

(1972) 05 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous No. 1151 of 1970

Krishna Bahadur

APPELLANT

Vs

Parmanand Gorwara and Others

RESPONDENT

Date of Decision : 24-05-1972

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 379, 380, 406, 409

Citation : (1973) 6 PLJR 217

Hon'ble Judges : G.N. Prasad, J

Bench : Single Bench

Advocate : B.P. Samaiyar in Cr. Misc. No. 1151 of 1970, Messrs Braj Kishore Prasad No. II, Yogesh Chandra Verma and A.K. Sinha No. II in Cr. Misc. No. 1237 of 1970, Messrs Sankat Haran Sinha, Beni Madhay Prasad Singh and Dayanand Singh No. 2 in Cr. Misc. No. 1410 of 1970, Meesrs R.S. Sinha and Rajendra Sinha in Cr. Misc. No. 1537 of 1970, Messrs Lalit Mohan Prasad and Ashwini Kumar in Cr. Misc. No. 1733 of 1970 and Messrs Shankar Prasad and Uma Shankar Prasad in Cr. Misc. No. 2096 of 1970, for the Appellant; Bishwanath Agrawal and Hari Lal Agrawal in Cr. Misc. No. 1151 of 1970, Messrs K.P. Verma, Government Advocate and Ramesh Chandra Sinha in Cr. Misc. No. 1237 of 1970, Messrs Bishwanath Agrawal and Hari Lal Agrawal in Cr. Misc. No. 1410 of 1970, Messrs K.P. Verma, Government Advocate and Ramesh Chandra Sinha in Cr. Misc. No. 1537 of 1970, Messrs Bishwanath Agrawal and Hari Lal Agrawal in Cr. Misc. No. 1733 of 1970 and Messrs R.S. Sinha, Rajendra Sinha, H.L. Agrawal, Bishwanath Agrawal and K.P. Verma, Government Advocate in Cr. Misc. No. 2096 of 1970, for the Respondent

Final Decision : Allowed

Judgement

G.N. Prasad, J.—These six miscellaneous applications u/s 561 A of the Code of Criminal Procedure, hereinafter referred to as the Code, arise out of the same matter and have, accordingly, been heard together. The petitioners, numbering nine in all, figure as accused in a Complaint Case No. 196 of 1969 wherein cognizance was taken by the Sub-divisional Magistrate of Patna City (Shri J. Jha) on the 23rd December, 1969, in regard to offences under Sections

379/406/409/420/467 and 120B, Indian Penal Code, said to have been committed between the 6th and the 22nd December, 1966. After taking cognizance and without recording any order as contemplated by Section 204 of the Code, the learned Sub-divisional Magistrate by the same order transferred the case to the Court of Shri I. N. Sinha, Munsif Magistrate, Patna City for "favour of disposal". The petitioners have not only assailed the order of the learned Sub-divisional Magistrate dated the 23rd December, 1969, as illegal and without jurisdiction, but have also characterised the entire proceeding before the learned Munsif Magistrate as illegal and without jurisdiction on the ground that he was not empowered to take cognizance of an offence u/s 190(1)(a) nor was he the successor-in-office, either permanent or temporary, of the Sub-divisional Magistrate of Patna City so as to be competent to issue processes against the accused persons u/s 204 of the Code. The petitioners, therefore, pray that the entire proceeding taken against them in the complaint case aforesaid should be quashed. Among the petitioners, Krishna Bahadur (the sole petitioner in Cr. Misc. No. 1151 of 1970) is the proprietor of a firm known as the Central Commercial Corporation. Two of the petitioners in Criminal Miscellaneous No. 1410 of 1970, namely Baldeo Prasad Kejriwal and Narmada Devi Kejriwal are the partners of M/S. Bhagwan Das Baijnath. Narmada Devi Kejriwal and Ratna Devi Kejriwal (the third petitioner in Cr. Misc. No. 1510 of 1970) are partners of another firms known as M/S Binod Textiles. Badri Das Agrawal and Lakhan Lal Agarwal, the two petitioners in Criminal Miscellaneous No. 1537 of 1970, are the proprietors of a firm of Commission Agents known as M/s Badri Das and Sons. Srikant Rai alias Shrimant Kumar Rai, the sole petitioner in Criminal Miscellaneous No. 1733 of 1970, was at the relevant time the Godown Keeper of the Central Bank of India, Patna City. Likewise, Gauri Shankar Bhagat, the sole petitioner in Criminal Miscellaneous No. 1237 of 1970, was the Godown Keeper of the Bank of Bihar Ltd. Patna City Branch, of the same Branch of the Bank of Bihar Ltd. Kedar Nath Verma, the sole petitioner in Criminal Miscellaneous No. 2096 of 1970, was then the Manager.

2. It appears from the petition of complaint which was filed on the 23rd December, 1969 by Parmanand Gorwara, Sub-Agent of the Central Bank of India at the relevant time, that one of the types of business which used to be done by the Bank was a business of advancing credit facilities or loan to respectable parties on the security or hypothecation of goods in trade, commonly known as Cash Credit account. The duty of the Godown Keeper was to receive the goods brought to the godown by the limit holders, to keep them in the godown under lock and key and to sign a storage invoice in token of having received and stored the goods in the godown. On the basis of the storage invoice signed by the Godown Keeper, the limit holders on presenting it at the Bank could draw a cheque up to the value of other goods previously stored by them in the godown and either take a fresh advance of loan from the Bank or take delivery of other goods stored in the godown. The further allegations contained in the petition of complaint are as follows : Messrs Bhagwan Dass Baijnath had a cash credit

account with the Central Bank of India at its Muzaffarpur Office wherein the sanctioned limit of credit was Rs. 2,20,000/-. Some time in July, 1963, they got a portion of this limit, namely Rs. 1,00,000/- transferred to the Patna City office of the Central Bank for the purpose of providing business facility to a branch of the said firm at Maheshwari Market in the town of Patna. At the time of the alleged occurrence, Messrs Bhagwan Dass Baijnath were enjoying cash credit facilities as aforesaid at the Patna City branch of the Central Bank of India. The second firm Messrs Binod Textiles had a similar cash credit account with the main office of the Central Bank of Patna with a limit up to Rs. 1,00,000/- since 1962. In March, 1964, this firm also got a portion of the said cash credit facilities transferred for operation at the Patna City Branch of the Central Bank of India. In this context Paragraphs 5, 6 and 7 of the complaint petition are important and may, therefore, be quoted in ex-tenso.

"5. That the complainant subsequently learnt that these transfers were made to the City Office at the request of both the firms aforesaid to accommodate and facilitate the operation of these two accounts by one M/s. Badri Dass and Sons who were doing business of commission agency of various mills in the town of Patna City in cloth of which accused Nos. 1 and 2 who are father and son, were the Managing Proprietors or Partners with some internal arrangement with the partner of the two firms, namely M/s. Bhagwan Dass Baijnath and M/s. Vinod Textiles.

6. That ever since the two accounts were transferred to the Patna City Branch, Badri Dass Agrawal was utilising the credit available to both the firms and he used to indent goods, namely cloth bales, from various Textiles, Mills and transferred the relative documents in favour of the above two firms and thereby utilised the credit available to them from this Bank.

7. That two godowns in the same premises were hired by the two firms which were situated in Mohalla Hiran Sah Ki Gali, P. S. Chowk, in the town of Patna City in the house of Shri Rameswar Lall Bawan Prasad and according to the usual custom the godown keeper named Shrikant Rai was made Incharge as the godown keeper of the aforesaid godowns by the Central Bank."

3. It is further stated in the petition of complaint that on the 6th December, 1966, 94 cloth bales bearing definite bale numbers were in stock in the godown of Messrs Bhagwan Dass Baijnath, out of which 8 bales were delivered to the party on that day, thus leaving 86 cloth bales in stock in pledge with the Central Bank in the said godown. The details of these cloth bales are set out in Schedule 1 of the complaint petition. Similarly, in the godown relating to the account of Messrs Binod Textiles, there were 25 cloth bales in stock after giving delivery of 10 bales on the 6th December, 1966. Thus there were in all 111 cloth bales held in pledge by the Bank in the two godowns mentioned above.

4. The further case of the complainant is that at about 1 p.m. on the 22nd December, 1966, two representatives of Messrs Bhagwan Dass Baijnath namely

Ram Lall and Sheo Prasad, came to the Bank for taking delivery of two cloth bales valued at Rs. 2,832/- and deposited Rs. 4,000/- in cash along with a requisition slip signed by petitioner Baldeo Prasad Kejriwal. Accordingly, the authorities of the Central Bank issued a delivery order bearing No. 24/740 to their Godown Keeper, namely petitioner S. K. Rai, to enable him to effect delivery of the said two bales. At about 2.30 p.m. on the same day, the complainant was informed by the Godown Keeper (S. K. Rai) that on opening the lock of the godown of Messrs Bhagwan Dass Baijnath, he found the room entirely empty and all the 86 cloth bales missing from there. The Godown Keeper further reported that the lock put from inside in the godown on a door at the other end opening in an adjacent hall or corridor towards the east had also been removed. On receipt of this information, the complainant along with another officer of the Bank visited the godown at about 4.30 p.m. for verification. What the Bank officers found on their arrival there has been stated in paragraphs 18 and 19 of the complaint petition thus I

""18. That in the godown of Bhagwan Dass Baijnath a lock which was put in the door opening in a corridor was missing. In the other godown of Binod Textiles, the complainant and his companions found all the 25 bales missing and the planks in another door towards the north broken and the godown bore various marks of trespass and violences.

19. That the complainant and his companions also found to their utter surprise that another godown bearing the name of the Bank of Behar Ltd. having a fresh name plate had suddenly come into existence in the same premises adjoining the 2 godowns which created suspicion in the mind of the complainant and his companions."

5. It has further been alleged that upon making this discovery, the complainant contacted the Chief Agent of the Bank at the Patna Main office and under the latter's advice he lodged the first information report at Chowk (Jhauganj) Police Station at about 11-15 p.m. on the 22nd December, 1966. A police case was, accordingly, registered and during the investigation it was discovered that all the 111 cloth bales which were missing from the aforesaid two godowns of the Central Bank of India Ltd. were found lodged in a freshly started godown in the same premises, the latter godown bearing the name plate of the Bank of Behar Ltd. In course of the police investigation, it also transpired that the Central Commercial Corporation owned by petitioner Krishna Bahadur had a similar cash credit account with the Bank of Behar Ltd. and had taken one godown adjacent to the godown pledged to the Central Bank in the same premises and that the Godown Keeper of the Bank of Behar Ltd. incharge of the new godown was petitioner Gauri Shankar Bhagat. According to the complainant, the aforesaid godown of the Bank of Behar Ltd. had been started near about the date of the occurrence with "the sole intention of wrongly removing the cloth bales under the possession and custody of the Central Bank of India, surreptitiously." According to the complainant, it further transpired that petitioners Badri Das Agrawal and

Lakhan Lal Agrawal had also entered into some agreement with petitioner Krishna Bahadur, the proprietor of the Central Commercial Corporation, and they were also dealing with the cash credit account of that firm with the Bank of Behar Ltd.

6. In this stage it is necessary to mention that after its investigation, the police had submitted final report on the 8th April, 1969 describing the prosecution case as false and involving a civil dispute. The final report of the police, a copy of which has been placed on the record of these cases, incorporates some of the observations of the Investigating Officer which are relevant for our purposes and are, therefore, extracted below :

"Later on I took up investigation, visited the P. O. in the godown of the Central Bank of India bounded in the double storied building of Rameshwar Prasad and Bhawani Das situated in Mohalla Hiran Sah lane. The house has only one entrance from the east balcony to the courtyard on the west of which is room and as godown of Central Bank on the ground floor. This has three doors on the Eastern wall out of which in two doors on the north and the middle was found locked and whereas no lock was found on the southern door. There is one door on to southern wall opening into corridor. This door was found locked but the finger of the door were damaged and stranded. There is another room on the north-east and as Godown of M/s Binod Textile under the charge of the C. B. I. There are three doors in this room on its northern side. The middle door which was jammed by planks were found broken.

Marks of removal of bales were found on both the doors (Sic). There is a room on the southern side of the courtyard intervened by a narrow corridor between it and the C. B. I. Godown on the west and interconnected by a door with the godown of Binod Textile. The plank of this connecting door was found damaged.

This southern room is used as godown of the Bank of Bihar Ltd. which was locked from outside in this godown of the Bank of Bihar."

The results of the police investigation have been summarised in paragraph 28 of the complaint petition thus;

"(i) 111 cloths bales pledged with the Central Bank of India Ltd. (Patna City) was stolen and removed from the godown situated in mohalla Hiran Sah Lane as alleged in the F. I. R.

(ii) The police found marks of violence and tampering on the wooden partition walls, doors and planks of godowns in question and the police has accepted the case of the complainant that the cloth bales have been removed from the two godowns as alleged by him.

(iii) Exactly the same No. of 111 bales were recovered from another room in the same premises by the police in course of the investigation on the written report lodged by the petitioner.

(iv) One of the bale numbers found on the bale recovered tallied exactly with the bale numbers recorded in the documents maintained by the Bank on the declarations given by the parties operating the godowns which clearly established that the bales stolen from the "Central Banks" godown were the bales recovered.

(v) The police has clearly recorded a finding that one Badri Das Agrawala has cheated the Central Bank by bringing the godown keepers in his collusion.

(vi) The Bank of Behar has not produced any document which could establish the genuine and bonafide custody of the bales in question.

7. In the complaint petition the conclusion of the police was characterised as wrong and inconsistent and in Paragraph 31 the complainant had put forward his case thus :

"That it is clear from the facts mentioned above that the above Badri Das Agarwal and his son Lakhanlal Agarwal in conspiracy with the godown keepers of both the Banks, Shri K. N. Verma, Local Manager of the Bank of Behar, Patna Branch and others have committed the offences of cheating, criminal breach of trust, theft and other offences and have manufactured various records and documents to support this crime."

Substantially upon these allegations the complainant prayed to the Subdivisional Magistrate that all the nine petitioners be summoned and put on trial. The learned Sub-divisional Magistrate examined the complainant on solemn affirmation and took cognizance of the various offences mentioned above and also transferred the case to the Munsif Magistrate for disposal. The Munsif Magistrate on receipt of the record issued processes against the petitioners under his order dated the 2nd January, 1970. The petitioners on receipt of the summonses appeared before the learned Munsif Magistrate who enlarged them on bail. Before, however, any prosecution witness was examined, the petitioners filed these applications in this Court.

8. The first contention put forward on behalf of the petitioners is that the learned Sub-divisional Magistrate ought not to have entertained the petition of complaint which was presented to him on the 23rd December, 1969. In this connection my attention was drawn to the fact that after the police had submitted a final report stating the prosecution case to be false and involving a civil dispute, a protest petition was filed before the Sub-divisional Magistrate on behalf of the Central Bank of India on the 30th May, 1969, Therein it was asserted that upon the materials collected by it, the police had no justification to submit a final report in the case inasmuch as a prima facie criminal offence had been made out "as the fact of the theft from the premises of the Central Bank of all the 111 bales of cloth has been duly established and if cognizance is not taken in this case, irreparable loss and injury would be caused to the petitioner". It was, therefore, prayed that "your honour may be pleased to order for taking cognizance in this case". My attention has also been drawn to the order sheet of the Police case (G, R. Case No. 630 of 1966) which shows that on receipt of the police report and

the protest petition, the then Sub-divisional Magistrate, Shri N. B. Kujur, called for the case diary and heard the lawyers representing the Central Bank of India and the Bank of Behar Ltd. and ultimately passed an order on the 10th July, 1969, whereby he accepted the police report. He did not, however, deal with the protest petition, and thinking that the same was still pending, the complainant filed another petition wherein he again set out the relevant facts of the case and requested the Sub-divisional Magistrate to examine him on solemn affirmation "and after appreciating the facts and circumstances enumerated in the present application as well as in the complaint petition filed earlier and other materials on the record to take cognizance and summon the accused to stand their trial or pass such other order or orders as may be deemed fit and proper.". Thereupon the learned Subdivisional Magistrate, Shri N. B. Kujur, passed a long order on the 28th August 1969 in the following terms :

"On 10. 7. 1969 an order has been passed by me accepting final report of the police in this case. Another petition however was filed on 22. 7. 69 stating that no order has been passed on a petition filed on behalf of the informant on 30.5.69.

It was urged that the petition filed on 30.5.69 was in the form of a protest petition and should have been treated as a complaint and the complainant should have been examined on S.A. u/s 200 Criminal Procedure Code. It was submitted to me that no order was passed on that petition. Subsequently after the final report was accepted by an order dated 10.7.1969 a further petition has been filed on 22.7.69 agitating the same point and giving more grounds as to why the final report should not be accepted but a prima facie case be treated as to have been made out.

The petition which was filed on 30.5.69 submitted only that the conclusion of the I. O. was entirely erroneous. It further said that the accused Badri Das had cheated the Central Bank and had manipulated the things. There was no jurisdiction for the I. O. to submit a final report. It was further said that prima facie criminal offence had been made as the fact of the theft from the possession of the Central Bank of all the 111 cloth bales had been duly established.

It appeared from the above petition that there was nothing wrong in the conduction of the investigation of the case by the police. The protest petition only gives out that the conclusion to which the police had arrived was wrong. The petition itself was not signed by the informant of the case. It was signed by Shri Agrawal advocate who held power on behalf of Central Bank of India and whose Vakalatnama had been authorised by the Chief Agent of Central Bank of India and by Parmanand Gorwara the informant of the case. Even after the passing of the order accepting the final report a subsequent petition was filed on 22.7.69 on behalf of Parmanand Gorwara signed only by Sri Agrawal who held powers from the Chief Agent of the Central Bank of India but not through Parmanand Gorwara. There is no Hazri filed of Shri P. N. Gorwara on any of these dates when the matter was agitated or fixed for argument.

Under such circumstances the only thing that needs consideration in this case is whether these two petitions can be taken to be petitions of complaint which need examination of the informant on S.A. According to Section 190 Criminal Procedure Code the Subdivisional Magistrate may take cognizance of an offence upon receiving complaint of facts which constitute such offence.

In this case the protest petitions do not by themselves give out facts which by themselves constitute an offence. These protest petitions have to be read with the first information lodged by the informant. The F. I. R. in this case gives out that 111 bales kept in the Godown of the Central Bank of India through the informant, were missing from the Godown and were said to have been stolen by unknown person. A case u/s 457/380 I. P. C. was registered. The investigation shows that there is no evidence regarding the removal of the 111 bales from the Godown of the Central Bank of India to the Godown of the Bihar Bank which is in the same building with wooden partition. There is no evidence as to who actually removed 111 bales from the Godown of the Central Bank of India. There is no evidence to show that Badri Das Agrawal actually removed the bales or got the bales removed.

It has been urged in the petition dated 22.7.69 that there should be no importance attached to the fact that the contents of the bales found, did not correspond with the description given by the Bank in the document as the bales hypothecated are relied upon by the Bank on the declaration made by the parties and the contents are not examined or compared. However, the Bank supervisors do examine whether hypothecation is correct when large amounts of money are advanced to a client. The F. I. R. makes out a case against unknown u/s 457/380 I. P. C. There is no evidence of this fact of theft in the police diary which is not challenged by the protest petition. Although no case u/s 411 I. P. C. was made out in the F. I. R., the police could not give chargesheet u/s 411 I. P. C. because these bales were entered in the books of the Bihar Bank and claimed as their property. They were also found in their godowns. There is no evidence that these very bales were removed from the Godown of the Central Bank. So the real contention between the two banks is as to who is the owner of the bales and this is a civil dispute.

The protest petition also says that there is an element of cheating found on the part of Badri Das Agrawal. It is not given out by them as to how they have been cheated. The original offence reported being that u/s 457/380 I. P. C. without any further evidence and only on the surmise of the police, a prima facie case of cheating does not arise.

In taking cognizance and issuing processes against the accused the Court must know as to who is the possible accused and the particular offence that he is supposed to have committed. Both the protest petitions named no one accused except Badri Das Agrawal who was said to have cheated the Bank. There is no indication as to who could the other persons be who would have removed these bales from one Godown to another. After all 111 bales of clothes are not small

articles. They will have to be removed by a number of men who will take some time in removing 111 bales.

Both the petitions did not give out facts regarding offences alleged to have been committed. These petitions themselves do not give out the names of the accused who have committed the alleged offence. They do not mention the evidence which would prove that the offence alleged to have been committed by certain persons. While taking cognizance I have to be satisfied that the evidence on record is prima facie true against certain persons and that the evidence even if un-rebutted will secure the conviction of the accused.

As the complainant did not make out a prima facie case against any of the accused it is only the superior officers of the complainant who are trying to revive the case by filing protest petitions. The learned Attorney on behalf of the Informant has filed a certified copy of an unreported case and Criminal Revision No. 556 of 1969 (Sarin Ram versus Harihar Ram Tiwary and others) of the Patna High Court. I have gone through this judgment which says inter alia that ""If lodging a complaint before him, then it is advisable and expedient that he should file a petition which should more fully comply with the requirements of Section 4 (H) of the Criminal Procedure Code. The two petitions filed before me do not give out that whatever the police have found is wrong or that the investigation has been done in a way prejudicial to the complainant. They both say only that the police have come to a wrong conclusion.

As such I do not think the actual protest petitions in the form of complaint have been filed before me necessitating the examination of the complainant u/s 200 Criminal Procedure Code. The informant himself never filed his Hajri on these dates for his examination on S.A. The petition, therefore, was rejected on 10.7.69 although this fact was not mentioned in the ordersheet and the final report given by the police was accepted. Even on the second petition filed on 22.7.1969 I do not find that there is enough materials for treating it as a fresh complaint and so the petition stands rejected."

9. The contention of the Learned Counsel for the petitioners in all these applications is that upon the facts and in the circumstances mentioned above, the complaint which was filed before the learned Sub-divisional Magistrate, Shri J. Jha, on the 23rd December, 1969, was the second, if not the third, complaint in regard to the same matter and ought not, therefore, have been entertained at all. It was urged that the remedy of the complainant was by way of an application for further inquiry u/s 436 of the Code, and not having taken recourse to that remedy, it was not open to him to file a fresh petition of complaint, and, at any rate, the complaint petition should not have been entertained in the manner in which it was done on the 23rd December, 1969.

10. The question as to whether a second complaint in regard to the same matter can be entertained or not has been considered in several reported decisions. One decision of this Court in point is in (1) Ram Narain V. Panacband Jain AIR. 1949

Patna 256. This point has also been dealt with by the Supreme Court in (2) *Pramatha Nath Talukdar V. Saroj Ranjan Sarkar* (A.I.R 1962 Supreme Court 876). In substance, the view expressed in these decisions is that the law does not prohibit the entertainment of a second complaint in regard to the same allegations. But a second complaint cannot be entertained as a matter of course. For example, where the previous complaint has been properly dealt with and dismissed u/s 203 of the Code, the remedy of the complainant is by way of an application for further inquiry u/s 436 of the Code. A second complaint can, however, be entertained under exceptional circumstances; for example, "where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced" see *Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*, , at page 899). In other words, where exceptional circumstances exist, there is no bar in law to the entertainment of a second complaint in regard to the same matter. It is manifest that it is neither desirable nor possible to lay down exhaustively what are exceptional circumstances justifying the entertainment of a second complaint. These must necessarily depend upon the facts and circumstances of each case.

11. It has, therefore, to be seen whether there was any exceptional circumstance in the present case to justify the entertainment of the complaint filed on the 23rd December 1959. A perusal of the orders of the learned Sub-divisional Magistrate dated the 10th July 1969 and the 28th August, 1969 leave no room for doubt that the learned Sub-divisional Magistrate did not treat the protest petition filed before him on the 30th May, 1969 as constituting a complaint within the meaning of Section 4(h) of the Code. That was the reason why he declined the prayer made before him on the subsequent occasion to examine the complainant on solemn affirmation. The learned Sub-divisional Magistrate thought that as there was no complaint before him, there was no occasion for him to examine the complainant on solemn affirmation. If this view of the learned Sub-divisional Magistrate, Shri N. B. Kujur, was right, then it must follow that the complaint filed on the 23rd December, 1969 was not the second or the third, but the only petition of complaint filed in Court in regard to the alleged offences said to have been committed by the petitioners. Learned Counsel for the petitioners, however, conceded before me that Shri N. B. Kujur was in error in proceeding upon the footing that the protest petition of the 30th May, 1969 or the petition filed before him by the complainant on the 22nd July, 1969 did not amount in law to a petition of complaint. In this view of the matter, it is manifest that it was incumbent upon Shri N. B. Kujur to examine the complainant on solemn affirmation before recording his order which amounts to dismissal of the complaint on the 28th August, 1969. Where a complaint is dismissed u/s 206 of the Code under a misapprehension that it is not a petition of complaint, there can, in my opinion, be no doubt that there is an exceptional circumstance

justifying the entertainment of a second complaint. In either view of the matter, no exception can legitimately be taken to the decision of Shri J. Jha to entertain the complaint filed before him on the 23rd December, 1969 and to take cognizance of the alleged offences after examining the complainant on solemn affirmation.

12. It is true that the complainant could have moved the Sessions Court against the order of Shri N. B. Kujur dated the 28th August, 1969 and obtained an order of further inquiry u/s 436 of the Code, but his omission to avail himself of that remedy could not preclude him from filing a second complaint, in view of the exceptional circumstances to which I have already referred. It is not the law that in a case where exceptional circumstances exist, a second complaint will not be entertained if the complainant fails to apply for further inquiry u/s 436 of the Code. If that were the law, then a second complaint would be barred in all cases even where the exceptional circumstances as contemplated in the reported decisions, referred to above, are found to have existed. Therefore, all that is necessary to justify the entertainment of a second complaint in regard to the same allegations is to see whether any exceptional circumstance had been made out upon the materials on the record. I have already shown that an exceptional circumstance did exist on account of which Shri J. Jha was perfectly justified in entertaining the complaint presented to him on the 23rd December, 1969. I have, therefore, no hesitation in rejecting this contention put forward on behalf of the petitioners.

13. The second contention put forward before me is that the petition of complaint dated the 23rd December, 1969 discloses no criminal offence against any of the petitioners, not even against the petitioners mentioned in paragraph 31 of the complaint petition. To deal with this contention it is necessary to recall the allegations contained in the petition of complaint. The substance of the complainant's case undoubtedly is that the real persons who were operating and availing of the cash credit facilities afforded to the three firms (Messrs Bhagwan Dass Baijnath, Messrs Binod Textiles and the Central Commercial Corporation) were petitioners Badri Das Agrawal and Lakhan Lal Agrawal as owners of the firm of Commission Agents known as Badri Das And Sons. Messrs Badri Das And Sons were acting as the commission Agents of Messrs Bhagwan Dass Baijnath and Binod Textiles and acting on behalf of both these firms as alleged in Paragraphs 5 to 7 of the complaint petition. Subsequently petitioners Badri Das Agrawal and Lakhan Lal Agrawal had also entered into some kind of agreement with the proprietor of the Central Commercial Corporation and they were also dealing with the cash credit account of that firm with the Bank of Behar Ltd. The two godowns of the Central Bank of India and the godown of the Bank of Behar Ltd. were located in one and the same premises and the definite case made out in the petition of complaint is that all the 111 bales which the police had found in the godown of the Bank of Behar Ltd. relating to the cash credit account of the Central Commercial Corporation were the same as the contents of the other two godowns in respect of the cash credit accounts in the Central Bank of India. It

has further been abundantly indicated in the petition of complaint that the entire stock in trade of the two godowns of the Central Bank of India had been stealthily and surreptitiously removed and lodged in the godown of the Bank of Behar Ltd. Reference has been made to the disappearance of the internal lock and marks of violence noticed by the police in the back door of the two go-downs of the Central Bank of India. It is, therefore, difficult to accept the contention that the petition of complaint does not disclose any criminal offence. It has been clearly stated in the petition of complaint that the real persons responsible for effecting the surreptitious transfer of the stocks of the two godowns of the Central Bank of India were the petitioners Badri Das Agrawal and Lakhan Lal Agrawal who, at the relevant time, happened to be the common Commission Agents of the three firms (Messrs Bhagwan Dass Baijnath, Binod Textiles and the Central Commercial Corporation). That is the real purport of the complainant's case contained in Paragraphs 5, 6, 24, 28(v) and 31 of the complaint petition. Therefore, so far as petitioners Badri Das Agrawal and Lakhan Lal Agrawal are concerned, the petition of complaint clearly discloses criminal offences against them.

14. The cases of principals of these two petitioners, namely Baldeo Prasad Kejriwal and Narmada Devi Kejriwal as partners of Messrs Bhagwan Dass Baijnath and of petitioner Ratna Devi Kejriwal as partner of Messrs Binod Textiles appear to me to stand on a different footing. Upon the complainant's own case, the cash credit facilities which the Central Bank of India had extended to Messrs Bhagwan Das Baijnath and Binod Textiles, were to all intents and purposes operated upon on their behalf by petitioners Badri Das Agrawal and Lakhan Lal Agrawal as the proprietors of the firm of Commission Agents known as Badri Das and Sons. Even in Paragraph 31 of the complaint petition, petitioners Baldeo Prasad Kejriwal, Narmada Devi Kejriwal and Ratna Devi Kejriwal have not been named as persons with whom petitioners Badri Das Agrawal and Lakhan Lal Agrawal had entered into a criminal conspiracy to commit the alleged offences. The words "and others" used in Paragraph 31 of the complaint petition obviously refer to persons other than the accused persons mentioned at the top of the complaint petition. Had Paragraph 31 of the complaint petition been intended to refer to the principals of the petitioners Badri Das Agrawal and Lakhan Lal Agrawal also, then the language employed would have been entirely different. In that case it would have been mentioned in Paragraph 31 that all the nine accused persons had entered into a criminal conspiracy inter se. But the conspiracy referred to in paragraph 31 has been alleged to be a conspiracy between five of the petitioners mentioned therein ""and others" meaning "and other unknown persons." Reading the complaint petition as a whole, therefore, it is clear to me that petitioners Baldeo Pd. Kejriwal, Narmada Devi Kejriwal and Ratna Devi Kejriwal have not been alleged to have been a party to the alleged conspiracy or to have committed any of the alleged offences.

15. That this is the true reading of the case put forward by the complainant is also clear from the fact mentioned in paragraph 13 of the complaint petition,

which shows that the requisition slip in respect of two of the cloth bales which was presented before the Godown Keeper S. K. Rai on the 22nd December, 1966 had been signed by petitioner Baldeo Das Kejriwal, who had also caused a sum of Rs. 4000/- to be deposited in his cash credit account with the Central Bank of India. Had petitioner Baldeo Prasad Kejriwal been a party to the alleged conspiracy, he would not have made a deposit of Rs. 4000/- in his cash credit account on the 22nd December, 1966. He would also not have personally signed the requisition slip mentioned in Paragraph 13 of the complaint petition. From this Paragraph of the complaint petition it is obvious that petitioner Baldeo Prasad Kejriwal had acted on the 22nd December, 1966 in a bona fide manner and in the usual course of business. Had he been a party to the alleged conspiracy, he would not have taken such a step which would only have exposed his criminal act. From the non-mention of the names of petitioners Baldeo Prasad Kejriwal, Narmada Devi Kejriwal and Ratna Devi Kejriwal in paragraph 31 of the complaint petition, I am of the opinion that no allegation of criminal act has been made against them in the complaint petition. These three petitioners should not be expected to have been a party to the alleged offences for another reason, They could not have thought of destroying their own security so as to render their respective cash credit accounts in the Central Bank of India totally uncovered, being at the same time liable to the fullest extent for the debit balance in those two cash credit accounts. In other words, by committing the alleged offence, petitioners Baldeo Prasad Kejriwal, Narmada Devi Kejriwal and Ratna Devi Kejriwal would have been acting against their own financial interest and" without any advantage to themselves, I, therefore, hold that the complaint petition does not disclose any criminal offence against the petitioners of Criminal Miscellaneous No. 1410 of 1970.

16. The alleged transference of the cloth bales to the godown of the Central Commercial Corporation relating to the cash credit account of petitioner Krishna Bahadur in the Bank of Bihar Ltd. would prima facie appear to be the advantage of this petitioner. But petitioner Krishna Bahadur also has been alleged in the petition of complaint to have depended upon petitioners Badri Das Agrawal and Lakhan Lal Agrawal for the actual operation of the cash credit facilities extended to him by the Bank of Behar Ltd. Even then the name of petitioner Krishna Bahadur is conspicuously absent from paragraph 31 of the complaint petition. Therefore, it is difficult to hold that this petitioner is alleged to have been a party to the conspiracy and other offences mentioned in the complaint petition. The allegation of the complainant appears to be that petitioners Badri Das Agrawal and Lakhan Lal Agrawal had entered into a conspiracy and had committed the alleged offences in league with persons other than any of their principals and, therefore, from the mere circumstance that their actions benefited petitioner Krishna Bahadur, no inference can legitimately be drawn that he was also in league with them. If a person commits an offence and the indirect result of it is to cause some benefit to a third person, it cannot be said that the third person is necessarily a party to the crime. Therefore, if the complainant intended to say

that petitioner Krishna Bahadur also was a party to the crime, then his name would not have been omitted from paragraph 31 of the complaint petition. It has nowhere been alleged that petitioner Krishna Bahadur was aware of the manner in which the stock of cloth bales were put in his Godown after their surreptitious removal from the other two Godowns. I, therefore, hold the complaint petition does not disclose any criminal offence against petitioner Krishna Bahadur also.

17. I now come to the cases of the two Godown Keepers. Their names, no doubt, find place in paragraph 31 of the complaint petition as having been privy to the crime. But if they would have had any hand in the matter, then there would not have any mark of violence on the back side of the godowns of the Central Bank of India, as mentioned in paragraphs 18 and 28 (ii) of the complaint petition. Rather with both the Godown Keepers in the alleged conspiracy, it would have been easy to transfer all the cloth bales through the front door of the godowns of the Central Bank to the front door of the Godown of the Behar Bank by operating the keys of the front doors which must have been in the custody of the two Godown Keepers. Since, however, the transference of the entire stock appeared to have been made through the back doors of the Godowns in question while the locks of the front doors of both the godowns were intact, there is good ground for thinking that the transference of the stock might have been made without the knowledge of either of the Godown Keepers. Upon the allegations contained in the complaint petition, therefore, it is difficult to attribute any blame to either of the two Godown Keepers. It must be remembered, as mentioned in paragraph 15 of the complaint petition, that the Godown Keeper of the Central Bank had lost no time in reporting to the complainant about the loss of the contents of the godown of Messrs Bhagwan Das Baijnath, If he would have been a party to the surreptitious removal of the stock, he was not likely to have made such a prompt report to the complainant. It is also relevant to note that it has nowhere been suggested in the entire complaint petition that the Godown Keeper of the Behar Bank had signed any storage voucher or invoice in respect of the cloth bales which were subsequently found by the police to have been stored in his godown. Reading the complaint petition as a whole, therefore, I am of the opinion that no criminal offence is disclosed against either of the two Godown keepers.

18. Then remains the case of the local manager of the Behar Bank whose name also finds place in paragraph 31 of the complaint petition. But all that has been mentioned in the body of the complaint petition is that the godown of the Central Commercial Corporation had suddenly come into existence in the same premises with a fresh name plate on account of which a suspicion arose in the mind of the complainant and his companions that the manager of the Behar Bank might have a hand in the affair. It has nowhere been alleged that any storage voucher in respect of the disputed cotton bales had been presented to the manager of the Bank of Behar or that he had made any advance on their security in the cash credit account of the Central Commercial Corporation. It was pointed out on behalf of the complainant that the Bank of Behar-people had not produced any

document before the police which could establish the genuine or bonafide custody of the bales in question. This might as well be on account of the fact that there was no such document in existence, meaning thereby that the manager of the Bihar Bank Ltd. had no knowledge about the lodgement of the cotton bales in question in the godown of the Central Commercial Corporation. Besides, even if the authorities of the Back of Behar did not produce any document before the Police in regard to the custody of the bales in question, there could have been nothing to prevent the police from inspecting the relevant Bank records despite the intransigence of the Bank authorities. Upon the allegations in the complaint petition, therefore, there is nothing but bare suspicion about the complicity of the Behar Bank manager in the crime. Thus upon a careful consideration of the entire allegations contained in the complaint petition, I have come to the conclusion that no criminal offence has been disclosed against any of the petitioners except petitioners Badri Das Agrawal and Lakhan Lal Agrawal.

19. The third contention put forward before me on behalf of the petitioners is that the learned Munsif Magistrate to whom the case was transferred by the learned Sub-divisional Magistrate for disposal had no jurisdiction to issue processes against the accused persons, which he has done by his order dated the 2nd January, 1970. The argument is that the Munsif Magistrate was neither the Subdivisional Magistrate nor his successor-in-office, either permanent or temporary, so as to be competent to issue processes against the accused persons under the purported exercise of his power u/s 204 of the Code. In support of this contention reliance is placed upon the decision of the Full Bench of this Court in (3) Krishnadeo Prasad V. Mt, Budhni (A.I.R. 1965 Patna 1) where it has been observed at page 3 that it is only the Magistrate taking cognizance of an offence on a complaint, or receiving the complaint when it is filed, or his successor-in-office, either temporary or permanent, who is competent to pass an order u/s 203 or Section 204 of the Code. That, however, was not a case like the present in which an order of transfer of the case for enquiry or trial, as contemplated by Section 192 of the Code, had been passed by the Sub-divisional Magistrate. The order of the Sub-divisional Magistrate there was only u/s 202 of the Code and the inquiry report which was called for from the Mukhiya was placed together with a protest petition before the Second Officer who had ultimately dismissed the complaint u/s 203 of the Code. It was held that the Second Officer was competent to pass the order u/s 203 in view of the fact at the relevant time he was acting as the Sub-divisional Magistrate in the latter's absence. That is not the situation in the present case. Here the learned Sub-divisional Magistrate had already taken cognizance before transferring the case to the Munsif Magistrate for disposal. In other words, the Subdivisional Magistrate had passed an order u/s 192 of the Code for inquiry or trial to be held by the learned Munsif Magistrate. A perusal of Section 192 of the Code makes it abundantly clear that all that is necessary to justify an order of transfer of a case for inquiry or trial to be held by a Magistrate subordinate to the Subdivisional Magistrate is that the Subdivisional Magistrate should have taken cognizance in the case, once the Sub-divisional

Magistrate has taken cognizance of offences disclosed in a petition of complaint, it is open to him to pass an order of transfer to another Magistrate subordinate to him u/s 192 for enquiry or trial, as the case may be. The inquiry contemplated by Section 192 is not an inquiry contemplated by Section 202 of the Code. Where an inquiry u/s 202 is ordered, there is no transfer of the case as contemplated by Section 192. The case is still retained in the file of the Sub-divisional Magistrate so that the Sub-divisional Magistrate or his successor-in-office, temporary or permanent, continues to retain jurisdiction over the case and can, therefore, pass an order u/s 203 or u/s 204, as he thinks fit. But where after taking cognizance of an offence disclosed in a petition of complaint, the Sub-divisional Magistrate passes an order of transfer u/s 192 of the Code, the transferee Magistrate is assigned the duty of holding inquiry or trial in the case in accordance with the provisions contained in Chapters XVIII, XX or XXI of the Code, as may be applicable to the case in hand. Section 192 does not enjoin upon the Sub-divisional Magistrate not to pass an order of transfer until he has passed an order for issue of processes against the accused persons u/s 204. It is open to the Sub-divisional Magistrate to pass an order of transfer u/s 192 as soon as he has taken cognizance in the case without making an order u/s 204 of the Code. The Sub-divisional Magistrate, if he so likes, may himself pass an order u/s 204 before transferring the case of which he has taken cognizance in exercise of his powers u/s 192. In that case it will not be necessary for the transferee Magistrate to issue processes against the accused persons after he has received the case on transfer from the file of the Sub-divisional Magistrate. But where the Sub-divisional Magistrate has passed an order u/s 192 in a case in which he has taken cognizance, but in which he has passed no order u/s 204 of the Code, a duty devolves upon the transferee Magistrate to issue processes against the accused persons so as to be able to perform the duty assigned to him, namely the duty of inquiring into or trying the case. The reason is that where an order of transfer u/s 192 has been passed, the entire case stands transferred to the transferee subordinate Magistrate, who then has full seisin over the case, and in order to perform the duty assigned to him as a trial court, he has not merely the jurisdiction but also the duty to secure the presence of the accused person in his Court without which he cannot proceed with the inquiry or trial of the case. This power of the transferee Magistrate--the power to compel the attendance of the accused persons in his Court for the purpose of inquiry or trial--is quite independent of the provisions of Section 204 of the Code. He derives his power of issuing processes against the accused persons by virtue of his being the transferee Magistrate u/s 192 and having been assigned the duty of holding a regular inquiry or trial. Therefore, even though the Sub-divisional Magistrate or his successor-in-office who has taken cognizance of an offence is alone competent to issue processes against the accused persons u/s 204, it is, in my opinion, still open to the trying or the Enquiring Magistrate to whom the case has been transferred u/s 192 of the Code and who has thus come in full seisin of the case to issue processes against the accused persons and to take all other requisite steps to proceed with the inquiry or the trial which has been assigned to

him under the law. In such a case the transferee Subordinate Magistrate does not act u/s 204, but in exercise of his inherent power as the trying or the Enquiring Magistrate to issue processes against the persons complained against.

20. The view which I have expressed above gains support from several reported decisions. I would first refer to a decision of Das, J. (as he then was) in (4) Dalu Gour and others V. Moneswar Mahato (48 Criminal Law Journal 347). At page 349 of the report his Lordship observed :

"After taking cognizance the Subdivisional Magistrate could transfer the case to any Magistrate subordinate to him, vide Sub-section (1) of Section 192 of the Criminal Procedure Code. It is well settled that when a case is transferred to a Subordinate Magistrate u/s 192(1), Criminal Procedure Code, the latter has the same authority to deal with the case as regards the issuing of the process and other matters connected with the enquiry or trial, as is vested in the superior Magistrate from whom he receives the case on transfer. It is also clear that the transfer may be made as soon as the transferring Magistrate has taken cognizance of the case; he need not wait for the stage when the accused person appears as a result of the issue of process."

At page 350 of the report, his Lordship further observed :

"Though Section 204 says that the Magistrate taking cognizance can issue process, it is now well settled (as stated above) that the Magistrate to whom the case is transferred u/s 192 has the same power which the Magistrate taking cognizance had, to issue process against the accused persons."

21. Another case in point is (5) Annapurna Dasi Vs. Bazley Karim Fazley Moula and Others, , where after referring to some earlier decisions of the Calcutta High Court, it was observed at page 191 thus :

"From the above mentioned cases it follows that when a case has been transferred to a Magistrate u/s 192 (1), Criminal Procedure Code, that Magistrate has the same authority to deal with the case which has been transferred to him, as regards the issuing of processes and other matters connected with the inquiry or trial, as is vested in the superior Magistrate from whom he received the case on transfer."

It was further pointed out there that the effect of an order of transfer of a case made u/s 192 ""for disposal" or "for favour of disposal" is "that the whole case is transferred so that it is competent for the subordinate Magistrate to issue process for the attendance of any persons whom he may consider to have been concerned in the commission of the offence.-- Although this decision of the Calcutta High Court is of a single Judge, it has been approved by a Division Bench of this Court in (6) Bhagwan Sahai and Another Vs. Divisional Forest Officer, Hazaribagh, . There it was held by Meredith, J, Bennett, J. concurring, that once cognizance of a case has been properly taken by a Magistrate and the case has been transferred to another Magistrate u/s 192 of the Code, then the

latter Magistrate has full seisin of the case and is at liberty to summon any further persons as accused if he finds evidence against them. The reason is that the whole case must be taken to have been transferred, that is, the case as against not merely the persons actually summoned but also as against all others whom the transferee Magistrate might consider to be implicated in the offence.

22. From the aforesaid decisions it is abundantly clear that the power of the transferee Magistrate to issue processes against the persons appearing to be concerned in the offence in question is vested in him on account of his being assigned the duty of holding inquiry into or trying the case, even though Section 204 of the Code, in terms, may refer to the powers of the Magistrate who is competent to take cognizance in a case. Unless this were so, the transferee Magistrate would not be in a position to proceed with the inquiry or the trial assigned to him. That is why, it has been held in numerous cases, and it is now well settled, that a trying Magistrate is competent in a proper case to issue processes even against persons other than those sent up to him for trial. This power of the trying Magistrate to summon additional accused persons necessarily implies that the Magistrate to whom a case has been transferred u/s 192 of the Code has inherent power to issue processes against all the persons appearing from the record to be concerned in the commission of the offence in question. Since these considerations did not arise in (3) Krishnadeo Prasad Vs. Mt. Budhni, , I am of the opinion that the Full Bench decision of this Court upon which the petitioners rely is of no avail to them.

23. I have, however, been referred to two other single Judge decisions of this Court, namely, (7) Raghubans Rai and others V. Nishan Singh and others 1972 B.L.J.R. 151 decided by J. Narain, J. and (8) Basudeo Hisaria and Ram Chandra Pd. Sao V. State of Bihar and others 1972 B.L.J.R. 166 decided by B. D. Singh, J., in both of which the Full Bench decision in (3) Krishnadeo Prasad Vs. Mt. Budhni, was relied upon for the purpose of holding that a trying Magistrate to whom a case has been transferred by the Sub-divisional Magistrate for trial has no jurisdiction to issue processes against the accused persons u/s 204 of the Code. But these decisions also are of no avail to the petitioners since as I have already pointed out, the trying Magistrate does not issue processes against the accused persons under the provisions of Section 204, but he does so in exercise of his inherent powers in respect of the case which has been transferred to him for inquiry or trial u/s 192 of the Code. I am, therefore, clearly of the opinion that the learned Munsif Magistrate in the present case had full jurisdiction to issue summonses against the accused persons under his order dated the 2nd January, 1970 and that there is no substance in the argument put forward on behalf of the petitioners that the entire proceeding before the learned Munsif Magistrate is illegal and without jurisdiction.

24. I may add that the petitioners having already appeared before the learned Munsif Magistrate to whom the case has been transferred by the learned Subdivisional Magistrate is no longer open to the petitioners to contend that the

Munsif Magistrate had no jurisdiction to issue the processes against them. u/s 242 of the Code, in case of a summons trial, as also u/s 252 of the Code, in case of a warrant trial, it is enough to give jurisdiction to the trying Magistrate to proceed with the trial that the accused has appeared before him. Having already appeared before the learned Munsif Magistrate, the petitioners cannot turn round and say that he has no jurisdiction to proceed with the trial.

25. One more point was urged by Mr. R. S. Sinha appearing for the petitioners in Criminal Miscellaneous No. 1537 of 1970. Learned Counsel contended that even after the case had been transferred to him by the learned Sub-divisional Magistrate, it was the duty of the learned Munsif Magistrate to apply his mind to the allegations contained in the complaint petition for the purpose of deciding whether there was sufficient ground for proceeding, within the meaning of Section 204 of the Code or not, before deciding to issue processes against the accused persons. Since, however, I have already held that the learned Munsif Magistrate did not exercise any power u/s 204, but acted under his inherent powers as the trial court, I can find no substance in this contention of Mr. Sinha. To accede to this contention would amount to saying that in every case in which the Sub-divisional Magistrate has taken cognizance of an offence and has then passed an order of transfer to another Magistrate u/s 192, the transferee Magistrate will have to sit in judgment over the opinion of the Sub-divisional Magistrate that a prima facie case has been disclosed against the persons complained against, which obviously cannot be the intention of the law. I will, therefore, overrule this contention of Mr. Sinha. In conclusion, for the reasons set forth above, I dismiss Criminal Miscellaneous No. 1537 of 1970 and discharge the rule obtained by petitioners Badri Das Agrawal and Lakhan Lal Agrawal. But I allow the remaining five applications and quash the prosecution as against the remaining seven petitioners.