

(1966) 04 MAD CK 0012

In the Madras High Court

Case No : Writ Ptn. No"s. 390 and 391 of 1965, Cri. R.C. No. 294 of 1965 and
Cri. M.P. No"s. 284 and 934 of 1965

P. Sirajuddin

APPELLANT

Vs

Government of Madras and Others

RESPONDENT

Date of Decision : 13-04-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 173(4), 251
Penal Code, 1860 (IPC) — Section 165, 466
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : AIR 1968 Mad 117 : (1968) CriLJ 493 : (1967) ILR (Mad) 659 :
(1968) 1 MLJ 480

Hon'ble Judges : Veeraswami, J;Natesan, J

Bench : Division Bench

Judgement

Natesan, J.—These cases arise out of a charge-sheet laid before the Special judge, Madras Division, by the Directorate of Vigilance and

Anti-Corruption, Madras on 5-10-1964 against P. Sirajuddin, Retired Chief engineer, Highways and Rural Works, Madras, under S. 165 I. P. C.

and S. 5(2) read with S. 5(1)(b) and (d) of the Prevention of Corruption Act 1947 (Central Act II of 1947), and taken on file as C. C. 10 of 1964

by the Special Judge. The petitioner is charged, to be brief, with having habitually obtained for himself and members of his family valuable things

from his subordinate officers without consideration or for inadequate consideration or for inadequate consideration or securing pecuniary

advantage, by corrupt or illegal means or by abusing his position as public servant. Nineteen instances are enumerated in the charge-sheet between

the period 3-1-1961 and 14-3-1964. He is alleged, for instance, to have directed another officer working under him to get a suit length of

imported variety him to get a suit length of imported variety of cloth and for its cost of Rs. 390 paid Rs. 200 only and asked the subordinate officer

to make good the balance by adjustment in the departmental nominal muster rolls. Similarly he had a new Rolex Oyster Date Wrist watch from his

subordinate without paying for it, the cost to be taken by manipulation of the nominal muster rolls. He got amenities like white-washing and F. O.

L. done to his house by his subordinates. For our present purpose it is needless to detail the charges.

(2) Before the matter was taken by the Special Judge for consideration, an application, Crl. M.P. No. 36 of 1964, was filed by the petitioner

praying that he may be discharged under S. 251-A Cri.P.C. On this application the learned Special Judge, while holding that there was no basis or

material for charging the petitioner under S. 165 I. P. C. or under S. 5(2) read with S. 5(1)(b) of the Prevention of Corruption Act, held that a

charge could be framed against the accused under S. 5(2) read with S. 5(1)(d) of the Prevention of Corruption Act. Against the said order dated

16-1-1965, the Public Prosecutor has preferred Crl. R. C. 294 of 1965 under Ss. 435 and 439 Crl.P.C. The petitioner has preferred Crl. M. P.

934 of 1965 under S. 561-A Crl.P.C. for quashing the proceedings and discharging the petitioner, as the charge against him was groundless. W.

P. 391 of 1965 is for the issue of a writ of certiorari or other appropriate writ or direction under Art. 226 of the Constitution for quashing the order

in Crl. M. P. No. 86 of 1964 directing the framing of the charge under S. 5(2) read with S. 5(1)(d) of Act 2 of 1947. W. P. 390 of 1965 relating

to the same proceedings if for the issue of a writ of Mandamus or other appropriate direction or order directing the Director of Vigilance and Anti-

corruption to forbear from prosecuting C. C. 10 of 1964. The writ petitions are sought to be maintained as providing the only effective remedy in

the circumstances alleged. It is submitted that this is one of those cases where there has been such a violent departure from the provisions of the

Criminal Procedure Code in the matter of investigation and cognisance of offences as to amount to denial of justice and call for interference by the

issue of prerogative writs. In the several affidavits filed averments are made that the investigation and prosecution are wholly made fide and

groundless and have been set afoot by the officer immediately next in rank to the petitioner. Sivasankara Mudaliar. Superintending Engineer,

Madras. It is alleged that the petitioner was to retire on 14th March 1964 and in the normal course he would have been retained till he completed

the age of 58 years, that the circumstances and sequence of events revealed that the aforesaid gentleman had used his influence with the Chief

Minister of the State to get the petitioner retired, and that not content with it he is harassing him further. It is stated that the petitioner during the

course of his official duties had to find fault with this gentleman, and that he had nurtured grievance against the petitioner on that account. Several

serious irregularities during the investigation are listed and it is contended that from the records it will be clear that the petitioner is being specifically

singled out and discriminated against. The two writ petitions, criminal revision cases and criminal miscellaneous petitions were all heard together

and no objection as to the maintainability of the writ petitions was taken before us by the learned Advocate General appearing for the prosecution.

(3) In the affidavit in support of his petition for the issue of a writ of Mandamus the petitioner avers that from the copy of the statements furnished

under S. 173(4) Cri.P.C. he found that 18 public servants have stated that they have given him valuables for no or inadequate consideration, and

that at his instance for the purpose of reimbursing themselves they had deliberately committed offences of criminal conspiracy under S. 120-B I. P.

C. Criminal breach of trust of Government money under S. 409 I. P. C. falsification of accounts u/s 477-A I. P. C. forgery of public records under

S. 466 I. P. C. and also offences u/s 5(1)(c) and S. 5(1)(d) read with S. 5(2) of Act 2 of 1947. The petitioner states that the charges against him

depend upon the statements of these subordinate officers in service and in their statements they admit their reimbursing themselves by manipulating

departmental accounts. The petitioner charges the Director of Vigilance and Anti-Corruption with obtaining signed statements which are

confessional and self-incriminating from the witnesses giving them assurance of immunity. The assurances are in common form and the operative

portion runs thus:

This is to affirm on behalf of the Government of Madras, and its officers, that in respect of any criminal or departmental offence disclosed in any

true but inculpatory statement made by any official or non-official relating to enquiries into allegations of corruption against a certain public servant,

no criminal prosecution will be launched by the Police or by any other Government Agencies and no other departmental action likely adversely to

affect the deponent will be launched against any official or non-official making such true statements to facts within his or her personal knowledge.

In the principal affidavit in W. P. 390 of 1965 it was categorically stated that the petitioner had every reason to believe that assurances in this form

have been given to the 18 public servants from whom statements have been recorded at the investigation. Charging that the procedure that has

been adopted is in the circumstances a deliberate violation of devious means of the provisions of the Criminal Procedure Code relating to

confessions and pardons to secure a definite end, it is submitted that the investigation is wholly illegal. Complaining that the procedure is a device

for manufacturing a case against the petitioner at the instigation of higher authorities, it is stated that here is a clear case of discrimination by the

State and the Police leaving out other persons who are guilty of their own statements and prosecuting the petitioner only. The malice and mala fides

it is stated, are apparent. More it is pointed out that by securing sanction to prosecute the petitioner when no sanction is necessary, the petitioner

being a retired Government servant when the charge-sheet was filed, an air of reality and solemnity is designedly sought to be given to the

proceeding.

(4) Apart from the question of mala fides and discrimination, the principal question that has arisen for consideration is whether there has been any

violation of Ss. 162 and 163 Cr.P.C. and the effect of the violations if any. For the petitioner it is submitted that the signed statements for which

assurances had been given to the witnesses are statements taken after investigation commenced and it is a fraud on the procedure to rely on

subsequent unsigned statements as statements under S. 161(3) Cr.P.C. for the purpose of S. 173 Cr.P.C. As the S. 161 statements are the

material on which the Special Judge has to consider whether the charge is groundless under S. 251-A(2) Cr.P.C. it is submitted that the illegality

corroding the foundation vitiates the enquiry and necessitates discharge of the petitioner.

(5) The history of the investigation as set out in the counter affidavit in W. P. 390 of 1966 dated 12-12-1965 by R. Thirumalai, the Secretary to

the Government, Public Works Department, may be briefly set out. It is stated that prior to the date of the retirement of the petitioner, the

Government had definite information about the corrupt activities of the petitioner and in the beginning of March 1964 the Government caused

confidential enquiry to be made through the Director of Vigilance and Anti-Corruption, Madras, the second respondent, in the writ petitions. The

decision to retire the petitions. The decision to retire the petitioner on 14-3-1964 without giving him re-employment was taken by the Government

on the record of service of the petitioner. It is not disputed that the decision to retire him was communicated to him only at 2 p.m. on 14-3-1964

with direction to hand over charge to Sivasankara Mudaliar, about whom reference has already been made. In the counter affidavit for the State it

is pointed out that 23 public servants have given statements and that only five of them stated that they had given valuable things to the petitioner for

on or inadequate consideration. The counter affidavit admits manipulations in the nominal muster rolls by S. Sivasubramaniam, an Assistant

Engineer and S. Chidambaram, a junior Engineer, for recouping themselves with assistance from other named subordinates. The stand is taken for

the State that the manipulations at the instance of the petitioner and the acts of the petitioner are distinct and separate things and the charge sheet is

concerned only with the misconduct of the petitioner. It is stated that the irregularities of the subordinates are incidental and subsidiary and so they

have been taken as witnesses. Their acts are only at the instance of the petitioner who was then the head of the Department. As regards assurances

of immunity, it is acknowledged in specific terms that the witnesses were given assurance certificates by the Deputy Superintendent of Police who

conducted the preliminary enquiry. It is stated that the certificates were given after they had given their statements. Reliance is placed on S. 8 of the

Prevention of Corruption Act, 1947 which give protection to a bribe giver from prosecution under S. 165-A I. P. C. It is set out that the

Registration of the case against the petitioner with the Directorate of Vigilance and Anti-Corruption or the F. I. R. was only on 27-6-1964 and the

charge-sheet was filed with the Special Judge on 5-10-1964. In the reply affidavit filed by the petitioner to this counter, it is pointed out that the

only manner in which any person who is suspected to be an offender or abettor could be taken as witness to depose against another is to tender

him pardon according to law. The purported exercise of discretion by the Vigilance department citing all the other persons as witnesses, it is stated, is in flagrant violation of the provisions of the Criminal Procedure Code and a clear case of hostile discrimination. It is submitted that the mode in which the investigation had gone on and sanction given shows a predetermination by the Government. It is emphasised that at the time when the matter was before the Special Judge the factum of immunity having been granted was not disclosed. The petitioner submitted that the evidence that has been procured at the investigation was assurance of protection not usually granted and that on the sole ground that the investigation and collection of evidence has proceeded in utter disregard of law, the entire proceedings have to be quashed. It has, in the circumstances, become necessary to examine in detail as to when the investigation under the Code can be said to have commenced in the present case and the nature and character of the several statements stated to have been taken during the investigation.

(6) By C. M. P. No. 589 of 1966 in W. P. 390 of 1965 the petitioner sought production of a petition alleged to have been received by the Dy.

Superintendent of Police, Vigilance and Anti-Corruption, on 15-4-1964, the statements recorded by him in pursuance of the said petition and

copies of the assurance certificates given to the witnesses. Production was also sought from the Chief Secretary to the Government of Madras of

the note file relating to his retirement G. P. Ms. 674 Public Works Department dated 14-3-1964. In the counter affidavit to this by the Director of

Vigilance and Anti-corruption dated 26-2-1966 it is stated that there is no objection to the production of the statements recorded by the Dy.

Superintendent of Police, Vigilance and Anti-corruption, in the preliminary enquiry conducted by him and the copies of the assurance certificates

given by him to Sivasubramaniam, Assistant Engineer and Chidambaram, Junior Engineer. It is averred that no petition was received from the

commencement of the preliminary enquiry and the preliminary enquiry was commenced on a not sent by the Director of Vigilance to the Dy.

Superintendent of Police on 15-4-1964. The Dy. Superintendent of Police, Vigilance, and Anti-corruption, G. K. Ranganathan, has filed a

supplemental counter affidavit on 24-2-1966. This states that he conducted the enquiry in the matter pursuant to the orders dated 15-4-1964 of

the Director of Vigilance registering the enquiry as 8/HD/64. He affirms in his affidavit that he gave assurance certificates in the common form

referred to by the petitioner only to Sivasubramaniam and Chidambaram and none else. It is denied that assurance certificates have been given to

18 public servants. He states that during his enquiry he took statements only from 9 witnesses, two of them being Sivasubramaniam and

Chidambaram above referred to. He states that he conducted the detailed enquiry only on the basis of the note on which enquiry No. 8/HD/64

was started on 15-4-1964 and not on any petition. On the prayer for production of the note file relating to G. O. Ms. 674 Public Works

Department, the Secretary to the Government, Public Works Department, as head of the Department, claimed privilege stating that the file is an

unpublished office record relating to the affairs of the State and its disclosure will cause injury to the public interest. It was stated that disclosure of

this document would impair the proper functioning of public service and efficient administration of public affairs. However, the relevant file was

produced in court by the learned Advocate General for our perusal and there was no objection to learned counsel for the petitioner having

inspection of the papers in the file excepting as regards the notes and minutes made by the officers and opinions expressed.

(7) From the supplemental counter affidavit filed on behalf of the respondent in W. P. 390 of 1965 it is seen that a copy of a petition dated 28-2-

1964 addressed to the Minister of Public Works supporting to emanate from one Rangaswami Nattar, North East Street, Thilla Nagar, Tiruchi,

was received by the Chief Minister on 1-3-1964. This was marked by the Chief Minister to the concerned department, as it contained allegations

of corruption against the petitioner. It is stated in the supplemental counter affidavit that similar allegations had come to the notice of the

Government, and that as the question of granting an extension of service to the petitioner, who was due to retire on 15-3-1964, was pending

consideration the Director of Vigilance and Anti-corruption was requested by the Chief Minister to make confidential enquiry and give opinion to

the Government. It is now seen from the supplemental affidavit that the Director, Vigilance and Anti-corruption sent a note on the matter on 10-3-

1964. There was a vagueness in the original counter affidavit filed as to when the Government got definite information about the corrupt activities of

the petitioner. In fact it read as if they had definite information even before the Government directed the enquiry by the second respondent. In the present supplemental affidavit it is stated that the Government had definite information relating to the corrupt activities of the petitioner from the note D/- 10-3-1964. It is unnecessary to discuss in detail this aspect of the matter, as the same has greater relevancy and bearing on the question whether the services of the petitioner were not continued beyond his 55th year mala fide. We are at the moment not on that matter. In the affidavit of the Secretary to the Government P. W. D. R. Thirumalai, it is now made out that further and detailed enquiry was directed by the Chief Secretary to the Government on the basis of the note dated 10-3-1964 and on this the Director of Vigilance registered the enquiry No. 8/HD/64. Copies of the petition dated 28-2-1964 and the note dated 10-3-1964 have now been give to the petitioner. The Secretary to the Government P. W. D. who had earlier not denied the averments in the affidavit of the petitioner of the grant of assurance certificate to the 18 persons now states that on enquiry he understands that assurance certificates have been given only to two officers. He also stated that by inadvertence it was not specifically averred that assurance certificates were given only to the two officers and none else. We cannot pass by these averments without remarking that the explanation now submitted is puerile. Courts expect exactitude from officers of Government on such matters. The question raised by the petitioner is of vital importance to him. He has pleaded that the 18 witnesses whose statements are relied upon for charging him with serious offences have been given assurance of total immunity. This procedure in the investigation has been attacked as undermining the very foundation of criminal justice as administered in this country. The petitioner would have it that the statements of these witnesses in whatever form they may be presented at the enquiry under S. 251-A Cr.P.C. would have to be wholly discarded and the argument is that if these statements are out of the record, there will not be a title of material for framing charges against the petitioner. When the petitioner has come to this court with that case, there is no repudiation in the earlier counter affidavit filed in the matter denying that the assurance certificates have been granted to all these 18 witnesses. The statements of these 18 witnesses are ex facie valuable material for the prosecution. It is only after the writ petitions had been

taken up for arguments, at a crucial affidavits are forthcoming limiting the grant of assurance to two of the Chief witnesses. The Secretary to

Government, P. W. D. now states on oath that on enquiry from the concerned officer he understands that only two assurance certificates have

been given and that he is not personally aware of these facts relating to the granting of assurance certificates. The petitioner who has expressed

apprehensions of mala fides and ulterior motives in the prosecution may justifiably have the feeling that but for the supplemental affidavits he has a

very good case. Naturally in his reply affidavit the petitioner states that the averments now made that only two witnesses were given assurance

certificates is an after-thought and incorrect and the State should not be allowed to go back on its original counter affidavit by a very responsible

officer of the rank of the Secretary to the Government.

(8) From the records now before us it is seen that a detailed enquiry was started on 15-4-1964. But according to the prosecution the investigation

commenced only on 27-6-1964, on a complaint given by G.K. Ranganathan, Dy. Superintendent of Police, Vigilance and Anti-corruption,

Madras, to the Additional Superintendent of Police, Vigilance and Anti-corruption. It is seen from the records that it is on 27-6-1964 the first

information report was submitted to the Principal Sessions Judge of Madras, the Special Judge. Sanction to prosecute was obtained on the 29th

September 1964 in G. O. No. 3107 and the charge sheet was filed before the Special Judge on 5th October 1964. It is submitted for the State

that from 27-6-1964, 47 witnesses have been examined in the investigation that followed and that only 9 of these witnesses had been previously

examined at what is termed a preliminary or detailed enquiry. It is the case now, that from these 9 witnesses only signed statements have been

taken. A statement purported to have been recorded from Sivasubramanian on 27-6-1964 is relied upon as his Section 161 Cr.P.C. statement.

But on 9-6-1964 a signed statement has been taken from him under S. 164 Cr.P.C. Similarly from Chidambaram a signed statement was taken on

3-6-1964. A statement purported to have been recorded from him on 27-6-1964 is relied upon as his Section 161 Cr.P.C. statement. A

statement u/s 164 Criminal Procedure Code has been recorded from him on 23-7-1964. Assurance Certificates are admitted to have been given

to these two witnesses when the first signed statements were recorded from them.

(9) We do not think it necessary to go into greater details of the facts or the actual merits of the accusation. It is always embarrassing to a superior

court to deal with a matter still at the stage of enquiry and determination in the court of first instance and particularly in a criminal matter where on

the one hand the liberty and reputation of the petitioner are to stake and on the other the interests of the public at large that crime and unsocial acts

which are offences under the law should be put down with firm hand. We may, however, state that we are not impressed with the contention that

the proceeding should be quashed for the reason that it is the result of mala fides, or that a direction should now be given by the court for the

prosecution of the subordinate officers also.

(10) As stated earlier we are not concerned in this case with the question whether the petitioner might have been continued in service. The

inference which the petitioner draws as he states from the subsequent events of the use of influence by his Deputy Sivasankara Mudaliar with the

Chief Minister, finds specific repudiation in the affidavit of the Chief Minister. The Chief Minister in an affidavit filed very early in the proceedings

has denied that Sivasankara Mudaliar is related to him and that Sivasankara Mudaliar used any influence with him for promotion as Chief Engineer.

We have no reason whatever not to accept the Chief Minister's statement. Charge of communal or sub-communal bias is sought to be made out in

the affidavits of the petitioner. In our view, this charge is equally groundless. Such a charge is easily made and can come in handy when there is

nothing else to hand upon. Besides, these considerations is guilty of the offence with which he is charged and could be so found on relevant, legal

and material evidence. Motive or malice in prosecution cannot absolve a criminal; may be if established it may have its effect in appreciation of the

evidence for the prosecution.

(11) The charge of hostile discrimination coming under Art. 14 of the Constitution is equally groundless. May be that several of the witnesses who

have been examined and from some of whom signed statements have been taken by the police are equally blame-worthy and are accomplices. It is

felt by the prosecution that if they arraign the sub-ordinate officers also along

with the petitioner, the whole case may fail for lack of evidence. What weight would be given by the court to the evidence of the accomplice is quite a different matter. It is well understood that evidence of the accomplice is quite a different matter. It is well understood that evidence of accomplice is tolerated as a necessity as it may be impossible to get sufficient evidence of many crimes unless some of the participants or at least one of them is disposed to disclose the circumstance within his knowledge. Usually pardon is tendered and an accomplice is taken as approver. As noticed in *Sarkar's Evidence*, 11th Edn. at page 1200--

The State may enter *nolle prosequi* against an accused and call him as a prosecution witness or the police may refrain from proceeding against a person with a view to call him as a witness against his confederates in the offence.

Under S. 494 Cr.P.C. any Public Prosecutor may with the consent of court withdraw from the prosecution of any person. Where interests of justice may require that every offender should be booked, equally interests of justice may require that where it is not possible, some at least are arraigned and the rest retained for giving evidence at the trial. The policy of not securing judicial pardon to accomplices and bringing them as approvers but retaining them at the sole discretion of the prosecution may be open to question; but that cannot by itself invalidate the arraignment of the persons actually put up for trial. If it is laid down that all participants in a crime should be put up for trial, grave consequences may ensue.

About L.C.J. observed in his charge to the grand Jury in March 1880, 33 How St. Tr. 689, that

It must not only happen that many heinous crimes and offences will pass unpunished, but great encouragement will be given to bad men, by withdrawing from their minds the fear of detention and punishment through the instrumentality of their partners in guilt and thereby universal confidence will be substituted for that distrust of each other, which naturally possess men engaged in wicked purposes, and which operate as one of the most effectual restraints against the commission of those crimes to which the concurrence of several persons is required".

(12) The demoralising effect of a general absolution by the prosecution authorities to practically all accomplices on the administration is one thing,

whether there is hostile discrimination against the person actually prosecuted is quite a different thing. It cannot be said that the superior officer and the subordinate are similarly situated. The subordinate may feel that he should oblige his superior or otherwise incur his displeasure, and he could hardly run that risk. For the present we are not concerned with the merits of the case. That is a question which will fall for consideration if and when it becomes necessary for the accused to be tried for the offence. The accused may be perfectly blameless. But the question is if in fact the investigation reveals that there is a prima facie case against him, it could be said that the prosecution of the chief alone is the result of an "evil eye & unequal hand". It is alleged for the petitioner that his immediate deputy Sivasankara Mudaliar, having achieved his object and got the petitioner retired and showing his spite further by getting all the staff in the Highways Department under his control and setting up the subordinate against him. Assuming that Sivasankara Mudaliar bears ill-will and malice against the petitioner, we are not pronouncing upon it, that cannot in the least effect the validity of the investigation and prosecution if it is otherwise regular. It may affect the credibility of the witnesses who happen to be subordinates of Sivasankara Mudaliar. That is a matter for consideration in the appreciation of evidence by the trial Judge, and much will depend upon the confidence in their testimony which the witnesses inspire. But certainly it cannot be said that there is any objectionable discrimination in proceeding with the prosecution of the principal offender leaving out the subordinates. In this particular case they continue to be in service and subject to the disciplinary jurisdiction in the service.

(13) Really the important question that is posed for consideration is the effect of the alleged contravention in the proceedings of Ss. 162 and 163

Cr.P.C. The argument of the learned counsel for the petitioner Mr. V. K. Thiruvengkatachari, on this part of the case may be briefly summed up

thus: Under S. 251-A Cr.P.C. which is the procedure to be adopted by the Special Judge in this case, whether or not a charge has to be framed

against the petitioner has to be decided by the Special Judge upon a consideration of all the documents referred to in S. 173 and on such

examination of the petitioner as the Special Judge may think it necessary and on hearing counsel for the prosecution and the petitioner. The

documents referred to in S. 173 are those specified S. 173 sub-clause (4) and include the statements, if any, recorded under S. 163 Cr.P.C. and

the statements recorded under sub-section (3) of S. 161 of all the persons whom the prosecution proposes to examine as its witnesses. Learned

counsel submits that if there is any violation of Ss. 162 and 163, the documents cease to be those whose consideration is provided under S. 251-A

Cr.P.C. If these documents are excluded, learned counsel submits, there will be no material on which a charge could be framed against the

petitioner in this case. The learned Special Judge would have to conclude that the charge against the petitioner is groundless and discharge him. For

the prosecution it is submitted that the signed statements and assurances were all prior to the commencement of the investigation and they were not

statements recorded under S. 161 Cr.P.C. The prosecution would have it that the investigation commenced on the filing of the first information

report on 27-4-1964 and not before.

(14) It will be convenient to set out Sections 161 to 163 Cr.P.C. :

161(1) Any police officer making an investigation under this Chapter or any police officer not below such rank as the State Government may, by

general or special order, prescribe in this behalf acting on the requisition of such officer may examine orally any person supposed to be acquainted

with the facts and circumstances of the case:

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which

would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The Police officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so he

shall make a separate record of the statement of each such person whose statement he records"".

162(1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be

signed by the person making it; nor shall any such statement or any record thereof whether in a police diary or otherwise, or any part of such

statement or record be used for any purpose as (hereinafter provided) of any inquiry or trial in respect of any offence under investigation at the time

when such statement was made.

Provided that when any witness is called for the prosecution in such enquiry or trial whose statement has been reduced into writing as aforesaid,

any part of his statement if duly proved, may be used by the accused and with the permission of the court by the prosecution, to contradict such

witness in the manner prescribed in by Section 145 Indian Evidence Act 1872 (I of 1872) and when any part of such statement is so used, any part

thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in this cross-

examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of S. 32, clause (i) of the Indian Evidence Act,

1872 (I of 1872), or to affect the provision of S. 27 of that Act.

163(1) No police officer or other person in authority shall offer or make or caused to be offered or made any such inducement, threat or promise

as is mentioned in the Indian Evidence Act 1872 S. 24.

(2) But no police officer or other person shall prevent, by any caution or otherwise any person from making in the course of any investigation under

this chapter any statement which he may be disposed to make of his own free will.

(15) One thing is clear that it is to statements recorded during investigation under Ch. XIV that Ss. 162 and 163 apply. Learned counsel have

taken us through the relevant provisions in Ch. XIV Part V of the Code, headed "Information to the police and their powers to investigate". The

first question for consideration is when the investigation commenced in this case. Ultimately, this is a question of fact and often defies easy

determination. In cases like habitual bribery and corruption it may often be necessary to make preliminary and informal enquiries as to whether at

all there is anything in the news floating about corruption and bribery as to necessitate a formal investigation". There may be groundless charges

inspired by pure malice anonymous and pseudonymous letters by disgruntled persons, may be chagrined by the integrity of the officer, and a formal

investigation may damage the reputation of persons holding responsible posts. The other aspect is that in certain types of cases it may help

delinquents to cover their tracks and varnish drying all sources of information.

But it could be said that while an enquiry may start with shadowy beginnings and vague rumours, once a police officer forms a definite opinion that there are grounds for investigating a crime, an investigation under the Code has started. Anything said or done subsequently must be held to have been done or said during the investigation. As pointed out in H.N.

Rishbud and Inder Singh Vs. The State of Delhi, .

Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under S. 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy.

(16) Section 154 of the Code provides for the recording of every information relating to the commission of a cognizable offence. If given to an officer in charge of a police station. Under S. 156 any officer in charge of a Magistrate investigate any cognizable case which a court having jurisdiction over the local area would have power to enquire into or try under the provisions of Chapter XV relating to the place of enquiry or trial.

Under S. 157 of the Code of police officer in charge of a police station, has, if from information received or otherwise reason to suspect the commission of an offence, to forthwith send a report of the information to a Magistrate empowered to take cognizance of such offence and commence investigation of the facts and circumstances of the case. Reference may be made in this connection to Section 551 of the Code which provides that police officers superior in rank to an officer in charge of a police station may exercise the same powers throughout the local area to

which they are appointed as may be exercised by such officer within the limits of his station. It is not questioned in this case for the petitioner or the prosecution that the police officer who conducted enquiries prior to the formal first information report lodged on 27-6-1964 was not a person competent to enter upon investigation. To recapitulate the progress of the enquiry; even admittedly there has been an earlier probe by the Vigilance Department prior to 10-3-1964. They had submitted a report on 10-3-1964 on which the Government had acted and retired the petitioner without giving him reemployment. It is admitted that this report dated 10-3-1964 was the definite information to the Government relating to certain corrupt activities of the petitioner. It is found in the counter affidavit now filed for the prosecution that on the orders of the then Chief Secretary to Government to conduct further and more detailed enquiry into the allegations revealed by the note dated 10-3-1964 the Director of Vigilance and Anticorruption registered enquiry 8/HD/64 on 15-4-1964. G.K. Ranganathan, Dy. Superintendent of Police, Vigilance and Anti-corruption. Madras City admittedly conducted an enquiry into the matter pursuant to the registration of the enquiry on 15-4-1964. He would state in his present affidavit that he had taken statements from 9 witnesses during the enquiry conducted by him till the filing of what is relied on by the prosecution as the first information report on 27-6-1964. He would have it that assurance certificates were given to two out of these 9 witnesses all of whom have signed their statements. On behalf of the petitioner the present version as to the number of the witnesses examined before 27-6-1964, and the number of persons to whom assurance certificates have been granted is questioned. It is needless for us to decide at this stage which of the proposed witnesses for the prosecution were examined prior to 27-6-1964, also which of them have given signed statements and which among them were given assurance of immunity purporting to be on behalf of the State. While it can be stated as a general principle that not every piece of information however vague, intangible and indefinite need be recorded as first information report under S. 154 Cr.P.C. to start an investigation it is equally clear that no permit a preliminary enquiry before recording the first information report even after definite information as the commission of an offence is received would be to destroy the value of the first information report and equally to provide room for fabrication of

cases. If the first information could be recorded after a detailed enquiry into the offence is conducted, there is the danger and temptation to incorporate in the first information report details and circumstances advantageous to the prosecution. S. 154 only provides for the receipt of information relating to the commission of a cognizable offence; that is, the information should be such that it enables the police to come to the conclusion that a cognizable offence has been committed. On receipt of such information the section provides for its being reduced to writing and authenticated by the person giving it. The substance of it has to be entered in a book to be kept by the officer in charge of the police station in such form as the State Government may prescribe in this behalf. Section 157 provides for the sending of the report of information to the Magistrate empowered to take cognisance of an offence, if from information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate. It is unnecessary to refer to several other features of the provisions of S. 154 to S. 157 Cr.P.C. Under S. 158 every report sent to a magistrate u/s 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order appoints in that behalf and such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall after recording such instructions on such report transmit the same without delay to the Magistrate. Section 157, it is seen, casts an imperative duty on a police officer who has reason to suspect be it from information received or otherwise, that a cognisable offence has been committed, to report forthwith the matter to the magistrate and initiate investigation. The aforesaid provisions of the Code relating to registration and investigation of an offence do govern also an offence under the Prevention of Corruption Act. Can a police officer by merely delaying sending a report to the magistrate after the receipt of definite information of the commission of an offence proceed upon what he would regard as more detailed enquiry and deprive the petitioner of the safeguards provided under S. 162 Cr.P.C. in respect of the statements recorded during that enquiry? In our view, it would be a travesty of justice if the provisions intended with the definite object of safeguarding the accused could be evaded in that manner. The delay on the part of the

investigating officer in registering the F. I. R. may be an irregularity but certainly the statement recorded subsequent to the receipt of definite

information of the commission of an offence in gathering evidence of the offence would nonetheless be a statement recorded during investigation

and hit by Section 162 Cr.P.C.

(17) Investigation is defined in S. 4(1) of the Code as to include all the proceedings under the Code for the collection of evidence conducted by a

police officer or by any person other than a magistrate who is authorised by a magistrate in this behalf. If the so called complaint dated 27-6-1964

filed by G.K. Ranganathan, Dy. Superintendent of Police, Vigilance and Anti-corruption, it is stated that on the orders of the Government a full-

fledged enquiry was conducted into the allegations of corruption, misconduct and malpractices against the accused, and that as a result of the

enquiry conducted by him the instances of obtaining valuable things by corrupt or illegal or by otherwise abusing his position as public servant set

out in the complaint have come to light. After setting out the instances, it is stated that from the same it would be seen that from 2-1-1961 to 14-3-

1964, the petitioner habitually obtained from his own subordinates valuable things without consideration or for consideration which he knew to be

inadequate and by corrupt and illegal means, abusing his position as a public servant, obtained for himself many valuable things, thereby committing

offences punishable under Ss. 161 and 165 I. P. C. and S. 5(1)(a) and (d) read with S. 5(2) of the Prevention of Corruption Act 1947.

Registration of a criminal case against the petitioner under the aforesaid sections is prayed for, as a regular investigation along would facilitate the

collection of additional evidence by way of recovering the various valuable things which he obtained from his subordinates"" etc. by illegal means. It

is stated that in addition more incriminating evidence is likely to be forthcoming during a regular investigation. It is after this no doubt there was

search of the premises of the petitioner on 29-6-1964, for the gathering of additional evidence by way of recovery of valuable things alleged to

have been obtained by the petitioner. This complaint admits that some evidence had already been gathered. What is wanted is further evidence

particularly search of the premises of the petitioner. There is a clear admission of a prior full-fledged enquiry. This was after the registration of the

offence by the Director of Vigilance and Anti-corruption on 15-4-1964. In this F. I. R. dated 27-6-1964, no doubt the Additional Superintendent

of Police, Vigilance and Anti-corruption, Madras, R.N. Krishnaswami, would state that he is personally investigating the case. Since this has been

sent to the Special Judge, as F. I. R. the prosecution has taken this as the starting point for investigation. As already stated, it would be a travesty

of justice to treat the investigation as commencing from 27-6-1964. We are unable to appreciate any emphasis on the lodging of the complaint by

the Deputy Superintendent of Police Vigilance and Anti-corruption to the Additional Superintendent of Police, Vigilance and Anti-corruption

between tweedledum and tweedledee. Substantial information and evidence, it is found, has been gathered before the so-called F. I. R. was

registered. The fact of registration of the F. I. R. long after steps were taken to gather evidence, cannot affect the question as to when the

investigation started. Collection of evidence relating to the commission of an offence is one of the definite steps in the investigation of a case, and

here the statements have been recorded from material witnesses. The violation of rules in the taking of statements during the course of

investigation cannot be got round by ignoring the investigation which preceded the formal lodging of the F. I. R. as in this case. In K.M. Nanavati

Vs. State of Maharashtra, , Subha Rao J, speaking for the court observes:

But it is said that as the information given by Puran Singh was not recorded by the police officer Phansalkar as he should do under S. 154 Cr.P.C.

no investigation in law could have commenced within the meaning of S. 156 of the Code. The question whether investigation had commenced or

not is a question of fact and it does not depend upon any irregularity committed in the matter of recording the first information report by the

concerned police officer. If so, Section 162 of the Code is immediately attracted"".

In our view the investigation in this case under Chapter XIV of the Code should be held to have commenced when G.K. Ranganathan the Deputy

Superintendent of Police, started enquiry on 15-4-1964.

(18) Now we shall consider the effect of disregarding the provisions of Ss. 162 and 163 while gathering evidence during the course of

investigation. The policy underlying the prohibition of S. 162 against taking the signature of a maker of statement appears to be that the witness at

the trial should be free to make any statement in favour of the petitioner which he may wish to make unhampered by anything which he might have said or might have been made to say to the police. The result of taking signature of the maker of the statement to his statement would be to tie him down to the statement so recorded or at least to give him the impression that he is so tied down and would not be free to make a different statement. The maker of a statement may feel at the trial that he is not a free agent to give evidence. No doubt the evidence of the witness who has signed the statement, given in open Court at the trial does not on that account only become inadmissible. There are no words for such prohibition in the Code or the Evidence Act, nor can it be said that the entire proceedings and investigation get vitiated by taking signed statements. The effect of signature on a statement may be in most cases seriously impair the evidence of the witness. Witnesses of standing and culture and with trained minds who might have given signed statements may hardly be expected to depart from what they have stated if subsequently statements are recorded from them u/s 164 Cr.P.C. or evidence taken in court. They may feel that they have pinned themselves down by the former signed statements, however, it might have been obtained. No doubt the question in each case would be whether the witness appeared to have been influenced by the impression that since he has given a signed statement to the police he is bound to repeat the same at the trial. The answer to this question would depend on the circumstances of each case, the nature and character of the evidence and the witnesses involved. In *Tahsildar Singh and Another Vs. The State of Uttar Pradesh*, while discussing the objects sought to be achieved by S. 162 Cr.P.C. reference is made to the observations of Braund J. in *Emperor Vs. Aftab Mohd. Khan and Others*, :

As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that as investigation has already started, are prepared to tell untruths.

The following observation of a Division Bench of the Nagpur High Court in

Baliram Tikaram v. Emperor, AIR 1945 Nag 1 is also referred:

The object of the section is to protect the accused both against over-zealous police officers and untruthful witnesses.

The Supreme Court also cites the following passage from the judgment of the Judicial Committee in AIR 1939 47 (Privy Council) .

If one had to guess at the intention of the Legislature in framing a section in the words used, one would suppose that they had in mind to

encourage the free disclosure of information or to protect the person making the statement from a supposed unreliability of police testimony as to

alleged statements or both.

In P. Kotayya v. Emperor, 74 Ind. App. 65 = AIR 1947 P. C. 67, their Lordships of the Judicial Committee noted that ""Courts in India have

always regarded any breach of the proviso to Sec. 162 as a matter of gravity"". True is has been observed by their Lordships of the Judicial

Committee in AIR 1947 75 (Privy Council) that where in contravention of Sec. 162, sub-sec. (1) CrI.P.C. a witness has signed a statement made

to a police officer which has been reduced into writing, the evidence given by the witness who signed it does not become inadmissible and still less

can it be said that the contravention has the effect of vitiating the whole proceeding. Their Lordships observe that the value of his evidence,

however, may be seriously impaired as a consequence of the contravention of the statutory safeguard. It is noted that when the Magistrate or

presiding Judge discovers that a witness has while giving evidence, made material use of a statement made by him to the police, it is the duty under

Sec. 162, sub-section (1) of the Code to disregard the evidence of that witness as inadmissible. That of course can happen only when the matter

goes to trial. We have to consider the case under the amended provisions of the Criminal Procedure Code, with reference to Section 251-A. We

will be adverting to this aspect of the matter presently.

(19) An equally serious infraction of procedural safeguard during the investigation alleged is the giving of assurance of immunity from all prosecution

to the subordinate officers who have given the statements. Admittedly two such assurances have been given. It is the petitioner's case that 18 of

the proposed witnesses had been given such assurances and the statements recorded from them. Sec. 163 of the Code in emphatic terms prohibits

a police officer or other person in authority from offering or making or causing to be offered or made any inducement, threat or promise which would appear to a person from whom a statement is obtained grounds for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature. A police officer or a person in authority should of course of any investigation under the Code any statement which the person may be disposed to make of his own free will. Sections 160 to 164 of the Code must in this connection be read together. The reasons behind the rule are obvious. Where a statement is not made voluntarily but is the result of inducement or threat, there is a danger of the statement being false or at least biased. Referring to confessions obtained by inducement or threat Williams J. in *R. v. Mansfield*, 1881-14 Cox C.

C. 639--

It is not because the law is afraid of having truth elicited that these confessions are excluded but because the law is jealous of not having the truth".

The same could be said of the statements obtained by inducement or threat. The ground for prohibition in Sec. 163 is that it would not be safe to

receive a statement made under any influence or fear. Such statements may hamper the due course of administration of justice. They may divert

investigation from proper channels. Equally such injunctions are necessary for keeping under check the wide powers of investigation and search

which are likely to jeopardise the cherished freedom of personal liberty and reputation. Mr. V.K. Thiruvengkatachari stressed on the demoralising

and debasing effect of an investigation vitiated by grant of full absolution at the discretion of police officers and securing statements from colleagues

or subordinates in a public office or for that matter in any administrative department. If such procedure is condoned, it is submitted that any person

who is approached for a statement may hesitate to refuse, as on his refusal others could be found in his place and the person refusing himself made

a victim in his turn. The thesis is, no one is secure unless every one is secure from the over-zealous investigation officer. The amnesty granted in this

case purports to emanate from the Government and is of the widest character. We are not (sic) on the validity of these assurances whether in law it

is worth the paper on which it is engrossed. Neither the Criminal Procedure Code nor the Prevention of Corruption Act recognises the immunity

from prosecution guaranteed under these assurances. It must be noted that the witnesses to whom assurances are given are themselves guilty of

offences. They are not just bribe givers to come under Sec. 8 of the Prevention of Corruption Act. The grant of pardon is not in the discretion of

police authorities; it is a judicial function. Section 337 of the Code provides for tender of pardon to accomplices in certain cases. At any stage of

the investigation or enquiry into or trial of the specified offences, with a view to obtaining evidence of any person supposed to have been directly or

indirectly concerned in or privy to the offence, conditional pardon could be tendered. Sec. 8 of the Prevention of Corruption Act provides that

notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant

for an offence under Sec. 161 or Sec. 165 I.P.C. or under sub-section (2) of Sec. 5 of the Prevention of Corruption Act that he offered or agreed

to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution

u/s 165-A I.P.C. This is the only statutory immunity outside judicial pardon to which our attention has been drawn. Reference may be made to

Sec. 343 of the Code which runs thus:

Except as provided in Ss. 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to

induce him to disclose or withhold any matter within his knowledge"". It cannot be gainsaid that assurances outside the law which cannot grant

immunity under the law are likely to interfere in the proper discharge of duties by public servants. The self inculpatory statements they might have

made would be hanging like a Democles sword over them, and unless they are men of strong character and have made statements really

voluntarily, with a sense of responsibility, to purify the administration and get rid of an incubus compelling them by his position to infamous acts,

they may become handy stooges for unprincipled officers ready to take advantage of their plight. The danger of such statements is that the man

getting fixed and pinned to a statement may readily seek further immunity by voluntarily accusing others if cornered. A statement so obtained cal

also vitiate any subsequent statement recorded under Sec. 164 CrI.P.C. In 74 Ind App 80 = (AIR 1947 PC 75 at p. 77), the Judicial committee

marked that while the value of giving evidence may be seriously impaired as a consequence of the contravention of the statutory safeguard under S.

162 CrI.P.C. the use by a witness while he was giving evidence of a statement made by him to the police gave rise to different considerations.

Their Lordships observed:-

The categorical prohibition of such use would be merely disregarded if reliance were to be placed on the evidence of a witness who had made

material use of the statement when he was giving evidence at the trial. When, therefore, the magistrate or presiding Judge discovers that a witness

has made material use of such a statement it is his duty under the section to disregard the evidence of that witness as inadmissible"".

Now we are dealing with literate witnesses holding positions of responsibility in Government office. If they have been called upon to go through the

formality of signing their statements, obviously it must be with a view to make them stick to it; then it is hardly likely that these person would vary or

depart from the signed statements they had made, when later making statements on oath before a Magistrate under Sec. 164 CrI.P.C. May be

they will not be actually having on hand the statements previously made by them to go through them. But one way reasonably expect this class of persons

when called upon to state again what they have already stated to, at least previously refresh their memory as to what they had stated before and

carry the same in their memory. Having pinned himself to a particular narration of facts in a signed statement the maker would feel that when he is

called upon to make a statement on oath before a magistrate, he is not free to depart from his earlier statement. Thus the violation of the provisions

of Secs. 162 and 163 may impair a statement judicially recorded on oath under Sec. 164.

(20) Of course irregularities and illegalities during an investigation do not necessarily vitiate the entire proceedings. The guilt of an accused will be

pronounced by court on the evidence given at the trial and irregularities and illegalities during investigation will only affect the value of the evidence.

When the case should-come up for trial it will be for the trial court to consider to what extent the testimony placed before court is vitiated and to

be discarded. If without any judicially recognised amnesty a person comes forward and gives evidence no doubt it is his look out. He is an

accomplice and his evidence will be looked with suspicion as tainted. But the law does not make him an incompetent witness at the trial of another

person on respect of an offence in the commission of which he is an accomplice. Sec. 133 of the Evidence Act provides that an accomplice shall

be a competent witness against an accused person. We are not here concerned at the present stage with the quality of such evidence at the trial

and what confidence it can inspire in court. The learned Advocate General referred to us in this connection to the decision of the Allahabad High

Court in Emperor Vs. Har Prasad Bhargava, . In that case in proceedings against a Subordinate Judge for receiving bribe, the Government issued

a notification to the effect that no prosecution would be instituted by the Government, against any person who came forward with evidence that he

had paid or offered bribe to the particular officer whose case was under consideration. In consequence of this notification, two persons came

forward and gave evidence against the Subordinate Judge, begin undoubtedly accomplices as regards the offence with which the accused was

charged. Of course this was long before we had on the statute book Sec. 8 of the Prevention of Corruption Act. The relevant passage is at page

231 (of ILR All) = (at p. 107 of AIR) and runs thus:

From a legal point of view that only difference in the case now before us is that neither Bhagirath nor Mangal Chand was ever an "accused

person" at the trial in which his evidence was tendered, within the meaning of the said section. The real effect of the argument addressed to us on

behalf of the accused on this point is that there is a method by which the prosecution, keeping strictly within the four corners of the Code of

Criminal Procedure might, with the consent of the court, have put Bhagirath and Mangal Chand into the witness box against Har Prasad Bhargava,

each of them fortified by a judicial order of acquittal which would have barred their subsequent prosecution. They actually gave evidence without

any such shield though relying upon an extra-judicial undertaking that the local Government would not direct their prosecution. Whether their

testimony is entitled to greater or less credit on this account is a question to be considered; but it has nothing to do with the admissibility of the

testimony. There is abundant case-law in support of the propositions which we have laid down.

Reference was also made for the State to the decision in *Anant v. Emperor*, AIR 1925 Nag 313 at p. 319 where it is observed:-

As to the assurance given to four persons it is notorious that it is very difficult to get evidence in such cases of bribery and I see nothing sinister in

the fact that it was considered necessary in the present case to assure four people that they would not suffer by telling the truth".

But the principles laid down in these cases do not in the least detract from the validity of the objection taken to the statements recorded at the

investigation and the consideration of those statements at the stage of framing charge under Se. 251-A. There has been deliberate violation of the

provisions of the Code, and a departure from the recognised and lawful procedure for investigation. When the law provides for a particular

procedure and certain prohibitions are specifically indicated, there are there to be obeyed and not deliberately flouted. In AIR 1936 253 (Privy

Council) the Judicial Committee while considering non-compliance with statutory provisions in regard to Ss. 164 and 364 CrI.P.C. observed:

The rule which applies is..... not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the

thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to

courts--*Taylor v. Taylor* 1876 1 Ch. D. 426.

In the *State of Uttar Pradesh Vs. Singhara Singh and Others*, Sarkar J. as he then was referred to this rule thus:

The rule adopted in 1876 1 Ch. D. 426 is well recognised and is founded on sound principles. Its result is that if a statute had conferred a power

to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner

than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provisions might as well not have been

enacted".

A point made on behalf of the accused is that as statements under S. 161(3) obtained on assurance of immunity from prosecution will have to be

discarded one of the weapons in the armoury of the accused the right to contradict the witnesses for the prosecution by reference to the statements

recorded under S. 162 is denied to the accused. It is therefore contended that

the investigation should be struck down as illegal.

(21) Like all procedural laws the provisions of the Code are designed to subserve the ends of justice and not to frustrate them. One has to see the

effect, if any, of the breach of the provisions of the Code in the advancement of justice, whether the illegality or irregularity is one that can be cured

or is cured and whether the accused would be prejudiced by its presence. The Code itself does not define what is irregularity and what is illegality

and as pointed out by the Supreme Court in *Willie (William) Slaney Vs. The State of Madhya Pradesh*, , illegality can only mean an incurable

irregularity, incurable because of the prejudice leading to failure of justice, and the question of prejudice being a question of fact has to be decided

by court in each particular case. Imam J. concludes his judgement in that case with the following observations:

In conclusion I would point out that the provisions of the Criminal Procedure Code are meant to be obeyed. Contravention of its provisions are

unnecessary and neither the prosecution nor the Courts of trial should ignore the provisions in the hope that they might find shelter under Sections

535 and 537 of the Code. Where the contravention is substantial and a retrial becomes necessary, public time is wasted and the accused is put to

unnecessary harassment and expense".

In view of the amended procedure to be adopted in warrant cases instituted on police report under S. 251-A CrI.P.C., statements recorded under

S. 162 have become more important. While prior to the amendment of the Code in 1955 the use of the statement under Sec. 161 CrI.P.C. was

limited, after the amendment of the Code in 1955, the statement has vital role to play at a crucial stage of the procedure in the enquiry of case

triable by court of sessions and in the trial of warrant cases under Ss. 207-A and 251-A of the Code. It is necessary to set out the following

portions in Sec. 173 CrI.P.C.

173(1) Every investigation under this Chapter shall be completed without unnecessary delay and, as soon as it is completed, the officer in charge

of the police station shall--(a) forward to a magistrate empowered to take cognizance of the offence, on a police report a report in the form

prescribed by the State Government setting forth the names of the parties, the nature of the information and the name of the persons who appear to

be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond and, if so, whether with or without sureties.....

(4) After forwarding a report under this section the officer in charge of the police station shall, before the commencement of the enquiry of trial,

furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-sec. (1) and of the first information report

recorded under Sec. 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely including the

statements and confessions if any recorded, under Sec. 164 and the statements recorded under sub-sec. (3) of Section 161 of all the persons

whom the prosecution proposes to examine as its witnesses"". The relevant provisions of Sec. 251-A under which the present enquiry is being

proceeded with are:

251-A(1) When, in any case instituted on a police report the accused appears or is brought before a Magistrate at the commencement of the trial,

such magistrate shall satisfy himself that the documents referred to in Sec. 173 have been furnished to the accused, and if he finds that the accused

has not been furnished with such documents or any of them, he shall cause them to be so furnished.

(2) If upon consideration of all documents referred to in Sec. 173 and making such examination if any of the accused as the Magistrate thinks

necessary and after giving the prosecution and the accused an opportunity of being heard the magistrate considers the charge against the accused

to be groundless, he shall discharge him.

(3) If, upon such documents being considered, and examination, if any, being made and the prosecution and the accused being given an

opportunity of being heard, the magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under

this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a

charge against the accused.

(4) The charge shall then be read and explained to the accused and he be asked whether he is guilty or claims to be tried...."" It will be seen that

under Sec. 251-A no provision is made for examination of a witness before

making an order under sub-section (2) discharging the accused or under sub-sec. (3) framing charge. It will be interesting to compare these provisions with the provisions of Ss. 252 to 255 Cr.P.C. in respect of warrant cases instituted otherwise than on police report. In such cases there is provision for taking evidence by the court before framing of charge.

The procedure has been simplified in cases taken cognizance on police report by reason of the provision for previous enquiry and investigation by

a competent police officer. A trained person has collected the evidence that would be available at the trial. As noticed in *Ramnarayan Mor and*

Another Vs. State of Maharashtra, .

In a warrant case, therefore, there will be no evidence of witnesses and the examination of the accused if found necessary by the Magistrate must

of necessity be restricted to the circumstances appearing from the documents under S. 173(4). The Legislature has therefore in enquiries in warrant

cases contemplated examination of the accused solely upon circumstances appearing from the documentary evidence referred to in Sec. 173(4)

and it cannot be assumed that the examination of the accused in respect of the circumstances appearing from these documents which are not

proved but of which copies have been furnished to the accused, is so inconsistent with principles of criminal jurisprudence that it must be

discountenanced.

While referring to the change in the procedure that had been brought about at the same time in committal proceedings by Section 207-A of the

Code, which their Lordships had to consider in the above case, it is observed:

Normally in a criminal trial, the court can proceed on documents, which are duly proved or by the rules of evidence made admissible without

formal proof, but under the amended Code the legislature has in Sec. 207-A prescribed a special procedure in proceedings for commitment of the

accused. The record consists of the oral evidence recorded under sub-sec. (4) of Section 173, and it would be difficult to regard only those

documents which are duly proved, or which are admissible without proof as ""evidence"" within the meaning of Clause 6 of Sec. 207-A and with not

the rest. There is no substance in the contention that the Legislature could not have intended that the accused should be examined in respect of

documents which are not duly proved before the court because to do so might in

some cases operate as a trap for the accused." The object of the examination it may be remembered is to afford an opportunity to the accused to explain any circumstance appearing against him".

(22) Under the amended procedure relating to warrant cases instituted on police report also the documents referred to in Sec. 173 of the Code

are the material on which the accused has to be discharged or charges framed and the accused made to stand on his trial. The examination of the

accused by the Magistrate at the stage can only be with reference to the documents. The documents referred to under S. 173 which thus now have

positive role in the framing of charges include the statements and confessions, if any, recorded u/s 164 and the statements recorded under sub-

section (3) of Section 161 of all the persons to examine as its witnesses. While prior to the amendment of the Code in 1955 statements recorded

at the investigation stage had a limited use, though important from the point of the accused, now they provide the basis for the framing of charge.

Prior to the amendment statements made by prosecution witness of the investigation, being the earliest statements made by them with reference to

the facts of the case, were valuable material for testing the veracity of the witnesses examined in court with particular reference to their recorded

statements when they happened to be at variance. Such statements were considered only with a view to weigh the evidence actually adduced in

court. Now as pointed out above, they are in a sense evidence, though only at the stage for enquiry before framing charge and for framing charge.

The Evidence Act, defines evidence to mean and include also all documents produced for inspection of courts. In Ramnarayan Mor and Another

Vs. State of Maharashtra, the documents referred to in S. 173(4) are considered is part of the evidence mentioned in Sec. 207-A. As theses

documents are the matter which a magistrate has to consider u/s 251-A(2) and (3), it would be open to the prosecution and the accused to rely

upon or refer to them in support of their respective contentions when they exercise the right of being heard under sub-clause (2) and (3) of Sec.

251-A. Sec. 162(1) while prohibiting the signing of statements recorded under Sec. 161(3) by the person making the statements places also an

embargo on its user for any purpose subject to the latter provision in the Code; "nor shall any such statement.....be used for any purpose save as

hereinafter provided.'" Ss. 207-A and 251-A provide for the user of these statements at the stage of committal or framing charge as the case may

be. In *Ukha Kolhe v. State of Maharashtra*, AIR 1963 SC 1531 it is stated--

Exclusion from evidence of any part of a statement made to a police officer or a record from being used for any purpose at any enquiry or trial in

respect of an offence under the investigation at the time when such statement was made is "save as hereinafter provided". The word "hereinafter" is

in our judgment not restricted in its operation to Sec. 162 alone, but applies to the body of the Code to hold otherwise would be to introduce a

potent inconsistency between Secs. 207-A and 162 of the Code for by the former section in committal proceeding statements recorded under S.

162 are to be regarded as evidence"".

(23) Such being the scope of Sec. 251-A, infraction of the provisions of the Code in the matter of investigation brought to the notice of the Court

before the framing of charge cannot be passed over leaving the accused to stand trial for charges framed on material gathered in violation of the

provisions of the Code. No doubt illegality committed in the course of investigation does not affect the competence or jurisdiction of the court for

trial. Where cognisance of a case had in fact been taken and the case had proceeded to termination the invalidity of the preceding investigation, it

has been held repeatedly, does not vitiate the result, unless miscarriage for justice has been caused thereby. But the position would be different, if

the illegality is discovered at the early stage of the proceeding. In *The State of Madhya Pradesh Vs. Mubarak Ali*, an objection was taken before

the trial began before the Special Judge that the investigation had been carried on in violation of Sec. 5-A of the Prevention of Corruption Act. The

order of the High Court in the matter providing for rectification of the defect and curing of the illegality in the investigation directing the Special

Judge to order the Dy. Superintendent of Police to carry on investigation while the case remains pending on the file of the Special Judge was

upheld by the Supreme Court. In *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, after observing that where cognizance of the case has in

fact been taken and the case has proceeded to termination the investigation will not vitiate the result unless miscarriage of justice has been caused

thereby it is stated by Jagannadha Das J.:-

It does not follow, however, that the invalidity of the investigation is to be completely ignored by the court during trial. When the breach of such a mandatory provision (Sec. 5(4) and proviso to S. 3 of the Prevention of Corruption Act and S. 5-A of the Act) is brought to the knowledge of the court at a sufficiently early stage, the court while not declining cognisance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for.....When the attention of the court is called to such an illegality at a very early stage it would not be fair to the accused not to obviate the prejudice they may have been caused thereby by appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under S. 537 Cr.P.C. of making out that such an error has in fact occasioned a failure of justice. It is relevant in this context to observe that even if the trial had proceeded to conclusion and the accused to make out that there was in fact a failure of justice as the result of such an error explanation to S. 537 Cr.P.C. indicates that the fact of the objection having been raised at early stage of the proceeding is a pertinent factor. To ignore the breach in such a situation when brought to the notice of the court would be virtually to make a dead letter of the peremptory provision which has been enacted on grounds of public policy for the benefit of such an accused"".

(24) Learned counsel for the petitioner attacked the propriety of taking self-incriminatory statements even in cases where there has been no assurance of immunity from the prosecution. Some of these persons have admitted making manipulations in the nominal muster rolls to reimburse themselves the cost of valuable things provided for the petitioner. It is unnecessary for us to examine at length the question whether these admissions in the statements which are confessions of guilt should be discarded by the Special Judge, as the learned Advocate General to a specific question from court, stated that the record of such manipulations has to be discarded as not proper material for consideration. The learned Special Judge has not considered these vitiating features in regard to the documents that have been placed before him while ordering the framing of charges against the petitioner.

(25) In the light of the above discussion, it is clear that the present order of the Special Judge directing the framing of charge on consideration of the statements before him under S. 173(4) Cr.P.C. without reference to the illegalities in the investigation has to be quashed. The Special Judge will have to take up the matter once again and consider the case excluding from consideration all statements recorded under Sections 161(3) and 164 which are found vitiated in the light of the observations made herein. The Special Judge will also exclude while considering the statements which are not otherwise violative of Ss. 162 and 163 of the Code, portions of the statements which are self-incriminatory and confessionals in character of the maker.

(26) The State has preferred Crl. R. C. 294 of 1965 questioning the view of the Special Judge that no charge could be framed in the case under S.

5(1)(b) of the Prevention of Corruption Act read with Section 5(2) of the Act. The Special Judge agreed with the contention on behalf of the

accused that S. 5(1)(b) of the Prevention of Corruption Act like S. 165 I. P. C. was designed to cover only cases of receipt of valuable things by

public servants from third parties who have any business before him and not from officers subordinate to him. It is not the case for the prosecution

that the documents warrant a charge for receipt of valuable things from third parties who are not subordinates of the petitioner. Their contention is

that the sub-section would include acceptance of valuable things from subordinates. The Special Judge has taken the view that the offence would

come u/s 5(1)(d) of the Act, that is by corrupt or illegal means or by otherwise abusing his position as public servant, he has obtained for himself or

for any other person any valuable thing or pecuniary advantage. In our view the interpretation placed by the Special Judge on S. 5(1)(b) is correct.

The language used in S. 5(1)(b) is identical with the language of S. 165 I. P. C. Though the illustrations to the section cannot govern its

interpretation the illustrations under S. 165 are at any rate where there is ambiguity indicative of the scope of the section. The illustrations refer to

receipt of valuable things from third parties. The material portion of S. 5 may be set out:

5(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty (b) if he habitually accepts or obtains or

agrees to accept or attempts to obtain for himself or any other person, any valuable thing without consideration or for a consideration which he

knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business

transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is

subordinate, or from any person whom he knows to be interested in or related to the person so concerned;.....(d) if he, by corrupt

or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary

advantage.

In our reading of the section the acceptance of valuable things which constitutes an offence of criminal misconduct is acceptance, (I) from any

person (whom he knows to have been or is to be likely to be) (a) concerned in any proceeding or business transacted or about to be transacted by

him or (b) concerned in any proceedings or business having any connection with the official functions of himself or of any public servant to whom

he is subordinate, and (II) from any person whom he knows to be interested in or related to the person so concerned for the prosecution that the

words ""having any connection with the official functions of himself"" are to be read as qualifying ""any person"". It is difficult to include the

subordinates of an officer as persons concerned in any business transacted or to be transacted by him. It is not contended that on the facts of this

particular case the subordinate officers were in any way concerned in any proceedings before the accused.

(27) In the result W. P. 391 of 1965 and Crl. M. P. 934 of 1965 are allowed. The order dated 16-1-1965 of the Special Judge in Crl. M. P. 86

of 1964 is quashed. The Special Judge is directed to take up the matter for fresh consideration in the light of the observations made above. W. P.

390 of 1965 and Crl. R. C. 294 of 1965 fail and are dismissed. No costs in the writ petitions.

(28) Order accordingly.