whose conduct I do not find wholly commendable, were it not for the fact that the petitioner's case was carefully examined by the Deputy Inspector-General of Police and also by the Inspector-General of Police."

In my opinion, however, the real order of the dismissal still remains that of the Superintendent of Police and the mere fact that the Deputy Inspector-General or the Inspector-General of Police had an opportunity to go into the case at a later stage for the purposes of deciding appeal and revision cannot alter the position materially and cannot bestow upon the order of dismissal any better sanctity. Once it is found that the order of dismissal was passed in disregard of the constitutional safeguards provided by the Constitution, the said order must evidently be quashed.

I would, therefore, accept this appeal and quash the order of dismissal. No order as to costs.

BHANDARI, C.J.—I agree.

Bhandari, C. J.

REVISIONAL CRIMINAL.

Before Falshaw, J.

SHRI RAM KRISHANA DALMIA,—*Petitioner*

versus

STATE,—*Respondent.*

Criminal Revision No. 601(C) 1957.

1957

Aug., 27th

Code of Criminal Procedure (V of 1898)—Sections 155, 173, 207-A and 208—Report regarding commission of cognizable offence—Non-cognizable offence found during investigation—Section 155(f)—Applicability of—Police Officer, whether debarred from investigating such an offence—Section

173—Report under—Mention of the commission of cognizable as well as non-cognizable offences—Case, whether instituted on a police report—Sections 207-A and 208—Difference between.

Held, that a police officer who is empowered to investigate a cognizable offence must be deemed to be authorised to investigate and mention in his report any incidental offences which arise out of the facts relating to the main offence, even where such offences are non-cognizable and would fall under section 155 if reported separately and simply as non-cognizable offences and so would require the authority of a Magistrate to investigate the offences.

Held also, that the provisions of section 155(1), Criminal Procedure Code, must be regarded as applicable only in those cases where the information given to the police relates solely to a non-cognizable offence. Where the information is given to the police of a cognizable offence and the case is registered regarding that offence, the investigating officer while investigating the cognizable offence cannot possibly be debarred from investigating any subsidiary and non-cognizable offence which may arise out of the case and can also include these latter cases in his main report under section 173. The case so presented will be considered as a whole to be instituted on a police report, thus attracting the provisions of section 207-A and not of section 208.

Held further, that the difference between sections 207-A and 208 is that the summary proceedings under section 207-A are to be adopted in any proceeding instituted on a police report forwarded by the police under section 173 of the Code, whereas the procedure provided in section 208 is to be adopted in any proceeding instituted otherwise than on a police report.

Naresh Chandra Das and another v. *Emperor* (1), *King Emperor* v. *Sada* (2), *Emperor* v. *Shivaswami Guruswami* (3), distinguished.

Petition for revision of the order of Shri Ganda Singh Bedi, Additional Sessions Judge, Delhi, dated the 22nd May, 1957, affirming that of Shri D. D. Sharma, Additional District Magistrate, Delhi, dated the 6th May, 1957, holding

(1) A.I.R. 1942 Cal. 593
(2) I.L.R. 26 Bom. 150 F.B
(3) A.I.R. 1927 Bom. 440

that the request for treating the recital of matters of a non-cognizable nature in the police charge-sheet, under section 173, Cr. P.C. cannot be treated as a complaint to be taken cognizance of under section 190(1)(a), Cr. P.C., and the entire police report must be taken cognizance of as such under section 190(1)(b)/173, Cr. P.C., and that the procedure to be adopted in the commitment proceedings shall be the one prescribed in section 207-A, Cr. P.C., and further rejecting the request of the defence to adopt the procedure prescribed in section 208, Cr. P.C.

VED VYAS and D. R. KALIA, for Petitioner.

H. R. KHANNA and R. L. MEHTA, for Respondent.

JUDGMENT

FALSHAW, J.—This revision petition filed on behalf of Mr. Ram Krishana Dalmia has arisen in the following circumstances. Falshaw, J.

On the 21st of September, 1955, a first information report was drawn up and a case registered under section 409, Indian Penal Code, by the Special Police Establishment, Delhi, in which the principal allegation was that the present petitioner had committed criminal breach of trust in respect of an enormous sum of money over Rs. 2,00,00,000 belonging to one of the companies in which he had a controlling interest. The petitioner was arrested very promptly and released on bail, but it was only after a long investigation that, on the 26th of November, 1956, the Special Police Establishment presented a charge-sheet under section 173, Criminal Procedure Code, in the Court of the Magistrate against the petitioner and eight other accused on various charges, including sections 409 and 477-A, 409 read with 120-B, 477-A read with 110 and 477-A read with 120-B of the Indian Penal Code. The sanction necessary under section 196-A, Criminal Procedure Code, for the prosecution of the accused had been obtained in the form of an order from the Chief Commissioner of Delhi sanctioning their

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prosecution under sections 409 and 477-A, read with 120-B, Indian Penal Code.

The nature of the case is such that for its proper trial it will have to be committed to the Sessions Court, and the question has arisen at the instance of the accused at a preliminary stage of the proceedings in the Court of the Magistrate whether the commitment proceedings should be in the summary form provided in section 207-A, Criminal Procedure Code, or whether the full commitment proceedings provided in section 208, which are on the old lines of commitment proceedings before the Criminal Procedure Code was amended in 1956, should be adopted, the latter being claimed by the accused as their legal right.

The difference between the two sections is that the summary proceedings under section 207-A, are to be adopted in any proceeding instituted on a Police report forwarded by the Police under section 173 of the Code, whereas the procedure provided in section 208 is to be adopted in any proceeding instituted otherwise than upon a Police report,

In view of the facts stated above it hardly seems to me to be possible to maintain for a moment that the case against the petitioner and his co-accused is not a proceeding instituted on a Police report received by the Magistrate under section 173. The point raised, however, which has been rejected by the learned Magistrate against whose order this revision petition has been filed, is that although an offence under section 409, Indian Penal Code, is undoubtedly cognizable by the Police, an offence under section 477-A, is non-cognizable, and reliance is placed on the provisions of section 155 of the Criminal Procedure Code. Sub-section (1) provides that when information is given to an officer-incharge of police station of the commission

of a non-cognizable offence, he shall enter in a book to be kept as aforesaid (i.e., as provided in section 154 for the recording of the information regarding cognizable offence) the substance of such information and refer the informant to the Magistrate. Sub-section (2) provides that no Police Officer shall investigate a non-cognizable case without the order of the Magistrate of the first or second class having power to try such case, and sub-section (3) provides that any Police Officer receiving such order may exercise the same powers in respect of the investigation except the power to arrest without warrant as an officer-in-charge of a police station may exercise in a cognizable case.

It is not in dispute in this case that the Special Police Establishment at no stage obtained permission from any Magistrate to investigate the non-cognizable offence under section 477-A, Indian Penal Code, and the argument is that since the provisions of section 155(2) are mandatory, the Police report, at least as far as it relates to the offence under section 477-A, cannot be treated as being a report under section 173, Criminal Procedure Code, but must be treated as a mere complaint, and, therefore, since the part of the case which relates to the offence under section 477-A cannot be readily separated from the case as a whole, the case should be treated as instituted otherwise than on a Police report and the proceedings should follow the course laid down in section 208, Criminal Procedure Code.

At first sight, however, it seems to me that the provisions of section 155(1), Criminal Procedure Code, must be regarded as applicable only in those cases where the information given to the Police relates solely to a non-cognizable offence, and that where information is given to the Police of a cognizable offence and the case is registered regarding that

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offence, the investigation officer, while investigating the cognizable offence cannot possibly be debarred from investigating any subsidiary and non-cognizable offence which may arise out of the facts, and can also include these latter cases in his main report under section 173.

A number of cases were cited on behalf of the petitioner, but it does not seem to me that they advance his argument very far. The first of these is *Naresh Chandra Das and another* v. *Emperor* (1). Briefly the facts in that case were that two accused were convicted of an offence under section 9 of the Opium Act after being captured by some Police Officers in a chase involving motor cars, the actual opium involved in the case being said to have been recovered in consequence of certain statements made by the accused after their arrest regarding the throwing of the bag containing the opium out of the car in which they were riding in the course of the chase. The decision in the case apparently turned mainly on the admissibility of the statements alleged to have been made to the Police Officers by the accused, and a good deal of the discussion in the judgment is concerned with section 27 of the Evidence Act. One aspect of the matter which arose for consideration, however, was whether the statements could be said to be made in the investigation of a case under Chapter XIV, Criminal Procedure Code, and it was held that Chapter XIV applies equally to cases, cognizable or non-cognizable; only in non-cognizable cases the Police Officer is not to take up the investigation without the order of a Magistrate, but when he does take up the investigation in non-cognizable cases the investigation which he holds becomes an investigation under Chapter XIV, provided the requirements of section 155(3) are complied with. However, section 155(3) is limited

(1) A.I.R. 1942 Cal. 593.

in its application to a Police Officer receiving an order of a Magistrate and if a Police Officer is otherwise authorised to investigate a non-cognizable case that power of investigation will not by itself attract the provisions of that Chapter. Thus a Police Officer may be authorised to investigate non-cognizable cases under the Opium Act, but this power of investigation does not necessarily bring the investigation itself under Chapter XIV. It will be seen that only a very limited aspect of the matter was under consideration in that case.

The next case is *King Emperor* v. *Sada* (1). The point involved in that case was whether, on dismissing a complaint by the Police Constable against a man for committing an offence under section 61(j) of Bombay Act IV of 1890 obeying a call of nature in a street as being vexatious, the Magistrate was competent to order the complainant to pay Rs. 10 as compensation to the accused under section 250, Criminal Procedure Code. It was held in these circumstances that there is no section in the Criminal Procedure Code which empowers the Police Officer to make of his own motion any report to a Magistrate in a non-cognizable case, and hence where he files a formal complaint in such a case he cannot be said to make a report and his complaint falls within the definition of "complaint" in section 4(h) of the Criminal Procedure Code, and, therefore, where a Police Officer appears before a Magistrate and makes a formal complaint of a non-cognizable offence which is found to be false, the Magistrate can order him under section 250, Criminal Procedure Code, to pay compensation to the accused. The other case is *Emperor* v. *Shivaswami Guruswami* (2), in which Fawcett and Patkar, JJ., followed the view that a report of a non-cognizable

(1) I.L.R. 26 Bom. 150 F.B

(2) A.I.R. 1927 Bom. 440

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offence made by a Police Officer to a Magistrate should be treated as a complaint and that the expression "report by any Police Officer" in section 190(1)(b) does not cover a report in a case where the Police Officer is expressly prohibited from investigating and reporting. It would be noted that in all these cases where was simply a case of a non-cognizable offence and no question whatever arose of such an offence being linked in an investigation with a cognizable offence, and no such case has been cited before me even on behalf of the State.

The plain fact appears to be that nobody has even thought of raising this particular objection before. There must be hundreds of cases which have been investigated under section 409, Indian Penal Code, in which it has come to light in the course of the investigation that the main offence, i.e., embezzlement, has been facilitated by the falsification of books of account or other records, and consequently in the Police report under section 173, Criminal Procedure Code, the case has been brought against the accused under both of these sections. In the case of another kind of offence there must be hundreds or thousands of cases in which persons have either been killed or seriously injured and cases have been registered and investigated under sections 302 or 304 or 326, Indian Penal Code, in which also persons other than those killed or seriously injured have received minor injuries, and cases have then been investigated and mentioned in the report under section 173, under section 323, Indian Penal Code, which relates to a non-cognizable offence, but I have never yet heard it suggested that it was necessary for the Police either investigating a case of embezzlement, or a case of death or serious injury, that they should also have gone to a Magistrate in the course of the main investigation to obtain his permission to include in the investigation minor

offences arising out of the main offence such as falsification of accounts in the case of embezzlement or simple hurt in the case of death or serious injury. In the circumstances I am of the opinion that a Police Officer, who is empowered to investigate a cognizable offence must be deemed to be authorised to investigate and mention in his report any incidental offences which arise out of the facts relating to the main offence, even where such offences are non-cognizable and would fall under section 155, if reported separately and simply as non-cognizable offences and so would require the authority of a Magistrate to investigate that offence, and I am not prepared to hold in the present case that the case as a whole is not instituted on a report of the Police presented to the Magistrate under section 173 of the Code.

I may add, however, that even if I had been of the opinion that formal permission from the Magistrate was necessary in the present case to investigate the case so far as it relates to offence under section 477-A, Indian Penal Code, I should have had no hesitation whatever in adopting the principle which has been adopted by Courts in a number of cases, under the Prevention of Corruption Act, offences under which can only be investigated with written permission from the Magistrate by a Police Officer above a certain rank. This practice has been, where the objection by the accused to the jurisdiction of the Court on account of the fact that the Police Officer who investigated the case was not authorised to do so, had been taken at an early stage, to order the necessary authority to be supplied in writing by a Magistrate followed by a formal rechecking of the investigation proceedings, and if I thought it necessary I should have passed an order of that kind in the present case. As I have said, however, I do not consider it to be necessary and I accordingly dismiss the revision petition.