

(1970) 02 BOM CK 0048

In the Bombay High Court

Case No : Criminal Revision Application No. 815 of 1969

The State of Maharashtra

APPELLANT

Vs

Century Spinning and Manufacturing Co., Ltd.

RESPONDENT

Date of Decision : 26-02-1970

Acts Referred:

Essential Commodities Act, 1955 — Section 10, 2, 3, 4, 7
Penal Code, 1860 (IPC) — Section 120B, 143, 147, 148, 307

Citation : (1970) 72 BOMLR 585 : (1971) MhLj 1022

Hon'ble Judges : Vimadalal, J

Bench : Single Bench

Judgement

Vimadalal, J.—This is an application filed by the State to revise the Order passed by the Additional Chief Presidency Magistrate, Mr. M. M. Dhruv, on April 29, 1969 discharging all the four accused u/s 251A(2) of the Code of Criminal Procedure in respect of an offence u/s 120B of the Indian Penal Code read with Section 7 of the Essential Commodities Act, 1955 with which they were charged, as well as of the substantive offence under the said Section 7 of the latter Act.

2. I must, at the outset, state the facts necessary for the purpose of disposing of this Revision Application. The first accused company is a textile mill which manufactures, amongst other things, Dhotis of a brand called "Paramsukh." The second accused is the President of the Executive Committee of the mill and is in overall charge of the production of the mill and controls its day-to-day working. The third accused is the Vice-President (Works) and controls the production of cloth manufactured by the mill and is authorised to sign the statutory returns required to be submitted by the mill to the Textile and Excise Authorities. The fourth accused was, at the material time, i.e., between October 20, 1964 and June 25, 1965, the Resident Executive of M/s. Udyog Services Ltd. as well as of M/s Shree Services and Trading Company which were working as liason agency between the office of the Textile Commissioner and the first accused mill.

3. Cotton and woollen textiles are included in the definition of "essential

commodity" contained in Section 2 of the Essential Commodities Act, 1955, and Section 8(1) of the said Act empowers the Central Government, if it is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity and availability at fair prices, "by Order" to provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2)(a) of Section 8 authorizes, in particular, the Central Government by an order made under Sub-section (1) thereof to regulate the production or manufacture of any essential commodity. Sub-section (6) of Section 8 lays down that every order made under the said section by the Central Government must be laid before both the Houses of Parliament as soon as possible. Section 4 of the said Act provides that an order made u/s 3 may confer powers and impose duties upon the Central Government, or the State Government, or officers and authorities of either of the said Governments, may contain directions to them in regard to the exercise of any such powers or the discharge of any such duties. The next section of the Act which must be referred to is Section 7 under which the accused in this case are alleged to have committed the offence in question. It enacts that if any person contravenes any order made under the said Section 3, he is to be punished with imprisonment and fine as specified therein. Section 10 of the Act provides that if the person contravening an order made u/s 3 be a company, every person who at the time of that contravention was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company itself, is to be deemed guilty of the contravention and punishable accordingly, subject to the proviso that no such person is liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

4. Under the powers conferred upon it u/s 3 of the Essential Supply (Temporary Powers) Act, 1946, the Central Government had made an order called the Cotton Textiles (Control) Order, 1948, which, it is common ground, has been continued in force under the subsequent statutory enactments replacing the said Act. Clause 20 of the said Order empowered the Textile Commissioner from time to time to issue directions in writing to any manufacturer or class of manufacturers or manufacturers generally inter alia, regarding classes or specifications of cloth or yarn which they are to produce and such manufacturers must comply with such directions. Clause 22 of that Order empowered the Textile Commissioner to specify the maximum prices or the principles on which maximum prices are to be determined, and the markings to be made by the manufacturers of specified classes of cloth or yarn.

5. In exercise of the powers conferred upon him under Clause 22 of the said Order, the Textile Commissioner by his notification No. S.O. 3656 dated October 13, 1964 specified the principles upon which the maximum ex-factory as well as retail prices, inter alia, of Dhotis were to be calculated, and defined the term "Dhoti" as meaning any type of grey or bleached cloth, whether mercerised or not, of plain weave which complied with certain specifications mentioned therein,

one of which was that it must have a width ranging between 71 cm. and 137 cm. By another notification No. S.O. 8637 of the same date, in exercise of powers conferred upon him by Clause 20 of the said Order, the Textile Commissioner laid down that no producer should produce, inter alia, any Dhoti which did not conform to the specification laid down in the schedule annexed thereto, and Item 94 in that schedule provided that the construction of Dhotis of superfine variety with which the Court is concerned in the present case was to be, Warp of 100 counts, Weft of 180 counts, and 88 Reed and 80 Picks. By a third notification bearing No. S.O. 3658 also of the same date in exercise of powers conferred upon him by Clause 22 of the said Order, the Textile Commissioner directed that each piece of cloth, the ex-factory price in respect of which had been specified, must be stamped in a particular manner, containing, inter alia, the words "controlled cloth" in red colour. It is important for the purpose of this case to note that it is common ground that these three notifications, all dated the October 13, 1964, were to take effect as from October 20, 1964.

6. Within a few days after the said three notifications were issued, it was realised by the office of the Textile Commissioner that the same would work hardship in respect of yarn which was already on beams in the various mills manufacturing Dhotis and the Textile Commissioner, therefore, by his circular letter dated October 30, 1964 granted a temporary relaxation, permitting all mills holding stocks of yarn on beams to manufacture Dhotis out of such beams against their control obligations, even though the varieties so manufactured did not conform to the notified specification, but provided that no production of varieties not specified in notifications Nos. S.O. 3656 and 3657 should take place on or after November 10, 1964, without the specific permission of the Textile Commissioner. It appears that, in another few days' time, the office of the Textile Commissioner realised one further hardship that was being occasioned to textile mills as a result of the said three notifications, and by para. 17 (i) of the said circular letter dated November 2, 1964, the Textile Commissioner directed that where a mill had been manufacturing any Dhoti of constructional particulars not falling strictly within the specifications prescribed in the Control Order, the Textile Commissioner would permit the mills, on application, to "continue" to manufacture such varieties, provided that the mill had been traditionally manufacturing the same for a period of not less than three years "continuously prior to October 1964", and stated that the mills could apply to the Textile Commissioner with full details "for approval and issue of Deviation Orders."

7. In reply to a letter dated December 3, 1964 written by the Office of the Textile Commissioner, the first accused mills by their letter dated December 7, 1964 stated that the variety of their Dhotis known as "Paramsukh Dhoti" were under production at that time, but the same would stop "as soon as the stock on present beams is exhausted." It was further stated in the said letter of the mills that they had already started manufacturing Dhotis with constructional particulars in conformity with those provided by the Textile Commissioner which would replace the said "Paramsukh" Dhoti. It is, however, common ground that

the mills went on manufacturing Paramsukh Dhotis which did not comply with the specifications notified by the Textile Commissioner, even after the stock on beams had been exhausted. It is the case of the accused that they did so under the bona fide belief that the same did not constitute a contravention of the notifications issued under the Textile Control Order by reason of the said circular letter dated November 2, 1964 issued by the Textile Commissioner to all the mills, permitting them to continue to manufacture their traditional varieties, even though the same did not comply with the notified specifications. It is, on the other hand, the prosecution case that by continuing to manufacture Paramsukh Dhotis which did not comply with those specifications, the accused have committed an offence u/s 7 of the Essential Commodities Act, 1955. It was only on February 11, 1965 that the first accused mills, by their letter signed by the second accused, applied to the Textile Commissioner for the necessary Deviation Order pursuant to the said circular letter dated November 2, 1964 issued by him. The said mills, however, continued to manufacture Paramsukh Dhotis even thereafter. In fact it appears that thereafter there had been some personal discussion between accused No. 4, and the office of the Textile Commissioner, and the first accused mills by their letter dated May 28, 1965 signed by the fourth accused, stated as follows :

From our personal discussion we presume there is some misunderstanding in your office that Paramsukh Dhoties were being manufactured by us during the last 8 months. As a matter of fact kindly note that we had manufactured these Paramsukh Dhoties upto December 1964 under the same particulars because the size beams were already ready with us and as per your office circular we were allowed to manufacture the cloth for which the size beams were ready. In the first quarter of this year we have started the manufacture of a new quality known as Sukh Data. We have produced these as per your specifications in the schedule.

Now we have started the production of the old specifications dhoties which are under processing for which we have been requesting your office right from the month of February to grant us the deviation order.

On June 25, 1965 the Textile Commissioner's office addressed a letter of warning to the first accused mills. It was observed in the said letter that the said mills had continued to manufacture Paramsukh Dhotis which did not comply with the notified specifications even after the introduction of statutory control on October 20, 1964, and that the same constituted a flagrant violation of the Textile Control Order and the first accused-mills were therefore cautioned that such irregularity would be viewed very seriously in future. The first accused-mills received separately a Deviation Order, which was also dated June 25, 1965, exempting it from compliance with the direction contained in the notifications and permitting the mills to produce Paramsukh Dhotis of its traditional specifications which, it may be mentioned, comprised 84 Picks instead of the notified 80 Picks. As this Deviation Order overlooked the fact that the traditional variety of Paramsukh Dhotis manufactured by the mills differed from the notified

specifications also in regard to its width which, was 140 cm. instead of the notified 137 cm., another Deviation Order dated July 23/26, 1965 was issued by the Textile Commissioner to the first accused-mills permitting it to produce Paramsukh Dhotis with a width of 140 cm.

8. It is quite clear to my mind that the Textile Commissioner's office did not want to pursue the matter of the alleged irregularity of the mills in continuing to manufacture Paramsukh Dhotis which did not comply with the notified specifications even after the statutory control on Dhotis came into force on October 20, 1964, but rested content with the warning it had issued to the first accused-mills by its letter dated June 25, 1965. For some mysterious reason, however, this matter was raked up almost two years later when the police filed a charge-sheet dated June 13, 1967 in respect of the same. It is indeed strange that the police should have done so, because it was after all the office of the Textile Commissioner that was concerned with the regulation and control of the textile trade in the interests both of consumers as well as of the trade. However strange that may appear, once the charge-sheet was filed and criminal proceedings initiated, the law had to take its course, and after investigation in the course of which the statements of various persons were recorded by the police, the matter came up as a warrant-case before the learned Additional Chief Presidency Magistrate who after perusing the statements recorded by the police and hearing detailed and exhaustive arguments for nearly five days, passed an order of discharge in favour of the accused u/s 251 A(2) of the Criminal Procedure Code, as already stated above. It is from that order of discharge that the State has come to this Court in Revision.

9. In order to decide the question as to whether the Order of discharge has been properly passed by the learned Magistrate, I must first decide upon the true construction of Section 251A (2) of the Criminal Procedure Code under which that Order was passed, in the context of the other relevant provisions of that Code. The said section occurs in a Chapter which lays down the procedure to be followed in the trial of warrant-cases by Magistrates, and it may be stated that that is the procedure applicable to the present case. Section 251 lays down that in the trial of warrant-cases by Magistrates, the procedure specified in Section 251A is to be followed, if the case has been instituted on a police report; and if the case has not been so instituted, the procedure to be followed in the trial of warrant-cases is that which is specified in the other provisions of that Chapter. It may be clarified that the present case is one which has been instituted on a police report and the procedure to be followed is, therefore, the one prescribed u/s 251A, and the Court is not directly concerned with the other provisions of the said Chapter except as an aid to the proper construction of Section 251A itself. Sub-section (1) of Section 251A enacts that the accused must be furnished with the documents referred to in Section 173 of the Code. Sub-section (4) of Section 173 refers to a copy of the police report, the first information report and all other documents on which the prosecution proposes to rely, including statements of witnesses recorded u/s 161 of the Code. Sub-sections (2) and (3) of Section

251A then lay down as follows :

(2) If, upon consideration of all the documents referred to in section 173, and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

(3) If, upon such documents being considered, such examination, if any, being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

The term "groundless" used in the said Sub-section (2) means, as a matter of plain English, "without any ground" and, in the context in which it is used, the grammatical construction of Sub-section (2) would, therefore, be that the Magistrate must discharge the accused if, on considering the relevant documents and the examination, if any, of the accused and after hearing both sides, he is of opinion that there is no ground whatsoever to sustain the charge against the accused. In order to arrive at the precise legal connotation of the term "groundless" used in the said Sub-section (2) it is, however, necessary to consider that sub-section in the context of Sub-section (3) which follows it, for the simple reason that in regard to the question as to whether an accused should be discharged or a charge should be framed against him in a warrant-case, Sub-sections (2) and (3) of Section 251A, between them, exhaust the universe of discourse and there can be no intermediate position or, as is popularly called, "no man's-land" between the situation contemplated by each of those sub-sections. Construed in the context of Sub-section (3), the term "groundless" used in Sub-section (2) must mean that there is no ground for "presuming" that the accused has committed the offence sought to be charged against him. That construction fits in with the purely grammatical construction of Sub-section (2) of Section 251A, to which I have just referred.

10. In order to further test whether that construction is correct, it is, however, necessary to consider certain other sections of the Code of Criminal Procedure which deal with situations which are somewhat analogous to Section 251A (2). Section 252, which is the first of the group of sections dealing with the trial of warrant-cases instituted otherwise than on a police report, imposes an obligation on the Magistrate to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution, and Section 253 (1) then lays down that if, upon taking that evidence and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that "no case against the accused has been made out which if unrebutted would warrant his conviction, the Magistrate must discharge him," The language of Section 253 (1) is somewhat different from the terminology employed in Section 251A (2), in so far

as it contemplates a case where there is some evidence, but that evidence is so weak that it would not warrant a conviction, even if it were to stand unrebutted. The difference in the terminology is due to the difference in the situations contemplated by these two statutory provisions. Section 251A comes into play at a stage when no evidence whatsoever has yet been led, whereas Section 253 comes into operation after all the evidence contemplated by Section 252 has been led before the Magistrate. Whenever, for the purpose of deciding whether an accused person should be discharged, the Magistrate is called upon to consider only the documents referred to in Section 173, or when, for that purpose, he is not bound to take all the prosecution evidence, the Code uses the expressions "groundless" or, what is the same thing, "no grounds." When, on the other hand, the Magistrate is required to consider, for that purpose, all the evidence on behalf of the prosecution, the phraseology employed in the Code necessarily differs. The examination (if any) of the accused has, of course, always to be considered. That, broadly speaking, explains the terminology used in the various sections which differs according as they fall into one or the other of these two classes. Sub-section (2) of Section 258 uses the precise term "groundless" which is to be found in Sub-section (2) of Section 251A for the simple reason that it gives a wide power to the Magistrate to discharge an accused without taking all the evidence which the prosecution proposed to lead before him.

11. I will now turn to certain analogous provisions which are to be found in Chapter XVIII dealing with inquiry by a Magistrate into cases triable by the Court of Session or the High Court, or what are known as committal proceedings. Section 207 divides committal proceedings into the same two classes into which proceedings for the trial of warrant-cases before Magistrate are divided by Section 251 viz., those instituted on a police report, and those instituted otherwise. It lays down that in the former class of cases the procedure specified in Section 207A has to be followed, whilst in the latter class of cases the procedure to be followed is that specified in the remaining provisions of that Chapter. Sub-section (6) of Section 207A lays down that after the Magistrate has taken the evidence only of the eye-witnesses to the alleged offence and considered all the documents referred to in Section 173 and has, if necessary, examined the accused, and has heard both sides, he must discharge the accused if he is of opinion that such evidence and documents "disclose no grounds for committing the accused person for trial." Sub-section (1) of Section 207A enacts that if, on the other hand, the Magistrate is, at that stage, of opinion that the accused "should be committed for trial," he must frame a charge against him. It may be noticed that the Legislature has advisedly used the expression "no grounds" in Sub-section (6) of Section 207A for the simple reason that, unlike Section 253 to which I have already referred, the Magistrate is not obliged to examine all the prosecution witnesses at that stage, but has to decide the question as to whether he should discharge the accused only on the evidence of eye-witnesses together with the statement of the accused, if any, and the

documents referred to in Section 178. In the case of committal proceedings instituted otherwise than on a police report, Section 208, like Section 252, makes it obligatory on the Magistrate to hear the complainant (if any) and take all such evidence as may be produced before him, and Section 209 (1), which corresponds to the situation contemplated by Section 253 (1) enacts that if after considering all that evidence as well as the statement of the accused, the Magistrate finds that "there are not sufficient grounds for committing the accused" he must discharge him. Sub-section (2) of Section 209 which corresponds to Sub-section (2) of Section 253 again gives a wide power to the Magistrate to discharge the accused at any previous stage if he considers the charge to be "groundless". It may be noticed that here again the term "groundless" is used because the Magistrate may exercise his powers thereunder and discharge the accused without taking all the evidence which the prosecution proposed to lead before him. The only other statutory provisions which may be considered are those relating to the trial of cases before the Sessions Court and the High Court under Chapter XXIII. Section 289 (2) provides that, after the prosecution witnesses have been examined and the statement of the accused concluded, and the accused states that he does not desire to adduce evidence, the prosecutor must be called upon to sum up his case, and if the Court "considers that there is no evidence that the accused committed the offence," it must acquit the accused or direct the jury to find him not guilty. Sub-section (3) of Section 289 is in identical terms, though it comes into operation in cases in which the accused means to adduce evidence. Sub-section (4) of Section 289, however, enacts that the Court must call upon the accused to enter on his defence in either of those situations, if the Court "considers that there is evidence that the accused committed the offence." As will be shown hereafter, the expression "there is no evidence that the accused committed the offence" used in Section 289 (2) and (3) has been judicially construed as being equivalent to the terminology used in Sub-section (i) of Section 253 mentioned above. That is because both the said statutory provisions come into operation when all the evidence produced on behalf of the prosecution has already been led before the Court. The expressions "no case against the accused" or "no evidence that the accused committed the offence" have, therefore, been construed to mean that the entire prosecution evidence, even if unrebutted, cannot lead to a conviction. In the case of the other sections referred to above, the Legislature has used the terms "groundless" or "no grounds" in respect of the charge, because the Court has to take into consideration only the documents referred to in Section 173 which are not evidence, or has to decide the question of discharge of the accused without being bound to examine all the prosecution witnesses and no question as to whether the prosecution evidence, if unrebutted, could lead to a conviction, therefore, arises at all. In order to justify the discharge of the accused even before the prosecution has had the opportunity of placing all its cards on the table, the case of the accused must be stronger and, in the opinion of the Court, the position as it entails on those documents, and/or on such prosecution evidence as has been taken, must be that no reasonable person could possibly

take the view that there is any ground whatsoever to sustain the charge. No question of the reasonableness or the sufficiency of those grounds, or of the assessment of that evidence on the footing that it stood unrebutted, can arise in regard to the same, as would arise under Sections 209 (1), or 253 (1), or 289 of the Code.

12. Turning to the authorities, I must state at once that, as far as this High Court is concerned, the point in regard to the true construction of Section 251A (2) is, what may be called, a maiden point, as there is no decision of this High Court with regard to it. After due research, the learned Counsel appearing before me on either side have been able to cite only three decisions on Section 251A (2) itself, one of which is an unreported decision. The first of these three decisions, in chronological order, is the decision of a single Judge of the Calcutta High Court in the case of Paritosh Khan v. State AIR [1958] Cal. 709. The facts of that case were that the petitioners before the High Court, who were accused persons in the trial Court, were charge-sheeted under Sections 143 and 379 of the Indian Penal Code. The trial Magistrate, after examining the documents and the statements made by the witnesses before the police, and after hearing both sides, discharged the petitioners u/s 251A of the Code, being of opinion that there was no prima facie case under Sections 143 and 379 of the Indian Penal Code against any of the petitioners, as these statements and documents indicated that the petitioners themselves were in possession of the land in dispute. The Sessions Judge set aside that order of discharge and directed a further inquiry into the case as, in his opinion, the statements and documents relied upon by the trial Magistrate were not the documents contemplated by Section 173 (4) of the Code. Against that order of the Sessions Judge, the petitioners approached the High Court in revision. It was observed by Sen J. in the course of his judgment (para. 7) that the object of framing a charge was not to prosecute the accused persons by any means, but to make them face a trial which may reasonably lead to a conviction, and laid down that the word "groundless" which occurs in the said Section 251A meant "the absence of reasonable ground to expect a conviction." The learned Judge pointed out that the object of the new procedure laid down in regard to the conduct of warrant-cases initiated on a police report was to avoid unnecessary delay and harassment to accused persons, and for that purpose statements and documents are placed before the Magistrate to enable him to consider whether he will be justified in framing a charge, or whether he should pass an order of discharge, and it was for him to consider whether the statements of witnesses were to be believed for the purpose of framing a charge. The learned Judge came to the conclusion that on the facts of the said case it was inexpedient in the interests of justice for the learned Sessions Judge to direct any further inquiry into the matter and he, therefore, set aside the order of the Sessions Judge and restored the order of discharge passed by the trial Magistrate. With respect to the learned Judge, I am not prepared to place upon the expression "groundless" the construction which he has placed upon it viz., the absence of reasonable ground to expect a conviction. In my opinion, the

word "groundless" can only mean the absence of any ground to sustain the charge. To require the prosecution to show reasonable ground to expect a conviction would virtually amount to its complying with the standard of proof laid down in the Evidence Act. It is no doubt true that what the Court must consider for that purpose is whether any reasonable person could come to the conclusion that there was no ground whatsoever to sustain the charge, but that is not the same thing as laying down that what must be proved must be the absence of reasonable ground to expect a conviction, as Sen J. has laid down in Paritosh Khan's case. The next decision in regard to the construction of Section 251A (2) is that of a single Judge of the Mysore High Court in the case of State of Mysore v. Gundappa AIR [1966] Mys. 78. The accused persons in the said case were charge-sheeted for offences punishable under Sections 147 and 323 of the Indian Penal Code and, treating the case as a warrant-case, the trial Magistrate, after perusing the documents referred to in Section 173 and hearing either side, passed an order of discharge u/s 251A (2) of the Code. In passing that order, he assigned a number of reasons for holding that the records of the investigation by the police were not sufficient to frame a charge against the accused, and concluded by saying that the charge against the accused was groundless. The Sessions Judge took the view that the trial Magistrate had gone far beyond the limitations of Section 251A (2) in passing the order of discharge and he, therefore, referred the matter to the High Court, recommending that the order of discharge passed by the Magistrate be set aside. Accepting the Reference, the High Court set aside the order of discharge passed by the Magistrate and remitted the proceedings back to him for disposal according to law. The learned Judge pointed out in his judgment (para. 3) that Section 251A was introduced by Act XXVI of 1955 in order to ensure speedy disposal of warrant-cases instituted on police report without in any way prejudicing the accused, and held (para, 5) that all that the Magistrate had to do at that stage was to see whether there was a reasonable basis or foundation for framing a charge, or in other words, whether the statements and the circumstances, if accepted, make out a prima facie case for which a charge could be framed against the accused. He then referred with approval to an earlier decision of the same Court in which it was laid down that the only question which the Magistrate had to decide at that stage was whether the material considered in the light of the arguments could lead to the view that the charge against the accused was groundless i.e., the material furnished by the records was such that no reasonable basis or foundation whatever could be found to support the accusation made against the accused. He then laid down that it was not for the Magistrate at that stage to consider whether the material, when tested by cross-examination, would or would not be capable of acceptance for founding a conviction, as considerations which might be available to him at the conclusion of the trial could not be availed of at that stage. After referring to the Supreme Court decision in the case reported in Bipat Gope Vs. State of Bihar, in regard to the proper construction of Section 207A (6) of the Code to which I will myself refer later on, the learned Judge of the Mysore High Court commented adversely on the fact that in the case before him the trial

Magistrate had by an elaborate order disbelieved the respondent and the eye-witnesses on the ground of omissions and ambiguities and probabilities which had been alleged, presumably, at the time of the arguments for the accused, and laid down that since the law required the charge to be framed before recording any evidence, the trial Magistrate had to accept the statements recorded by the police at their face value and consider whether they disclosed the commission of an offence by the accused. He further observed that Section 251A (2) did not warrant an elaborate examination of the statements recorded during the course of investigation, that the jurisdiction of the trial Magistrate did not extend to the weighing of the police statements and other records as if he was scrutinising the evidence recorded at the trial, and that he had merely to consider whether the material as a whole produced before him, disclosed an offence and, if it did, he had to frame a charge and proceed with the trial. In conclusion, the learned Judge laid down that the trial Magistrate could pass an order of discharge "only when the material discloses no basis or foundation whatever for framing a charge." With respect to the learned Judge of the Mysore High Court, there is an inconsistency intrinsic in the legal position laid down in the judgment in the said case, in so far as in the earlier part of that judgment the test laid down is whether there is a "reasonable" basis or foundation for framing a charge, whereas the test laid down by him in the concluding portion of the judgment is whether the material disclosed no basis or foundation whatever for framing a charge. I fully approve of the latter statement viz., that the test is whether the material discloses any basis or foundation whether for framing a charge, but regret I cannot agree with the statement of law in the earlier part of his judgment that the Magistrate has to see whether there is a "reasonable" basis or foundation for framing a charge. The last decision in regard to the construction of Section 251A (2) of the Code is the unreported decision of a single Judge of the Delhi High Court (1969) Criminal Revision No. 313 of 1967, decided by the Delhi High Court on February 24, 1969 (Unrep.) in which the Special Judge had discharged an accused person who had been sent up for trial before him on a charge u/s 5(2)(c) read with Section 5 (2) of the Prevention of Corruption Act, 1947. On considering the documents referred to in Section 173 of the Code, and after giving an opportunity to either side to be heard, the Special Judge had come to the conclusion that there was no prima facie case against the accused and he had, therefore, discharged him, the Special Judge being required under the law to follow the procedure prescribed for the trial by the Magistrate of warrant-cases instituted on a police report. The test laid down by the Special Judge in passing the order of discharge u/s 251A (2) was that unless the evidence collected by the prosecution and intended to be produced showed that, if unrebutted, it was sufficient for the conviction of the accused and there was a prima facie case against him, the accused was entitled to be discharged. After referring to the decision of the Supreme Court reported in *Bipat Gope v. State of Bihar* and to the decision of the Mysore High Court in the case reported in *State of Mysore v. Gundappa*, to both of which I have already referred, the single Judge of the Delhi High Court, applying the test laid down in the latter of those

judgments observed, "It may be that the word "groundless" would have been more appropriate to use; but the meaning of the learned judge when he said that there was "no prima facie case" against the accused can be scarcely different", and he therefore held that there had been no error in the learned Judge's approach to the case. He then proceeded to deal with the facts of the said case with which I am not concerned for the purpose of the present judgment. In the concluding portion of that judgment the learned Judge stated as follows :

The framing of charge is not a mere formality and its object is not to prosecute the accused persons no matter what the ultimate result of the trial might be. Its real object is to make the accused face a trial which may reasonably lead to a conviction. The word "groundless" in my judgment, does not mean anything more nor less than the absence of a reasonable ground to expect a conviction. It is therefore open to the Magistrate at this stage to examine the material placed before him by the prosecution and also the material and explanation suggested on behalf of the accused and to consider that material in the light of arguments addressed to him by both sides.

With respect to the learned Judge, for the reasons already stated above, I do not accept the view taken by him that the word "groundless" means the absence of reasonable ground to expect a conviction. As stated by me above, in my opinion, the word "groundless" can only mean that no reasonable person could take the view that there was any ground whatsoever to sustain the charge.

13. That brings me to two decisions of the Supreme Court, one in the case of *Bipat Gope v. State of Bihar* in which the expression "groundless" used in Section 207A (6) has been construed, and the other in the case of *K.P. Raghavan and Another Vs. M.H. Abbas and Another*, in which the expression "not sufficient grounds" used in Section 209 (1) has been construed. In the first of those two cases, Hidayatullah J. (as he then was), delivering the judgment of the Court, compared the words of the said two sections and stated (para. 6) that it was possible that the force of the two sections was not the same and that Section 209 gave a power to enter upon the merits of a case in a manner in which Section 207A did not warrant. The learned Judge then proceeded to lay down that the test for discharging the accused "must, in a large way, be the same under both the sections...", and if there was any indication in the language, it was altogether on the side that the Magistrate must find a stronger case for discharging an accused u/s 207A than u/s 209. He then stated the true construction of Section 207A in the following terms (p. 1197) :

But, whatever the meaning of the two expressions, neither of them invests the Magistrate with the jurisdiction to decide the case, as if the Sessions trial was before him.... Put in other words, the section can only mean that if there is a prima facie case triable by the Court of Session, the Magistrate must commit the accused to the Court of Session to stand his trial.

What had happened in the said case was that the Magistrate had, in committal proceedings instituted on a police report, discharged the appellants u/s 207A (6), but that order of discharge was set aside by the High Court of Patna and the Magistrate was directed to commit the appellants to the Court of Session to stand their trial u/s 307/34 and 148 of the Indian Penal Code. The Supreme Court took the view (paras. 7, 8 and 9) that it was clear on a reading of the reasons recorded by the Magistrate that he did not stop to find out that there was evidence which, if believed, would establish at least a prima facie case, but went on further to disbelieve that evidence by an elaborate and painstaking process of examination, in aid of which he brought to bear his own appraisal of inconsistencies, improbabilities etc. The Supreme Court, therefore, saw no reason to interfere with the Order of the High Court and dismissed the appeal, cautioning the Magistrate to disregard completely any expression of opinion on the merits of the case, either by it or by the High Court. Turning to the very recent decision of the Supreme Court in Raghavan's case referred to above, the facts of that case were that the two appellants were sought to be charged u/s 330 of the Indian Penal Code, an offence triable exclusively by the Court of Session, but in the committal proceedings the Magistrate came to the conclusion that, on the evidence adduced before him, there was no justification for committing the appellants for trial to the Court of Session and he consequently discharged them. In revision, the Sessions Judge set aside that order of discharge and directed the Magistrate to commit the appellants for trial, and that order was confirmed by the High Court in revision. The appellants then appealed to the Supreme Court to set aside the order of commitment passed by the Sessions Judge and upheld by the High Court, and to restore the order of the Magistrate, and the question which arose before the Supreme Court was, whether the Magistrate had, in discharging the two appellants, correctly exercised the powers vested in him as an enquiring Court u/s 209. The Supreme Court stated that on a perusal of the judgment of the Magistrate it was clear that he had decided to discharge the appellants on three grounds, as a result of which he came to the conclusion that the evidence of the prosecution witnesses could not be relied upon, but he did not record any finding that there was no evidence in support of the prosecution case. The Supreme Court observed that the evidence led by the prosecution before the Magistrate, if it had stood by itself, was very clear and was quite enough to prove the prosecution charge against the appellants. Referring with approval (para. 15) to the test laid down in an earlier decision of the Supreme Court itself reported in *R.G. Ruia v. State of Bombay* AIR [1958] S.C. 97 : 60 Bom. L.R. 407 that the Magistrate holding the enquiry has to be satisfied that prim facie case was made out against the accused by the evidence of witnesses entitled to a reasonable degree of credit, if he has to make an order of commitment, the Supreme Court came to the conclusion that it could not be held (para. 16) that the witnesses who gave the evidence were such that, in the case before them, there was no reasonable possibility of their being believed by any Court. The Supreme Court then referred (paras. 17 and 18) to Section 207A which had been introduced into the Code of Criminal Procedure by

a later amendment, as well as to its own earlier decision in Bipat Gope's case just referred to by me in regard to that section, and laid down that the subsequent introduction of the said Section 207A could make no difference to the principles governing the exercise of jurisdiction by the Magistrate u/s 209. It, therefore, upheld the order of the Sessions Judge and dismissed the appeal. Whilst the wording of Section 209 (1) which was construed by the Supreme Court in Raghavan's case is different from the wording of Section 251 A (2) which I am called upon to construe in the present case, the expression "no grounds" used in Section 207A (6) which has been construed by the Supreme Court in Bipat Gope's case is, for all practical purposes, identical with the expression "groundless" used in Section 251A (2) which, as a matter of plain language, could only mean without any grounds. The decision of the Supreme Court in Bipat Gope's case can, therefore, be regarded as of assistance for the purpose of ascertaining the true meaning of that word, subject to this, that whereas Section 207A deals with committal proceedings, Section 251A deals with the stage anterior to the framing of a charge in cases tried as warrant-cases. The difference in the nature of the proceedings, and the fact that the Magistrate has, in committal proceedings u/s 207A, to consider not merely the documents referred to in Section 173 but also the evidence of the eye-witnesses, if any, explains why the Supreme Court has interpreted the expression "no grounds" in Sub-section (6) of Section 207A to mean the absence of a "prima facie case." The expression "prima facie case" would be inappropriate when what the Magistrate has to consider is, as in a proceeding u/s 251A, only the documents referred to in Section 173. I would, therefore prefer to construe the word "groundless" used in Section 251A (2) as meaning such that no reasonable person could come to the conclusion that there was any ground whatsoever to sustain the charge against the accused, as already stated above. No question of giving benefit of doubt to the accused could arise at the stage of the framing of a charge for, if there is a, doubt, it must mean that the other view is clearly possible and the charge cannot then be said to be "groundless" within the terms of Section 251A (2). As laid down by the Supreme Court in Bipat Gope's case, however, it is not for the Magistrate at the stage when he is called upon to consider whether he should discharge the accused, "to disbelieve that evidence by an elaborate and painstaking process of examination" and if he does so, the order of discharge passed by him would be in excess of jurisdiction and would have to be set aside, as was done in that case.

14. Section 289 which deals with a certain stage of a Sessions trial viz., of the close of the prosecution case, has been construed by two Full Benches of this Court, one in the case of Emperor v. Thokarsi Narsi (1940) 43 Bom. L.R. 238, at p. 243 and the other in the case of Emperor v. Dawood Hasham (1940) 43 Bom. L.R. 245, at p. 248, in both of which it has been laid down that if the Judge, after the prosecution case is closed, comes to the conclusion that, assuming that the jury believed every word of the prosecution evidence, they would not be justified in convicting, then the Judge is bound in law to say so and direct the jury that in

Jaw they must bring in a verdict of not guilty, and he ought not in such a case to leave the matter to the jury. That is how the expression "there is no evidence that the accused committed the offence, " used in Section 289 (2) and (3) has been construed by this Court. That is somewhat similar to the construe! ion placed by the Supreme Court upon Sections 209 (1) in Raghavan's case discussed above, apparently because, in the case of Section 209 (1) as well as 289 (2) and (3), the Court has to decide the question of discharge of the accused after all the evidence produced in support of the prosecution has been placed before it.

15. I must now proceed to consider whether the order of discharge passed by the learned Magistrate in the present case is in accordance with the construction placed by me on Section 251A (2) of the Code. As far as that question in concerned, this case is, I am afraid, a case of, what may be called, *res ipsa loquitur*. The charge against the accused could hardly be said to be groundless if it took Mr. Khandalawala and Mr. Sibal five days to convince the learned Magistrate that it was so, and it took 2| days for Mr. Daphtary and Mr. Sibal to attempt to convince me that that charge was groundless, I am, however, not deciding the present revision application on that ground alone. The learned Magistrate has subjected the documents referred to in Section 173 which were before him to a detailed scrutiny, and has dealt exhaustively with the arguments that were advanced before him, as if it was the trial of the case itself after the framing of a charge. After doing so, he has written an elaborate judgment running into 27 typed pages in the course of which he has embarked on a full appraisal of the material placed before him. Curiously enough, however, he has not discussed at all the statements of witnesses recorded by the police u/s 161 of the Code of Criminal Procedure. An analysis of the judgment of the learned Magistrate shows that he has passed the order of discharge on the following five grounds :

1. That on a true construction of the notifications and the circular letters dated 30th October 1964 and 2nd November 1964, the latter of which uses the word "continue," the exemptions sought to be granted thereunder were intended to operate retrospectively and the mills could not be said to have contravened the notifications in question.

2. Alternatively, the offence, if any, committed by the mills must be held to have been condoned by the warning letter dated 25th June 1965 issued by the Textile Commissioner along with the Deviation Order of the same date which was issued separately. The learned Magistrate has, however, proceeded to observe that such condonation would, in substance, mean that the defaulter had been granted exemption with retrospective effect from the provisions of the control order.

3. The mills having bona fide believed that they were entitled to continue to manufacture Paramsukh Dhoties and having no intention of contravening the control order, had no *mens rea* and have, therefore, not committed any offence.

4. The three notifications in question not having been laid before both the Houses of Parliament, as required by section 3 (6) of the Essential Commodities Act, 1955, the order issued under it had not legal force and had not become operative, and no offence was, therefore, committed, even if the same were contravened, and

5. Accused Nos. 3 and 4 were not parties to the alleged contravention of the control order and could not be held guilty by reason of the provisions of section 10 of the Essential Commodities Act, 1955.

16. As far as the first two grounds on which the learned Magistrate based his order of discharge are concerned, Mr. Daphtary stated, very frankly, that he was unable to support the same in the form in which they were accepted by the learned Magistrate. Mr. Daphtary made it quite clear that he did not submit that the Deviation Order was retrospective in the sense that it condoned an offence, but submitted that it was retrospective as being an exemption, because the mills were told by the circular letter dated November 2, 1964 that they would be exempted if certain conditions were satisfied and there was, therefore, no offence at all. The submission of Mr. Daphtary called for a detailed examination and construction of the notifications, the said circular letters dated October 30, 1964 and November 2, 1964, as well as the correspondence between the mills and the office of the Textile Commissioner, through all of which Mr. Daphtary had to take me. The learned Magistrate was also taken through the same, perhaps in greater detail than I was, and whilst I am not prepared to say that this submission made on behalf of the accused is frivolous or could be brushed aside, I am also not prepared to hold that no reasonable person could possibly take the contrary view. The learned Magistrate was not called upon at this incipient stage of the proceedings to decide finally whether on a true construction of the notifications, the circular letters, and the correspondence, on certain conditions being satisfied, there would be an exemption from the operation of the control order and there would be no offence at all. The decision of that question would require a full argument at the hearing of the case after the framing of a charge, in so far as there may be many similar acts, notifications or orders which may have come up before one or the other of the Courts in the country for being judicially construed, and those decisions would have to be considered. In purporting to decide this question finally, the learned Magistrate has, in my opinion, clearly exceeded his jurisdiction u/s 251A (2).

17. Similarly, as far as the question of the alleged absence of mens rea is concerned, in my opinion, the contrary view is not only possible, but highly probable for any reasonable man to take, and it is impossible to come to the conclusion at which the learned Magistrate has arrived that the charge is groundless in that respect. It might very well be that the accused did not honestly believe that there was no offence, but took the chance, or perhaps took it for granted, that once the Deviation Order was issued in their favour, they would not be prosecuted for the intervening offence which they knew they had

committed. It has no doubt been laid down by the Supreme Court in the case of *Nathulal v. State of M.P.* [1966] AIR S.C. 43, that mens rea is a necessary ingredient of the offence u/s 7 of the Essential Commodities Act, 1955. In order, however, to arrive at a definite conclusion as to whether there was mens rea on the part of the accused when they contravened the notifications in question, the Court would have to consider not merely the documentary evidence in the case, in the form of the correspondence that has passed between the accused and the mills, but also the oral evidence of the witnesses whose statements have been recorded by the police u/s 161 of the Code. The learned Magistrate has not considered those statements at all. I have, however, been taken through those statements and it was sought to be argued on behalf of the accused that there was nothing in those statements to prove mens rea. As laid down by the Supreme Court in *Tahsildar Singh v. State of U.P.* [1959] AIR S.C. 1012, para. 16, having regard to the atmosphere in which police statements are recorded, they could be only a summary of what appears to the police officer to be relevant and are "very often perfunctory". It would certainly be open for the prosecution to depose to the interviews between the accused or any representative of the first accused mills, and representatives of the Textile Commissioner's office, for the purpose of proving mens rea on the part of the accused by showing that the accused persons were fully aware of the true position in regard to the contraventions of the control order. For instance, the statement of II. L. Dutt, Director in the office of the Textile Commissioner which was recorded by the police shows, and the letter of the first accused mills dated May 28, 1965 signed by accused No. 4 bears out, that there was a personal interview between accused No. 4 and the said Dutt where the subject of the continued manufacture of Paramsukh Dhotis was discussed. All these are matters for trial at the hearing and, in so far as the learned Magistrate has purported to decide the same finally for the purpose of passing the impugned order of discharge, in my opinion, he has clearly exceeded his jurisdiction u/s 251A (2).

18. The question as to whether the three notifications required to be laid before both the Houses of Parliament u/s 3 (6) of the Essential Commodities Act of 1955 could also well have been left for decision at the hearing of the case after the framing of a charge. Suffice it to say, that the view contrary to that taken by the learned Magistrate on this point appears to be the more correct view on a proper interpretation of the said Section 3(6) read in the context of Section 4 of the Act, and the charge against the accused could by no means be said to be groundless in that respect. The precise part played by accused Nos. 3 and 4 in the matter of the alleged contravention of the control order, and whether the same was such as to hold them guilty by reason of the provisions of Section 10 of the Act, would be entirely matters of evidence at the hearing after the framing of a charge and not mere matters of construction of the documentary evidence in the case. Under the proviso to Section 10(1) of the Act, the onus of proving exculpatory facts is on accused Nos. 3 and 4. In so far as the learned Magistrate has purported to decide the same, he has clearly exceeded his jurisdiction u/s 251A

(2) of the Act. The learned Magistrate has also exceeded his jurisdiction under the said section in so far as he has come to a definite conclusion that there was no basis at all for the charge of conspiracy u/s 120B of the Indian Penal Code which was also sought to be levelled against the accused, for conspiracy would, essentially, also be a matter of oral evidence to be led at the trial. The documents referred to in Section 173 do show a certain consistency of conduct, or even collaboration, between the accused persons in this case as far as the alleged contravention of the control order is concerned and, under the circumstances, it could not be said by the learned Magistrate that the charge of conspiracy was groundless, as he has done.

19. In the result, I set aside the order of discharge passed by the learned Magistrate in favour of the four accused on April 29, 1969 and order that charges should be framed against the accused in this case u/s 120B of the Indian Penal Code, as well as u/s 7 of the Essential Commodities Act, 1955, and the trial of the case proceeded with according to law. Having regard to the very definite views expressed by the learned Additional Chief Presidency Magistrate Mr. M. M. Dhruv, I order that this case should now be heard by such other Presidency Magistrate as the Chief Presidency Magistrate may appoint for that purpose. The accused persons will not be entitled to be heard by the learned Magistrate on the question as to whether charges should be framed against them or not. The learned Magistrate may, however, if he desires their assistance, hear the accused persons or their legal advisers in regard to the manner in which the charges should be framed, or the form thereof. As was done by the Supreme Court in Bipat Gope's case discussed above, I must make it clear to the learned Magistrate that any expression of opinion by me on the merits of the case is to be completely ignored, and he should proceed to try this case without being influenced in any way by such expression of opinion by me.