
(1974) 02 AP CK 0011
In the Andhra Pradesh High Court

State	Vs	APPELLANT
Gali Chalapathi Rao and Others		RESPONDENT

Date of Decision : 14-02-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 158, 161, 162, 164, 165
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 302

Citation : (1974) 1 APLJ 325 : (1974) CriLJ 1424

Hon'ble Judges : Sriramulu, J;Sambasiva Rao, J

Bench : Division Bench

Judgement

Sambasiya Rao, J.—This Criminal Revision case has been placed before us in a Division Bench on a reference made by our learned brother Mukhtadar, J. The question of law that arises in the case and which has been argued before us at great length is whether the Court has power and discretion, while remanding the accused to custody u/s 344, Cr.P.C. to remand him into police custody. To put the question in other words It is, whether the Court has to remand an accused, while dealing with an offence which it has taken cognizance of, only to judicial or jail custody and has no discretion whatever under any circumstances to remand him to police custody.

2. This question has arisen in the following manner. One K. Vedagiri Rao was attacked in the afternoon of 27-10-72 by a large number of persons and was caused fatal injuries to which he succumbed subsequently. 19 persons were charged under Sections 302, 149, 148, 120B, I.P.C. etc. Though all the accused were absconding for some time, A- 6 to A-14 were apprehended and were remanded to police custody on 10-11-1972. A charge sheet was filed against all the 19 accused on 24-3-1973. A-15 to A-19 surrendered themselves to Court after the charge-sheet was filed. The preliminary inquiry before the Munaif-Magistrate Madhira was numbered as P. R. C. 2/973. On 6th June, 1973 A-1 to A-4 surrendered to Court and were, on that day, remanded to judicial custody. The police, however, filed Criminal Miscellaneous Petition No. 302 of 1973 before the

Munaif-Magistrate on 8-6-1973 seeking police custody of these four accused for more investigation in regard to them. The Munsif Magistrate, however, dismissed the petition holding that as the period of 15 days from 6-6-1973 had expired, he could not grant police remand and while coming to this conclusion, he relied on the decision of the Orissa High Court in Artatran Mahasuara and Others Vs. State of Orissa, It may be noticed here that the 5th accused was still absconding and his case was separated from that of the others.

3. The prosecution preferred Criminal Revision Petition No. 3 of 1973 to the Court at Khammam against the order of the Munsif-Magistrate Madhira. The learned Sessions Judge felt that the Munaif-Magistrate was wrong in rejecting the petition for polios remind- In coming to this conclusion he relied on some cases particularly that of this Court (of Mirza J.) in State of Andhra Pradesh v. Golla Rajulu 1971 Cri L J 1368 (Andh Pra). So, he referred the case to this Court for setting aside the order of the Munsif Magistrate, Madhira and for allowing the petition of the police to have custody of A-1 to A-4 for a reasonable time. Mukhtadar J., before whom the matter came opined that "there is no ruling directly on this aspect of the case interpreting the term "may by a warrant remand the accused. If in custody" and also being a matter of importance, this is fit fit case to be heard and disposed of by a Bench of this Court.

4. It would be useful if we notice at the outset the respective contentions advanced before us by both sides. The learned Public Prosecutor contends that the Magistrate has enough discretion u/s 344, Cr.P.C., to remand the accused to police custody. He is not bound to invariably keep them in jail custody until the inquiry before him is over. It may be that generally speaking, the accused will have to be in jail custody after an offence has been taken cognizance of. But it cannot be said that under no circumstances whatever, a Magistrate has power or discretion to entrust the accused to police custody. Section 344, Cr.P.C., confers adequate power on him to do so, But that power he has to exercise in his judicial discretion and when he thinks it reasonable to place the accused in the police custody, he has to give his reasons for his conclusion. In this particular case an extraordinary situation prevails. It is true that a charge sheet was filed on 24-3-1973. But A-1 to A-4 were not in police custody before it was filed and were not, therefore, available to the police for interrogation and investigation in so far as they were concerned. It may become necessary for the police to make more and further investigation in regard to them after they are available. If that is denied to the police, a complete investigation may not be possible in all cases. Full investigation into an offence need not necessarily result in prosecuting the accused. It is quite possible that as more information is gathered and more light is thrown on the offence, some accused may be found to be innocent of the offence. So, the possibility of the accused deriving benefit from further investigation can not be ruled out. What is, therefore, required is a full investigation and in some cases it may not be possible for the police to complete it without the aid of the accused. Since A-1 to A-4 were never in the custody of the police, it was not possible for the latter to complete their investigation. That

is why they sought police custody. If it is held that once Section 344, Cr.P.C. becomes applicable, no police custody can be given under any circumstances and the Court has no power or discretion in this behalf, it would result in having inadequate investigations in some cases. Clever accused would surrender to the Court directly after the charge sheet has been filed and thus deprive the police of the opportunity of conducting a thorough inquiry into the offence in so far as they are concerned. Section 344, Cr.P.C., is no bar to the Magistrate entrusting the accused to police custody and the learned Public Prosecutor maintains that the legal position enables and the practical approach to offences requires that a Magistrate should have this power and discretion.

5. Shri K. Jagannadha Rao, on the other hand, submits that it is abundantly clear from the scheme of the Criminal Procedure Code that from stage to stage the rigour of the police custody is reduced and when it reaches Section 344, Cr.P.C., police custody is completely done away with and only judicial or jail custody is provided for. It may be that the prosecution may require some more time, even after filing the charge sheet, to make more and further investigation. To enable the police to complete the investigation, the Court has power u/s 344, Cr.P.C., to place the accused in remand and continue it for not more than fifteen days at a time, but that remand is only to judicial custody. Judicial custody does not mean that the police cannot interrogate the accused in jail; that they can do with the permission of the Court. If the accused are prepared to make a confession, that can also be done while they are in judicial custody. Thus all reasonable investigation is possible even if the accused are in jail custody.

On the other hand, jail custody is contemplated for avoiding unfair and undesirable methods of investigation by the police. Remitting the accused from jail into the custody of the police would result in encouraging such methods. The intendment of the Code is clearly against this. If the contention of the learned Public Prosecutor is accepted, the very purpose of Section 167, Cr.P.C. that there should not be more than fifteen days police custody of any accused would be defeated. It is not as if for all accused police custody is compulsory; the custody of an accused can as well start with his surrender to court, thus resulting in judicial custody right from the beginning. It is, therefore, manifest from a harmonious reading of the relevant provisions of the Code that Section 344, Cr.P.C., postulates only judicial custody and nothing else. It does not contemplate any exceptions and to say that the Court has discretion to remand the accused to police custody in extraordinary cases, is to read something into Section 344, Cr.P.C., which is not there. In this light, the view taken by Mirza J. in 1971 CriLJ 1368 requires reconsideration. Learned Counsel also submits that the circumstances of the case do not warrant handing over the four accused to police custody even if the legal position is to be held against them.

6. We will do well by understanding the scheme of the Criminal Procedure Code in this behalf and the scope of the few relevant provisions therein in regard to custody of offenders. Chapter V of Part III of the Code relates to arrest, escape

and retaking. Section A thereof is concerned with "arrest generally." Section B deals with "arrest without warrant." The provisions in this section show the anxiety of the framers of the Code to see that as far as possible, person should be arrested only under a warrant issued by a Magistrate and if one is arrested without warrant, many precautions should be taken. Clear guidelines are laid down in what circumstances a person may be arrested without a warrant. Then Section 60 requires a police officer making an arrest without the aid of a warrant, to take or send the person arrested before a Magistrate having jurisdiction in the case or before the officer in charge of a, police station. Section 61 goes further and lays down that:

No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate u/s 167 exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

The fact that the law, as stated by the Code, requires that a person arrested without warrant should be produced before a Magistrate at the earliest possible moment after the arrest, which should not in any case exceed 24 hours, is quite manifest from this provision. However, custody of the arrested person by the police for more than 24 hours can be extended only by a Magistrate and that too u/s 167. To us, it looks very significant that Section 61 refers only to an order u/s 167 as the sole exception and not to any other provision in the law and even to Section 344, Criminal P.C. It follows that unless an order is made u/s 167, no arrested person can be kept in police custody for more than 24 hours and further that further detention in such custody is permissible only u/s 167, and no other provision.

7. The next material portion of the Code is Chapter XIV in Part V which provides for information to the Police and their power to investigate and it is in Chapter XIV that Section 167 occurs. That Section lays down the procedure when investigation cannot be completed in 24 hours fixed by Section 61. If the investigation into the alleged offence cannot be completed within that time and if there are grounds that the accusation against the arrested person is well founded, the officer in charge of the police station or the investigating officer not below the rank of Sub-Inspector, shall forthwith transmit the arrested person to the nearest Magistrate with a copy of the entries in the diary. That Magistrate need not necessarily be a Magistrate who has jurisdiction to try the case. He can authorise the detention of the accused in such custody as he thinks fit, This power, is circumscribed by many limitations. In the first place he should be satisfied that further detention of the accused is necessary. But the term for which he permits the detention should not exceed 15 days in the whole. If he has no jurisdiction to try the case and considers further detention unnecessary, he may send the accused to the Magistrate having jurisdiction. Further, no third class Magistrate or even a Second Class Magistrate, who is not specially

empowered in this behalf by the State Government, can permit such detention in the custody of the police.

It should be noticed here that the custody which a Magistrate may give under Sub-section (2) of Section 167 is such custody which he thinks fit. That means he may direct either of the two i.e., judicial or police custody. That is why the proviso to that Sub-section says that no Magistrate of a rank below the one specified there, shall authorise detention in the custody of the police. This clearly implies that entrusting an accused person to police custody is a matter that should not be done freely and should be granted only with caution and responsibility. What is more, Sub-section (3) insists on a Magistrate, authorising detention in the custody of the police, recording his reasons for so doing. Yet another safeguard is provided against police custody in Sub-section (4), which is to the effect that if such order is made by a Magistrate other than the District Magistrate or sub-divisional Magistrate, he shall forward a copy of his order with his reasons for making it to the Magistrate to whom he is immediately subordinate. All this clearly demonstrates that even at the stage of investigation, police custody can be given under great caution and only for justifiable reasons. It will not be unreasonable to say that the framers of the Code postulated police custody of an accused person for the absolute minimum time even at the stage of investigation and even that circumscribed by many limitations. Thus, reading Sections 61 and 167 together, it is quite manifest that the detention of the accused with the police is not countenanced for more than 24 hours, excepting to the very limited and highly qualified extent permitted u/s 167.

8. We may then notice Section 190, which is a provision in Chapter XV of Part VI. Part VI deals with proceedings in prosecutions and that Chapter XV is concerned with "the jurisdiction of the criminal Courts in Inquiry and trials. Section 190 is the provision which provides for cognizance of offences by Magistrates. I empower any Presidency Magistrate, District Magistrate or Sub Divisional Magistrate and any other Magistrate specially empowered in this behalf to take cognizance of any offence on receiving a complaint of facts which constitute such offence; or on receiving a similar report from any Police Officer, or on receiving information from any other person, who has knowledge or suspicion of the commission of an offence. As the code unfolds the procedure, it thus reaches the stage of taking cognizance of offences by Magistrates resulting in the Magistrate having seisin over the matter. Chapter XVII contains provisions relating to the commencement of proceedings before the Magistrate Chapter XVII deals with enquiries into cases triable by the Court of Session or High Court, wherein Section 207A lays down the procedure to be adopted in proceedings instituted on police report, Chapter XIX gives the form of charges. Chapter XX relates to trial of summons cases by Magistrates while Chapter XXI with trial of warrant cases. Then Chapter XXII gives the provisions relating to summary trials and XXIII with trials before High Courts and Courts of Session. Then we come to Chapter XXIV, which lays down general provisions as to enquiries and trials. It is in this Chapter Section 344 is included. We have referred to the nature of these different parts

of the Code only to demonstrate that it has from step to step evolved different stages in the course of investigation into offences bringing them to the cognizance of Courts and the subsequent proceedings by way of enquiry and trial that have to be followed by Courts.

9. It is in this context the scope and ambit of Section 344 will have to be understood, Its marginal note is "Power to postpone or adjourn proceedings". In Sub-section (1) it is laid down that in every enquiry or trial the Proceedings shall be held as expeditiously as possible, and once the examination of witnesses has begun such examination shall be continued from day to day until all these in attendance have been examined. If, however, the Court finds that it is necessary to adjourn the enquiry or trial beyond the next day, it may do so after recording reasons therefor. Sub-section (1-A) was inserted in 1955 and it enables the Court, if it thinks fit, to postpone the commencement of or adjourn any inquiry or trial, by order in writing stating the reasons therefore from time to time. Such postponement or adjournment may be for such time as the Court considers reasonable. The Court is given discretion to do so either on account of the absence of witnesses or for any other cause. When it grants such postponement or adjournment it is, however, required to give the reasons therefore in writing. While doing so it may, by warrant, remand the accused, if in custody. There is a proviso to this sub-section which lays an embargo on the Court remanding an accused to custody under this section for a term exceeding 15 days at a time, Though this limit of 15 days is imposed for remanding an accused to custody at a time, it is manifest from reading Sub-section (1-A) that the Court can go on remanding him to custody more than once, each time not exceeding 15 days, provide, of course, it considers such remand reasonable.

A distinction between Sections 167 and 344 in this behalf is quite patent. Section 344 speaks of only "custody" while Section 167 enables the Magistrate to authorise the detention of the accused in such custody as such Magistrate thinks fit." Thus, while u/s 167 the Magistrate can place an accused person either in jail custody or in police custody, Section 344 does not give him any such choice between the two alternatives. It is also very pertinent to note that u/s 167(3), a Magistrate is required to record his reasons for authorising, under that section, detention of an accused person in the custody of the police. The necessary implication of that requirement is that police custody may be given only very sparingly. Such a requirement is absent in Section 341. What all the Magistrate can do under this section is that he may remand the accused to custody for a term not exceeding 15 days at a time. If this custody also includes police custody, there is no reason to suppose that the Magistrate would not have been required to give his reasons therefor. The place in the Code where Section 344 occurs also points out that what is contemplated by Section 341 is only Court or jail custody and not police custody. It is true, as is now settled by the ruling of the Supreme Court in *Gouri Shankar Jha Vs. The State of Bihar and Others*, that the power u/s 344 can be exercised even before the submission of the charge sheet and when the investigation is still going on. At the same time, Section 344

comes into play only after the stage contemplated by Section 167 is over. There the policy custody of the accused should stop and that of the Court should begin. That clearly seems to be the intendment, of the Code and of Section 344 in particular.

10. While Section 344 insists on the continuation of the examination of witnesses, once begun, to be continued from day to day, it has also taken into account some practical difficulties which the Court may encounter in the process. If its hands are shackled completely and its discretion is stifled, it may not be able to postpone or adjourn an enquiry or trial under any circumstances whatever. So enough leeway or discretion is conferred on the Court to postpone or adjourn an inquiry or trial for any reasonable cause for such time as it considers reasonable. All this only emphasises the basic feature of Section 344 that the Court should give an expeditious disposal to the inquiry or trial before it and to remand the accused to custody if necessary, for a term not exceeding 15 days at a time. In this connection the explanation to Section 341 which states what is a reasonable cause for remand is very important. It is that:

If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

It is, therefore, manifest that there should be some evidence to raise a suspicion that the accused may have committed the offence. Only then an accused may be remanded to custody, provided it appears likely that further evidence may be obtained by such remand. That does not mean that the accused person should be placed in the hands of the police, If the investigation into offence has not been completed by that time and the Court is satisfied that it may be possible to obtain further evidence then only an accused person may be remanded to custody. If police custody also is postulated at this stage of the matter, then the Code would have mentioned it as it does in Section 167. We are of the opinion that on the other hand, at the stage when Section 344 becomes applicable, only Court or jail custody is contemplated by the Code and not police custody. We have already noted that Section 61 makes an exception only in the case of an order u/s 167 and in no other case. Reading all these provisions together in the contexts in which they find their places in the Code, police custody is discountenanced and not contemplated except. ing to the limits stated by Sections 61 and 167 of the Code.

11. Though they are not material, the corresponding provisions of the Code of Criminal Procedure, 1973 which is going to come into operation on 1st April 1974 may also be noticed, Section 61 of the present Code corresponds to Section 57 of the new Code. The latter is a verbatim" reproduction of Section 61. Section 167 of the old Code is reproduced in Sub-section (1) to (4) of Section 167 of the forthcoming Code. Though there are certain alterations in these sub-sections which include the extension of the total period of custody to 60 days they do not beat on the question we are now endeavouring to answer. In so far as that

aspect is concerned, Section 167 in the new code also continues to be the same. Sections 344(1) and 344(1A) are re-enacted in Section 309 sub-sections (1) and (2). These sub sections are identical in all material particular with sub-sections (1) and (I A) of the present Section 344. Even the explanation in regard to the reasonable cause for remand is continued in explanation (1). Thus, the position does not appear to have altered in any way in the new Code.

12. There is another argument of the learned Public Prosecutor which should be examined. He refers to the use of the word "commencement" in Sub-section (1 A) of Section 344 and seeks to draw a distinction between "commencement" of an inquiry and the "beginning" of an inquiry or trial. What Section 344 postulates is possibly the retention of the accused person in Court custody only after the examination of the witnesses has begun. It is possible to understand from the language used in Section 344 that until the examination of witnesses is "begun" but after the "commencement" of an inquiry, an accused person can be remanded to police custody at the judicial discretion of the Court. That is why, in his submission Sub-section (1) refer to the stage where examination of witnesses has once begun, while Sub-section (1A) refers to the commencement of an inquiry. He refers to the title of Chapter XVII, which is "of the commencement of proceedings before Magistrates." Beginning with Section 204 that chapter deals with issue of process and other steps to be taken on the commencement of proceedings. That is distinct from beginning of an inquiry with examination of witnesses. Until that is begun, it is possible to read the meaning of Section 344 as conferring power on the Magistrate to give the accused person into any custody as the circumstances require. This is how the learned public prosecutor advances this argument.

We are not much impressed by this subtle distinction sought to be made. Reading Section 344 as a whole, it does not appear to make any particular distinction between "commencement" and "beginning". Both words are used in it. Sub-section (I A) begins with the words "if from the absence of a witness, or any other reasonable cause", thereby continuing the same idea as contained in Sub-section (1). The later part of Sub-section (1) refers to postponement or commencement or adjournment of an inquiry or trial. Maxwell in his Interpretation of Statutes, Twelfth Edition has this to say on interpretation of acts of similar scope at page 71:

The doctrine of stare decisis applies in the usual way to cases which determine the interpretation of particular statutory provisions...Further, the construction which has been placed on statutes of similar scope may be referred to. In the words of James, L. J.: "If an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the same subject and passed with the same purpose, and for the same object, the safe and well known rule of construction is to assume that the legislature when using well-known words upon which there have been well-known decisions use those words in the sense which the decisions have attached to them.

13. We are presently going to refer to a large number of judicial pronouncements construing the relative scopes of sections 187 and 344. There is no reason to suppose that when subsection (1 A) was introduced in 1955, the words therein were used with a different connotation as has been given to them by a long catena of cases. Further, certain well-known rules of interpretation, as explained by Maxwell as well as by Craies are: (1) When precision is required, no safer rule can be followed than always to call the same thing by the same name. It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act. (2) with regard to what is meant by the expression the plain meaning of the words of

statute", it is necessary on all occasions, to give the Legislature credit for employing those words which will express its meaning more clearly than any other words; So that if in any particular instance it can be shown that there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the Legislature used that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all, and in that event it becomes necessary to try to discover what intention it did intend to convey. These rules of interpretation, universally accepted as they are, have been reiterated by a Full Bench of this Court in *Sait Nainamnl v. B. Subbarao* 1957 ALT 536 : AIR 1957 AP 546. It is not consequently possible to give different meaning to these words, Therefore, we are unable to accept the distinction pointed out by the learned public prosecutor.

14. He also urges upon us to appreciate that after all the Criminal Procedure Code lays down the procedural law and not any substantive law, and therefore, it should be so construed that the object and intent behind the substantive law viz. the Indian Penal Code and the administration of criminal justice are not in any way hampered. Such interpretation should be given to procedural law as would facilitate proper administration of substantive law and serve the ends of justice. It is patent that Criminal Procedure Code certainly lays down the procedure for administration of criminal Justice. At the same time it lays down very careful guidelines for the Courts to follow in conducting investigations, enquiries and trials. It provides safeguards to suspected and accused persons against being subjected to third degree methods by the police and further confers several opportunities for them to place before the Court their case in a fearless and free manner. In fact, giving a free and fair trial to persons accused of offences is one of the cardinal principles of administration of criminal justice in this country. That being one of the important objects of administration of criminal justice, Criminal Procedure Code naturally provides safety measures to the accused persons against their being at the mercy of the police in the matter of fair investigation. It is exactly for that reason the Criminal Procedure Code limits the retention of the accused person in the police custody to the absolute minimum and provides for his being kept in Court custody the rest of the time.

15. We will now proceed to consider the practical difficulties which the learned public prosecutor apprehends that might result, if under no circumstances an accused person can be entrusted to Police custody u/s 344. He points out that Section 344 itself contemplates further investigation into the offence that is alleged to have been committed by the accused person and enables the Court to postpone or adjourn the inquiry or trial for completing the investigation. While conducting such investigation, the Police may require on occasions, to have the presence help and co-operation of the accused and it may not be possible to have a thorough investigation into the offence without it. Further investigation may not necessarily be to the detriment of the accused. When more material is gathered and more light is thrown on the offence, they may show that the accused person is innocent of the offence and is not in any way connected with it. So, further investigation may also result in eliminating the accused person from the offence, inquiry and trial altogether.

After all, so the learned Public Prosecutor argues, the police are interested in getting at the truth by having an investigation into the offence, and the presence of the accused person with them may help in having a full and satisfactory investigation. For instance, the accused person may be inclined to make a confession. For another instance, he may make a statement which might lead to the discovery of any fact connected with the offence u/s 27 of the Evidence Act. So, if the possibility of entrusting the accused to police custody is altogether excluded u/s 344, it may jeopardise the investigation and getting at truth. After all Section 344 confers discretion on the court to remand an accused person to police custody or jail custody and it is not obligatory for him to entrust him to police custody. When it does so, it does so only in exercise of judicial discretion and when it is satisfied that police custody would be helpful for throwing more useful light on the offence. As it has happened in the present case, some accused persona may altogether avoid investigation by surrendering themselves into Court after the charge sheets is filed. It would lead to great hardship if this discretion, judicial discretion as it is, is denied to the Court.

16. We are not impressed by this argument or the possible practical difficulties that may ensue from giving the construction to Section 344, which we are inclined to give. According to the scheme of the Code, the information to the police and their powers to investigate generally precede the Court taking cognizance of an offence. In fact, Section 158 empowers any officer in charge of a Police Station to investigate any cognizable offence Without the order of a Magistrate. Section 161 enables any police officer making an investigation to examine orally any person acquainted with the facts and circumstances of an alleged offence. No statement by any person to police officer need be signed and those statements may be used for purpose of contradiction, u/s 162. However, no police officer shall offer any inducement, threat or promise while making investigation. He is even enabled by Section 165 to conduct searches in the course of investigation. He is also enabled to secure search warrants. If all the investigation is not completed within 24 hours he can seek police custody u/s

167 for a term not exceeding 15 days in the whole. Thus an investigation into an offence is contemplated by the Code to be completed expeditiously and even without the presence of the accused. However, if the custody of the accused is required by the police it may be given to them say the Magistrate for a term not exceeding 15 days- u/s 164 any Magistrate mentioned therein may record statements or confessions. But, it is important to note that such statements or confessions have to be recorded only by a Magistrate and not by a Police Officer, As is well known, before a confession is recorded, the person making it must be given warnings and be kept in judicial custody. At the time of recording confessions, police custody is completely excluded. Therefore, it is futile to argue that in order to record statements or confessions from an accused person, his custody by the police is necessary. It may also be noted that the police may seek an Interview with an accused person who is in jail custody, from the Court, and interview him under such permission. If such statements lead to any discoveries, they are not prevent-ed from proceeding further, even if an accused person is in jail custody.

On the other hand, the intendment of the Code by insisting that an accused parson should not be kept in the custody of the police for more than 15 days is to enable him to have a tree defence unencumbered by any threat or inducement by the police. If the police have Custody of an accused person, the possibility of extracting statements and confessions by force or inducement cannot be excluded. The Code shows great anxiety to avoid this possibility. When the police officer feels that there is sufficient evidence, after completing investigation, be may send the case to the Magistrate u/s 170. It is therefore, reasonable to presume that the police are generally expected to complete the investigation or have

at least a reasonable basis for charge-sheeting the accused before a charge sheet is filed. Even thereafter, if further investigation is necessary and the Magistrate is satisfied of that necessity, the inquiry or even trial may be postponed or adjourned. That cannot mean that the Court has power to entrust the accused at that stage into the custody of the police for completing the investigation, even in extraordinary cases. We find nothing in that section which makes an exception and says that in extraordinary cases the Court can re. man an accuse person to police custody. We are thus unable to agree with the learned public Prosecutor in thinking that some practical difficulties would ensure if this judicial discretion is not recognised in a Court u/s 344 to entrust the accused to police custody if it becomes necessary.

17. We may now refer to the case law which has a material bearing on this question. Though many decisions are cited before us, we propose to deal only with such of those which we think are very material. We may start with a decision of the Madras High Court of 1897 in Queen-Empress v. Engadu (1897) 1 LR 11 Mad 98. It may be noted here that excepting Sub-section (1 A), Section 344 was then in the same form as it is now. A Division Bench hell that the right

construction of Section 167 of the Code of Criminal Procedure is that in proceedings before the police under Chapter XIV, the period of remand cannot exceed in all fifteen days, including one or more remands. Brandt J., pointing out the distinction between Sections 167 and 344 pointed out that:

Under an order made u/s 167, Criminal Procedure Code, the accused person is detained in the custody of the police, or in such other custody as the Magistrate making the order thinks fit. Ordinarily, no doubt, he will be in the custody of the police. Such detention is altogether different from the custody in which an accused person is kept under remand given u/s 344, Criminal Procedure Code which is the custody provided by the legislature for under trial prisoners." The Division Bench thus clearly opined that custody contemplated u/s 344 is that of an under trial prisoner, i.e., Court custody.

18. In *Re Krishnaji P. Joglekar* (1899) 1 LR 23 Bom 32, it was held that this section (Section 344) however, relates to proceeding in inquiries or trials, and has nothing to do with police investigation and it contemplates a remand to jail and not to police custody. A later decision of another Division Bench of the same Court in *Re Kama Khandu Zugrya* (1902) 4 Bom LR 878 also took the view that Section 344, Criminal Procedure Code, does not empower the Magistrate to remand an accused person in custody of the Magistrate to Police custody for the purpose of obtaining information with regard to the offences which the accused may be alleged to have committed. It may be noted here that the aforesaid case also arose out of a reference made by the District Magistrate exactly in similar circumstances, disagreeing from the Magistrate, who declined to entrust the accused to police custody.

19. A Division Bench of the Calcutta High Court considered the nature of custody contemplated by Sections 167 and 344 in *Nag-and ranath Chakravarti In Re*, 1 LR 51 Cal 402 : 1924-25 Cri LJ 732 (Cal). It was stated there:?

The power of remand under section 167 is given to detain prisoners in custody while the police make the investigation, and in a proper case, to commence the inquiry. But the custody mentioned in Section 344 is quite different and is intended for under trial prisoners.

20. The question was once again considered by the Calcutta High Court in a decision of a Full Bench of five Judges in *Md. Suleman v. Emperor* AIR 1926 Cal 1121 : 27 Cri LJ 1201. Chatterjee, acting C. J. in his opinion pointed out the distinction between sections 167 and 344 and observed that Section 167 empowers the Magistrate to authorise detention of the accused in police custody for a term not exceeding 15 days but that does not apply to the Calcutta Police. There is, however, Section 344. But, under it, a Magistrate may order a remand not to police custody but only to magisterial custody. Mukerji J., in his separate opinion observed that Section 341 (obviously a misprint for Section 344) is the only other provision of the Code under which an order for remand may be made by a Magistrate. But it has been held by that Court that under it a remand may

be made to magisterial and not police custody.

21. In *Kundan Lal v. Emperor* AIR 1931 Lah 353 : 32 Ori L J 785 it was observed by Bhide J.(at page 353 that:?

The Code (Criminal Procedure Code) does not contemplate accused persons being kept in police custody except for a limited period during the course of investigation: vide Section 167.

A single Judge of the same High Court also held, in *Bal Krishna v. Emperor* (1932) 33 Cri L J 180 : AIR 1931 Lah 99 that Section 167 requires a Magistrate remanding an accused to police Custody to state his reasons in writing. Where the maximum period of remand allowed has expired no iurther remand can be granted. If need be, it is open-to the police to adopt the procedure u/s 344, Criminal Procedure Code, for judicial look-up of the accused.

22. A Division Bench of the Allahabad High Court in *Dukhi and Another Vs. State and Another*, observed that a Magistrate granting remand u/s 167(2) had the discretion to remand the accused either to police custody or to jail custody, but it was doubtful if a court granting remand u/s 344 had such discretion and could remand the a sensed to police custody.

23. The same view was stated by a Division Bench of the Travancore Cochin High Court In re, *Kunjan Nadar* AIR 1955 Trav-Co 74 : 1955 Cri L J 740 Koshi, C J. delivering the Judgment of the Court observed at p. 79: : (of AIR) : (at p. 746 of Cri L J) that:

In Section 344 "remand" means remassd to custody in a Magisterial look up or jail during a postponement or adjournment of an inquiry or trial.

The Delhi High Court held in a decision of one of its Pull Benches in *Ajit Singh and Another Vs. The State*, dissenting from the view taken in *Artatran Mahasuara and Others Vs. State of Orissa*, that am accused person can in the absence of police report u/s 173, be remanded to custody beyond 15 days of his arrest u/s 344. In the absence of any words in the section or in the contest it is not permissible to read in the section a limitation or condition attached to, the power of Magistrate to grant remand only in case a charge-sheet has been put in Court. Likewise, the taking of cognizance of an offence is not a condition precedent to the passing of order of remand. The words "postpone the commencement of any inquiry or trial" in Section 344 indicate that an order under that section can be made-at a stage preceding the commencement of" inquiry or trial. In para 6 (of A I R) : (Para. 6 of Cri L J), the Fall Bench also stated: ?

It may also be mentioned that the accused has to be remanded u/s 344 not to police custody but to judicial lock-up,

Finally the question came to be considered by the Supreme Court in *Gouri Shankar Jha Vs. The State of Bihar and Others*, . We may briefly notice the foots of that case. A person was arrested on 17-2-1968 and was produced before the

Magistrate on the very next day, that day the Magistrate remanded the person to police custody for four days. On 21st of February the Magistrate remanded the person to judicial custody. Again on 5-3-1968 another remand for 15 days to judicial custody was ordered and the same was repeated on 20th of March 1968 and 4-4-1968. On 5th March, 1968 however, the arrested person refused to go to the Magistrate's Court and was therefore not produced. An application u/s 561-A of the Code of Criminal Procedure for a writ of habeas corpus and an order of like nature was filed on behalf of the arrested person in the Patna High Court. That was dismissed and the arrested person after obtaining special leave went in appeal to the Supreme Court. Many contentions were raised before the Supreme Court, but all of them were repelled and the appeal was dismissed. Overruling the decision in AIR 1956 Orissa 129 ? 1856 Cri L J 909 the Supreme Court held that:

The fact that Section 344 occurs in the Chapter dealing with inquiries and trials does not mean that it does not apply to cases in which the process of investigation and collection of evidence is still going on. That is Clear from the very language of Sub-section (1-A) under which the Magistrate has the power to postpone the commencement of the inquiry or trial, That would be the stage prior to the commencement of the inquiry or trial which would be the stage of investigation. The power u/s 341 can be exercised even before the submission of the charge-sheet, that is, at the stage when the investigation is still not over.

One of the contentions raised on behalf of the appellant was that the remand passed by the Magistrate was really u/s 167 and not u/s 344. That contention was that Section 341 did not apply at that stage and secondly that even if it applied the Magistrate could not order detention for more than 15 days in the whole. Dealing with this contention Shelat J., rendering the decision of the Court observed in Para. 11 (of AIR) ? (Para 11 of Cri L J) as follows:

Section 167 appears in Chapter XIV which deals with information and investigation. As its language shows it deals with the stage when a person is arrested by the police on information that an offence has been committed. In providing that such a person must, in terms of Section 61, be produced before a magistrate within 24 hours after his arrest, the section reveals the policy of the legislature that such a person should be brought before a Magistrate with as little delay as possible. The object of the section is two-fold, One that the law does not favour detention in police custody except in special cases and that also for reasons to be stated by the magistrate in writing, and secondly, to enable such a person to make a representation before a magistrate. In cases falling, u/s 167, a Magistrate undoubtedly can order custody for a period at the most of 15 days in the whole and such custody can be either police or jail custody. Section 344, on the other hand, appears in Chapter XXIV which deals with inquiries and trials. Further, the custody which it speak of is not such custody as the magistrate thinks it as in Section 167, but only jail custody, the object being that once an inquiry or trial begins it is not proper to let accused remain under police influence.

On the basis of this view the learned Judge concluded saying:

If the view we hold is correct that Section 344 operated the Magistrate provided he complied with the condition in the Explanation, was competent to pass remand orders from time to time subject to each order being not for a period exceeding 15 days. There can be no doubt that the Magistrate had satisfied that condition.

We would respectfully like to add that our understanding of the scope of the remand u/s 344 vis-a-vis that u/s 167 read with Section 61 is in accordance-with this view of the highest Court of the land.

24. Learned Public Prosecutor however, wants to say that though this view is apparently against his contention in effect it is not so. He endeavours to take advantage of the observation that the object of Section 167 is that the law does not favour detention in police custody except in special cases and that also for reasons to be stated by the Magistrate in writing. So he argues that if there are special circumstances and the Magistrate is satisfied about them, he has power to remand the accused person to police custody. The Supreme Court pointed out that Section 344 also applies to cases in which the process of investigation, and collection of evidence is still going on. It is also pointed out that the Supreme Court did not say that under no circumstances the Court can give police custody u/s 341. So it can be safely understood that the Supreme Court was of the view that in special circumstances the Court can entrust an accused person to police custody even u/s 344. This however is clearly a vain attempt in view of the categorical statement of the legal position by the Supreme Court in Para. 11. which we have extracted. We may also usefully refer to another passage in Para. 12 where it was stated that:

Thus Section 167 operates at a stage when a person is arrested and either an investigation has started or is yet to start but is such that it cannot be completed within 24 hours. Section 344, on the other hand, shows that investigation has already begun and sufficient evidence has been obtained raising a suspicion that the accused person may have committed the offence and further evidence may be obtained to enable the police to do which a remand to jail Custody is necessary.

This in our view is clear enunciation of the law and leaves no scope for doubt.

25. The statement of the law by the Full Bench of the Delhi High Court in *Ajit Singh and Another Vs. The State*, is called as a stray observation by the learned Public Prosecutor. Though stray it is it is the view of a Full Bench of a High Court and so has a persuasive value. Though in our opinion the matter is now concluded by the decision of the Supreme Court in *Gouri Shankar Jha Vs. The State of Bihar and Others*, , we may briefly touch upon two or three decisions relied on by the learned Public Prosecutor. An observation of a Division Bench in, *In Re: V. Venkataraman*, to the effect that whenever an accused is brought before the Court and the court issues an order of remand the Magistrate has

complete freedom to remand the accused to whatever custody he thinks fit is sought to be relied on. But that is reading the passage out of its context. The question the learned Judges were considering was whether the remand to the Central Jail, Tiruchinopoly instead of to the Central Jail, Madura was proper. It is only to decide that question the learned Judges observed that the Magistrate had complete freedom to remand the accused either to the Trichinopoly Jail or to the Madura Jail. So, the observation read in the light of the facts does not support the contention of the learned Public Prosecutor.

26. In *State Vs. Sukhsingh and Others*, a Division Bench held that where an accused is kept in jail by orders of adjournment or remand u/s 314 he can be handed over to the police in some other case for purposes of investigation. As the facts themselves disclose, this view has no bearing on the question before us. There the learned Judges were only considering the entrustment of the accused to the police custody in connection with some other case.

27. Reliance is also placed on a decision of the Delhi High Court in *State v. Mehar Chand* 1969 Delhi L T 179. There it was held:

If an accused who is in magisterial custody in one case can be allowed to be remanded to police custody in another case then the same rule should not apply to the accused who is in magisterial custody and is sought to be turned over to police custody at a subsequent stage of investigation in the same case when the information discloses his complicity in more serious offences. On principle there is no difference at all between the two types of cases if the accused is already in magisterial custody it is open to the Magistrate u/s 167(2) to take the accused out of jail or judicial custody and hand him over to the police for the maximum period of 15 days provided in that section. All that he is required to do is to satisfy himself that a good case is made out for detaining the accused in police custody in connection with investigation of the case.

In this case what was subsequently suspected of the accused, who was already in magisterial custody was he was guilty of more serious offences than those which had already been alleged against him and thus the case is of the same nature (as) that of a new charge against him. Also if this decision is taken as laying down a general rule as canvassed by the learned public prosecutor then it must be held that it is no more good law in view of the later Supreme Court decision.

28. Reliance is then placed on a Division Bench decision of the Kerala High Court in *Velu Viswanathan v. State*. 1971 Ori L J 725 (Ker). The Court held that Section 314 applies to a case which is still in the stage of collecting evidence i.e. which is still under investigation. In the course of the judgment, though it was not necessary to express any opinion on the question as to the scope of remand u/s 344 since it did not arise in that case, the learned Judges made some observations. Even in regard to these observations they simply expressed a doubt regarding the position whether u/s 344 the Court can remand an accused

person only to judicial custody. They pointed out that:

Cases are conceivable where the investigation cannot be completed within 15 days and where even after an accused person is remanded u/s 344 he may have to be handed over to the police to be questioned not only for getting evidence in support of the prosecution but may even be to drop him from the array of accused persons. Suppose there are several accused persons in a case of whom some have been arrested and have been remanded u/s 344 and subsequently the rest of the accused are arrested. On questioning the accused persons arrested later, if the police got some information on which they want to question further one of the accused persons already under remand, we fail to see why he should not be handed over to the police. We are not bold enough to think that the legislature would not have been alive to such a situation. At any rate we need not express a final opinion on this question because this question does not arise in the cases before us.

Apart from the fact that it is merely an obiter ani also an expression of doubt at that for the reasons we have stated above we cannot agree with this reasoning. In any case the view of the Supreme Court in *Gouri Shankar Jha Vs. The State of Bihar and Others*, settles the question.

29. Now remains the decision of a single Judge of our own High Court viz., decision of *Mirza J.*, in 1971 Cri L J 1368 (Andh Pra). The facts before *Mirza J.*, are similar to those which are before us. Finding that the Magistrate had taken cognizance of the offence since he had taken the charge-sheet on file the learned Judge observed that it could not be said that Section 344, Cr.P.C. was not applicable, then the learned Judge proceeded to state that even if it is to be accepted that it was not the case where the enquiry had commenced nothing prevents the Court to act under Sub-section (3) of Section 167, Cr.P.C. In either case the powers of the Court are not restricted or limited by any provision of Jaw in making orders of remand and, there fore, the conclusion of the Sessions Judge that the order of the Magistrate was not justified was right. In the result the learned Judge directed the Magistrate to hand over the accused to the police custody for a period of five days. We cannot read this decision as laying down clearly that u/s 344 also the Magistrate has power to entrust an accused person to the custody of the police. Even if it is so construed, in the light of the decision of the Supreme Court, and what we have said above, we hold that it is not correct. The conclusion which emerges from the above discussion is that the Court, while proceeding u/s 344, Cr.P.C. has no power or discretion to remand an accused person to police custody. It can remand only to judicial or jail custody.

30. The answer we have given to the legal question is sufficient to dispose of the criminal revision case and to hold that the view of the Magistrate is correct and that of the referring Sessions Judge is wrong Even the circum-stance³ of the casa do not warrant the entrustment of the accused persons to police custody any more. They have already been committed to take their trial before the Sessions Court and they are now awaiting their trial before that Court. For that

reason also the accused cannot be entrusted to police custody.

31. The reference is answered accordingly.