
Linda and another Vs Central Bureau of Investigation

Criminal Revision No. 1006 of 2008

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 28, 2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 167(2)

Citation: (2009) 1 RCR(Criminal) 807

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: Akshay Bhan, for the Petitioners in CrI.R. No. 1006 of 2008, Mr. S.D. Singh for the Petitioners in CrI.R. No. 1007 of 2008 and Mr. Manjeet Singh, for the Appellant; R.K. Handa, Advocate and Mr. Sukhdeep Singh Sidhu, for the Respondent

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

This order will dispose of two revision petition Nos. 1007 of 2008 (Ms. Linda and another v. Central Bureau of

Investigation) and 1008 of 2008 (Manoj Kumar and others v. Central Bureau of Investigation).

2. Claiming that the petitioners are entitled to be released on bail under the operation of Section 167 (2) Cr.P.C., the petitioners have challenged

the order passed by Special Judicial Magistrate, C.B.I., Ambala, who has declined the prayer of the petitioners in this regard for their release on

bail by operation of law.

3. Grievance of the petitioners is that C.B.I., which is investigating this case, has not filed the charge sheet within a period of 90 days of the date of

arrest of the respective petitioners and, thus, order denying bail passed by Special Judicial Magistrate, C.B.I., Ambala, is illegal, improper and

liable to be set-aside.

4. FIR No. 27 dated 25.1.2008 stands registered against the petitioners u/s 420 IPC read with Section 18 and 19 of the Transplantation of

Human Organ Act, 1994 (hereinafter referred to as ""TOHO Act"")) at Police Station Palm Vihar, District Gurgaon. Stating briefly, the allegations

against the petitioners in the FIR are that pursuant to a disclosure statement made by Dr. Upender, who was arrested during investigation a search

of house/hospital was conducted. Five persons were found lying on separate beds in room No. 206. On asking, they disclosed their names as

mentioned in the FIR. Shakil, one of the person present, told that he was brought in an esteem car from Ghaziabad for doing labour work about 10

to 12 days ago and that he was kept in a forest for 8 to 9 days and then brought to the hospital on 21.1.2008. He alleged that on 22.2.2008, his

kidney was forcibly removed. He was promised a payment of Rs. 60-70 thousand and was told to keep quiet. Wasim and Saleem two other

persons present their made a similar disclosure about the fact that their kidneys were removed. This led to the proceedings against the petitioners

u/s 420 IPC and under the relevant provisions of TOHO Act. On a request made by Government of Haryana, the investigation of this case was

transferred to C.B.I on 8.2.2008. Pursuant to the same, CBI has registered FIR No. 27 dated 25.1.2008.

5. During investigation, petitioner, Ms. Linda was arrested on 30.1.2008 and produced before a Magistrate at Gurgaon on 31.1.2008. Counsel

for the petitioners claims that statutory period of 90 days, as prescribed u/s 167(2) Cr.P.C for filing of charge sheet, expired on 29.4.2008 qua this

petitioner. Petitioner, Amit Kumar, however, was arrested on 11.2.2008 and was produced before the Magistrate on the same date and, thus,

period of 90 days qua him expired on 11.5.2008, according to the counsel. Petitioner, Manoj Kumar was arrested on 18.2.2008 and produced

before the Magistrate on 19.2.2008. Dr. Saraj Kumar surrendered before the C.B.I. on 11.2.2008 and was produced before the Magistrate on

12.2.2008. Dr. Upender Kumar Dublesh was arrested on 11.2.2008 and produced before the Magistrate on the same date. Jeevan Kumar Raut

surrendered on 10.2.2008 and produced before the Magistrate on 11.2.2008. Plea accordingly is that statutory period of 90 days in respect of

these petitioners expired on 19.5.2008 and 11.5.2008 respectively.

6. Concededly, C.B.I. filed a complaint against 9 persons, including the petitioners, u/s 22 of TOHO Act on 29.4.2008 for taking cognizance of

the offence against the persons mentioned as accused in the said complaint. Copy of the complaint is annexed with the petition as Annexure P-4

with Criminal Revision No. 1007 of 2008. The case was adjourned to 3.6.2008. In this background, the petitioners applied for bail pressing into

service the provisions of Section 167(2) Cr.P.C., urging that the charge sheet had not been filed within prescribed period of 90 days and, thus,

they would be entitled to the grant of bail by operation of Section 167 (2) Cr.P.C. This prayer of the petitioners has been declined by Special

Magistrate, Ambala, by holding that the complaint, which is filed by C.B.I. on 29.4.2008, can be treated as a complaint under the TOHO Act and

as a police report qua the offence punishable under the IPC. The Magistrate has further held that since this has been done within a period of 90

days, therefore, the petitioners would not be entitled to be released on bail by operation of Section 167(2) Cr.P.C. This order is under challenge in

the present revision petitions.

7. Attacking the view taken by the Magistrate, Mr. Akshay Bhan, appearing for the petitioners in Criminal Revision No. 1006 of 2008 would

submit that complaint can never be treated as a police report and as such, the view taken by the Magistrate is legally unsound. He refers to the

definition of a complaint as given in Section 2(d) of the Criminal Procedure Code, which, as per this definition, means that any allegation made

orally or in writing to a Magistrate with a view to his taking action under the Code that some person whether known or unknown has committed an

offence but does not include a police report. The counsel would stress this part of the definition ""but does not include a police report"" to bring

home his point that complaint can never be treated as a police report in view of definition contained in Section 2(d) Cr.P.C. Reference is also

made to Section 2(r) of the Code to highlight the definition of ""police report"", which is a report forwarded by police officer to a magistrate under

sub-section (2) of Section 173 Cr.P.C. The counsel would then refer to the provisions of Section 57 of Cr.P.C. to say that no police officer can

detain a person in custody without warrant for a longer period exceeding 24 hours in the absence of special order of a Magistrate u/s 167 Cr.P.C.

Reading the provisions of Section 167 Cr.P.C with special emphasis on sub-section (2) thereof, the counsel says that detention beyond the period

of 90 days in offences punishable with death and imprisonment for life or for a term of not less than 10 years is the maximum period for which a

magistrate can authorise detention and on the expiry of period of 90 days, the accused shall be released on bail if he is prepared to and if he does

furnish bail. The submission of the learned counsel obviously is that if charge sheet u/s 173 (2) is not filed within a statutory period of 90 days in this

case, the petitioners, who are under arrest, are to be released on bail, if they are prepared to and do furnish bail. The petitioners had applied for

grant of bail, showing willingness to furnish bail bonds in accordance with provisions of the Section 167 Cr.P.C. It would be of advantage to refer

to the said provision, which is reproduced below :-

167. Procedure when investigation cannot be completed in twenty-four hours. - (1) Whenever any person is arrested and detained in custody, and

it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for

believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if

he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter

prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from

time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole;

and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be

forwarded to a Magistrate having such jurisdiction:

Provided that -

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen

days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody

under this paragraph for a total period exceeding, -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than

ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case

may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-

section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the

police.

(2-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer

making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest

Executive Magistrate, on whom the powers of a Judicial Magistrate, or Metropolitan Magistrate have been conferred, a copy of the entry in the

diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such

Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit

for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be

released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order;

and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders

made by an Executive Magistrate under this subsection, shall be taken into account in computing the period specified in paragraph (a) of the

proviso to sub-section (2) :

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the

case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or

the police officer making the investigation, as the case may be.]

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it to

the Chief Judicial Magistrate.

(5) If in any case triable by Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which

the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the

investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of

six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied,

on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section

(5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

8. The prayer of the petitioners is stoutly opposed by the counsel appearing for C.B.I. Apart from highlighting the fact that the petitioners are

accused of very serious offence, which would be shocking to the conscience of the Society, as such, the prayer made by the petitioners has been

opposed on the ground by contesting the legal plea raised on behalf of the petitioners. Counsel for the C.B.I would defend the view taken by the

Magistrate to say that the complaint which was filed on 29.4.2008 can be treated as a police report u/s 173(2) so far as offences under IPC are

concerned and same is a complaint under the provisions of TOHO Act. The necessity of filing a complaint under the TOHO Act by the C.B.I

perhaps was due to the provisions contained under the TOHO Act, whereby no Court is to take cognizance of any offence under the TOHO Act

except on a complaint made by an appropriate authority. This is so provided u/s 22 of the TOHO Act, which is reproduced below :-

Cognizance of offences - (1) No Court shall take cognizance of an offence under this Act except on a complaint made by-

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the

case may be, the Appropriate Authority; or

(b) a person who has given notice of not less than sixty days, in such manner as may be rescribed, to the Appropriate Authority concerned, of the

alleged offence and of his intention to make a complaint to the court.

(2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the Court may, on demand by such person, direct the Appropriate

Authority to make available copies of the relevant records in its possession to such person.

9. The appropriate authority defined u/s 2(b) of the TOHO Act means appropriate authority appointed u/s 13. Section 13 defines the term

"appropriate authority" and reads as under :-

Appropriate Authority. - (1) The Central Government shall appoint, by notification, one or more officers as Appropriate Authorities for each of the

Union Territories for the purpose of this Act.

(2) The State Government shall appoint, by notification, one or more officers as Appropriate Authorities for the purposes of this Act.

(3) The Appropriate Authority shall perform the following functions, namely :-

(i) to grant registration under sub-section (1) of Section 15 or renew registration under sub-section (3) of that section;

(ii) to suspend or cancel registration under sub-section (2) of Section 16.

(iii) to enforce such standards, as may be prescribed, for hospitals engaged in the removal, storage or transplantation of any human organ;

(iv) to investigate any complaint of breach of any of the provisions of this Act or any of the rules made thereunder and take appropriate action;

(v) to inspect hospitals periodically for examination of the quality of transplantation and the follow up medical care to persons who have undergone

transplantation and persons from whom organs are removed; and

(vi) to undertake such other measures as may be prescribed.

10. Thus, the Central Government is to appoint by notification one or more officers as "appropriate authority" for each of the Union Territories and

State Government is to appoint one or more officers as "appropriate authority" for the purpose of this Act. The offence alleged against the

petitioners is under Sections 18, 19 and 20 of the TOHO Act, apart from various other offences under Sections of Indian Penal Code. Offence u/s

18 is punishable with imprisonment for a term which may extend to five years whereas offences under Sections 19 and 20 are punishable upto

seven years and three years respectively. In fact, for an offence u/s 19, term of imprisonment shall not be less than two years. Thus, this is the

minimum sentence which is prescribed for the said offence.

11. Learned counsel representing the parties have drawn my attention to some precedents in support of their respective pleas. Mr. Bhan,

appearing for the petitioners, would refer to the case of The Public Prosecutor v. Mulugu Jwala Subrahmanyam, AIR 1957 AP 987. This was a

case where common charge sheet for offences under Sections 294A and 420 IPC was filed but for the purpose of enquiry the offence u/s 420

IPC was separated. No separate charge sheet or a complaint was filed for offence u/s 294A IPC. The High Court took a view that the same

document can not be treated as both a report of a police officer and a complaint because that would be in the teeth of Section 4(1)(h) Cr.P.C (old

Cr.P.C.). From this, the counsel seems to contend that the submission made on behalf of CBI that a complaint under the TOHO Act can be

treated as a Police report under the IPC can not be accepted. The counsel also refers to Asaduddin Owaise v. State of A.P., 2001 (3) RCR (Cri)

387, to say that complaint does not include a police report and sub-section (2) of Section 2 Cr.P.C. defines a police report to mean a report

forwarded by police officer to a Magistrate u/s 173(2) Cr.P.C. He has also drawn my attention to case of Rameshwar Dayal v. Col. Ram Singh,

1998 (2) RCR (Cri) 802. to highlight the difference between the police report and the complaint. Reference is also made to Sham Lal Vs. The

State, wherein it is observed that the expression "police report" as used in the Code for reports of offences made by the police carries a special

meaning. It is further observed that as used in the old Section 190(1) (b), the expression was interpreted by several High Courts as meaning

reports made u/s 173 that is to say, reports of cognizable offences or non-cognizable with regard to which there had been a direction by a

Magistrate to investigate made after an investigation under Chapter XIV. As observed, the result of that interpretation was that cognizance of an

offence could be taken u/s 190(1)(b) only on police reports of that particular kind and not on other police reports. Other police reports were to be

treated as complaints, coming under Sections 190(1)(a). The Court went on to observe that apparently the legislature did not desire that the

operation of Section 190(1)(b) should be so restricted and so in 1923 it amended the Section by replacing the expression "police report" by the

more general words that "reports in writing of such facts made by any police officer" which would cover all police reports. At the same time, the

legislature left the expression, as occurring in Sections 170, 173 untouched. The High Court accordingly observed that it must therefore, be

presumed that the legislature accepted the judicial construction of the expression "police report" as used in the Code for reports of offences made

by the police, and that where it left the expression used in similar context untouched, it intended the expression to continue to bear the meaning

which had been put upon it by the Courts. Not only did the legislature not make any change in the expression "police report" when amending the

Code in 1923, at any place other than Section 190(1)(b), but when it amended the Code again in 1955, it itself used the same expression in

enacting Section 207, 207A, 251 and 251-A and in amending Secs. 208 and 252. In those circumstances it must equally be presumed that in the

amendments made by it in 1955, the Legislature used the expression "police report" in the sense in which it had been construed to bear in the old

Section 190(1)(d). The counsel has also referred to certain judgments to say that an accused can claim an indefeasible right u/s 167(2) in case the

police fails to file the police report or a charge sheet within 90 days. In this regard, he refers to the observations made in *Punjaram v. State of*

Maharashtra, 2006 (1) RCR (Cri) 541 (Bombay) and *Uday Mohanlal Acharya v. State of Maharashtra*, 2001(2) RCR (Cri) 452 (SC).

12. To support their stand, the counsel appearing for C.B.I has highlighted the observations made by Calcutta High Court in *Chittaranjan Das Vs.*

State of West Bengal and Others, to urge that complaint by police officer except in special cases is to be treated as a police report for the purpose

of Section 173(4). The relevant observations of the High Court are as under :-

Cognizance of offences is taken by Magistrate u/s 190 of the Code; sub-section (1) of cl. (b) provides that a Magistrate may take cognizance of

an offence upon receiving a complaint of facts which constitute such offence; and sub-section (1), cl. (b) provides that a Magistrate may take

cognizance of an offence upon a report in writing of such facts made by any police officer. Before the amendment of 1923, cl. (b) provided for

taking cognizance "upon a police report of such facts". As pointed out by a Bench of this Court in *Premchand Khetry Vs. The State*, , by the

decision of various High Courts, the expression "police report" as used in the Code came to acquire a special meaning, viz., a report made u/s 173

of a cognizable offence, or of a non-cognizable offence which the police had been directed to investigate u/s 155(2), after investigation under

Chapter XIV of the Code; cognizance could be taken u/s 190(1)(b) only on such a police report; other police reports were treated as complaints

coming u/s 190(1)(a). When the legislature substituted a more general expression in clause (b) of Section 190(1) viz., "a report in writing of such

facts made by any police officer", all kinds of reports by police officers (of facts constituting as offence) came u/s 190(1)(b); and since the

amendment in 1923 therefore, a statement of facts constituting an offence contained in an application by a police officer cannot be treated as a

complaint as defined in Section 4 (1)(h), but must be deemed to be a report by the police, of which cognizance is taken u/s 190(1)(b). In

Tarapada Sarkar Vs. The State, , it was held that when a police officer investigates a non- cognizable offence without obtaining before-hand an

order from a Magistrate u/s 155(2), the report which he submits after investigation cannot be treated as one u/s 173 and so a Magistrate taking

cognizance on such a report has to follow the procedure under Sections 252 to 258. Since the amendment of the Code in 1923, the report of the

police officer cannot even in such a case be treated as a complaint, though it be submitted in the form of a petition of complaint. In respect of a

cognizable offence, it follows, with stronger reason, that qua statement of facts constituting the offence, made by the police, cannot be treated as a

complaint, in whatever form it may be made, but it must be treated as a report coming u/s 190(1)(b). No further authority is needed in support of

this proposition; but it may be mentioned that the point was dealt with by the Judicial Commissioner of Tripura in the case P.K. Subbiah v. State,

AIR 1952 Tri 1 it being held that there is no material irregularity if a complaint is filed instead of submitting a charge- sheet in a case investigated by

the police; and that a complaint attended by a schedule of prosecution witnesses and other relevant documents, if any, comes within the purview of

Section 190(1)(b), it making no difference whether it is in the form of a report or a complaint. It would logically follow therefore that where the

police submit their report after investigation under Chapter XIV of the Code, in the form of a complaint, the complaint should be treated as

equivalent to a police report u/s 173.

13. To rebut the submissions made by counsel for the petitioners that the complaint filed under TOHO Act did not contain documents, the counsel

for the C.B.I. has highlighted that non supply of documents within 90 days would not make any difference, when no prejudice is caused to the

accused. In this regard, counsel would refer to Bhole alias Bholesh Vs. The State of Madhya Pradesh, , which is a case where the copies of

documents were supplied two days after filing of charge sheet and it was observed that delay would not be fatal and the accused can not claim bail

simply on this ground. In this regard only reference is made to Central Bureau of Investigation v. R.S. Pai & Anr., 2000(2) RCR (Cri) 536 (SC)

and Velinedipurnam Vs. State, .

14. I have heard the learned counsel for the parties. Let us first see what are the nature of offences alleged against the petitioners under the TOHO

Act. Classification of offences against other laws to be cognizable, non-bailable etc. as contained under the Cr.P.C would show that any offence

punishable with death, imprisonment for life or imprisonment for more than 7 years is cognizable, non-bailable and triable by Court of Session. If

such offence is punishable for punishment of three years and upwards but not more than 7 years, then such offences again are cognizable,

nonbailable but triable by magistrate of 1st Class. Thus, the offences alleged against the petitioners under the TOHO Act, are cognizable and non-

bailable. The cognizance of the offence under the TOHO Act in terms of Section 22 is to be taken on the basis of a complaint filed by an

appropriate authority concerned. Conceded position is that the complaint against the petitioners under the TOHO Act was filed on 29.4.2008,

which was within a period of 90 days in respect of all the petitioners. Once the complaint was filed within a statutory period for a cognizable

offence, which is non-bailable, of which cognizance was taken by the Magistrate, the petitioners would not be entitled to seek the protection of

Section 167(2) Cr.P.C, even if it is construed for the sake of argument that a complaint is not a police report or can not be treated as such. The

net effect of the argument raised by counsel for the petitioners would be that even if the complaint is not treated as a police report for offences

under I.P.C., still the petitioners would not be entitled to be released on bail by operation of Section 167(2) Cr.P.C. as complaint against them

stood filed within a statutory period of 90 days. The petitioners could, thus, be denied the concession of said provision without going into the

elaborate and detailed submissions made by counsel for the parties in regard to the status of complaint, being police report or not. I am, thus, not

inclined to go further into the aspect whether this complaint can be treated as a police report for the purpose of offences under the IPC or not. The

definition of "complaint" as contained in Section 2 (d) Cr.P.C., would prima-facie tend to indicate that complaint as such, would exclude the police

report, though it is equally true that the police report need not be on any particular format. Observation made by the Hon"ble Supreme Court in the

case of Madhu Bala Vs. Suresh Kumar and others, , may be noticed :-

From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made

before a Magistrate, he may take cognizance upon the same u/s 190 (1)(a) of the Code and proceed with the same in accordance with the

provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate police station u/s

156(3) for investigation. Once such a direction is given under sub-section (3) of Section 156 the police is required to investigate into that complaint

under subsection (1) thereof and on completion of investigation to submit a "police report" in accordance with Section 173(2) on which a

Magistrate may take cognizance u/s 190(1)(b)-but not under 190(1)(a). Since a complaint filed before a Magistrate cannot be a "police report" in

view of the definition of "complaint" referred to earlier and since the investigation of a "cognizable case" by the police u/s 156(1) has to culminate in

a "police report" the "complaint" - as soon as an order u/s 156(3) is passed thereon - transforms itself to a report given in writing within the

meaning of Section 154 of the Code, which is known as the first information report (FIR). As u/s 156(1), the police can only investigate a

cognizable "case", it has to formally register a case on that report.

15. In the passing, it may be mentioned while observing that police report (charge-sheet) can not be regarded as complaint, the Court was dealing

with the unamended provisions of Cr.P.C., where police report was differently defined as compared to the present definition. In Mulugu Jwala

Subrahmanyam's case (supra), case was registered u/s 420 IPC but after investigation, charge-sheet was filed u/s 420 and 294A IPC. Reports

made by police in non-cognizable cases were to be treated as complaints. Since in these cases, charge-sheet did not arise from the investigation of

any non- cognizable offence, it was treated as report only u/s 420 IPC and not a complaint u/s 294-A IPC. Even the observation in the case of

Sham Lal (supra) appears to have been made in somewhat different context on the basis of definition of term "police report" as then defined in

Cr.P.C. In this case, challan was submitted, where no accusation of cognizable offence was made and rather it was mentioned that no case was

made out against the petitioners. This was said to be not a police report within the meaning of Section 251-A Cr.P.C. Police report then

consistently was held to mean not any communication made by police officer but only a formal report of cognizable offence made by him after

investigation. The observations in the case of Chittaranjan Das (supra) were also made in different context. Police submitted a charge sheet against

Chittaranjan Das in respect of charges u/s 376, 376/109, 366 and 120B/366 IPC before Additional Chief Presidency Magistrate, Calcutta. The

said Magistrate, after perusal, refused to take cognizance of the offence u/s 366 and 120-B/366 IPC as these were committed outside his

jurisdiction. He, however, took cognizance of the charge u/s 376 and 376/109 IPC. Chittaranjan Das was accordingly convicted for these

offences. Supplementary charge sheet in respect of charges under Sections 366A, 120-B/366 IPC was submitted before Presidency Magistrate,

who was holding commitment inquiry in respect of offences under Sections 376 and 376/109 IPC. He refused to take cognizance on the ground of

territorial jurisdiction by observing that the prosecution might very well file a charge before the Magistrate having territorial jurisdiction. Instead of

filing a charge sheet, Inspector filed an application purporting to be a petition of complaint in respect of charges u/s 366 and 120/366 IPC before

the Police Magistrate, Alipore, against Chitrnanjan Dass and others. The contention was that the report was filed after investigation and be treated

as a police report. This prayer was rejected. It is in this context held that this complaint may be treated as a police report. This position also would

not be strictly applicable to the facts in the present case.

16. So, these cases may not be strictly apply to the case in hand, where complaint has been filed against the petitioners, which reveals cognizable

offence and hence, petitioners would not be entitled to seek concession of Section 167(2) Cr.P.C.

17. In this view of the matter, I am of the considered opinion that no case for interference is made out in the impugned order and the revisions are

accordingly dismissed.