
(1955) 01 AHC CK 0004

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No's. 1352, 1353 to 1357 and 1697 to 1720 of 1951

Kali Charan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-01-1955

Acts Referred:

Constitution of India, 1950 — Article 22(1)
Criminal Procedure Code, 1898 (CrPC) — Section 167, 170, 173, 177, 179
Penal Code, 1860 (IPC) — Section 420, 468, 471, 474

Citation : AIR 1955 All 462 : (1956) 26 AWR 45 : (1955) CriLJ 1146

Hon'ble Judges : Raghubar Dayal, J

Bench : Single Bench

Advocate : P.C. Chaturvedi, for the Appellant; A.K. Kirty, for Government Advocate, for the Respondent

Judgement

Raghubar Dayal, J.—These are 30 cases on the applications by Kali Charan under Sections 491 and 498, Criminal P. C. The facts appearing from the affidavits and the papers sent by the Additional District Magistrate, Farrukhabad are as follows.

2. Kali Charan applicant was arrested at Sikandrabad district, Bulandshahr on the 9th of January 1951 in connection with 3 warrants issued from the court of Shri R.K. Garg, Judicial Officer, Farrukhabad on the report of Shri Zahir Hussain, Inspector, C. I. D., I. B., Uttar Pradesh, Lucknow in three cases under Sections 420 468 471 474 and 120B, I. P. C. relating to crimes Nos. 90, 91 and 92 of police station Kotwali, Fatehgarh. The Sessions Judge, Bulandshahr released him on interim bail directing him to present himself at Fatehgarh within a week. The applicant complied with the order and Shri R.K. Garg, City Magistrate, Fatehgarh then ordered his release on the 18th of January in each case on bail on his executing a personal bond for Rs. 10,000/- with two sureties each in the like amount in spite of objections of the police that two dozen cases were under investigation against him. The result was that the applicant had to furnish surety worth Rs. 60,000/- to get his release in the three cases. He furnished the

required security which after due verification was accepted by Shri R.K. Garg on the 29th of January 1951. On the 30th of January 1951 an application for cancellation of bail was presented to the same Magistrate. It was prayed that the accused be not released on bail. The Magistrate refused to cancel bail. This application is in file No. 5 against Behari Lal co-accused.

3. The same day, i. e., on the 30th of January another application by, Shri Zahir Hussain, Inspector, C. I. D. was presented to the same Magistrate. This application purported to be an application in case "State v. Behari Lal alias Mukat Lal and others" and after praying for remand of Behari Lal up to the 12th of February 1951 stated in paragraph 2:

"Kalicharan, Hemchandra and Ram Narain are also in jail under remand and they have also to be put up for identification. Therefore it is further requested that a remand upto 12-2-1951 may also be kindly sanctioned for these three accused." On this report Shri K.K. Garg granted remand. This started the series of unjustified remands which were granted on the 15th and the 26th of February, 14th and 28th of March, 11th and 26th of April, 10th and 18th of May and 5th and 18th of June 1951. It is noticeable that the remand on the 26th of April was granted even in the absence of any report from the Inspector of the C. I. D. who presumably was in charge of the investigation. The remand was granted on the report of the court-moharrir which was just submitted to the Magistrate by the Special Prosecuting Officer. The Court-moharrir's report simply stated that remand had not been received and it is hoped that 14 days" remand be given. It was very irregular of the Magistrate to grant remand on such a report.

4. How Kali Chaiau happened to be in jail as mentioned in this application is a mystery. No application by the police is on either of the two records, viz., Case No. 1 against Kali Charan and Case No. 5 against Behari Lal in which file the remand orders against Kali Charan had been passed. It is alleged in the affidavit by the applicant that before he could be really released on the furnishing of the required security in the three cases of Farruktiabad district he was ordered to be detained in custody in connection with three other cases for similar offences which were crimes Nos. 173 of 1949 of district Mathura, crime No. 25 of 1950 of Madras and crime No. 20 of 1950 of Madras. No information about this seems to have been given to Shri H.K. Garg who granted bail, as the order-sheet dated the 2nd of February in file No. 1 against Kali Charan shows that he had been released on bail. These warrants have not been submitted to this Court. The three warrants for interim custody dated the 18th of January 1951 which are signed by V.D. Chaturvedi, another Judicial Officer of Fatehgarh have been received. Two of them purport to be from the court of the Collector, Mathura and the third from the Collector, Fatehgarh, These give no date of appearance. The file against Kali Charan or Behari Lal contains no papers making a request for the issue of these warrants. It is not clear why Shri Chaturvedi signed these warrants and how they happened to be put up before him when Shri Garg was dealing with the cases.

5. On the 13th of February an application was filed in the court of the Additional Magistrate, Fatehgarh on behalf of Kali Charan saying that when the release warrant reached the jail the jail authorities refused to release him on the plea that he had been arrested in some other case or cases. This would be on the 27th of January 1951 as Shri R.K. Garg accepted the sureties that day and he must have issued the release warrants that day. This means that Kali Charan did not know of his arrest and detention in connection with three other cases and that the proceedings in those three cases were not taken in a straightforward and fair manner, an inference which finds support from the fact already mentioned that these detention warrants were not signed by Shri R.K. Garg but by Shri Chaturvedi who probably knew nothing about the case of Kali Charan, and about his being ordered to be released on bail. It was further alleged in this application that Kali Charan's applications for bail in the other three cases were rejected by the Sessions Judge due to want of particulars. It was prayed that Kali Charan be supplied with full particulars of the case in which he was under arrest, then the Additional District Magistrate called for a report from the Prosecuting Inspector. The prosecuting Inspector submitted his report which after perusal was ordered to be filed by the Additional District Magistrate on the 15th of February. This report is interesting and may be quoted here. It is:

"This Kali Charan with some others has committed offences under Sections 420 468 474 and 120B I. P. C. in U. P., C. P., Bombay, Madras and other States. The complicity of this Kalicharan is believed in three cases of Farrukhabad, two of Mathura, 3 of Jhansi and 2 of Agra, two of Jabbalpur, 16 of Madras.

Kali Charan has been arrested in connection with all these cases. 24th February 1951 has been fixed for the identification of this accused, and three others who have been arrested in this connection. After the identification proceedings I will be in a position to say that in how many of these cases he would be dealt with.

These are inter-provincial cheats and the cases against them are being investigated by the C. I. D. of the different States.

The money involved in these cases is said to be about Rs. 40,00000/-. They are regular cheats and they practise cheating even in obtaining the release on bail. Behari Lal brother of this Kali. Charan had gone underground in 1947 after obtaining his release on bail."

The report evaded the crucial information which was sought in the application filed on behalf of Kuli Charan. It gave no particulars of the cases-in which he had been arrested. It should have been said that he was arrested in connection with such and such crimes and under the orders of such and such officer or court. Instead of giving the particulars of the three cases in connection with which he was supposed to be in detention the report repeated all the general allegations which were urged before Shri H.K. Garg in connection with the submission for refusing bail. The most unfortunate part of this report is mis-statement of fact and that is that Kali Charan had been arrested in connection with all these cases.

Upto the 14th of February, when this report was written, only six warrants had been issued against the accused. He was ordered to be released on bail in three of those cases. Therefore his detention was in connection with three cases whose precise details the Prosecuting Inspector should have given. It is wrong to say that Kali Charan had been arrested in connection with the 28 cases detailed in the first paragraph of the report. It is very unfortunate that the Additional District Magistrate and Shri R.K. Garg to whom this report with the order of the Additional District Magistrate seems to have been sent did not catch the inaccuracy of statements and that the latter was not reminded of his own order to release Kali Charan in three of these cases and his not issuing any orders for arrest or detention in connection with the other cases.

6. Kali Charan, however, seems to have managed to secure particulars of the cases and to have successfully applied for bail. The Sessions Judge ordered his release on similar bail on the 4th of May 1951. He was, however, unable to file the necessary sureties for a further sum of Rs. 60,000/-and had to remain in jail.

7. The applicant therefore has filed six miscellaneous cases Nos. 1352 to 1357 of 1951.

8. On the 7th of May Kali Charan was again served with warrants in connection with 24 other cases. These cases relate to crimes of Madras, Coimbatore, Cochin, Travancore, Calicut, Bangalore, Jessore, Mathura and Jhansi. These warrants have also been not received by this Court. Instead the Court has got 24 warrants for interim custody. They purport to emanate from the courts of the Collectors of the districts to which the cases relate. They are addressed to the jailors of the same districts and not to the jailor of Farrukhabad jail. They mention the court of the District Magistrate of the district in which the accused was to be produced and by mistake mention the District Magistrate of Mathura in 4 warrants which related to the cases of Madras. They are all signed by Shri V.D. Chaturvedi, Judicial Officer. No date for appearance of the accused is fixed in any of these warrants. No application for the issue of the warrants of arrest or for the issue of interim warrants of custody is on the record. What I have said in connection with the issue of the other 3 warrants applies equally well to the issue of these warrants. This second attempt of the police in securing detention orders against the accused soon after he was ordered to be released by the Sessions Judge is a very strong corroboration of the suggestion for the accused which can be accented without much difficulty that the conduct of the police was mala fide and was solely directed to keep the accused in jail in spite of orders of competent courts for his being released from custody. Such an inference is further strengthened from the fact that if all those cases were the result of a conspiracy for which a charge u/s 120B was framed there would be only one case u/s 120B and not 30 cases and that the other individual incidents could have been tried in the same case. There, therefore, did not exist any justification for the issue of 30 separate warrants concerning each incident.

9. In each of these cases the Sessions Judge required Kali Charan, by his order

dated the 16th of July to furnish security in personal bond of Rs. 10,000/- with sureties each for Rs. 5,000/-. Thus he had to furnish a further security of a total amount of Rs. 2,40,000/-. He was unable to furnish the required security and therefore filed the other 24 cases on the 18th of July 1951.

10. Of these thirty cases, three, viz., Criminal Misc. No. 1355 of 1951, Criminal Misc. No. 1356 and Criminal Misc. No. 1357 of 1951 did not relate to any illegal detention or to any excessive bail. In fact, these applications related to the three cases of the Farrukhabad district itself in which the accused had already secured order for his release on the furnishing of the necessary security. These cases were instituted merely to get, if necessary, such order of bail which may avail the applicant in all these 30 cases without in any way making it impossible for him to furnish bail and thus to create a situation in which the order for his release on bail be not effective. In view of the opinion I have formed about the validity of the arrest and detention of the application with the other 27 cases I need say no more about these three cases as no action is necessary in these cases.

11. It is said in the affidavit filed in the first six cases that the case for the prosecution is that a bogus unregistered firm by the name Raniawarup Govindram was brought into existence at Farrukhabad whose proprietors were alleged to be two fictitious persons Govind Ram and Gopal Das. The said firm sold many forged and bogus railway receipts with respect to pulses and other grains which were alleged to have been booked to the various firms in different parts of the country. The 27 cases mentioned above are alleged to be in connection with these 27 transactions. It is alleged that the applicant and other persons were responsible for these crimes. It was further alleged in the affidavit that on the prosecution allegations the case against the applicant would be a case of conspiracy and would be one case with regard to all the transactions. Therefore only one bail should have been demanded. A counter-affidavit was filed on behalf of the State in cases Nos. 1352 to 1354 of 1951. Therein it was mentioned as regards the case that the accused was a member of a gang of inter-provincial cheats who were accused in over two dozen cases of cheating, it is said, by forging railway receipts and cashing them through banks involving several lacs of rupees and that different cases were being investigated by different officers and could not be considered as one case.

12. Similar allegations were made in the affidavit filed with the later 24 cases. The State did not file any counter-affidavit in them.

13. Two points are urged for the applicant. One is that his arrest and detention in these 27 cases under the orders of the City Magistrate, Farrukhabad are illegal. The other is that if his detention is not illegal the bail required is of such an excessive amount that it is impossible for the applicant to furnish it and that therefore in order to make the bail order an effective one the amount of bail required should be appreciably reduced, I need not say anything on the second question as I agree with the first contention.

14. It may be mentioned here that during the hearing it became necessary to get a knowledge of the facts relating to the arrest and remands in greater detail and with greater precision. The necessary papers were summoned from the Magistrate. The files sent here do not contain any papers which can be of great help in this connection and do not include the warrants issued for the arrest of the applicant in the 27 cases relating to crimes in districts other than Farrukhabad. The arguments continued several days and though someone connected with the investigation came to help the State counsel, neither a counter-affidavit giving full facts was filed by the State nor the State counsel seems to have been posted up with those facts. The result is that the Court does not know anything precise about the cases against the applicant, about the places where reports against the applicant were lodged, the action taken by the police or the Magistrate in the various places and the communications which the respective police or the Magistrates of those places sent to the police or the Magistrate at Farrukhabad. The importance of such information would be apparent from what will follow. I cannot help remarking that this omission on the part of the State is not a matter for credit to the prosecution specially in a case concerning the deprivation of a person of personal liberty.

15. The first contention for the applicant is that the applicant was not furnished with the grounds of his arrest and that the non-furnishing of the grounds amounted to contravention of Sub-section (1) of Article 22 of the Constitution. On this point I am inclined to the view that the mention in the warrant about the accused being wanted in cases for certain offences is sufficient compliance with the requirements of Sub-section (1) of Article 22 of the Constitution. The ground for arrest is simply an order of the court which is passed in a case relating to a certain accusation against the person arrested. I, therefore, do not see any force in this contention.

16. The other contention is that the warrants for arrest of the accused in connection with the crimes said, to be committed in districts, other than Farrukhabad should have been issued by the Magistrates of those districts and could not have been issued by the City Magistrate at Farrukhabad. The warrants actually issued against the applicant are not before the Court, but the allegation to this effect in the affidavit of the applicant has not been controverted in the counter-affidavits filed in the three cases or by any counter-affidavit in the other 24 cases. This allegation should therefore be accepted that the warrants were issued by the City Magistrate, Farrukhabad. Obviously the City Magistrate, Farrukhabad had no jurisdiction to issue warrants for the arrest of a person wanted in cases pending before Magistrates in other districts and in connection with crimes committed in those districts.

17. Offences under Sections 420 and 471, I. P. C. being cognizable the police of Farrukhabad could arrest the applicant on receiving from the police of the various districts requisition for arresting him showing the offence or other cause for which the arrest was to be made, it is appeared therefrom that the person might

lawfully be arrested without a warrant by the officer who issued the requisition. There is nothing on the record to show that any such requisition was received by the police. There is also, not on the record any such matter from which it can be inferred that the Farrukhabad police knew that the applicant had been concerned in any cognizable offence committed in other district or that there was a reasonable complaint or credible information or reasonable suspicion against him of having been so concerned. In the absence of any such information any arrest by the police of Farrukhabad without any warrant of the Magistrate concerned will also be illegal. It follows therefore that even if it be assumed that the arrest of the applicant was not under any warrant signed by the City Magistrate, Farrukhabad in connection with crimes committed in districts other than Farrukhabad but was by the police of Farrukhabad, the arrest and the consequent detention would not be legal.

18. Even if it be assumed that the arrest in connection with such cases was not illegal, it is argued, the detention of the applicant after the 15 days of his arrest, i.e., after the 2nd of February 1951 and again after the 22nd of May 1951, would be illegal as a remand for further detention had not been ordered by the Magistrate having jurisdiction in these cases but by the City Magistrate of Farrukhabad who certainly had no jurisdiction to try cases of districts other than Farrukhabad.

19. The various sections justifying the detention of a person arrested are Sections 61, 167 and 344, Criminal P. C. Section 61 simply provides for detention in the custody of a police officer for a period not longer than 24 hours and directs that the detention should not exceed this period in the absence of a special order of a Magistrate u/s 167, Criminal P. C. u/s 167, Criminal P. C. the Magistrate to whom the accused is forwarded can authorise the detention of the accused in such custody as he thinks fit for a term not exceeding 15 days in the whole irrespective of the fact whether that Magistrate has or has not Jurisdiction to try the case. If such Magistrate has no jurisdiction and considers further detention unnecessary he is to forward the accused to the Magistrate having jurisdiction. It is only under this section that a Magistrate having no jurisdiction to try a case can authorise detention. The City Magistrate, Farrukhabad who had no jurisdiction to try the cases of Madras and places other than Farrukhabad had therefore no jurisdiction to remand the accused to custody for a period longer than 15 days in the whole, and that therefore the remand to custody of the accused by the City Magistrate, Farrukhabad for a period subsequent to the 2nd February and again subsequent to the 7th of May 1951 was illegal as the last batch of 24 warrants was executed on the 7th of May.

20. Section 344, Criminal. P. C. is the other section which authorises a Magistrate to remand the accused if in custody. This section is:

"(1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, the Court may, if it thinks (sic) by order in writing stating the

reasons therefor, from time to time, 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 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.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Explanation: It 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." It is to be noted that this section gives the power of remand to the Court and not to any Magistrate as such. This means that the power under this section can be exercised by a court. This would be in the nature of things after the court had taken cognizance of the offence. The same should appear from the provision that primarily this section authorises a court to postpone commencement of or adjourn any inquiry or trial in certain circumstances and as a corollary when the court does any of these things, it was given the power to remand the accused by warrant if in custody. The stage of the inquiry or trial will also arrive after the court had taken cognizance of the offence. It should appear, therefore, that in view of what is said in Sub-section (1) of section 344, Criminal P. C. the power of remanding the accused to custody under this section is to be exercised by a court after it had taken cognizance of the offence.

21. The explanation to Section 344, Criminal P. C., mentions that a remand, when there be already sufficient evidence against the accused and there would be chances of securing further evidence, would be on a reasonable cause. It is not said in the explanation that during the course of mere police investigation prior to its submitting a report for the purpose of the court taking cognizance against the accused remand can be ordered under the provisions of Section 344, Criminal P. C., of course the conduct of the police in trying to secure further evidence would be a part of the investigation. There is nothing in the Code to suggest that the police cannot investigate an offence after it has submitted a report for the Magistrate to take cognizance of an offence against the accused. It follows, therefore, that submission of such a report and the continuation of the investigation are not inconsistent and that both the steps can be taken provided the court does not pass any final order in the case till the investigation has been completed. If a Magistrate can grant remand u/s 344, Criminal P. C., during the course of police investigation and in the absence of a report by the police for taking cognizance of the offence, I am of opinion that the strict condition in Section 107, Criminal P. C., that the Magistrate to whom the accused is forwarded by the police can remand him to custody for a period not longer than 15 days in the whole, would be nullified. The whole scheme of these sections relating to remands seems to be that for the purpose of investigation the remand should ordinarily be for a period not longer than 15 days and that when remands

for a longer period are found to be necessary by the police it should approach the Magistrate having jurisdiction over the case and that that Magistrate on receipt of such report should decide judicially whether further remand be given or not. The moment he decides judicially, the Magistrate may be said to act as a court and may also be said to have taken cognizance of the offence. He can therefore act u/s 344, Criminal P. C. As" cognizance of an offence can be taken by a Magistrate having jurisdiction, to inquire or try it, it is only such Magistrate who can act u/s 344, Criminal P. C. In this view of the matter also the City Magistrate, Farrukhabad could not have granted the remand for the custody of the accused u/s 344, Criminal P. C., as he had no jurisdiction over these cases.

22. It is not necessary that cognizance of an offence be taken on a police report contemplated by Section 173, Criminal P. C., after the completion of investigation.

23. Sections 169 and 170, Criminal P. C., provide for the steps to be taken by the police officer with respect to an accused in custody. The expressions used in these sections are different from the expressions used in Section 173 of the Code which provides for what the investigating officer is to do after the completion of the investigation. It follows, therefore, that those two sections do not necessarily refer to the stage after the completion of the investigation though it may be that in some cases the contingencies referred to in this section may synchronise with completion of the investigation. These two sections will not come into play if the accused be not in police custody and had been either released on bail or had been confined in jail. Section 169 provides that if upon investigation it appears to the investigating officer that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate such officer shall if such person is in custody release him on his executing a bond with or without sureties, to appear if and when so required before a Magistrate empowered to take cognizance of the offence on police report and try or commit him for trial. This bond is taken, I suppose, for the contingency that the Magistrate may not accept such report and may like to proceed against the accused on the basis of the evidence collected by the police but considered insufficient by it. If the accused be not in police custody but be in jail, the police will have to request the Magistrate to order his release.

24. Section 170 of the Code is:

"(1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to

a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond, to appear before the Magistrate as thereby directed and prosecute or give evidence as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(4).

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report."

The accused is to be forwarded to a Magistrate empowered to take cognizance of the offence upon a police report when there be sufficient evidence or reasonable ground about his having committed the offence. The police officer is also required under Sub-section (2) to send weapons or other articles to the Magistrate and to bind over the witnesses for their appearance before the Magistrate as they be directed in the bond and to give evidence against the accused. The relevance of such a provision is not apparent from the present section but becomes obvious when what used to be Sub-section (4) of this section till 1926 be considered. The repealed sub-section was:

"The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody."

This should mean that the provision of Section 170 originally contemplated commencement of the proceedings against the accused when he appeared before the Magistrate either in custody or on bail. In view of the provisions of Section 170, Criminal P. C., the accused was to be before the Magistrate and the witnesses were to be there. The only object contemplated by the section could be that the Magistrate was to start the case against the accused on the police report. Though not expressly provided for in Section 170, Criminal P. C., it can be presumed in the natural course of things that the investigating agency which had already obtained sufficient evidence would ultimately submit a charge sheet against the accused. The possibility of subsequent release without charge sheet could not be contemplated in the presence of sufficient evidence with the police. It may also be noted that Section 190, Sub-section (1) Clause (b) as existing upto 1928 authorised the Magistrate concerned to take cognizance of any offence upon police report of such facts and did not restrict his power to take cognizance

to the police report in writing. That may be a reason why no mention of the submission of a report is made in Section 170. The Magistrate could take cognizance on receiving a report by the police to the effect that such and such accused is being forwarded as sufficient evidence has been obtained against him about his committing a certain offence and that witnesses have been bound over to appear before the Magistrate on such and such date. I am, therefore, of opinion that the forwarding of the accused to the Magistrate u/s 170 of the Code of Criminal Procedure was for the purpose of the Magistrate taking cognizance against the accused and that it was in such a contingency that the Magistrate was to grant further remand u/s 344, Criminal P. C., in order that further evidence might be secured against the accused. If the period of 15 days allowed to the police for investigation u/s 167, Criminal P. C., did not result in its obtaining sufficient evidence against the accused it would not justify the remand of the accused to custody on the basis of the provisions of section 170 or section 344, Cr. P. C. The accused must be released from custody. At best he may be released on obtaining a bond from him for appearance whenever required, though a bond without any definite date for appearance would be valueless. I am, therefore, of opinion that remand u/s 344, Criminal P. C., can be given by a Magistrate having jurisdiction over the case and after the police had obtained sufficient evidence. I would also add that it is to be given after the submission of police report in writing that the court should take cognizance of the offence against the accused. Such report might not be a report contemplated u/s 173, Criminal P. C., which report is to be submitted after the completion of the investigation.

25. I have been referred to -- " Emperor Vs. Sooba and Others . In this case the contention that a police investigation could in no case involve the detention of the accused in custody for more than fifteen days, was not accepted. It" was also not accepted that a Magistrate could not take cognizance of the offence under Clause (b) of Section 190 (1) in order to remand the accused to custody u/s 344, Criminal P. C., until a report prescribed u/s 173, Criminal P. C., had been Forwarded. It was observed at page 618;

"This question of procedure has been argued at length before me, and it must be admitted that the law, as laid down in the Code of Criminal Procedure, is not altogether free from ambiguity."

It was further observed at page 619:

"If the investigation is not complete and the report is not ready, but the accused may be forwarded on reasonable: ground of suspicion, for what purpose is he forwarded? Clearly I think for the purpose set forth in Section 344, that the court may remand the accused to custody if it considers that there are reasonable grounds for doing so." What I have said above is not in conflict with what is laid down in this case, except that I am of opinion that the purpose of forwarding the accused to a Magistrate u/s 170, Criminal P. C., is not to obtain remand u/s 344, Criminal P. C., merely, but is for the Magistrate to take cognizance of the offence.

He may or may not commence inquiry or trial till investigation be completed. There can be no unreasonableness in the Magistrate's taking cognizance of the offence after sufficient evidence has been obtained. Reasonableness of taking cognizance in the presence of reasonable grounds about the accused having committed the offence may be not so apparent. To my mind there can be such reasonable grounds for suspicion only when there is sonic good evidence against the accused. That evidence may not be considered sufficient by the police to bring home the guilt to the accused. But the police can never be the final judge of the sufficiency of the evidence obtained during the investigation. Sufficiency of evidence to bring home the guilt to the accused would be determined by the court. I, therefore, see no unreasonableness in the Magistrate's taking cognizance of the offence even in cases in which sufficient evidence had not been obtained by the police if such evidence had been obtained which furnished reasonable ground for considering that the accused had committed the offence or reasonable ground for prosecuting the accused for the commission of the offence. We are familiar with "such provisions in the Code which justify a Magistrate framing a charge on the basis of prima facie evidence. Further, if the purpose of Section 170, Cri-minpl P. C., was merely to send the accused for obtaining remand there could not have been any point in taking bonds" from witnesses to appear before the Magistrate on a certain date as provided in Sub-section (2) of Section 170, Criminal P. C.

26. The view I have expressed above finds support from what is expressed in -- " Bholanath Das and Others Vs. Emperor, . It may be mentioned that doubt about the correctness of this view was expressed in the Superintendent and Remembrancer of Legal Affairs, Government of West Bengal v. Bidhindra Kumar Roy AIR 1949 Cal 143 (C). ,

27. It may further be mentioned here that in none of the cases for remand it had been mentioned that the police was in possession of sufficient evidence against the accused. The existence of sufficient evidence is a condition precedent for the police acting u/s 170, Criminal P. C., and for making a request to the Magistrate to take cognizance of the offence. It is said in paragraph 10 of the affidavit in Miscellaneous Case No. 1698 of 1951 that so far 76 witnesses have been produced for the purpose of identifying the applicant in connection with the various offences, that 30 of them were from the Farrukhabad district and that not a single witness could identify the applicant. Similar assertion was made in para. 10 of the affidavit filed in Criminal Miscellaneous case No, 1352 of 1951 with the difference that up to that time 64 witnesses had been produced. The counter-affidavit filed in that case did not question this statement. In fact the learned counsel appearing for the State did not question the accuracy of the fact that no witness could identify the applicant. It appears from the statements of the learned counsel for the State that the case against the applicant would depend on the evidence that signatures on certain, documents were of Kali Charan. So far the prosecution is not in possession of the expert's opinion on the point. It would appear therefore that there is no evidence against the applicant

so far in possession of the investigating officer and that therefore the various remands given by Shri R.K. Garg who could not have applied his mind to the facts of the case as the case diaries were not submitted to him and the accused was not summoned to state what objection he had to granting further remands and the application requesting for remand just mentioned that further dates for identification had been fixed without intimating what the result of the previous identification proceedings had been, were illegal. It follows, therefore, that even if it be held that Shri R.K. Garg, Magistrate, Farrukhabad could have granted remands u/s 344, Criminal P. C., in connection with these cases relating to places other than Farrukhabad he had no material before him on which the remand orders can be said to have been given after due deliberation and that the remand orders in the absence of any evidence against the accused were absolutely unjustified.

28. It is conceded by the learned counsel for the State that the various offences under investigation against Kali Charan could be tried only at the places where those offences were committed and that those offences could be tried at Farrukhabad in view of these offences being along with an offence. u/s 120B, I. P. C., as some acts in furtherance of the conspiracy were done at Farrukhabad. It may be so. But, as already indicated, the offence of conspiracy cannot give rise to 30 cases of conspiracy. In that view of the matter there can be only one case against Kali Charan. Already three cases have been registered against him at Farrukhabad and he has been ordered to be released on bail in these three cases. No more cases could have been registered against him with respect to the same conspiracy and no more warrants to of arrest or detention could have been legally issued against him.

29. It was further argued for the State that the court at Farrukhabad could have jurisdiction over these cases of other places in view of Sections 179 and 182, Criminal P. C. The various offences under investigation against the accused would be complete the moment they were committed at any place. Such consequences at other places which could be the result of such conduct cannot be an ingredient of those offences and therefore Section 179; Criminal P. C., cannot apply in view of -- " Kashi Ram Mehta Vs. Emperor . The offences under Sections 420 468 471 and 474, I. P. C., are not such which can be committed in more than one place and therefore" Section 182, Criminal P. C., would not apply.

30. I am, therefore, of opinion that the detention of the applicant in connection with the 27 crimes alleged to have been committed in places other than Farrukhabad is illegal. I, therefore, order that he be released from custody which is in connection with these cases. I make it clear that his release from custody in connection with the three cases of Farrukhabad district will be in pursuance of the bail already furnished by him.

31. A copy of this judgment be sent to the Chief Secretary to the Government for information and such action as be considered necessary.