submit a charge-sheet. Otherwise, counsel points out, the position will be that the entire matter is left to the discretion of the police authorities, and the Courts will be powerless, even when 'they feel that the action of the police is not justified. Quite naturally, counsel prays for acceptance of the views expressed by the dissenting Judges, in A. K. Roy v. State of W. B. (2) and by the Bombay and Patna High Courts, in the decisions reported as State v. Murlidhar Govardhan(3), and Ram Nandan v. State (4) , respectively.

In order, properly, to appreciate the duties of the police, in the matter of 'investigation of offences, as well as their powers, it is necessary to refer to the provisions contained in Chapter XIV of the Code. That chapter deals with 'Information to the Police and their Powers to investigate', and it contains the group of section beginning from s. 154 and ending with s. 176. Section 154 deals with information relating to the commission of a cognizable

R. 1966 Guj, 283. (2) A. 1. R. 1962 Cal. 135 (F. B.).
(3) A. 1. R. 1960 Bom. 240 (4) A. 1. R. 1966 Pat. 438.
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offence, and the procedure to be adopted in respect of the same. Section 155, similarly, deals with information in respect of noncognizable offences. Sub-s. (2), of this section, prohibits a police officer from investigating a non-cognizable case, without the order of a Magistrate. Section 156 authorizes a police officer, in-charge of a police station, to investigate any cognizable case, without the order of a Magistrate. Therefore, it wilt be seen that large powers are conferred on the police, in the matter of investigation into a cognizable offence. Sub-s. (3), of s. 156, provides for any Magistrate empowered under S. 190, to order an investigation. In cases where a cognizable offence is suspected to have been committed, the officer, in-charge of a police station, after sending a report to the Magistrate, is entitled, under S. 157, to investigate the

facts and circumstances of the case and also to take steps for the discovery and arrest of the offender. Clause (b), of the proviso to s. 157(1), gives a discretion to the police officer not to investigate the case, if it appears to him that there is no sufficient ground for entering on an investigation. Section 158 deals with the procedure to be adopted in the matter of"a report to be sent, under S. 157. Section 159 gives power to a Magistrate, on receiving a report under S. 157, either to direct an investigation or, himself or through another Magistrate subordinate to him, to hold a preliminary enquiry into the matter, or otherwise dispose of the case, in accordance with the Code. Sections 160 to 163 deal with the power of the police to require attendance of witnesses, examine witnesses and record statements. Sections 165 and 166 deal with the power of police officers, in the matter of conducting searches, during an investigation, in the circumstances, mentioned therein. Section 167 provides for the procedure to be adopted by the police, when investigation cannot be completed in 24 hours. Section 168 provides for a report being sent to the officer, incharge of a police station, about the result of an investigation, when such investigation has been made by a subordinate police officer, under Chapter XIV. Section 169 authorises a police officer to release a person from custody, on his executing a bond, to appear, if and when so required, before a Magistrate, in cases when, on investigation under Chapter XIV, it appears to the officer, in-charge of the police station, or to the police officer making the investigation, that there is no sufficient evidence or reasonable ground of suspicion, to justify the forwarding of the accused to a Magistrate. Section 170 empowers the officer, incharge of a police station, after investigation under Chapter XIV, and if it appears to him that there is sufficient evidence, to forward the accused, under custody, to a competent Magistrate or to take securtiy from the accused for his appearance before the Magistrate, in cases where the offence is bailable. Section 172 makes it obligatory on the police officer making an investigation, to maintain a diary recording the various particulars therein and in the
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manner indicated in that section. Section 173 provides for an investigation, under Chapter XIV, to be completed, without unnecessary delay and also makes it obligatory, on the officer, incharge of the police station, to send a report to the Magistrate concerned, in the manner provided for therein, containing the necessary particulars.

It is now only necessary to refer to S. 190, occurring in Chapter XV, relating to jurisdiction of criminal Courts in inquiries and trials. That section is to be found under the heading 'Conditions requisite for initiation of proceedings' and its sub-S.

(1) is as follows :

"(1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate and any other Magistrate specially empowered in this behalf, may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute 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."

From the foregoing sections, occurring in Chapter XIV, it will be seen that very elaborate provisions have been made for securing that an investigation does take place into a reported offence and the investigation is carried out within the limits of the law, without causing any harassment to the accused and is also completed without unnecessary or undue delay. But the point to be noted is that the manner and method of conducting the investigation, are left entirely to the police, and the Magistrate, so far as we can see, has no power under any of these provisions, to interfere with the same. If, on investigation, it appears to the officer, in-charge of a police station, or to the officer making an investigation, that ,,here is no sufficient evidence or reasonable grounds of suspicion justifying the forwarding of an accused to a Magistrate,, S. 169 says that the officer shall release the accused, if in custody, on hi-, executing a bond to appear before the Magistrate. Similarly, if on the other hand, it appears to the officer, in-charge of a police station, or to the officer making the investigation, under Chapter XIV, that there is sufficient evidence or reasonable ground to justify the forwarding of an accused to a Magistrate, such an officer is required, under S. 170, to forward the accused to a Magistrate or, if the offence is bailable, to take security from him for his appearance before such Magistrate. But, whether a case comes under S. 169, or under S. 170, of the Code, on the completion of the investigation, the police officer has to

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submit a report to the Magistrate, under s. 173, in the manner indicated therein, containing the various details. The question as to whether the Magistrate has got power to direct the police to file a charge-sheet, on receipt of a report under s. 173 really depends upon the nature of the jurisdiction exercised by a Magistrate, on receiving a report.

In this connection, we may refer to certain observations, made by the Judicial Committee in King Emperor v. Khwaja Nazir Ahmed(1) and by this Court, in H. N. Rishbud and Inder Singh v. The State of Delhi(2). In Nazir Ahmed's Case(1), Lord Porter observes, at 212, as follows

> "Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is, of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own

> function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under s. 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then."

These observations have been quoted, with approval, by this Court, in State of West Bengal v. S. N. Basak(3). This Court in Rishbud and Inder Singh's Case(1), observes, at p. 1156, as follows :

> "Investigation usually starts on information relating to the commission of an offence given to an officer incharge of a police station and recorded under sec-

(1) L. R. 71 1. A. 203. (2) [1955] 1. S. C. R. 115).
(3) A. 1. R. 1963 S. C. 447.
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> tion 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment or the facts and circumstances of the case. By definition, it includes 'all the proceedings under the Code for the collection of evidence conducted by a police officer'."

Again after a reference to some of the provisions in Chapter XIV of the Code, it is observed at p. 1157

> "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 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 of 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 filing of a charge-sheet under section 1 7 3. . . . It is also clear that the final step in the investigation viz., the formation of the opinion as to whether or no' there is a case to place the accused on trial is to be that of the officer in-charge of the police station."

We are referring to these observations for the purpose of emphasizing that the scheme of Chapter XIV, clearly shows that the formation of an opinion as to whether or not there is a case to place the accused on trial, has been left to the officer incharge of a police station. Bearing in mind these principles referred to above, we have to consider the

question that arises for consideration, in this case. The High Courts which have held that the Magistrate has no jurisdiction to call upon the police to file a charge-sheet, under such circumstances, have Tested their decision on two principles viz., (a) that there is no express provision in the Code empowering a Magistrate to pass such an order; and (b) such a power, in view of the scheme of
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Chapter XIV, cannot be inferred-vide Venkata Subha v Anjanayulu(1); Abdul Rahim v. Abdul Muktadin(2); Aman Premanand v. State(3); the majority view in A. K. Roy v. State of W. B.(1); and Stale of Gujarat v. Shah Lakhamshi(5). Or the other hand, the High Courts which have recognised such a power, rest their decision again on two grounds viz., (a) where a report is submitted by the police, after investigation, the Magistrate has to deal with it judicially, which will mean that where the report is not accepted, the Magistrate can give suitable directions to the police-, and (b) the Magistrate is given supervision over the conduct of investigation by the police, and there ore, such a power can be recognised in the Magistrate-vide State v. Murlidhar Goverdhan(6); and Ram Nandan v. State(7).
Though it may be that a report submitted by the police may have to be dealt with, judicially, by a Magistrate, and although the Magistrate may have certain supervisory powers, nevertheless, we are not inclined to agree with the further view that from these considerations alone it can be said that when the police submit a report that no case has been made out for sending up an accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. But, we may make it clear, that this is not to say that the Magistrate is absolutely powerless, because, as will be indicated later, it is open to him lo take cognizance of an offence and proceed, according to law. We do not also find any such power, under s. 173(3), as is sought to be inferred, in some of the decisions cited above. As we have indicated broadly the, approach made by the various High Courts in coming to different conclusions, we do not think it necessary to refer to those decisions in detail.
It will be seen that the Code, as such, does not use the ex-pression 'charge-sheet' or 'final report'. But it is understood, in the Police Manual containing Rules and Regulations, that a report by the Police, filed under s. 170 of the Code, is referred to as a 'charge-sheet'. But in respect of the reports sent under s. 169, i.e., when there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, it is termed variously, in different States, as either 'referred charge', 'final report', or 'Summary'.
In these two appeals, which are from the State of Bihar, the reports, under s. 169, are referred to as 'final report'. Now, the question as to what exactly is to be done by a Magistrate, on receiving a report. under s. 173, will have to be considered. That report may be inrespect of a case, coming under s. 170,
(1) A.I.R. 1932 Mad. 673. (2) A.I.R. 1953 Assam 112.
(3) A.I.R. 1960 M P. 12. (4) A.I.R. 1962 Cal. 135.
(5) A.I.R. 1966 Guj. 283. (6) A.I.R. 1960 Born. 240.
(7) A.I.R. 1966 Pat. 438.
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or one coming under s. 169. We have already referred to s. 190, which is the first section in the group of sections headed 'Conditions requisite for Initiation of Proceedings.' Sub-s. (1), of this section, will cover a report sent, under

s. 173. The use of the words 'may take cognizance of any offence', in sub-s. (1) of s. 190 in our opinion imports the exercise of a 'judicial discretion', and the Magistrate, who receives the report, under s.. 173, will have to consider the said report and judicially take a decision, whether or not to take cognizance of the offence. From this it follows that it is not as if that the Magistrate is bound to accept ,,the opinion of the police that there is a case for placing the accused, on trial. It is open to the Magistrate to take the view that the facts disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify an accused being put on trial. On either of these grounds, the Magistrate will be perfectly justified in declining to take cognizance of an offence, irrespective of the opinion of the police. On the other hand, if the Magistrate agrees with the report, which is a charge-sheet submitted by the police, no difficulty whatsoever is caused, because he will have full jurisdiction to take cognizance of the offence, under s. 190(1)(b) of the Code. This will be the position, when the report under s. 173, is a charge-sheet.

Then the question is, what is the position, when the Magis-trate is dealing with a report submitted by the police, under s. 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a 'final report'? 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. 1 5 6 (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 s. 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 s. 190(1) (c), notwithstanding the contrary opinion of the police, expressed in the final report.

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In this connection, the provisions of S. 169 of the Code, are relevant. They specifically provide that even though, on 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.

We have to approach the, question, arising for consideration in this case, in the light of the circumstances pointed out above. We have, already referred to the scheme of Chapter XXIV, as well as the observations of this Court in Rishbud and Inder Singh's Case(1) that the formation of the opinion as to whether or not there is a case to place the accused on

trial before a Magistrate, is 'left to the officer in-charge of the police station. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack; nor can any such powers be implied. There is certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of tile police, to take cognizance, under S. 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 s. 190(1) (c), on the ground that, after having due regard to the final report and the police records placed before him, be has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to, place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be under s. 170, being a 'charge-sheet', or under S. 169, 'a final report'. It is no

(1) [1955]1 S.C.R. 1150.

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doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because, the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. Thai will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report, either under s. 169, or under s. 170, depending upon the nature of the decision. Such a function has been left to the police, under the Code.

We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of ,the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

The question can also be consider from another point of view. Supposing the police send a report, viz., a charge-sheet, under s. 170 of the Code. As we have already pointed

out, the Magistrate is not bound to accept that report, when he considers the matter judicially. But, can he differ from the police. and call upon them to submit a final report, under s.169 ? In our opinion, the Magistrate has no such power. If he has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot certainly infringe upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.

Therefore, to conclude, there is no power, expressly or im-pliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under s. 169 of the Code, that there is no case made out for sending tip an accused for trial.

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In these two appeals, one other fact will have to be taken note of. It is not very clear as to whether the Magistrate, in each of these cases, has chosen to treat the protest petitions, filed by the respective respondents, as complaints, because, we do not find that the Magistrate has adopted the suitable procedure indicated in the Code, when he takes cognizance of an offence, on a complaint made to him. Therefore, while holding that the orders of the Magistrate, in each of these cases, directing the police to file charge-sheets, is Without jurisdiction, we make it clear that it is open to the Magistrate to treat the respective protest petitions, as complaints, and take further proceedings, according to law, and in the light of the views expressed by us, in this judgment.

Mr. Nuruddin Ahmed, learned counsel for the appellants in Criminal Appeal No. 238 of 1966, particularly urged that it is unnecessary to direct further proceedings to be continued, so far as his clients are concerned. Learned counsel pointed out that the police report before the Magistrate clearly shows that the girl, in question, who is stated to be above 19 years of age, has herself stated that she bad eloped, of her own accord and that if that is so, further proceedings against his clients, are absolutely unnecessary, to be continued. We are not inclined to accept these contentions of the learned counsel. As to whether an offence is made out or whether any of the appellants or both of them are guilty of the offences with which they may be charged, are all matters which do not require to be considered, by this Court, at this stage.

In the result, subject to the directions contained above, the orders of the Magistrate, directing the police to file a charge, will be set aside, and the appeals allowed, to that extent.

V.P.S. Appeals allowed.

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