PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
SK. BANNU AND SHANKAR

DATE OF JUDGMENT12/09/1980

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
REDDY, O. CHINNAPPA (J)

CITATION:
1981 AIR 22 1981 SCR (1) 694
1980 SCC (4) 286

ACT:
Code of Criminal Procedure, 1898-Section 195(1) (b) and (c) and Section 476-Scope of.
Words and phrases-"In or in relation to"-meaning of.

HEADNOTE:
Section 195(1)(b) of the Code of Criminal Procedure, 1898 provides that no Court shall take cognizance of any offence punishable under section 205 (among others) I.P.C. when such offence is alleged to have been committed in or in relation to any proceedings in any Court, except on the complaint in writing of such Court. Clause (c) of this sub-section provides that no Court shall take cognizance of any offence described in, among others, section 471 when such offence is alleged to have been committed by a party to any proceedings in any Court in respect of a document produced except on the complaint in writing of such Court. Section 476 Cr.P.C. provides that when any Criminal Court is, whether on application made to it or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195(1)(b) and (c) which appears to have been committed in or in relation to a proceeding in that court such court may make a complaint thereof and forward the same to a Magistrate First Class.

The prosecution alleged that in an application for release of a person arrested under the Bombay Prohibition Act on bail accused no. 2 identified the surety and that he attested the bail application. Accused no. 3 was the scribe of the bail application and the affidavit accompanying it. The Magistrate ordered his release on bail.

The case was transferred to another judicial magistrate who, when the accused failed to appear before him on the date of hearing, issued notice to the surety. The person to whom the notice was issued (the purported surety) appeared before the Magistrate and stated that he had never stood surety in the case, nor had he ever made an affidavit nor signed any papers in this regard and being a literate person there was no question of putting his thumb impression on the affidavit and bail bond.

Accused no. 1 who was later named by accused no. 2 as the real surety admitted before the trial Magistrate that

the bail application and the affidavit had been thumb marked by him at the instance of accused no. 2 and that he had no knowledge about the contents either of the application or of the affidavit. The Magistrate made a complaint to the judicial Magistrate, First Class for prosecution of the three accused for the offences under sections 205, 419, 465, 467 and 471 IPC. On finding that there was a prima facie case against all the accused the Magistrate committed them for trial.

695

The Additional Sessions Judge acquitted accused no. 3 but found accused no. 1 guilty of offence under sections 205, 419, 465 and 471 I.P.C. and accused no. 2 for offences under section 205 read with sections 109, 419, 465 and 471 read with section 109 I.P.C. and sentenced them variously.

On appeal by accused nos. 2 and 3 the High Court held that the proceedings before the transferee Magistrate were not the same proceedings or continuation of the same proceedings which were before the previous court in which or in relation to which the offence was committed within the meaning of section 476 read with section 195, Cr.P.C. and that such a complaint could have been made only by the magistrate who released the accused on bail prior to the initiation of the case or his successor in office in that court but since the transferee Magistrate was not the successor in office of the Magistrate granting the bail, the proceedings before the committing Magistrate were without jurisdiction.

Allowing the appeals,

^

HELD : 1. The High Court was not right in holding that the bail proceedings before the 'first' Magistrate were "distinct and different" from those initiated on police challan before the transferee Court and that, therefore, the latter was not competent to hold a preliminary inquiry under section 476 Cr.P.C. and/or to make a complaint for persecution of the respondents in respect of offences under sections 205, 419, 465, 467 and 471 IPC. [706A-C]

2. An offence under section 205 I.P.C. will fall within the ambit of clause (b) and an offence under section 471 IPC, will fall under clause (c) of section 195(1). The words "in or in relation to" occurring in clause (b) are not repeated in clause (c). But these words occur in section 476 both with reference to clause (b) and clause (c) of section 195(1). [701B].

3. The settled position on the interpretation of these provisions is that the bar in section 195(1)(b) does not apply if there is no proceeding in any court at all when the offence mentioned in section 195(1) had been committed. In other words, the section contemplates only proceedings pending or concluded and not in contemplation. [701H].

In the instant case, the forged bail-bond and the false affidavit were presented in bail proceedings before the 'first' Magistrate. That Magistrate had jurisdiction to try the case which was then under investigation. While considering a bail application of a person accused of an offence under investigation of the police, the Magistrate acts as a court, the proceedings in the bail application being judicial proceedings. [702B].

Kamalapati Trivedi v. State of West Bengal A.I.R. 1979 S.C. 777 relied on.

4. The bail proceedings before the 'first' Court could not be viewed in isolation but had to be taken as a stage in and part of the entire judicial process, the second stage of which commenced on presentation of the challan by the police

in the court of the magistrate for an enquiry or trial of the accused person to whom the bail had been granted. [702G].

5. The very terms of the bail bond in the instant case show that they were intended to be a preliminary part of the proceedings of inquiry or trial before the magistrate commencing with the presentation of a charge-sheet under section 173 Cr.P.C. against the accused. This being the real position, the bail proceedings before the 'first' magistrate and the subsequent proceedings before
696
the transferee magistrate commencing with the presentation of the challan by the police for the prosecution of the accused in the prohibition case could not be viewed as distinct and different proceedings but as stages in and parts of the same judicial process. Neither the time lag between the order of bail and the challan, nor the fact that on presentation of the challan, the case was not marked to the 'first' Magistrate but was transferred under section 192 of the Code to the transferee magistrate, would make any difference to the earlier and subsequent proceedings being parts or stages of the same integral whole. If the earlier proceedings before the 'first' court and the subsequent proceedings before the transferee court were stages in or parts of the one and the same process, then it logically follows that the aforesaid offences could be said to have been committed "in or in relation to" the proceedings in the Court of the transferee Magistrate also, for the purpose of taking action under section 476 of the Code. [703D-H].

6. The rationale behind decided cases is that if the two proceedings, one in which the offence was committed and the other, the final proceedings in the same or a transferee court are, in substance, different stages of the same integrated judicial process, the offence can be said to have been committed "in relation to" the proceedings before the Court to which the case was subsequently transferred or which finally tried the case. By the same token, the offences under sections 205 and 471 Penal Code in the present case can be viewed as having been committed "in relation to" the proceedings before the court of transferee magistrate to whom the case was transferred for disposal. Therefore, the transferee magistrate was competent to make a complaint in respect of the offences, after conducting a preliminary inquiry under section 476, Cr.P.C. [704F-H].

In the instant case, it cannot be disputed that the bail proceedings before the 'first' magistrate were judicial proceedings before a court, although such proceedings took place at a stage when the offence against the accused, who was bailed out, was under police investigation. [705G].

Nirmaljit Singh Hoon v. The State of West Bengal & Ors., A.I.R. 1972 S.C. 2639 distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 282-283 of 1974.

From the Judgment and Order dated 19-4-1973 of the Bombay High Court (Nagpur Bench) Nagpur in Criminal Appeal Nos. 216 and 243 of 1971.

J. L. Nain and M. N. Shroff for the Appellant.

J. C. Batra (Amicus Curiae) for the Respondent.

The Judgment of the Court was delivered by

SARKARIA, J.-These two appeals by the State of Maharashtra are directed against a common judgment, dated

April 19, 1973, of the High Court of Bombay, Nagpur Bench, Nagpur. Both will be disposed of by this judgment. They arise out of these facts:
697

Three persons, namely, Shankar, Sk. Bannu and Mohamad Nazir were tried for offences punishable under Sections 205, 419, 465, 467 and 471 of the Indian Penal Code, on the basis of a complaint made on August 12, 1978 by Shri R. K. Karandikar, Judicial Magistrate, First Class, Akola, under Section 476 read with Section 195 of the Code of Criminal Procedure. Sk. Bannu, accused 2 was, at the relevant time, serving as a Clerk to an Advocate at Akola. Mohamad Nazir, accused 3, is the son of Sk. Bannu. Accused 1, Shankar, was a milkman residing at Dabki Road, Akola.

On October 25, 1968, in respect of offences under Section 85(1)(2) and (3) of the Bombay Prohibition Act, one Deolal Kishan was arrested. He was produced before Shri L. G. Deshpande, Judicial Magistrate (First Class), Akola, and was remanded to custody till November 2, 1968.

On November 1, 1968, an application was made before that Court for releasing Deolal Kishan. Along with that application, an affidavit was filed which purported to have been sworn by one Gulabrao Rupchand Tikar as a surety. This affidavit was sworn before the Senior Clerk (P.W. 2) and accused 2, Sk. Bannu is alleged to have identified him as Gulabrao and attested that application for this purpose. The Senior Clerk accordingly accepted what they stated and he made the necessary endorsement on the affidavit. Thus, on the basis of that affidavit, Deolal Kishan was released on bail on November 1, 1968. The Bail Application and the affidavit were scribed by accused 3.

The case against Deolal Kishan was transferred on April 20, 1969 to the Court of Mr. Karandikar, Judicial Magistrate (First Class), Akola, before whom it came up for hearing on May 12, 1969. On that date, Deolal Kishan did not appear. Consequently, the Court issued a non-bailable warrant against him for his arrest and production. Notice was also issued to the surety, Gulabrao Rupchand Tikar (P.W.3). Gulabrao appeared before the Magistrate on. June 2, 1969 in response to the notice and filed a reply in writing (Ex. 25/A) contending that he had never stood as surety for the accused Deolal Kishan; and that he did not make any affidavit, nor did he sign the application or the affidavit or the bail bond. According to him, he was literate and could sign his name, while the application and the affidavit, in question, bore thumb-impressions of the surety. Gulabrao denied that he swore any affidavit for standing surety of Deolal Kishan. Thereupon, the Magistrate recorded the statement of Gulabrao and initiated an inquiry. He called Mohd.
698
Nazir, accused 3, the scribe of the bail application, and recorded his statement. He also called accused 2, Sk. Bannu, and directed him to produce the real surety on June 10, 1969 as the Magistrate was satisfied on the inquiry made by him that the person named in the bail application as the surety was not the real surety.

On November 9, accused 3, Mohd. Nazir, made an application to the Magistrate on behalf of his father, accused 2, that the real name of the surety was Shankar Kishan Kawitkar. Thereupon, the Magistrate, on June 10, 1969, issued summons to accused 1, Shankar Kishan Kawitkar. The latter appeared in response to the summons on June 17, 1969. The Magistrate recorded his statement (Ex. 29), in which he admitted that the bail application and the

affidavit had been thumb-marked by him at the instance of accused 2, and that he had no knowledge about the contents of the application and the affidavit.

On the preceding facts, the Magistrate made a complaint to the Judicial Magistrate (First Class), Akola, for prosecution of the three accused persons in respect of the aforesaid offences. The complaint came up before Shri P. N. Panchawadkar, Judicial Magistrate, who after holding an inquiry under Section 207A of the Code of Criminal Procedure, recorded the evidence of the material witnesses and finding that there was a prima facie case against all the accused. Accordingly, he committed them for trial to the Court of Session.

The case came up for trial before the Additional Sessions Judge, who, after recording the prosecution evidence, came to the conclusion that there was no case against accused 3 and acquitted him. He found that accused 1, Shankar was guilty of an offence under Section 205 of the Indian Penal Code and convicted him under that Section and sentenced him to suffer rigorous imprisonment for three years and a fine of Rs. 1,000, or, in default of payment of fine, to six months further rigorous imprisonment. Accused 1 was further convicted in respect of offences under Sections 419,465 and 471, Penal Code, and was sentenced to two years' rigorous imprisonment on each count, with a direction that the sentences on all the counts, would run concurrently. Accused 2, Sk. Bannu was convicted under Section 205 read with Section 109 of the Indian Penal Code and sentenced to three years' rigorous imprisonment and a fine of Rs. 1,000, or, in default, to suffer six month's further rigorous imprisonment. He was further found guilty of the offences under Sections 419, 465 and 471 all read with Section 109, Penal Code, and sentenced to two years' rigorous imprisonment on each count, with a direction that the sentences would run concurrently.

699

Against the judgment of the learned Additional Sessions Judge, Shankar and Sk. Bannu preferred an appeal before the High Court. The High Court held that the proceedings before Shri Karandikar are not the same proceedings or continuation of the same proceeding which was before Shri L. G. Deshpande, the previous court, in which or in relation to which the offence is said to have been committed within the meaning of Section 476 read with Section 195, Criminal Procedure Code; that the investigation stage is quite a distinct proceeding than the one which came to be transferred on the file of Shri Karandikar, it being a regular trial. In this view of the matter, the High Court concluded:

> "We are of the view that such a complaint could have only been made by Mr. L. G. Deshpande who had released the accused on bail prior to the initiation of the case or his successor-in-office in that Court. So far as these proceedings in which the accused were released on bail by Mr. L. G. Deshpande are concerned, Mr. Karandikar cannot be said to be the successor-in-office of Mr. L. G. Deshpande."

On this reasoning, the High Court held that the complete proceedings before the Committing Magistrate were without jurisdiction, and by a writ quashed the same. In the result, the appeals of Shankar and Sk. Bannu were allowed and their convictions were set aside. The High Court, however, granted a certificate under Article 134 of the Constitution that the case was fit for appeal to this Court.

The question that falls for consideration in this case

is, whether Shri Karandikar, Judicial Magistrate who made the complaint for prosecution of the accused in respect of offences under Sections 205, 419, 465, 467 and 471, Penal Code, was competent to initiate the proceedings within the meaning of Section 195 read with Section 476 of the Code of Criminal Procedure, 1898. The relevant provisions of that Code are as under:

"S. 195 (1) No Court shall take cognizance-

(a).....

(b) of any offence punishable under any of the following sections of the same Code, namely, Ss. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to any proceedings in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

700

(c) of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1), the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate:

Provided-

(a) where appeals lie to more than one Court, the appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

The material part of Section 476 of the Code of 1898 is as follows:-

"S. 476. Procedure in cases mentioned in Section 195.-

(1) When any Civil, Revenue or Criminal Court, is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court,

and shall forward the same to a Magistrate of the First Class having jurisdiction..... "

701

Section 476A gives powers to the superior court to complain when the subordinate court has omitted to do so.

It may be noted that an offence under Section 205, Penal Code, as in the present case, will fall within the ambit of clause (b) and an offence under Section 471, Penal Code will fall under clause (c) of sub-section (1) of Section 195. The words "in or in relation to" which occur in clause (b) are not repeated in clause (c). But these words occur in Section 476 both with reference to clause (b) and clause (c) of Section 195(1). The interpretation of these words is not res integra. There was a conflict of judicial opinion in regard to the meaning and ambit of these words. One line of decisions took the view that the words "in relation to" are vide enough to cover a proceeding in contemplation though it may not have begun at the date of the commission of the offence, but was subsequently instituted in court. This view is no longer good law in view of the pronouncement of this Court in M. L. Sethi v. R. P. Kapur. That case related to the commission of an offence under Section 211, Indian Penal Code. The question was whether the expression "in or in relation to", according to clause (b) of sub-section (1) of Section 195 is applicable to cases where there can even in future be a proceeding in any court in relation to which the offence under Section 211, Indian Penal Code may be alleged to have been committed. The Court answered this question in the negative, with these observations:

"When examining the question whether there is any proceeding in any court there are three situations that can be envisaged. One is that there may be no proceeding in any court at all. The second is that a proceeding in a court may actually be pending at the point of time when cognizance is sought to be taken of the offence under s. 211, I.P.C. The third is that, though there may be no proceeding pending in any court in which or in relation to which the offence under s. 211, I.P.C. could have been committed, there may have been a proceeding which had already concluded and the offence under s. 211 may be alleged to have been committed in, or in relation to, that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under s.195(1) (b) would come into operation."

Now, thus, the settled position is that the bar in Section 195(1)(b) does not apply if there is no proceeding in any court at all when the offence mentioned in the aforesaid clause (1) has been

702

committed. In other words, the Section contemplates only the proceedings pending or concluded and not in contemplation.

In the instant case, it is common ground that the forged bail-bond and the false affidavit were presented in the court of Shri Deshpande, Magistrate in bail proceedings. Shri Deshpande, it is not disputed before us, had also the jurisdiction to try the case which was then under investigation with the police. While considering a bail application of a person accused of an offence under investigation of the police, the Magistrate acts as a 'court', the proceedings in the bail application being judicial proceedings. This position has been clarified recently by this Court in Kamalapati Trivedi v. State of West Bengal. It was held by this Court (per majority) that

while deciding the question of bail, the Magistrate cannot but be regarded as a Court acting judicially, notwithstanding the fact that an offence of the accused is still under investigation by the police or has progressed to the stage of an inquiry or trial by the Magistrate. It was added that the taking cognizance of any offence by a Magistrate under Section 190 is not a condition precedent for him to be regarded as a Court. It was further explained that an order of bail passed by a Magistrate, also, decides the rights of the State and the accused and is made by the Magistrate after the application of his mind and therefore in the discharge of his judicial duties which factor constitutes it an act of a Court. It was further observed:

> ".. all orders passed by a Magistrate acting judicially (such as orders of bail and those passed under sub-section (3) of s. 183 of the Code discharging an accused or orders taking cognizance of the offence complained of) are parts of an integral whole which may end with a definitive judgment after an inquiry or a trial, or earlier according to the exigencies of the situation obtaining at a particular stage, and which involves, if need be, the adducing of evidence and the decision of the Magistrate on an appreciation thereof. They cannot be viewed in isolation and given a character different from the entire judicial process of which they are intended to form a part."

Considered in the light of the above enunciation in Kamalapati Trivedi's case, the bail proceedings before the Court of the Magistrate, Shri Deshpande could not be viewed in isolation but had to be taken as a stage in and part of the entire judicial process the second stage of which commenced on presentation of the challan by the Police in the Court of the Magistrate for an enquiry or trial of the
703
accused person to whom the bail had been granted. Indeed, the surety-bond, which is alleged to have been forged in the name of Gulabrao Roopchand Tikar, in terms, was intended to be used for procuring the attendance of the accuses, by the Court before whom the chargesheet under Section 173, Cr.P.C. might be presented by the Police for inquiry or trial. The material part of the surety-bond dated November 1, 1968, rendered into English, reads as under:

> "I undertake that the said Deolal Kishan, Maratha, shall be present before the Court of the Judicial Magistrate. First Class, Akola, or,..... before any other Magistrate conducting the preliminary inquiry .....to answer the charges, and on his failure to do so, I do hereby bind myself to pay the sum of Rs. 500/- to the Government by way of fine."

Under the terms of the Personal Bond, accompanying the surety bond, also, the executant had undertaken to appear before the Judicial Magistrate, First Class, Akola or before any other Magistrate who would hold an inquiry into or trial of charges framed against him. In other words, the very terms of these bail-bonds show that they were intended to be a preliminary part of the proceedings of inquiry or trial before the Magistrate commencing with the presentation of a charge-sheet under Section 173, Cr.P.C. against the accused. This being the real position, the bail proceedings before Shri Deshpande, and the subsequent proceedings before Shri Karandikar commencing with the presentation of the challan by the Police for the prosecution of Deolal Kishan, could not be viewed as distinct and different proceedings but as stages in and parts of the same judicial process. Neither the time-lag between the order of bail and the challan, nor

the fact that on presentation of the challan, the case was not marked to Shri Deshpande but was transferred under Section 192 of the Code, to Shri Karandikar, would make any difference to the earlier and subsequent proceedings being parts or stages of the same integral whole. Indeed, the commission of the offences under Sections 205, 419, 465, 467 and 471, Penal Code, came to light only when Shri Karandikar, on the basis of the forged surety-bond in question, attempted to procure the attendance of the accused. If the earlier proceedings before Shri Deshpande and the subsequent proceedings before Shri Karandikar were stages in or parts of the one and the same process-as we hold they were-then it logically follows that the aforesaid offences could be said to have been committed "in or in relation to" the proceedings in the Court of Shri Karandikar, also, for the purpose of taking action under Section 476 of the Code.

704

In Behari Lal v. Sheikh Abdul Qadir Hamyari, it was held by the High Court of Lahore that if a case or proceeding in which the offence is committed has been before various courts, all the courts have the jurisdiction to complain, but normally, the court which finally tried the case would be the proper court to make a complaint. The Calcutta High Court in Bhiku's case, held that if a false complaint made to a Magistrate is transferred under Section 192 of the Code of Criminal Procedure to another Magistrate, the latter who had seisin of the case, can make a complaint.

In Maromma & Ors. v. Emperor, it was held by the High Court of Madras that a false statement made during police investigation before a Magistrate and recorded by him under Section 164, Cr. P.C. regarding an offence of murder, which is triable only by a Sessions Court, must be held to be "in relation to" the trial in that Court and a complaint can be made for the prosecution of the persons giving that false statement for an offence under Section 193, Penal Code, by the Sessions Court. Similarly, in Athi Ambalayaran & Ors. v. Emperor, a Division Bench (consisting of Waller & Pandalai JJ.) held that a statement made by a witness at the preliminary enquiry leading up to the trial in the Sessions Court is to be regarded as having been "in relation to" the subsequent proceedings in the Sessions Court. Consequently, the Sessions Judge has jurisdiction to direct prosecution of the person making that false statement even if he finds that the statement made before the Committal Court of the Magistrate, was false.

The rationale behind these decisions is that if the two proceedings, one in which the offence is committed and the other, the final proceedings, in the same or a transferee court are, in substance, different stages of the same integrated judicial process, the offence can be said to have been committed "in relation to" the proceedings before the Court to whom the case was subsequently transferred or which finally tried the case. By the same token, the offences under Sections 205 and 471, Penal Code, in the present case can be viewed as having been committed "in relation to" the proceedings before the Court of Shri Karandikar to whom the case was transferred for disposal. Thus considered, Shri Karandikar was competent to make a complaint in respect of the aforesaid offences, after conducting a preliminary inquiry under Section 476, Cr. P.C.

705

Before concluding, we think it necessary to notice and distinguish the decision of this Court in Nirmaljit Singh Hoon v. The State of West Bengal & Ors. In that case, the

complaint was filed before the Chief Presidency Magistrate in respect of a cognizable offence of criminal breach of trust and cheating. The Magistrate without taking cognizance of the case, sent that complaint under Section 156(3) of the Code to the police for investigation. During that investigation or inquiry by the police, the alleged forged receipt was produced by the accused. It was held that it could not be argued that this forged document was produced in a proceeding before the Court of Chief Presidency Magistrate, although the forged document formed part of the record of the case which part of the record of the case which went to the Chief Presidency Magistrate together with the report of the police. The reason for so holding was that investigation ordered by a Magistrate under Section 156(3) is an investigation made by a police officer in his statutory right under sub-sections (1) and (2). Moreover, the Magistrate sending such a complaint for investigation under Section 156(3) cannot be said to have taken cognizance of the offence, and no proceeding could be said to have been commenced before him, of which the inquiry by the police could be said to be part and parcel. Further, it cannot be said that the police officer acting under Section 156(3) was a delegate of Chief Presidency Magistrate or that the investigation by him was an investigation by or on behalf of the Magistrate. On these premises, the Court held that the production of the forged receipt in the course of such an investigation was not production in a proceeding before the Chief Presidency Magistrate, so as to attract the ban under Section 195(1)(c).

In the instant case, it cannot be disputed that the bail proceedings before Shri Deshpande were judicial proceedings before a court, although such proceedings took place at a stage when the offence against the accused, who was bailed out, was under police investigation. Thus, the facts in Nirmaljit Singh's case were materially different. The ratio of that decision, therefore, has no application to the case before us.

For all the foregoing reasons, we are unable to agree with the High Court that the bail proceedings before Shri Deshpande were "distinct and different" from those which were initiated on police challan in the Court of Shri Karandikar and, therefore, the latter was not competent to hold a preliminary inquiry under Section 476,

706

Cr. P.C. and/or to make a complaint for prosecution of the respondents, herein, in respect of the offences under Sections 205, 419, 465, 467 and 471, Penal Code. We, therefore, allow this appeal set aside the impugned judgment and send the case back to the High Court with the direction that it should restore the appeals of Sk. Bannu and Shankar to their original numbers and after hearing the parties, decide the same afresh on merits, according to law.

P.B.R. Appeals allowed.

707