

(2005) 01 CAL CK 0027

In the Calcutta High Court

Case No : C.R.R. No. 478 of 2002 and 188 of 2003

Ram Swarath Yadav

APPELLANT

Vs

State
 Bimal Prakash @ Bijay @ Munna Tiwari Vs
State of West Bengal

RESPONDENT

Date of Decision : 14-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 125, 144, 156(2), 167
Factories Act, 1961 — Section 28(1)
Penal Code, 1860 (IPC) — Section 211, 395
Prisoners (Attendance in Courts) Act, 1955 — Section 3(2), 8

Citation : (2007) 1 CHN 289

Hon'ble Judges : Pranab Kumar Deb, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Sovan Lal Hazre and Abhijit Adhya, in CRR No. No. 478 of 2002 and Joymalya Bagchi, Kallol Mondal, Nilendra Narayan Roy and Sharmila Talukdar, in CRR No. 188 of 2003, for the Appellant; Ld. Public Prosecutor, Swapan Kumar Mallick and Barin Roy, for the Respondent

Judgement

1. Since Pradip Kumar Biswas, J. in C.R.R. No. 478 of 2002 with C.R.R. No. 188 of 2003 on 24.6.2004 could not agree with the ratio of the decision in Sk. Ismail Ali Vs. State of W.B., , His Lordship after formulating the following point-

whether an order and warrant u/s 267 of the new Code in Form No. 36 of Second Schedule thereof can be issued by a Criminal Court on the request of the police investigating agency in course of investigation.

referred the matter before His Lordship The Hon''ble The Acting Chief Justice.

2. It is pursuant to an order of assignment, made by The Hon''ble The Acting Chief Justice, the matter has been placed in our Roster for answering the REFERENCE.

3. We have had the assistance at the Bar of Shri Hazra, learned senior Advocate and Shri Bagchi per contra to the REFERENCE; while learned Public Prosecutor in

support of the same. Elaborate submissions have been made at the Bar by the respective Counsels. We set out the same according to their serial.

4. Shri Hazra learned senior Advocate appearing with Shri Abhijeet Auddy has submitted that the words "the other proceeding" in Section 267 of the Code of Criminal Procedure (hereinafter referred to as "the said Code") has to be construed on the principle of *ejusdem generis*. According to him, it means a proceeding other than an inquiry and trial pending in a Criminal Court. He has stated that in the said Code there are three distinct spheres-investigation, inquiry and trial. All these are defined in the said Code and when the Legislature for some reasons or the other has omitted the word "investigation" from the wording of Section 267 of the said Code it is not just an omission but it should have to be understood in the context of the legislative intent that the other proceeding would not include the stage of investigation and the Court cannot fill up the gap in the said provision Shri Hazra has referred to the various scheme of the Code with regard to the jurisdiction of Criminal Court, condition of initiation of a proceeding, taking of cognizance and compelling the production of articles etc.

5. Shri Bagchi with Shri Kallol Mondal, Shri N.N. Ray and Smt. Sharmila Talukdar has submitted that the word "investigation" has been defined in Section 2(h) of the said Code. According to Shri Bagchi both an inquiry and a trial are proceedings before a Court of Law. The proceeding means one which is pending before the Court and it is not a proceeding by way of a remand order. He also submitted that a proceeding before a Court of Law cannot include a proceeding before a police officer. He expanded his argument with reference to the decision of the Supreme Court in *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, and showed that the stage of the investigation was different and the Court has no power to monitor an investigational process.

6. According to him, without the production warrant, the Investigating Officer is not toothless he submitted that Section 167 of the said Code takes care of the situation. He outlined the definition of the word "arrest" and submitted issuance of production warrant is an effort of a Court to produce an accused before it. A production warrant should be in an investigation stage and not either at the time of an inquiry or a trial and expansive definition of Section 267 of the said Code is not the legal mandate because Legislature has already given power to the police in Section 47 of the said Code in that direction.

7. He also outlined the provisions of Section 268 of the said Code and showed that production warrant cannot be executed at the stage of an inquiry or a committal proceeding or a trial.

8. Shri Bagchi submitted that the word "other proceeding" in Section 267(1) of the said Code must be in existence when prayer for production warrant is made; otherwise, the futuristic proceeding goes against the word of Section 267 of the said Code. According to him, there must be a pending proceeding. He showed

that the words "other proceeding" have been used in Section 267(1) of the said Code instead of any proceeding. To illustrate his argument on this point he referred to Satish Chandra Sadhukhan and Others Vs. Balaram Banerjee, and State of Haryana and others Vs. Ch. Bhajan Lal and others, and as also the provision of Sections 3(2) and 8 of the Production of Prisoners" Act, 1955 (for short, "the said Act"). He further referred to the decision of the Supreme Court in H.N. Rishbud v. State of Delhi (supra) and submitted that sphere of investigation is solely within the jurisdiction of the police until such time cognizance is taken on the basis of the report.

9. Referring to the principle of ejusdem generis Shri Bagchi submitted that the words "other proceeding" are preceded in Section 267 of the said Code by the words "inquiry or trial".

10. In Section 195 of the said Code Shri Bagchi has submitted that it has specifically been stated any proceeding before any Court of Law has been used whereas in Section 267 of the said Code the position is quite otherwise. He referred to Sections 41, 46, 48, 73, 72, 81 and 87 of the said Code with regard to different mode of production of an accused and since there has been specific mode of production of accused outlined in the Code there is no scope for the Court to interpret the words "other proceeding" as including "an investigation".

11. Lastly, Shri Bagchi submitted that a production warrant is addressed to the Officer-in-Charge of the prison unlike a warrant of arrest.

12. Both Shri Hazra, learned of senior Advocate and Shri Bagchi made elaborate submissions touching Schedule II of the said Code and that in Section 167 of the said Code the question of custody by a police officer is the essence during the investigation, whereas no such custody by a police officer is envisaged in Section 267 of the said Code.

13. Learned Public Prosecutor appearing for the State submitted that Chapter XXII has been newly inserted in the said Code which contains Section 267 of the said Code for supplementing the said Act. According to the learned Public Prosecutor "other proceeding" in Section 267 would include all proceedings at any stage under the said Code. According to him, in Section 269 of the said Code the word "investigation" has been included. In Section 269(b) of the said Code the word "investigation" has been used in relation to the order passed u/s 267 of the said Code. He submitted that any proceeding in connection with a criminal case would include the exercise of grant or refusal or bail or for the purpose of remand at any stage.

14. Learned Public Prosecutor submitted that if the bail has been granted by a Court and subsequently any mischief is detected then the Court can take notice of the same by invoking the provisions of Section 195 of the Indian Penal Code.

15. According to the learned Public Prosecutor, the investigation is very much part of the judicial proceeding. If there is a prayer for police remand then

Magistrate has to apply his judicial mind whether to send him to jail custody or to police custody. It is nothing but an exercise of judicial decision.

16. In other words, according to the learned Public Prosecutor it is a pure judicial proceeding even at the stage of grant or rejecting bail. As a part of his submission he referred to a Full Bench Decision of the Allahabad High Court reported in P.C. Gupta Vs. State and Another, and submitted that while granting bail in any case, a judicial officer conducts the judicial proceedings and acts in the capacity of Court. He also referred to the decision of the Supreme Court in V.S. Kuttan Pillai Vs. Ramakrishnan and Another, , that even issuance of a search warrant by a Magistrate has to be in terms of exercise of his judicial discretion.

17. Learned Public Prosecutor further took recourse to the Full Bench decision of the Kerala High Court in *Albert v. State of Kerala* AIR 1966 Ker 11. To illustrate his point that in Section 211 of the Indian Penal Code simply it has been shown as proceeding and not qualified by the word judicial or any other word.

18. Learned Public Prosecutor further referred to the decision of *State of Maharashtra Vs. S.K. Bannu and Shankar*, , to illustrate his point that even at the stage of exercise of grant of bail it would be a judicial proceeding before a Magistrate.

19. In reply, Shri Hazra distinguished the Full Bench decision of the Allahabad High Court, whereas Shri Bagchi contradicted the learned Public Prosecutor that issuing a warrant of arrest or search warrant or an order of remand is not a judicial proceeding and relates to purely to the domain of investigation.

20. We have at the first instance to consider the import of the decision of *Sk. Ismail Ali v. State of W.B.* (supra) in terms of the dissenting view in *Ram Swarath Yadav v. State* in C.R.R. No. 478 of 2002 and *Bimal Prakash @ Bijay @ Munna Tiwari v. State of West Bengal* in C.R.R. No. 478 of 2002.

21. The ratio of the said decision of *Sk. Ismail Ali v. State of West Bengal* (supra) was in the direction that at the stage of investigation directions for production of accused before the Court cannot be passed as the words "other proceeding" does not include investigation by the police. Reference was made to the Division Bench decision of the Rajasthan High Court in the said decision before the Court having arrived at its conclusion.

22. Whereas in *Ram Swarath Yadav and Anr. v. State* in C.R.R. No. 478 of 2003 with C.R.R. No. 188 of 2003, which forms the subject-matter of REFERENCE before this Court, the ratio of *Sk. Ismail Ali v. State of W.B.* (supra) was found "difficult to be in agreement with the view expressed" in *Sk. Ismail Ali v. State of W.B.* (supra) and "the investigation of the offence by the police,...is also a proceeding under the Code and for that purpose, a Magistrate can exercise power u/s 267 of Cr.PC to issue an order if the prisoner is detained in some other prison."

23. With the assistance received at the Bar in the light of the decisions and the

interpretation of law let us now proceed to answer the question which has fallen before us in this REFERENCE.

24. For profitable discussion the provision of Section 267 of the said Code, which has formed the subject-matter of dispute in this REFERENCE needs to be set out:

267. (1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court,-

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him,

(b) that it is necessary for the ends of justice to examine such persons as a witness,

the Court may make an order requiring the Officer-in-Charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under Sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the Officer-in-Charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under Sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

25. Now, as to the whether the words "or other proceeding" under this Code would have to be understood in the text. It has been used i.e., the preceding portion of Sub-section (1) of Section 267 of the said Code which shows in course of an inquiry, trial,...the words "or other proceeding" have to be read in conformity with the words "inquiry, trial". Recourse has been taken at the Bar to the principle of *eiusdem generis*. But we feel the principle of *noscitur a sociis* would be applicable in a more expansive manner.

26. Half a century ago the 3-Judge Bench of the Supreme Court in *M.K. Ranganathan and Another Vs. Government of Madras and Others*, , held:

(21) It is a well-recognised rule of construction that "when two or more words which are susceptible of analogous meaning are coupled together "*noscuntur a sociis*". They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general" (*Maxwell on Interpretation of Statutes*-Edn. 10, p. 332).

27. The Supreme Court referred to the Privy Council decision in *Angus Robertson*

v. George Day 879 AC 63 and quoted with approval the following passage-

It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them.

28. The said principle of *noscitur a sociis* means in other words the meaning of a word had to be judged by the company it keeps and it is a rule much wider than the rule of *eiusdem generis*.

29. This principle has been followed by P.B. Gajendragadkar (as The learned Chief Justice of India then was) writing the Judgment for the 3-Judge Bench of K. Subba Rao (as The learned Chief Justice of India then was) and K.C. Gupta, JJ., for The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, , elucidated this position further:

(9) It is, however, contended that, in construing the definition, we must adopt the rule of construction *noscuntur a sociis*. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "words and phrases" (Vol. XIV, p.207):

Associated words take their meaning from one another under the doctrine of *noscuntur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *eiusdem generis*." In fact the latter maxim "is only an illustration or specific application of the broader maxim *noscuntur a sociis*."

31. With these guidelines let us move ahead with the caution of Vivian Bose, J, in the Constitution Bench Decision of Willie (William) Slaney Vs. The State of Madhya Pradesh,

Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a Code of Procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.

31. As we have seen in the foregoing paragraphs that Pradip Kumar Biswas, J. could not agree with the ratio of the decision in *Sk. Ismail Ali v. State of W.B.* (supra) as His Lordship was of the view that the investigation of the offence by the police is also a proceeding under the said Code and the Magistrate was free to exercise his power in respect of Section 267 of the said Code for directing an order for production of the prisoner who is detained in some other prison in the anvil of the legislative impact of Section 267 of the said Code and in the

touchstone of legal methodology.

32. As we have addressed ourselves with the very important principles of *noscitur a sociis* we have found that a word has to be understood in the context of its formation and the company to which it belongs. Maxwell on the Interpretation of Statutes, 12th Edition while interpreting the principle of *noscitur a sociis* found-

Section 28(1) the Factories Act, 1961 deals with five different parts of the factory "floors, steps, stairs, passages and gangways," which are to be kept free from obstruction. It will be observed that the last four are places vised for the purpose of passage. The expression "floors" in this context and in the light of the word "obstruction", which means "blocking or being blocked : making or becoming more or less impassable," is, in my view, limited to those parts of the factory floor upon which workmen are intended or likely to pass and repass. It does not, therefore, include part of the factory floor properly used for purposes of storage.

quoted the above passage from the Judgment of Lord Justice Diplock in *Pengelly v. Bell Punch Co. Ltd.* 1964 (1) W.L.R. 1055, at page 1059.

33. Lord Justice Diplock's observation quoted with approval by Maxwell clarifies the entire situation and fortifies us to proceed ahead and find out the scope of the line "or other proceeding" in Section 267 of the said Code vis-a-vis Form No. 36 of Second Schedule of the said Code.

34. From No. 36 reads as follows:

FORM No. 36

ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR ANSWERING TO CHARGE OF OFFENCE

[See Section 267]

To

The Officer-in-Charge of the Jail at....

Whereas the attendance of (name of prisoner) at present confined/detained in the abovementioned prison, is required in this Court to answer to a charge of (state shortly the offence charged) or for the purpose of a proceeding (state shortly the particulars of the proceeding);

You are hereby required to produce the said...under safe and sure conduct before this Court...on the day of...of 19...by...a.m. there to answer to the said charge, or for the purpose of the said proceeding and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said person.

And you are further required to inform the said...of the contents of this order and deliver to him the attached copy thereof.

Dated, this...day of...19....

(signature)(Seal of the Court) Countersigned(Seal) (signature)

35. A cursory glance of the said Form reveals that the "attendance of a prisoner "at present confined/detained" in a particular prison is required in a particular Court to answer a certain charge "or for the purpose of a proceeding".

36. In ordinary parlance it can be said that the said Form is nothing else but a prescription for production of a prisoner lodged in a particular jail before any Court in seisin of a particular case be that at any stage, even during the course of investigation.

37. Profile of crime has been changed. The Court must move with time and the law either has to progress or wither away in due course as has been held by Lord Macardie.

38. Should we stop where we have been asked to or proceed towards the corner of the road? If we take the latter path we find it makes all the difference.

39. The opening words is Section 267 of the said Code which reads - "in course of an inquiry, trial or other proceeding" - has to be read conjunctively and not disjunctively. If we adopt a purposive construction of the provisions of Section 267 of the said Code without doing harm to the harmony of construction and militating against the legislative intent we at once find that the words "or other proceeding" has to be read in tune with the preceding definition of "inquiry, trial".

40. The word "or" in ordinary sense would have made it disjunctive in the colloquial sense but if we look at Francis Bennion in his Treatise that:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).

41. We feel that the word "or" cannot act as a colonial cousins of inquiry, trial and other proceeding; but, has to be seen as a little sister of the other siblings in the family of Section 267 of the said Code i.e., inquiry, trial-other proceeding.

42. Again if we refer to Maxwell on the Interpretation of Statutes, 12th Edition at page 36 we find-

A construction which would leave without effect any part of the language of a statute will normally be rejected.

43. Again, if we take recourse to Maxwell on the Interpretation of Statutes, we find in Chapter 2 containing the General Principles of Interpretation at page 29. He wrote-"the desirability or the undesirability of one conclusion as compared with another cannot furnish a guide in reaching a decision. Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the Legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the Court as to what is just and expedient; words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the Court is to expound the law as it stands, and to "leave the remedy (if one be resolved upon) to others."

44. If we segregate the word "other" an substitute "any" in this Code, in our respectful view could make hardly any difference so as to exclude the word "investigation".

45. In Section 267 of the said Code the Legislature has invoked the provisions to enable the Court for the purpose of asking an accused in connection with an inquiry or trial to answer a charge or a proceeding against him for giving evidence in a matter which is pending before the Court as mentioned in Clauses (a) and (b) of Sub-section (1) of Section 267 of the said Code. The provision of Clause (a) of Sub-section (1) of Section 267 of the said Code if read alongside that "...or for the purpose of any proceedings against him" it would at once make clear what was the legislative intent.

46. Even if the Legislature has not inserted in so many words the term "investigation" in the phraseology of Section 267 of the said Code, however, an investigation by the police for collection of evidence in respect of an accused suspected of an offence is also a proceeding before the Court under the said Code.

47. Section 2(g) of the said Code defines-"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;"

48. Section 2(h) : ""Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf".

49. Section 2(i) : ""judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;"

50. If we read the definition of Section 2(g), (h) an (i) of the said Code contemporaneously it would at once be clear that investigation is also a proceeding under this Code though there is a subtle difference that in course of a proceeding there may be "collection of evidence conducted by a police officer" but, in judicial proceeding is "in course of which evidence is or may be legally

taken on oath". But, the bottom line of both Clauses (h) and (i) relates to the word "proceeding" under the Code.

51. From a broad analysis of the entire length and breadth of the matter we are of view that if in the event it is interpreted that the phrase "or other proceeding" does not include investigation then it would do violence to the provisions of Section 267 of the said Code.

52. On a wholesome analysis we are of the view that Section 267 of the said Code if read as an integrated whole it would be difficult to form an opinion that the succeeding phrase in Sub-clause (1) thereof reading as "or other proceeding" cannot be inclusive of the definitional meaning as given in Sub-section (h) of Section 2 of the said Code as a plain reading of Sub-section (h) of Section 2 of the said Code shows investigation includes all proceedings.

53. In the event we have to read otherwise, we are extremely afraid that in the process we would do violence to the construction of the provisions of Section 267 of the said Code as we are of the most humble view that any other interpretation would very much militate against the legislative intent.

54. Again if we resort to Maxwell on the Interpretation of Statutes we find that the phrases and sentences are to be construed according to the Rules of Grammar. This is known as the Rule of Literal Construction.

55. We further fortified with the decision of the Privy Council in the case of Quebec Railway Light, Heat and Power Co. Ltd. v. Vandry AIR 1920 PC 181, wherein Lord Sumner held:

Effect must be given if possible to all the words used, for the Legislature is deemed not to waste its words or to say anything is vain.

56. This view has been accepted with approval by the Supreme Court in Ghanshyamdas v. Regional Asstt. Commr. of Sales Tax. Nagpur AIR 1964 SC 776, wherein Subba Rao, J. (as The Learned Chief Justice of India then was)-

A construction which would attribute redundancy to a Legislature shall not be accepted except for compelling reasons.

57. In the light of the aforesaid situation it would be inappropriate for us to hold any other view except interpreting that the words "other proceeding" would also include an investigation.

58. We have with utmost circumspection heard the erudite submissions made at the Bar. Shri Hazra and Shri Bagchi have laid great stress on the fact that a production warrant cannot be envisaged at an investigational stage.

59. Shri Hazra referred to a note of submission. His main contention is that the other proceeding cannot include the word investigation and the legislative intent in Section 267 of the said Code is to omit investigation from the purview of the provisions of Section 267 of the said Code. We are not inclined to go by the same

in view of the elaborate discussions held by us in this context.

60. Further the other point that the powers u/s 267 of the said Code have to be exercised by the Courts in course of a proceeding, also does not impress us as we are of the view investigation would also include the phrase "proceeding", as we have seen earlier.

61. Submission of Shri Hazra that investigation relates to collection of evidence and formation of opinion by the police and the same cannot be a proceeding under the Code though prima facie has some appeal but on a deeper look it is not of any value. He has sought to make out the case that besides inquiry, trial, the "other proceeding" would mean a proceeding under Sections 144, 107, 125 of the said Code, remand application, naraji application, appeal, revision, disposal of property etc. We are extremely sorry that we cannot see eye to eye with Shri Hazra in this context. After all it is true that after completion of investigation the investigating agency has to form an opinion about the materials collected and the said opinion in the form of a report in final form, as contemplated u/s 173 of the said Code, is placed before the Court which takes cognizance which obviously falls within the domain of a judicial proceeding; but, the remand application, the naraji petition, the bail petition, disposal of property are, without any doubt, judicial proceedings as the Court has to apply its judicial mind to act on the basis of such prayers. We are not in a position to buy the argument of Shri Hazra as he has so advanced.

62. Shri Bagchi had taken great pains to drive home his point that the word "proceeding" must connote a proceeding before a Court of Law and cannot include a proceeding before a police officer. As we have seen hereinabove the said view of Shri Bagchi has to be discerned in the light of the definitional status of Clause (h) of Section 2 of the said Code since a proceeding would also include an investigation.

63. The other part of the submission of Shri Bagchi that the words "other proceeding" in Section 267 of the said Code has to be read as a judicial proceeding before a Court whilst issuance of a production warrant is purely an investigational stage, in our view, has to be judged in the light of the foregoing position. After all the steps at the stage of investigation has to be reported before the Court and the order passed thereon is obviously judicial order and this takes clear note of the agony of the learned Counsels. The reference made by Shri Bagchi to the Calcutta High Court decision in Satish Chandra Sadhukhan and Ors. v. Balaram Banerjee [supra] and the Supreme Court decision in State of Haryana v. Bhajan Lal (supra) requires some discussion.

64. In Bhajanlal's case the Supreme Court has clearly laid down that-

investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified

for obliterating the track of investigation....

65. There cannot be any qualms with the said position. But, as we have found that at each stage of the investigation, even if there cannot be any judicial tailoring of the same, yet the results of the investigation and further progress has to be reported before the Competent Court of appropriate jurisdiction for seeking further orders which would encompass investigation within the proceeding pending or is sought to be achieved before the Court. As such the reference made by Shri Bagchi to the before the Court. As such the reference made by Shri Bagchi to the decision of State of Haryana v. Bhajan Lal (supra), in our humble opinion, does not help him in any manner.

66. The decision of Satish Chandra Sadhukhan and Ors. v. Balaram Banerjee (supra) has also been considered by us. We are afraid that the said decision does not come to the rescue of Shri Bagchi in any manner. The ratio of the decision of Satish Chandra Sadhukhan and Ors. v. Balaram Banerjee (supra) has to be understood in the particular fact situation of the said case. In the said decision the Supreme Court while dealing with a case u/s 476 of the 1898 Code (corresponding to Section 340 of the new Code) and Section 195(1)(b)(c) of the 1898 Code had held in paragraph 4 of the said judgement:

(4) The alleged offence, according to the present petitioners was committed as a result of a false charge laid at the police-station in the First Information Report which culminated in a chargesheet u/s 395 of the Penal Code against them. Obviously, there was no proceeding pending in any Court at that time. The question as to whether there is a proceeding pending in any Court while a matter is pending investigation by the police came up for decision by the Supreme Court in the case : M.L. Sethi Vs. R.P. Kapur and Another, . It was held in that case that in the case of a matter pending police investigation, there is no proceeding pending in Court till the filing of the final report or the chargesheet in the case and it was further held that if there was no proceeding in any Court at all in which or in relation to which the offence u/s 211 of the Penal Code could be alleged to have been committed, Section 195(1)(b) of the Criminal P.C. would not be attracted at all.

And paragraph 6 of the said judgement:

(6) Section 211 of the Penal Code appears in Chapter XI of the Code which deals with false evidence and offences against public justice. All the offences mentioned in Section 195(1)(b) of the Criminal P.C. are offences falling under this Chapter. The Chapter deals with a proceeding pending in Court and from this arrangement also a conclusion is permissible that Section 195(1)(b) of the Criminal P.C. comes into operation only when a proceeding is pending in Court and the offences concerned are committed in or in relation to that proceeding. Although arrangement in a Code is not always sufficient guide in the matter of interpretation of the Code, a literal interpretation of Section 195(1)(b) must lead to the inference that unless there is a proceeding pending in any Court and

unless the offences concerned are committed in or in relation to that proceeding the bar provided for in the section does not operate.

And concluded that:

the enquiry u/s 476 of the Criminal P.C. in this case was incompetent as no complaint of the Trial Court was necessary for the purpose of prosecuting the opposite party for the offence u/s 211 of the Penal Code in the present case. The petitioners were free to make a complaint in Court untrammelled by any bar imposed by the Code.

67. The aforesaid observation of His Lordship has to be appreciated in its integral whole and not to be read as torn out of context. That apart, it is now a settled position that each decision has to be read in its particular fact situation and cannot be mechanically applied. The Court has to see as to whether the ratio of a decision cited has complete application on the issue which we have found is quite otherwise and can be safely used as an authority to decide a question.

68. We have a very high authority of the Supreme Court where Arijit Pasayat, J. speaking for the 3-Bench Decision in *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, held:

19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgements of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but as the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgements. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* 1951 AC 737, Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge.

His Lordship further held:

21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases. Disposed of cases by blindly placing reliance on a decision is not proper.

69. In such view of the matter this Court is extremely afraid that in the present context the issue that has been fallen for decision in this reference being quite different from the point decided in *Satish Chandra Sadhukhan and Ors. v.*

Balaram Banerjee (supra) the same cannot have any square application in the contextual backdrop of the Reference.

70. In this context we feel it more appropriate to take recourse to the decision of *State of Maharashtra v. Sk. Banu and Shankar* (supra), referred to by the learned Public Prosecutor, where Their Lordships had categorically held that:

...it cannot be disputed that the bail proceedings before...were judicial proceedings before a Court, although such proceedings took place at a stage which the offence against the accused, who was bailed out, was under police investigation.

71. The Supreme Court decision in *H.N. Rishbud v. State of Delhi* (supra), referred to by Shri Bagchi, over the question of the actual impact of the scope of investigation has been carefully perused by us. We respectfully bow down to the ratio of the said decision and find that although it is a trite position yet we are afraid that the said decision is not apposite in connection with the issue that is involved in the present case. The question here is not the scope of investigational power of the police vis-a-vis the power of the Court to control the same which has been decided in various decisions of the Apex Court, but, the issue involved relates to as to whether the "other proceeding" would include investigation. Although at the stage of investigation there is bare involvement of the Court expect acting on prayer for remand, issuing of search warrant and such other miscellaneous powers vested under the Code, the Court is distanced at that stage but, however, from a deep analysis of what we have seen, we are of the considered opinion that the phrase "or other proceeding" would include even the stage of investigation and it would be expedient on the part of a Criminal Court to issue an order of warrant u/s 267(1) of the said Code and we have no reason to find that the word "or other proceeding" excludes the power of the Investigating Agency (read police authority) during the course of investigation to approach the Court for issuing necessary warrant in terms of the aforesaid provision and the words "other proceeding" very well combines the scope of investigation as well.

72. The argument of Shri Hazra and Shri Bagchi to the effect that unless the report in final form has been placed before the Court and cognizance is taken on the basis of the same there is no proceeding cannot be accepted sacrosanctly. There is no scope to give the words "a proceeding" a restricted and narrow meaning. Although proceedings simpliciter has not been defined in the Code if we see the definition of Section 2(h) of the said Code where investigation has been defined to include all proceedings under the Code and in Section 2(i) of the said Code judicial proceeding has been defined to include any proceeding in course of which evidence is or may be taken on oath. This explains the entire position and the tangle seems to be resolved.

73. As experienced earlier by us we find the word "proceeding" which has been used in Chapter XII, Sections 156(2), 172 and 173(6) all relate to the stage of

investigation but, whereas as very rightly pointed out by the learned Public Prosecutor for the State that in Sections 91(1), 92(1) and 93(1)(c) the words "other proceeding" have been very prominently incorporated in these provisions as contained in Chapter VII which relates to the jurisdiction of the Court.

74. As such, a very close scrutiny of the same reveals, in our most humble view, the word "proceeding" nor being qualified by the word "judicial" or by any other word, has to be understood in the context of investigation in view of the aforesaid discussion and as such, the decision referred to by Shri Bagchi in *Satish Chandra Sadhukhan and Ors. v. Balaram Banerjee* (supra) apart from any other aspect of the matter is quite distinguishable.

75. The submissions per contra to the Reference in our view does not have any ultimate impact. If we go by the same we will, we are sorry to say, deviate from the focal point and be eluded by mere claptrap of extreme narrow technicalities and frustrate in the process what the Legislature had intended in their wisdom.

76. On the other hand, we find substance in the submission of the learned Public Prosecutor that the provisions of Section 267 of the said Code empowers the Court to direct the Incharge of the prison whenever it appears to the former in course of inquiry, trial or other proceeding that the prisoner is required to be brought before it for the purpose of a proceeding which would obviously include an investigation. The Full Bench decision of the Allahabad High Court in *P.C. Gupta's* case relied upon by the learned Public Prosecutor, in our view, is quite applicable in the position which we have seen hereinabove. Therein Their Lordships of the Full Bench of the Allahabad High Court were of the view that exercise of power of bail in any case by a judicial officer falls within a judicial proceeding as it acts in the capacity of a Court. We feel that the Full Bench decision of the Allahabad High Court has full application on the point which we were discussing.

77. Similarly, we find much sustenance from the Full Bench decision of the Kerala High Court in *Albert v. State of Kerala and Anr.* (supra) wherein Their Lordships of the Full Bench of the Kerala High Court held that the words "criminal proceeding" in Section 211 of the Indian Penal Code is not qualified by the word "judicial" or by anything else and it is confined to a proceeding before a Court of Law or other Tribunal.

78. Similarly we find the decision referred to by the learned Public Prosecutor for the State in *V.S Kuttan Pillai v. Ramkrishnan and Anr.* (supra) is fully axiomatic in the present case even at the stage of issuing a search warrant clear application of mind was required, as has been held by the Supreme Court, which must be discernable in the order of granting the search warrant. This obviously involves an exercise of judicial discretion and is not a manifestation of a mechanical exercise.

79. In conclusion, we are of the view that the phrase "or other proceeding" in Section 267 of the said Code would also include the concept of investigation.

80. In view of the above analysis we come to the conclusion that the REFERENCE has to be answered in the positive by the following reply:

Yes an order and warrant u/s 267 of the new Code in Form No. 36 of Second Schedule thereof can be issued by a Criminal Court on the request of the police investigating into a case during the course of investigation.

81. As we have returned a positive answer to the REFERENCE the ratio of the decision laid down in Sk. Ismail Ali (supra) cannot be said to be any longer good law.

82. Since we have already answered the REFERENCE, now let the matter be placed before the learned Single Bench for disposal.

83. Reference answered accordingly.