

(1957) 11 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 496 of 1957

Piara Singh

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 11-11-1957

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 3
Criminal Procedure Code, 1898 (CrPC) — Section 176

Citation : AIR 1958 P&H 141 : (1958) CriLJ 673

Hon'ble Judges : A.N. Bhandari, C.J;G.D. Khosla, J

Bench : Division Bench

Advocate : Bhagirath Das, Rajinder Sachar and K.S. Thapar, S.M. Sikri, General, for the Appellant;

Final Decision : Dismissed

Judgement

A.N. Bhandari, C.J.—By this petition u/s 3 of the Contempt of Courts Act, the petitioner prays that S. Par-tap Singh Kairon, Chief Minister, Punjab, should be committed for contempt of court for interfering with a judicial enquiry pending before a Magistrate of the 1st class at Karnal.

2. The petitioner is one Piara Singh, a resident of the Karnal district. He states that on 7-7-1957 a brutal murder was committed in village Rukhsana of the Karnal district in which Hazara Singh and Piara Singh sons of one Kirpa Singh were among the culprits. As this murder was one in a chain of murders committed by the gang of Hazara Singh in the Karnal district, the authorities concerned were deeply perturbed and had warrants of arrest issued against the culprits on 12-7-1957. While the police were looking for the perpetrators of the crime in all likely places the badmashes who are known to the Chief Minister went and took shelter under his roof. On 14-7-1957 Shri Asa Singh, Secretary to the Chief Minister, contacted the Superintendent of Police, Karnal, on telephone and informed him that Hazara Singh and Piara Singh had approached the Chief

Minister and had stated that the police had raided their houses for purposes of arrest, that they apprehended a danger to their lives from their opponents and that they should be given the necessary protection.

The Superintendent of Police informed Shri Asa Singh that Piara Singh and Hazara Singh were dangerous bad characters and were proclaiming to kill the prosecution witnesses of a murder against them. He accordingly request-ed Shri Asa Singh to arrest these bad characters immediately. At about 10 o'clock the same night one Iqbal Singh of Samana Bahu learnt that Hazara Singh and party had come to the neighbourhood of the village with the object of killing Iqbal Singh, the petitioner and the other members of his party. On receipt of this information Iqbal Singh hastened to notify the police of the danger which he was apprehending. The police surrounded the village and asked the petitioner and his companions to hold themselves in readiness for an encounter. At about 1.30 a.m. Hazara Singh, Piara Singh and Gian Singh. came towards village Samana Bahu but were challenged by the police.

As the dacoits opened fire the police fired back in reply. As a result of this encounter the three dacoits were killed. A Magistrate held an enquiry u/s 176 of the Code of Criminal Procedure which was undertaken immediately to enquire into the cause of the death of these three persons and people were summoned to come and state before the Magistrate what they knew about the incident of 22-7-1957.

3. After a number of hearings before Shri Onkar Nath Magistrate Shrimati Hukam Kaur, widow of Kirpa Singh and mother of Hazara Singh and Piara Singh, appeared before the Magistrate on 14-8-1957 and began her statement After the very first sentence she requested for permission to bring a counsel with her. This permission was allowed. She went out and came back with Shri Dewan Chand Bali her counsel and stated in his presence that she could not make statement as she was still under the shock of the death of her two sons and wanted ten days adjournment.

The learned Magistrate adjourned the case to the 21st August. On this later date she made a detailed statement in which she referred to the telephonic conversation between the Chief Minister and the Superintendent of Police and her interviewing with the Chief Minister who had sympathised with her. Even before the 14th August she sent an application to the Chief Minister that after the death of her sons she had seen the Chief Minister who had reverted and transferred the Superintendent of Police and who required the other police officers who took part in the encounter to be transferred.

4. On the 21st August 1957 the case was adjourned to the 29th August but Hokam Kaur again sent an application to the Chief Minister asking for the transfer of this enquiry from the Court of Shri Onkar Nath Magistrate. This application was sent by the Chief Minister to the District Magistrate for disposal. The District Magistrate asked for an explanation from Shri Onkar Nath before

whom the enquiry was pending. The Magistrate denied the allegations of partiality but stated that attempts were being made to Influence his decision.

The District Magistrate gave no notice to any of the parties and transferred the enquiry to the Court of Sh. C. D. Khanna a junior executive Magistrate without assigning any reason for transferring the same. It is said that immediately before the transfer of the enquiry Shri Asa Singh visited Karnal.

5. On the 29th August 1957 a large number of senior police officials who had taken part in the encounter were summoned by written orders to meet the Chief Minister at the Canal Rest House, Delhi, and on the 30th they were individually asked by the Chief Minister to change their statements recorded by the Magistrate and confess to having murdered three dacoits as their mother had deposed. This constituted a direct interference by the Chief Minister with the judicial enquiry and was done with a view to influence the remaining witnesses.

The police officers who had refused to fall in line with the wishes of the Chief Minister were threatened by the Chief Minister with serious consequences and all of them were transferred to other posts. The District Magistrate was also suddenly transferred so that the magistracy of the district should be completely demoralised and the enquiring Magistrate overawed. The Chief Minister is alleged to have adopted the somewhat unusual measures as Hazara Singh who was undergoing a long sentence was a friend of the Chief Minister. It is said that by reason of this intimacy the Chief Minister had secured Hazara Singh repatriated him from Pakistan. As the Chief Minister was frequently interfering with a course of justice by overawing Magistrates, threatening witnesses, trying to create evidence and thus interfering with the course of justice, the petitioner prayed that he should be committed for contempt of Court.

6. Upon the filing of this petition my learned brother Khosla J. issued a notice to the Chief Minister to appear before this Court and to show cause why he should not be adjudged to be guilty of contempt for interfering with the course of justice.

7. S. Partap Singh Kairon has by his answers denied the charge. He has put in a lengthy affidavit in which he has categorically denied the serious allegations that have been made against him and his statement is supported by the affidavits of Shri Nakul Sen, Chief Secretary to Government, S. Waryam Singh Inspector-General of Police, Shri Ram Singh Deputy Inspector-General of Police, Shri Asa Singh Private Secretary to the Chief Minister, and certain other officers.

8. The Chief Minister states that Hazara Singh deceased and his companion went to see him in his office in the Punjab Government Secretariat, at about noon on the 14th July. 1957. Hazara Singh interviewed him for a few minutes and complained that the local police wanted to murder both him and his brother Piara Singh and that the necessary protection should be afforded to them. Hazara Singh was so frightened about the safety of himself and his brother that he threatened to stage a dharma in the office of the Chief Minister unless orders were issued to the Superintendent of Police, Karnal, to afford them protection.

Thereupon the Chief Minister asked his Secretary Shri Asa Singh to send a telephonic message to Shri G. S. Garewal, Superintendent of Police, Karnal, to give them the requisite protection.

9. On 16-7-1957 Shrimati Hukam Kaur mother of Hazara Singh and Piara Singh deceased, interviewed the Chief Minister at Chandigarh and made a complaint against the police for murdering her sons Hazara Singh and Piara Singh along with Gian Singh on the night between the 14th and 15th July 1957. On 24-8-1957 the Chief Minister received a petition from Shrimati Hukam Kaur and this petition was marked in routine by his office to the Home Secretary without having been shown to the Chief Minister. The office of the Home Secretary forwarded the application in routine on the 6th or 7th September 1957 to the District Magistrate Karnal "for favour of such action as may be considered necessary". This application was received in the Deputy Commissioner's office on 12-9-1957.

10. The prosecution version before the Magistrate holding the inquest had concluded long before the 30th August 1957, The Chief Minister had received repeated complaints that the police officers in the "encounter" were harassing and threatening those witnesses who had refused to fall in line with the police, the last complaint in this connection being dated 22-8-1957. This complaint was received in the office of the Chief Minister on the 24th August. By that time the case had gained notoriety in the State and all sorts of rumours were afloat regarding the manner in which Hazara Singh, Kara Singh and Gian Singh had met their end. In order to ensure an effective and impartial enquiry the Chief Minister asked the Inspector-General of Police to call the police officers against whom complaints of interference had been received.

The Inspector-General of Police accordingly called seven of the police officers concerned in the encounter on 30-8-1957 in the first instance to Chandigarh. But the Chief Minister had to leave for Delhi unexpectedly and the officers were accordingly directed to meet him at Delhi. In his presence S. Waryam Singh Inspector-General of Police told them that complaints of interference by them had been received and impressed upon the officers concerned the desirability of desisting from exercising any kind of pressure on the witnesses who wished to make statements during the inquest proceedings. Later to avoid any possibility of their interference it was decided to transfer them immediately from the district and the Inspector-General of Police issued the necessary orders. It is emphasised that the statements of these officers had been recorded by the Magistrate between the 15th of July and the 15th of August, that is, long before their transfers were ordered.

The Chief Minister denies the assertion that the police officers at the meeting at Delhi were asked by the Chief Minister or the Inspector-General of Police to change the statements which had already been recorded by the Magistrate or to confess that they had murdered Hazara Singh, Piara Singh and Gian Singh. The sole purpose of the meeting was to ensure that the witnesses should be at liberty

to depose as they wished without any fear or pressure.

The Chief Minister asserts that the transfers were made in the circumstances mentioned above and that the transfer of Shri Bhag Singh, District Magistrate, Karnal, had no connection with the enquiry. The Chief Minister admits that he was interned in the Sialkot jail during the "Quit India" movement in 1942 but denies knowledge of the fact that Hazara Singh deceased was also a prisoner in that jail at that time. He repudiates the suggestion that he had any intimacy with Hazara Singh or that he had anything to do with the remissions granted to him. The Chief Minister offers the assurance that he attaches the greatest importance to the due administration of justice in accordance with law and that whatever was done by him in this case was done with the object of advancing the cause of justice.

11. It is not necessary in my opinion to embark upon an enquiry for the purpose of examining the truth or otherwise of the allegations appearing in the petition or of the explanations appearing in the written statements, for I am satisfied that it is possible to decide this petition on other grounds.

12. The learned Advocate General who appears for the State of Punjab and for the Chief Minister prays that this petition should be dismissed summarily and has given two reasons in support of his prayer. It is contended in the first place that although the petition is supported by an affidavit of the petitioner who could have no personal knowledge of the facts stated therein, more particularly those stated in paragraphs 2, 4, 17 and 18, it is unsupported by the affidavit of any person who had direct knowledge of the facts. Secondly, it is argued that a Magistrate holding an enquiry u/s 176 of the Code of Criminal Procedure is not a Court subordinate to the High Court the contempt of which is punishable u/s 3 of the Contempt of Courts Act. Both these pleas must, in my opinion, be upheld.

13. It is an accepted proposition of law that when a contempt is committed in the presence of the Court, it is within the competence of the Court to act on what it sees and hears and on that evidence alone to punish the offender without trial or issue and without other proof than its actual knowledge of what occurred. But it is equally well settled that where the contempt does not occur in the presence and hearing of the Court it must be brought to the attention of the Court by affidavits or sworn statements of the facts by persons who witnessed them or have knowledge of them. The affidavit which is a necessary pre-requisite to the issue of a rule must specify the acts and in such a way as prima facie to show the commission of a contempt.

14. The necessity for the verification of the statement or charge, as a condition precedent to the issue of a rule to the offender to show cause why he should not be punished for the alleged contempt has been established by a long and unbroken string of authorities. In *Rapalje on Contempt* Section 93, it is said:

"In the United States the almost universal practice in this matter is to present to the Court an affidavit setting forth the facts and circumstances constituting the

alleged contempt, sworn to by some person who witnessed or had knowledge of the offence. Unless such an affidavit be presented, process will not be granted. The issuing of process without the filing of the proper affidavit is erroneous, and the error is not cured by the subsequent filing thereof.

15. In *Encyclopaedia on Pleading and Practice*, Volume IV page 779, it is stated:

"The almost universal method by which contempt proceedings are begun is by an affidavit, and an examination of the authorities will generally disclose that in all contempt proceedings, save for such as are committed in the Court's immediate presence, an affidavit is essential."

16. In *Wyatt v. People* 17 Colo 261: 28 Pac 964 the Supreme Court of Colorado observed as follows:

"Constructive contempts those not committed in the presence of the Court -- must, of course, in some regular and legitimate way be brought to the Court's knowledge; until this is done the process of attachment will not issue And in *Gandy v. State* 13 Neh 445 : 14 NW 143 (B) it is said that such proceedings must be commenced by a sworn information. But the practice generally recognised throughout United States, and according to Blackstone frequently followed in England, is for some proper official or interested party to set forth by affidavit the material facts relied on. A little contrariety of opinion exists as to whether the warrant of commitment or the order of Court must recite the jurisdictional facts. But the overwhelming weight of authority in this country sustains the proposition that the affidavit on which the proceeding for a constructive contempt is based must state facts which, if established, would constitute the offence, and that, if the allegations of the affidavit are not sufficient in this respect, the Court is without jurisdiction to proceed."

17. In *State v. Blackwell* (1878) 10 SCC 35 a person accused of selling intoxicating liquors without a licence stated while on his trial that he had the day previous given two of the jurors whisky, whereupon the Court on its own motion, and without affidavit, issued a rule to show cause why he should not be punished for contempt. Holding the proceeding to be void for want of an affidavit, the Court observed:

"The rule to show cause appears to have been made without affidavits. This is a fatal objection. All parties charged, otherwise than by the oath of the grand jury, with offences other than contempts committed in the presence of the Court, are entitled to have the matters charged stated under oath, the penalties for false swearing being regarded as a safeguard to the liberties of the citizen."

18. The law of England requires that to found an application for committal or attachment in the case of a criminal contempt, the facts constituting the alleged contempt must be proved by affidavit (Section 63. Contempt of Courts, Halsbury's Laws of England, Vol. 8). The person sought to be committed has the

right to see the applicant's evidence in reply. The first objection raised by the learned Advocate General must prevail.

19. I shall now proceed to deal with the second objection taken by the learned Advocate General that a Magistrate holding an enquiry u/s 176 of the Code is not a Court under the Contempt of Courts Act.

20. All High Courts in the country possess inherent powers to punish for contempt independently of a special or express grant of Statute and in their case statutory authorisation such as has been conferred by the Contempt of Courts Act is unnecessary and adds nothing to their power.

It is somewhat doubtful however whether it is open to an inferior Court, in the absence of an appropriate statutory enactment, to award punishment to persons guilty of contemptuous acts or behaviour. Section 3 of the Contempt of Courts Act empowers every High Court to exercise the same jurisdiction, power and authority in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself. A question at once arises whether a Magistrate of the 1st class holding an enquiry u/s 176 of the Criminal Procedure Code can be regarded as a Court subordinate to the High Court. This section is in the following terms:

"176. (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in Section 174, Clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined."

21. Mr. Bhagirath Das who appears for the petitioner contends that the Magistrate of the 1st class who is holding the enquiry u/s 176 is a Court subordinate to the High Court and that the constructive contempt which is alleged to have been committed in the present case is punishable u/s 3 of the Contempt of Courts Act. He has placed three submissions in support of this contention, viz. (1) that a Magistrate of the 1st class is one of the five classes of criminal Courts constituted by Section 6 of the Code of Criminal Procedure; (2) that a proceeding u/s 176 of the Criminal Procedure Code is a judicial proceeding, for it is a proceeding in the course of which evidence may be taken legally on oath (Section 4(1) (m), Criminal Procedure Code); and (3) that a proceeding u/s 176 is open to revision by the High Court u/s 435 of the Criminal

Procedure Code.

He relies simply on the case reported as *Advocate General, Burma v. Maung Chit Maung* AIR 1940 Rang 68 where a Division Bench of the Burma High Court held that the expression ""Subordinate Court" in the Contempt of Courts Act is used in a wide sense as including any Court over which the High Court has superintendence, that is any Court which is subject for the time being to its appellate jurisdiction. While dealing with this aspect of the matter the learned Judges observed as follows:

"There can be no doubt, and it is not now seriously contended to the contrary, that the proceedings of the Magistrate holding this inquiry u/s 176 of the Code were judicial proceedings. In our opinion, a Magistrate holding judicial proceedings in which it is necessary for him to come to a finding as to the cause of death and as to the person or persons, if anybody, responsible for that death, must be considered to be acting as a "Court". "Court" is not defined in the Criminal Procedure Code. It is defined in the Evidence Act as including all Judges and Magistrates and all persons except arbitrators legally authorized to take evidence. "Court of justice" has been defined in the Penal Code, Section 20 as denoting a Judge or body of Judges, and the word "Judge" itself includes, vide Section 19 every person empowered to give in a criminal proceeding a definitive judgment. The illustration shows that a Magistrate exercising jurisdiction in cases where he can pass sentence is a "Judge" though not when he is merely committing to Sessions. It is clear that this definition, though sufficient for the purposes of the Penal Code is not wide enough here. For the purposes of Section 195, Criminal Procedure Code, (which lays down the cases where sanction of a Court is necessary for cognizance of an offence, such as perjury), it has frequently been held that the word "Court" has a wider meaning than that defined in the Penal Code: see for example *Nando Lal Ganguli v. Khetra Mohan* ILR Cal 585 : AIR 1918 Cal 932 and must include a tribunal empowered to deal with a particular matter and authorized to receive evidence bearing on that matter in order to enable it to arrive at a determination."

On 7-2-1947, the Uklana pay office wired "vide Exhibit D. 17" to the Rawalpindi branch enquired and it is necessary therefore that, in accordance with the general rule of statutory construction, it should be interpreted in its ordinary acceptation and significance and given its natural, popular and recognised meaning. According to the Shorter Oxford English Dictionary the expression "Court" means (1) a clear space enclosed by walls or surrounded by buildings; a yard, a court-yard; (2) the place where a sovereign (or high dignitary) resides and holds state attended by his retinue; (3) an assembly held by the sovereign at his residence. In early English history the tribunal was called curia or Court because it was held by the King himself who was actually the fountain and dispenser of justice.

When he ceased to hold the Court in person, justice was administered by Judges who assembled in the court-yard of the baron or of the King himself or who

followed the King as officers of his Court. According to Blackstone "a Court is a place where justice is judicially administered", but this definition has been held to be too narrow and a Court has been defined as a tribunal duly constituted and present at the time and place fixed by law for judicial investigation and determination of controversies". It is charged as a substantive duty with the exercise of judicial power, that is, the power which administers justice to people according to the prescribed forms of law.

23. A Court as understood in its full modern signification, consists of at least three constituent parts, namely the actor, or plaintiff, who complains of an injury; the reus or defendant who is called upon to make satisfaction of it; and the judex or judicial power, which is to examine the truth of the fact, to determine the law arising from the fact, and if any injury appears to have been done, to ascertain and by its officers to apply the remedy (3 Blackstone's Commentaries 25), Judicial power is the power which adjudicates upon and protects the rights of states and citizens and to that end construes and applies the law.

The exercise of judicial power postulates the existence of parties who have opportunity to be heard, of a controversy which requires to be adjudicated upon, and of a Court, tribunal or officer clothed with judicial powers for the enforcement or protection of a right or the prevention of a wrong or the determination of the propriety or otherwise of a justiciable act. The tribunal is authorised to hear and determine questions of fact or mixed questions of law and fact upon evidence, or of law on proved or conceded facts. It proceeds after notice to parties, pronounces upon evidence, interprets and applies the law, gives a binding and authoritative decision (whether subject to appeal or not) and carries it into effect.

It is the inherent authority not only to decide but to make binding orders or judgments which constitute judicial power. The conclusive character of the judicial determination constitutes the test as to what proceedings are judicial, and the power to give a decision or a definitive judgment which has finality and authoritativeness is the essential sine qua non of a Court. *Brajnandan Sinha Vs. Jyoti Narain*, . It was in view of this distinctive character of judicial power that the framers of the Indian Penal Code chose to declare in Section 19 that the expression "Judge" Includes every person who is empowered by law to give, in any legal proceeding, a definitive judgment.

24. The power to hear and determine is not peculiar to the judicial office, for every administrative and executive officer is required to hear, determine and to decide many facts on which his action is based. The power exercised by him is administrative or quasi-judicial and not judicial. Whether the Power to hear and determine is judicial depends upon the nature of the subject of the enquiry, the parties to be affected and the effect of the determination.

If the function of the officer or body is primarily administrative and the power to hear and determine controversies is granted as an incident to the administrative

duty, the power is administrative or at least it is properly exercisable by administrative authorities; but if the duty is primarily to decide questions of legal rights between private parties, such decisions being the primary object and not merely incidental to regulation or some other administrative function, the function is judicial, *Re Opinion of Justices U. S. 110 ALR 819* . The true test of the character of a power is whether it is reasonably necessary or incidental to the proper carrying out of an executive or judicial function, *Re Clark 28 LRA 242*.

25. The test laid down by their Lordships of the Supreme Court that a tribunal is a Court if and only if it has the power to give a decision or a definitive judgment which has finality and authoritativeness renders obsolete pronouncements to the contrary appearing in authorities such as *AIR 1940 Rang 68*.

26. Now a Magistrate holding an enquiry u/s 176 of the Criminal Procedure Code cannot be regarded as a Court or judicial tribunal in any proper sense of those terms, although, the procedure before him possibly resembles Court procedure. The enquiry held by him is purely of an executive nature. Section 174 of the Criminal Procedure Code provides that when a police officer receives information that a person has committed suicide or has been killed by another or has died under suspicious circumstances he shall proceed to the place where the dead body of such person is, make an investigation and draw up a report of the apparent cause of death for the information of the District Magistrate. Section 176 empowers a Magistrate to hold an enquiry into the cause of death either instead of or in addition to the investigation held by the police officer.

It may be that this section is designed to provide a check on the enquiry held by the police (*In re In Re: Laxminarayan Timmanna Karki*, or to calm any alarm that has been created in the mind of the public by reason of a violent or unnatural death, or to allay any unfounded suspicion, or to put In force the law against a particular Individual or merely to gain information which may be of use to the authorities: *In the matter of Troylokanath Biswas ILR Cal 742* . Be that as it may, the fact remains that there is nothing in the section which requires the Magistrate to arrive at a finding or to submit a report. The Magistrate cannot be regarded as a Court within the usual acceptation of the term, for while holding an enquiry under this section he performs no judicial functions.

There may be an actor or plaintiff who complains of an injury, but there is no reus or defendant who is called upon to make an answer, and there is no judex or judicial power who is required to give a binding and authoritative decision. The Magistrate's determination, if he chooses to make one, lacks finality and authoritativeness and is neither binding nor conclusive. He has no jurisdiction to deliver or power to enforce a judgment. It may be that a proceeding u/s 176 is a judicial proceeding within the meaning of the Criminal Procedure Code for it is a proceeding in the course of which evidence is or may be taken *In Re: Laxminarayan Timmanna Karki*, ; but it can by no stretch of meaning be regarded as a proceeding before a Court. It is at best a proceeding before a Magistrate acting in his executive or administrative capacity, for the grant of

power to hold an enquiry u/s 176 is incidental to an executive or administrative function.

It has nothing to do with the exercise of judicial power. It is the nature of the act performed rather than the officer who performs it which determines its character as judicial or otherwise. I am doubtful if a proceeding u/s 176 is open to revision u/s 435, but even if it were, that fact alone would not confer on the proceeding the quality of a judicial act. The mere fact that a revision has been provided for does not render the power of a Magistrate judicial. As stated earlier in this paragraph, a Magistrate acting under this section is required to hold an enquiry into the cause of death but is not required to arrive at a finding or to make a report.

Even if it were held that a Magistrate making an enquiry under this section must come to a finding as to the cause of death AIR 1940 Rang 68 he must in my opinion be deemed to act merely as an executive or administrative officer, for the final determination as to whether the person has committed suicide or has been killed by another must be left to the final determination of Courts.

27. For these reasons I am of the opinion that this petition must be dismissed without further investigation. I would order accordingly.

G.D. Khosla, J.

28. This is an application by Piara Singh under Ss. 526 and 561-A of the Code of Criminal Procedure and Section 5 of the Contempt of Courts Act. The application which is supported by an affidavit of Piara Singh contains extremely serious allegations against the Chief Minister of the Punjab State and substance of these allegations is briefly to the following effect. On 7-7-1957 a murder was committed in broad daylight in a village of the Karnal District and in this murder Hazara Singh and Piara Singh sons of Kirpa Singh were concerned. The police obtained warrants for the arrest of the culprits on 12-7-1957, but attempts to apprehend them were not successful. On 14-7-1957 the said Hazara Singh and Piara Singh went to see the Chief Minister at Chandigarh. Hazara Singh had been an inmate of the Sialkot Jail.

At that time the Chief Minister was also undergoing a sentence of imprisonment in that jail. So Hazara Singh was friendly with the Chief Minister and saw this opportunity of seeking his aid. The Chief Minister directed his Private Secretary Asa Singh, to telephone the Superintendent of Police, Karnal, and tell him that police protection should be given to these two miscreants. The Superintendent of Police, Karnal, told Asa Singh, that these men were bad characters, they were wanted in a murder case, warrants for their arrest had already been issued and they were eluding arrest, indeed, they were planning to kill the prosecution witnesses who were to appear in a murder case against them. The Superintendent of Police requested Asa Singh, to arrest Hazara Singh and Piara Singh, immediately.

29. This, however, was not done and information was received by the Karnal police that Hazara Singh, and his party were present in the neighbourhood of village Smana Bahu, where Iqbal Singh and the petitioner reside. It was feared that these men had come to murder Iqbal Singh and the petitioner. The police gave prompt assistance and surrounded the* village Smana Bahu. The raiders arrived and during the course of an armed encounter with the police three persons including Hazara Singh and Piara Singh were shot dead. This happened at about 1-30 on the night between the 14th and 15th of July.

30. Thereafter a magisterial inquiry under the provisions of Section 176, Criminal Procedure Code, into the cause of the death of these persons was started. The inquiry was entrusted to Shri Onkar Nath, Magistrate. It was feared that the report of the inquiry officer would exonerate the police of these deaths, and so Hukam Kaur mother of Hazara Singh and Piara Singh approached the Chief Minister with an application for the transfer of the inquiry proceedings to the Court of a more sympathetic Magistrate. The District Magistrate transferred the case to the Court of another Magistrate. The order of transfer was made on 29-8-1957 after a report about the matter was received from Shri Onkar Nath.

31. It is further alleged that 29-8-1957 had been fixed for further evidence in the inquiry and on that date a large number of senior police officials who had taken part in the encounter with Hazara Singh and Piara Singh were summoned by the Chief Minister to meet him at the Canal Rest House, Delhi. They were asked to change their statements and "confess to have murdered the three bad characters," The police officers declined and they were all transferred from the district. The Superintendent of Police was reduced in rank and also transferred.

32. The petitioner's case therefore is that the Chief Minister, Punjab, interfered with the course of justice first by ordering the Superintendent of police to give police protection to the individuals against whom warrants of arrest in a murder case had, to his knowledge, been issued; in the second place he influenced the District Magistrate in transferring the inquiry proceedings from the Court of Shri Onkar Nath, and finally he threatened and intimidated a number of police officials by calling them to Delhi and telling them that unless they changed their statements they would be victimised. He in fact victimised them by transferring them from the district and reducing the rank of one of them.

33. Notice of this petition was issued to the two respondents, namely, the State of Punjab and Sardar Partap Singh Kairon, Chief Minister, on 11-9-1957. On 17-9-1957, an application was filed in this Court by Mr. Kishan Sarup Thapar, Advocate for the petitioner, in which he prayed that the petition be dismissed as the petitioner wanted to withdraw it. Before any action could be taken on this application, however, a second application was put in on 24-9-1957 containing a prayer that the application should be proceeded with because the application of 17-9-1957 was the result of some misapprehension; the petitioner had not given him any instructions to withdraw the case and the message sent to him was "the result of some deep-laid conspiracy" to defeat his petition. Written replies by

both the respondents were filed and these replies are supported by a number of affidavits. Copies of some statements made before the inquiry magistrate have also been placed on record.

34. The allegations made by the petitioner are denied by both the respondents. It is, however, admitted that Hazara Singh and Piara Singh went to see the Chief Minister on 14-7-1957 and that they expressed their fears regarding danger from the police to him. The Chief Minister directed his Private Secretary Asa Singh to telephone the Superintendent of Police, Karnal, and tell him to give protection to these two persons.

It is denied that the Chief Minister knew anything about the warrants issued for the arrest of Hazara Singh and Piara Singh two days previously or that the Superintendent of Police made any mention of them during the course of his telephonic conversation with Asa Singh. It is further admitted that the Chief Minister summoned seven police officials from Karnal and spoke to them at the Canal Rest House, Delhi. The reason why he did this was that complaints were being made to him regarding the police behaviour on the occasion of the midnight encounter with Hazara Singh and his companions and their attempts to interfere with the course of the magisterial inquiry and so

"in order to ensure a free and impartial inquiry I asked the Inspector-General of Police to call the Police Officers against whom complaints of interference had been received. The Inspector-General of Police accordingly called seven of the Police Officers concerned in the encounter for 30-8-1957, in the first instance at Chandigarh. But, as I had to leave for Delhi unexpectedly, the officers were called to meet me at Delhi."

The Chief Minister went on to say in his affidavit that he

"impressed upon the officers to desist from exercising any kind of pressure on the witnesses who wished to make statements during the inquest proceedings."

It was admitted that these officers were transferred from the district immediately but this was done in order to avoid any possibility of interference by them. It was also admitted that an application for transfer of the inquest proceedings was received, but this application was sent to the District Magistrate without any directions. In the meantime the proceedings had already been transferred from the Court of Shri Onkar Nath.

35. The respondents have thus denied the allegations made by the petitioner although the statements filed in this Court might appear to contain some apparently damaging admissions. It has, however, not been necessary to go into the facts of the case and adjudicate upon the truth or otherwise of the allegations made by the petitioner because of the validity of a preliminary objection taken before us by the learned Advocate-General. The objection is to the effect that a Magistrate holding an inquiry u/s 176 of the Criminal Procedure Code is not a Court within the meaning of the Contempt of Courts Act, and so

even if the allegations contained in the petition are true, the respondent has not been guilty of any contempt. This was the main point argued before us and my judgment will therefore deal with this point only.

36. Section 176 (1) of the Code of Criminal Procedure is in the following terms:--

When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in Section 174, Clauses (a), (b) and (c) of Sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manpers hereinafter prescribed according to the circumstances of the case." It will be seen that there is no direction to the Magistrate to adjudicate upon any matters in dispute, to give a finding, or even to make a report to anyone. The Magistrate is authorised to record evidence, but he is not required to come to a decision. It is to be observed that this section is part of Chapter XIV, which is entitled "Information to the police and their powers to investigate." The heading of Chapter XV is "of the Jurisdiction of the Criminal Courts in Inquiries and Trials." It is significant that Section 176, is the last section of Chapter XIV, when it might well have been the first section of Chapter XV. The arrangement shows that the proceedings before the Magistrate u/s 176 were intended to be part of investigation and not part of proceedings before a Court.

37. There is very little doubt that proceedings u/s 176 are judicial proceedings. The definition of "judicial proceeding" given in Section 4 (1) (m) is :--

" "Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath."

There is no doubt that a Magistrate acting u/s 176 can legally take evidence on oath. Indeed, Section 176 specially provides that "he shall have all the powers in conducting it which he would have in holding an inquiry into an offence." From this two things follow : Firstly, the Magistrate is not holding an inquiry into an offence; he only has some of those powers which he would have were he doing so. Secondly, it is clear that he has the right to take evidence on oath and therefore, by the definition given in Section 4 the proceedings before him are judicial proceedings.

38. A different view was taken by the Calcutta High Court in ILR Cal 742 where it was held that the report of a Magistrate holding an inquiry of this nature could not be considered to be part of a judicial proceeding. This decision was given in 1878, when the definition of "judicial proceeding", according to the Code of Criminal Procedure then in force, was quite different.

At that time "judicial proceeding" was defined as "any proceeding in which any

judgment sentence, or final order is passed". The scope of "judicial proceeding" has been considerably widened by the new definition, and the Calcutta decision therefore is no longer good law under the present Code. A Division Bench of the Bombay High Court held in *In Re: Laxminarayan Timmanna Karki*, that an inquiry u/s 176 by a Magistrate was, in fact, judicial proceeding. In the Calcutta and the Bombay High Courts the question under consideration was whether the matter could be brought before the High Court as a judicial proceeding. The question of whether the Magistrate was a Court within the meaning of the Contempt of Courts Act was not considered in either of these two cases.

39. Interference with the proceedings u/s 176, Criminal Procedure Code, will amount to contempt of Court only if it is held that the Magistrate was acting as a Court. It is not enough to say that the proceedings before him were judicial proceedings. The Supreme Court has laid down the test of what is a Court for the purposes of the Contempt of Courts Act quite clearly in *Brajnandan Sinha Vs. Jyoti Narain*, The Supreme Court was considering whether a Commissioner appointed under the Public Servants (Inquiries) Act was a Court. The decision of their Lordships was that he was not a Court. On page 69 of the report Bhagwati J. cited the opinion of Stephen on the nature of a Court:

"In every Court, there must be at least three constituent parts -- the actor, reus and judex; the actor or plaintiff, who complains of an injury done; the reus, or defendant, who is called upon to make satisfaction for it; and the judex, or Judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and by its officers to apply, the remedy."

And again on page 70 the following observation taken from *Cooper v. Wilson* (1937) 2 KB 309 appears:

"A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The presentation (not necessarily orally) of their case by the parties to the dispute: (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law."

40. Applying this test to the Magistrate holding this inquiry u/s 176 we find that none of the four tests hold good. When a Magistrate holds an inquiry u/s 176, there is no allegation of any offence having been committed. There is no dispute between two parties and there is no question of his giving a decision or adjudicating upon any point in issue. His object in holding the inquiry is merely

"to elucidate, the facts of a violent or unnatural death before there is any

reasonable suspicion of the commission of any offence, and that when such grounds do exist, the inquiry comes under another portion of the Code" ILR Cal 742.

41. The learned counsel for the petitioner relied upon a decision of the Rangoon High Court in AIR 1940 Rang 68 where it was held that a Magistrate holding an inquiry u/s 176, Criminal Procedure Code, acts as a Court subordinate to the High Court for the purposes of the Contempt of Courts Act. In view of the Supreme Court decision to which a reference has been made above the Rangoon decision cannot be accepted as correct law. The learned Advocate-General also made a reference to *Maqbool Hussain Vs. The State of Bombay*, and *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, to support the argument that even though a tribunal or an Individual has some of the attributes of a Court, it does not become a Court unless the tests laid down in *Brajnandan Sinha Vs. Jyoti Narain*, are satisfied.

42. In this view of the matter it must be held that the Magistrate was not acting as a Court within the meaning of the Contempt of Court Act and that even if there was any interference with this inquiry, no contempt of a Court subordinate to the High Court was committed.

43. I would therefore dismiss this petition, but as our decision rests on a technical ground and the case was not argued on merits, I would make no order as to costs.