(1961) 05 CAL CK 0002

Calcutta High Court

Case No: Full Bench Ref. No. 1 of 1960

Ajit Kumar Palit		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: May 19, 1961

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 190, 190(1), 193, 251A
- Penal Code, 1860 (IPC) - Section 417
- West Bengal Criminal Law Amendment (Special Courts) Act, 1949 - Section 4(2), 5(1), 5(2)
- West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1960 - Section 2, 3

Citation: AIR 1961 Cal 560 : (1961) CriLJ 617 : 65 CWN 977 : (1962) 1 ILR (Cal) 357

Hon'ble Judges: S.K. Sen, J; P.B. Mukharji, J; H.K. Bose, J; Debabrata Mookerjee, J; D.N. Das Gupta, J

Bench: Full Bench

Advocate: S.S. Mukherjee and Sukumar Mitra, for the Appellant; S.M. Bose, General, S.N. Banerjee, D.L.R., Surathi Mohan Sanyal and Anil Kumar Sen, for the Respondent

Judgement

P.B. Mukharji, J.
On the view expressed by a Division Bench of S.K. Sen, J. and K.C. Sen, J. by their order of reference dated the 31st August. 1960 the learned Chief Justice constituted this Full Bench for determination of the following points raised on the order of reference :

" (1) Does the Special Judge appointed under the West Bengal Criminal Law Amendment (Spe-cial Courts) Act, 1949, to whom the case has been allotted by notification u/s 4 (2) or the Act need a petition of complaint for taking cognizance of the case or does he take cognizance when on receiving the Government notification and the record of the case from the Court of the Magistrate, he applies his mind to

the-facts of the case; and

(2) Was this point rightly decided in the un-reported decisions in two Criminal Appeals-Nos. 377 of 1958 with the title Sudhanshu Ram Guha v. The State and 393 of 1959 with the title Nemai Chandra Paul v. The State being cases decided by a Division Bench of N.K. Sen, J. and D. N. Das Gupta, J. 011 the 6th July, 1959 and in four Criminal Revision Cases 1545 to 1548. of 1959 with the title The State v. Pranlal Jamunalal Vora decided by the Division Bench of N.K. Sen, J. and D.N. Das Gupta, J. on the 22nd December, 1959".

2. Taking cognizance is a well-known but undefined concept in criminal jurisprudence. The Criminal Procedure Code does not define the word "cognizance". There is no statutory definition of what cognizance means. Judicial decisions however have indicated the character and nature of cognizance in criminal jurisprudence-It is unnecessary to review in detail the long line of authorities and cases discussing the idea and nature of cognizance. I need only cite the observations of Kama, C. J. in the Supreme Court decision in R.R. Chari Vs. The State of Uttar Pradesh, , as being the most authoritative pronouncement on the subject;

"After referring to the observations in Emperor v. Sourendra Mohan ILR 37 Cal 412 it was stated by Das Gupta, J. in Supdt. and Remembrancer of Legal Affairs, Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, as follows:

"What is taking cognizance "as not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s 190 (1) (a) of the Criminal Procedure Code, he must not only apply his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this chapter--proceeding u/s 200 and thereafter sending it for enquiry and report u/s 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this chapter, but for taking notion of some other kind, e.g. ordering an investigation u/s 156 (3), or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence.

In our opinion that is the correct approach to the question before us in this Court".

3. Having indicated the nature and concept of cognizance in criminal jurisprudence, the point for decision of this Full Bench Reference is how a Special Judge appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 takes cognizance of the case which is distributed to him u/s 4 (2) of the Act, before its amendment by the West Bengal Criminal Law Amendment (Special Courts) (Amending) Act, 1960 prescribing the methods of taking cognizance u/s 190 (1) (a) and (b) of the Criminal Procedure Code.

4. The determination of this question involves a survey and analysis of the scheme of the main provisions of this statute. This statute in its preamble states that it is "an Act to provide for the more speedy trial and more effective punishment of certain offences" and recites "whereas it is expedient in the public interest to provide for the speedy trial of the offences specified in the schedule". Section 2 specifies the Special Courts and how they are to be constituted and how the Judge to preside over the Court is to be appointed with his qualifications, and provides jurisdiction in Section 2 (3) by saying that every Special Court shall have jurisdiction throughout the whole of West Bengal and shall sit at such place or places as the State Government may by notification in the Official Gazette specify. Section 3 has been omitted and deleted. Section 4 specifies the offences to be tried by Special Courts. It provides first that notwithstanding anything contained in the Criminal Procedure Code or in any other law the offences specified in the schedule shall be triable by Special Courts only with a proviso that when trying any case the Special Court may also try any offence other than an offence specified in the schedule with which the accused may under the Criminal Procedure Code be charged at the same trial. Secondly, it expressly excludes Section 337 (2B) of the Criminal Procedure Code-Thirdly, u/s 4 (2) of the Act the distribution among Special Courts of cases involving offences specified in the schedule to be tried by them, shall be made by the State Government.

5. It is followed by Section 5 which prescribes the procedure and powers of the Special Courts. Section 5 (1) of the Act expressly provides that a Special Court may take cognizance of offences without the accused being committed to his Court for trial, and in trying accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates, instituted otherwise than on a police report. This provision is in consonance with the avowed object of speedy trial as stated in the preamble quoted above. This first sub-section has two provisos with which We are not concerned in this Reference. Sub-section (la) of Section 5 of the Act provides powers to the Special Court to tender a pardon with which also we are not concerned. Sub-sections (2) and (3) of Section 5 of the Act are relevant for our purpose and proceed to provide as follows :

"(2) Save as provided in Sub-section (1) or Sub-section (la) provisions of the Criminal Procedure Code. 1898, shall so far as they are not inconsistent with this Act, apply to the proceedings of a Special Court; and for the, purposes of the said provisions, a Special Court shall he deemed to be a Court of Session trying cases without a Jury and a person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(3) A Special Court may pass any sentence authorised by law".

6. An analysis of Section 5 of the Act therefore shows the nature of the Special Court and the procedure prescribed for it. It takes cognizance of offences but without an order of commitment from a court of trial. It is a necessary-deviation from the

Criminal Procedure Code because u/s 5 (2) of the Act Special Court shall be deemed to be a Court of Session. A Court of Session under the Criminal Procedure Code can only take cognizance u/s 193 of the Criminal Procedure Code which provides that no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the accused has been committed by Magistrate and of course unless otherwise provided by the Code or any other law for the time being in force. As the Special Court under this Act has to take the distribution of cases to it by the State Government u/s 4 (2) of the Act, this departure from Section 193 (1) of the Criminal Procedure Code was inevitable. It follows also that a Special Court has no power to transfer a case allotted to it to another Special Court. Secondly, although a Special Court under the Act is deemed to be a Court of Session, it docs not follow the procedure of the Sessions Court, because Section 5 (1) of the Act expressly requires him to follow the procedure for the trial of warrant cases by Magistrate instituted otherwise than on a police report, in trying the accused person. In other words, it is a Sessions Court with a warrant procedure. That is why it is "deemed" to be a Sessions Court u/s 5 (2) of the Act while in reality it is not. It is truly a "Special Court" as its name implies. It is neither a real Sessions Court nor a real Magistrate''s court. It partakes of some features of either. It is a Special Court with special procedure and with special jurisdiction as circumscribed by the special statute which creates it. The third conclusion follows from section 6 of the Act where it is provided that appeal and revision are put under the High Court''s jurisdiction in accordance with the Chapters XXXI and XXXID of the Criminal Procedure Code. Fourthly, the essential feature to be noticed is the residuary provisions made in Section 5 (2) of the Act which I have quoted above providing that the provisions of the Criminal Procedure Code shall apply to the proceedings of a Special Court with two limitations expressly made there namely, (1) so far as they are not inconsistent with this Act and (2) save as provided in Sub-section (1) or Subsection (la) of Section 5. I have already noticed the provisions of Sub-section (1) and Sub-section (la). I have also noticed some of the provisions which are inconsistent with the Criminal Procedure Code. There are also some other provisions inconsistent with the Criminal Procedure Code, as for instance, section 10 of the Act which provides that the provisions of the Prevention of Corruption Act, 1947 shall apply to the trials under this Act.

7. In this context and against this background of the statute the point for determination is how does the Special Court take cognizance of an offence. The order of distribution of cases by the State Government to the Special Courts u/s 4 (2) of the Act cannot be a substitute for or cannot amount to taking cognizance, because, first that order is an administrative and executive order and taking cognizance being application of judicial mind an order of executive Government cannot be held to be taking cognizance and secondly, because then Section 5 (1) of the Act would not have proceeded thereafter to expressly lay down again that "a Special Court may take cognizance of offences". We have seen how and why the provision for taking cognizance ''through an order of committal u/s 193 of the

Criminal Procedure Code has been expressly dispensed with in this Special Statute. The other method of taking cognizance of offences by Magistrates under the Criminal Procedure Code is laid down u/s 190 (1) of the Criminal Procedure Code. Under that provision a Magistrate'' may take cognizance of any offence in three different ways, namely, (1) upon receiving a complaint of facts which constitute such offence; (2) upon a report in writing of such facts made by any police officer; and (3) upon information received from any person other than a police officer or upon his own knowledge or suspicion, that such offence has been committed. Section 190 (1) of the Criminal Procedure Code is only for specified Magistrates, such as, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf. As such Section 190 (1) of the Criminal Procedure Code cannot he attracted by the Special Courts, became they are not Magistrates of the description given in Section 190 (1) of the Criminal procedure Code. It is also necessary to remember that Section 5 (1) of the West Bengal Criminal Law Amendment (Special Courts) Act expressly prescribes the procedure for trial of warrant cases by Magistrate. Therefore the methods of taking cognisance in the manner laid down in sections 190 and 193 of the Criminal Procedure Code cannot apply to Special Courts under this Act. There is no other prescribed method of taking cognizance under the Criminal Procedure Code which can be made applicable u/s 5 (2) of the West Bengal Criminal Law Amendment (Special Courts) Act, section 194 of the Criminal Procedure Code being only applicable to High Court taking cognizance of offences.

8. As no provisions of the Criminal Procedure Code relating to taking cognizance of offences are applicable to the Special Court and as Section 5 (1) of the West Bengal Criminal Law Amendment (Special Courts) Act while requiring the Special Court to take cognizance of offences does not prescribe any hard and fast procedure for taking cognizance of such offences, it must in my opinion follow that the Special Court is free to lake cognizance of offences in any manner unhampered by any particular statutory provision. It is therefore open to the Special Court to take cognizance by the Judge applying his mind for the purpose of proceeding with the trial of the offence under this Act, in accordance with the principle approved by the Supreme Court in R.R. Chari Vs. The State of Uttar Pradesh, .

9. In this connection the pronouncement of the Supreme Court in Bhajahari Mondal Vs. The State of West Bengal, is relevant. Kapur, J. delivering the judgment of the Supreme Court at p. 12 of that report observed as follows :

"The crucial date for the purpose of determining the jurisdiction of the Court would be the dale when the Court received the record and took cognizance of the case and took any step in aid of the progress of the case and, not when the evidence of the witness began to be recorded. u/s 4 of the West Bengal Act (West Bengal Act XXI of 1949) as amended by the Act of 1952 the jurisdiction of the Court arises when the notification is issued distributing the case to a particular Special Court giving the

name of the accused and mentioning the charge or charges against him which must be under one of the offences specified in the schedule. In the absence of any of these elements the Special Court would have no jurisdiction".

10. The next material observation of Kapur, J. relevant for our purpose occurs again at page 13 where talking of Section 529 (e) of the Criminal Procedure Code, His Lordship laid down :

"This section applies to Magistrates and would not apply to a Special Judge whose jurisdiction arises not on his taking cognizance u/s 190 of the Criminal Procedure Code but on the case for an offence specified in the schedule being distributed to him by the State Government by notification".

11. The jurisdiction of the Special Court under this Act therefore arises on the combined operation of Section 2 (3) and Section 4 (2) of the Act but cognizance is taken u/s 5 (1) of the Act. Jurisdiction is one thing and cognizance is another. There can of course be no cognizance if there be no prior jurisdiction. No doubt these observations of the Supreme Court are made in connection with jurisdiction of the Special Courts, nevertheless the express remarks there such as "took any step in aid of the progress of the case"" and "a Special Judge whose jurisdiction arises not on his taking cognizance u/s 190 of the Criminal procedure Code", are relevant on the point for determination by this Full Bench.

12. In the The King Vs. Mrinal Kanti Chatterjee alias Tuku, a Division Bench of this High Court, decided that section 193 of the Criminal Procedure Code does not apply to trials under the West Bengal Special Courts Ordinance (Ordinance 3 of 1949) which contains exactly similar provisions as the present Act. That decision also held that it was not necessary that any Magistrate should take cognizance of offence u/s 190 (1) of the Criminal Procedure Code and therefore that fact that no Magistrate took cognizance of the offences tried in that case did not make the cognizance taken u/s 6 of the Ordinance illegal. See the observation of Das Gupta, J. in The King Vs. Mrinal Kanti Chatterjee alias Tuku, . There is another Division Bench decision of this High Court in Anadi Kumar Chatterjee v. The State 59 CWN 306, which discussed almost] analogous provision in another statute called Tribunal of Criminal Jurisdiction Act, 1952 (Act 14 of 1952) whose Section 5 also provided :

"A Tribunal may take cognizance of scheduled offences without the accused being committed to it for trial"

and Das Gupta, J. at page 310 of the report observed :

"The position therefore clearly is that before a special Tribunal under the Act can assume jurisdiction to try a scheduled offence, two things are necessary first, that the case in which scheduled offence is alleged to have been committed has been distributed to the Tribunal by the State Government and secondly, that the Tribunal has taken cognizance of the scheduled offence--which, it may be observed, can be

done either on a petition of complaint Or a report in writing of such facts made by the police officer".

13. In deciding the first question before the Full Bench, it is not necessary here to discuss the different stages of enquiry, investigation, complaint and trial under the Criminal Procedure Code and the case law thereupon, because the Act in this case prescribes the special procedure for the Special Court. For the reasons given above and on the analysis of authorities discussed- I am of the opinion that the Special Court may take cognizance of an offence by applying the mind to the case for the purpose of proceeding under this Act on the principle approved by the Supreme Court in R.R. Chari Vs. The State of Uttar Pradesh, and is not confined to the statutory methods recognised and prescribed u/s 190 (1) of the Criminal Procedure Code and by reason of Section 5 (1) of this Special Statute, is not dependent on an order of commitment as prescribed u/s 193 of the Criminal Procedure Code. The Special Court can therefore take cognizance independently of these sections of the Criminal Procedure Code, But that does not mean that the Special Court cannot take cognizance on a complaint u/s 190 (1) of the Criminal Procedure Code as indicated in 59 Cal WN 306, just quoted above. It only means that the Special Court is not confined to that method only in taking cognizance.

14. It remains to indicate what then is the material on which Special Court under this Act can take cognizance of an offence thereunder. Ordinarily, the Papers in connection with the case would come before the Magistrate during the investigation of the case. All such papers before the Magistrate in addition to the Government order of distribution of the case u/s 4 (2) of the Act will ordinarily be the materials on which the Special Court will take cognizance. The accused under the Act will also ordinarily be arrested by the police during investigation and will either be in the custody or be released on bail by the order of the Magistrate concerned following the general criminal, procedure of producing the accused before the Magistrate. All such papers relating to the proceedings before the Magistrate will be relevant materials on which the Special Court can and will take cognizance under this Act. Even independently and apart from these papers or even in the absence of them in any special case, this much is certain that there is bound to be not only an order of distribution of the case u/s 4 (2) of the Act giving, it is expected, some reasonable particulars of the offence involved in the case and some papers of some kind of investigation by the Government and/or by the police before the case is distributed by the Government to the Special Court and then m such cases those papers will also be relevant papers on which the Special Court can and may take cognizance of the offence. No doubt, the special exclusion in Section 5 (1) of the Act excluding Police Report, must be respected, but the language of Section 5 (1) is important in this respect in so far as it allows the Special Court to take cognizance of the offence without the order of commitment and expressly providing that the police report is to be excluded only for the purpose of "trying accused person7'' and "to follow the procedure prescribed by the Criminal Procedure Code for the trial of warrant cases

by Magistrates instituted otherwise than on a police report". The practical effect of this provision is to exclude the operation op section 251 (a) and therefore of section 251A of the Criminal Procedure Code from the procedure prescribed for the Special Court. The word "may" in Section 5 (1) of this Act should however be construed as "must", first because the Act charges the Special Courts thereunder with the public duty of trying scheduled offences in public interest and secondly because to construe "may" as permissive will here allow such Special Courts to avoid such public duty imposed by the statute. See R. v. Tithe Commissioners (1849) 14 K B 459 and Maxwell''s Interpretation of Statutes, 9th Edition, page 246.

15. I therefore answer the first question before the Full Bench by holding that the Special Court under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 does not need a petition of complaint for taking cognizance of the case and can take cognizance on receiving the Government order of distribution u/s 4 (2) of the Act and on the record of the case from the Court of the Magistrate by applying his mind to the facts of the case for the purpose of trying the offence under the Act The Government order of distribution u/s 4 (2) of the Act by itself does not dispense with the statutory duty of the Special Court to take cognizance u/s 5 (1) of the Act. The Special Court must look at whatever records it has or can get before it and apply its mind to proceed under the Act in order to take cognizance. In so far as the Criminal Revision New. 1545 to 1548 of 1959 (Cal) took a different view, their view must be held to be erroneous and incorrect. I therefore answer the second question before the Full Bench by holding that the said Criminal Appeals and Revisions were wrongly decided.

16. It will be necessary to add a few words on the amendment which was introduced to this Act by the West Bengal Criminal Law Amendment (Special Courts) (Amending) Act, 1949 (West Bengal Act 24 of 1960) which was published on the 1st February, 1961 while this Full Bench reference was pending. The need for alluding to this amendment is the argument advanced from the Bar that the amendment must affect our answers to the questions raised on this Full Bench Reference because it prescribes the method of taking cognizance u/s 5 (1) of the Act. Sections 2 and 3 of this Amending Act lay down as follows :

''2. In Sub-section (1) of Section 5 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, hereinafter referred to the said Act), after the words "cognizance of offences", the words," in the manner laid down in Clauses (a) and (b) of Sub-section (1) of Section 190 of the Criminal Procedure Code of 1898", shall be inserted.

"3. After Section 5 of the said Act the following section shall be inserted, namely :

"5A. Nothing in sections 4 and 5 shall affect the jurisdiction and powers of Magistrates under the Code of Criminal Procedure, 1898 during investigation by the police under the said Code of offences specified in the schedule".

17. On the strength of this amendment it is contended that the intention of the Legislature is and always has been to prescribe the same manner of taking cognizance as laid down in Clauses (a) and (b) of Section 190 (1) of the Criminal Procedure Code and therefore tine previous decisions in the criminal appeals and revisions which we are overruling represent the correct law. I am unable to uphold that contention.

18. Amendment means a change of the law. Because the law enacted did not produce the desired result, therefore, the law was amended. Legislature has the power to amend and ''or change the law. Because Section 190 (11 (a) and (b) of the Criminal Procedure Code did not apply, therefore, it was thought necessary by the Legislature to change the law and make such provision applicable as to method and manner of taking cognizance u/s 5 (1) of the Act But then this argument proceeds thereafter to contend that this subsequent amended law applies retrospectively, because this amendment is concerned only with procedure to which there is no vested right. The law on this point is well-settled. In a recent decision of the Supreme Court in Anant Gopal Sheorey Vs. The State of Bombay, , Kapur, J. at page 917 laid down :

"The question that arises for decision is whether to a pending prosecution the provisions of the amended Code have become applicable. There is no controversy on the general principle applicable to the case. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to altered mode. See Maxwell on the Interpretation of Statute page 225; Colonial Sugar Refining Co. Ltd. v. Arving 1905 AC 369. In other words, a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective".

19. Similarly in the King v. Chandra Dharm;., 1905-2 KB 335, Lord Alverstone, C. J. at page 338 observed:

"The Rule is clearly established that apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective".

20. In the same case Channel, J. also observed at page 339 as follows:

"I wish to say that in my view a statute dealing only with procedure applies to past events as well as to future events, and to hold this is not to make the statute retrospective. The object of the statute is only to affect the procedure, and it matters not whether the events in respect of which the proceedings are taken happened before or after the passing of the Act".

21. The same view was taken by Das Gupta: J. in the Division Bench decision in Anadi Kumar Chatterjee v. The State (which Ii have already quoted on another point) 59 C WN 306 where after referring to the observations of Lord Manton, in Gardner v. Lucas, 3 AC 582 it was said that procedure was always retrospective unless good reason was shown otherwise.

22. The law therefore is not in doubt, that amended law relating to procedure operates retrospectively, but it is a very misunderstood branch of the law. It is necessary therefore to emphasise that it only means that pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law. but it docs not mean that the part of the old procedure already applied and concluded before the amendment came into force, e.g. in this case cognizance taken in the manner permissible under the old Act. becomes bad or can be reopened under the new procedure after the amendment- The amendment of the procedural law will apply from and after the 1st February, 1961 when the amendment came into force and is retrospective only in the sense that even pending cases will be governed for future stages of the procedure by the amended procedure under the amended '' law. But this doctrine of retrospective operation does not mean that whatever procedure was correctly adopted and concluded under the old law will be reopened again for the purpose of applying the new law of procedure. That will be not merely making it retrospective but going a step further to make ex post facto the procedure, legal when applied and concluded, illegal by subsequent law. No court will permit such a consequence unless of course the Statute expressly or by compelling implication, says so. The present amendment has neither that express nor necessary implication. It is crucial to bear this distinction in mind. A substantive law when amended is ordinarily said to be prospective, unless otherwise expressly or impliedly retrospective, and therefore even pending cases, even after amendment of substantive law, are governed by the old substantive law under which they were instituted,, but here where the amendment is only of procedure even pending cases are governed by the amended law of procedure but only in respect of those stages of procedure that remain to be applied after the amendment comes into force.

23. I am, therefore, of opinion the amendment does not alter the answers I have given on the questions raised on this Full Bench reference. As the amendment only applies to the act of taking cognisance and to the period of investigation of the police before such cognisance by the Special Court, and as those stages are already closed and concluded for this case, the present amendment does not vitiate the cognisance already taken. For such pending cases where the cognisance has not been taken or where the police investigation is taking place, certainly the amended sections 2 and 3 as aforesaid must be applied.

24. With the points before this Full Bench decided in the answers I have proposed the matter will go back to the referring Division Bench for final disposal in the light

of the answers of the majority of this Full Bench.

Bose, J.

25. The points which have been referred to the Full Bench for decision are:--

(1) Does the Special Judge appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 to whom the case has been allotted by a notification u/s 4 Sub-section (2) of the Act need a petition of complaint for taking cognizance of the case or does he take cognizance when on receiving the Government Notification and the record of the case from the Court of the Magistrate'' he applies his mind to the facts of the case?

(2) Was this point rightly decided in the un-reported decisions in Criminal Appeals Nos. 377 of 1958 and 393 of 1959 and Criminal Revision cases 1545 to 1548 of 1959?

26. In the case of ILR 37 Cal 412 at p. 416 a Division Bench of this Court pointed out that

"taking cognizance does not involve any formal action or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence."

27. After referring to this observation in the case of Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, , observed as follows;--

"Before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1) (a) of the Criminal Procedure Code he must not only have applied his mind to the con-tents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202. Where the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter but for taking action of some other kind e.g. ordering investigation .... u/s 156(3) or issuing a search warrant for the purpose of the investigation he cannot be said to have taken cognizance of the offence."

28. The Supreme Court in the case of, R.R. Chari Vs. The State of Uttar Pradesh, of the judgment has approved of this observation of Dasgupta J. (See also Narayandas Bhagwandas Madhavdas Vs. The State of West Bengal, .)

29. Now Section 5(1) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 (W. B. Act XXI of 1949) provides that a Special Court may take cognizance of offences without the accused being committed to his Court for trial and in trying the accused persons shall follow the procedure prescribed by the Code of Criminal Procedure for the trial of Warrant cases by Magistrates instituted otherwise than on a police report,

30. Section 5(2) provides that save as provided in Sub-section (1) and Sub-section (la) the provisions of the Code of Criminal Procedure shall so far as they are not inconsistent with the Act apply to the proceedings of a Special Court and that for the purpose of the said provisions a Special Court shall be deemed a Court of Session trying a case without a jury.

31. SO the procedure prescribed for trial by the Special Court is the procedure prescribed by the Code of Criminal Procedure for the trial of Warrant cases by Magistrate as contained in Chapter XXI of the Code. Under this procedure the Magistrate is required to hear the evidence produced by the prosecution. (Sec. 252) If he finds that the evidence does not make out a prima facie case against the accused he has to discharge the accused (Sub-section (1) of section 253). The Magistrate may also discharge the accused at a previous stage if he considers the charge to be groundless (Section 253(2)). But if the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XXI and within his competence to try, he is to frame a charge in writing against the accused. (Section 254). Then after the charge is framed and explained to the accused, the latter is called upon to plead and adduce evidence in his defence. (Section 255).

32. The scheme of sections 4 and 5 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 therefore appears to be that the State Government decides upon the materials placed before it that the persons mentioned in the Order of distribution as contemplated in section 4(2) of the Act, shall be prosecuted for the offences specified, but has left it to the Special Court to decide whether the evidence adduced by the prosecution justifies the framing of a charge.

33. By providing in Section 5(1) of the Act that the Special Court may take cognizance of offences without the accused being committed to its Court for trial, the bar imposed by Section 193 of the Code of Criminal Procedure upon a Court of Session taking cognizance unless the accused is committed for trial before it, is lilted.

34. But the question is what is the mode by which the Special Court takes cognizance of the case and whether the Special Court has to follow the modes of taking cognizance as contemplated in Section 190 of the Code. Now it is clear that taking cognizance is not the same thing as trial for the offence. Taking cognizance is a judicial act which precedes and is anterior to the trial. It is also clear that a Special Court is not a "Magistrate" as contemplated in Section 190 of the Code, and so this Section 190 cannot in terms apply to the case of a Special Court constituted under the W.B. Act XXI of 1949 for trial of offences allotted to it. The provisions of Section 190 can this be said to be inconsistent with the provisions of Section 5 of the Act.

35. It has been pointed out by the Federal Court in the case AIR 1944 66 (Federal Court) , in construing the provisions of Criminal Law Amendment Ordinance (XXIX of 1943) that Section 1(2) of the Code of Criminal Procedure which enacts that in the

absence of any specific provision to the contrary nothing contained in the Code shall affect any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force, excluded the applicability of Section 197 of the Code to proceedings before the Special Tribunals. It is true that so far as the West Bengal Criminal Law Amendment (Special Courts) Act 1949 is concerned there is a provision in Section 5(2) of the Act which makes the provisions of the Code applicable to proceedings before Special Courts unless they are in any way inconsistent with the provisions of the Act. But as I have pointed out already the provisions of Section 190 are inconsistent with the scheme and intendment of Sections 4 and 5 of the West Bengal Act.

36. The Supreme Court in the Case of, Bhajahari Mondal Vs. The State of West Bengal, in dealing with this very West Bengal Act with which we are concerned, and after referring to Section 190 of the Code of Criminal Procedure observed:--

"This section applies to Magistrates and would not apply to a Special Judge whose jurisdiction arises not on his taking cognizance u/s 190 of the Code of Criminal Procedure but on the case for an offence specified in the Schedule being distributed to him by the State Government by notification." (page 13).

37. Then again at page 12 in paragraph 11 of the judgment the Supreme Court stated:--

"The crucial date for the purpose of determining the jurisdiction of the Court would be the date when the Court received the record and took cognizance of the case and took any step in aid of the progress of the case and not when the evidence of the witnesses began to be recorded- u/s 4 of West Bengal Act (W.B. XXI of 1949) as amended by the Act of 1952 the jurisdiction of the Court arises when the notification is issued distributing the case to a particular Special Court giving the name of the accused and mentioning the charge or charges against him which must be under one of the offences specified in the Schedule. In the absence of any of these elements the Special Court would have no jurisdiction."

38. It is clear from these observations of the Supreme Court that a Special Court is not required to take cognizance in the manner laid down in Section 190 of the Code of Criminal; Procedure, and it appears to me that as soon as the Special Court is served with the Order of allotment of the case, it acquires jurisdiction to try the case and when it receives the records of the case on which it can apply its-judicial mind and takes any step in aid of the progress of the case, it can be said that the Special Court has taken cognizance of the case.

39. Our attention has been drawn to the case of, 54 Cal WN 753 where Dasgupta J. and Lahiri J. held that Section 190 of the Code is not applicable to the case tried by a Special Court constituted under the West Bengal Special Courts Ordinance (W. B. Ordinance III of 1949) and the attention of the Court has also-been invited to the case of, 59 Cal WN 306 in which Dasgupta J. (with whom Debabrata Mookerjee J.

concurred) in construing Sections 4 (2) and 5 of the Tribunals of Criminal Jurisdiction Act 1952 (Act XIV of 1952) which were very similar to the corresponding sections in the West Bengal Act which is before us, held that

"before a Special Tribunal under the Act can assume jurisdiction to try a scheduled of-fence, two things are necessary, first, that the case in which the scheduled offence is alleged to have been committed has been distributed to-the Tribunal by the State Government and, secondly, that the Tribunal has taken cognizance of the scheduled offence -- which it may be observed, can "be done either on a petition of complaint or report in writing of such facts made by the police officer." (page 310).

40. It appears to me that as the Special Court does not answer the description of "Magistrates" as contemplated in Section 190 of the Criminal Procedure Code, there is no obligation on the Special Court to take cognizance of the case allotted to it in the modes specified in Section 190. As I have stated already if the order of distribution of the case which contains the bare name and some description of the accused and mentions the sections of the Penal Code relating to offences of which the accused is alleged to be guilty, is backed or supported by some materials on which the Special Court can property apply its judicial mind and the Court after taking judicial notice of the offence takes some steps for the purpose of proceeding under the subsequent sections of Chapter XXI of the Code it can be said that the Special Courts has taken cognizance of the case

41. In my view therefore the Questions should be answered as suggested by my Lord P. B. Mukharji J. in the following manner:

Question (1) --A special Court can be said to have taken cognizance when on receiving the Government notification of the allotment or distribution of the case and the records of the case it applies its mind to the facts of the case and takes some step for proceeding under the subsequent sections of Chapter XXI of the Code.

Question (2)-- This point is wrongly decided in Criminal Appeals Nos. 377 of 1958 and 393 of 1959 and Criminal Revision Cases Nos. 1545 to 1548 of 1959 (Cal).

42. A point was raised before us in course of argument to the effect that the amendment which was made in Section 5(1) of the West Bengal Criminal Law Amendment Act on 1st February 1961 by inserting after the words "cognizance of offences" the words "in the manner laid down in Clauses (a) and (b) of Sub-section (1) of Section 190 of the Code of Criminal Procedure 1898" is retrospective in operation and applies to pending proceedings and so it is this amended law which should govern the case before us. Our attention was drawn to the cases reported in 1905 2 KB 335; Rajab Lochan Dhar Vs. Jogesh Chandra Das Gupta, ; Nataraja Pillai Vs. Rengasami Pillai and Others, ; Anant Gopal Sheorey Vs. The State of Bombay, , to show that no one has a vested right in procedure and enactments which merely affect procedure and do not affect substantive rights are presumed to be

retrospective in Operation. In view however of the fact that the steps in procedure which have already been taken in pending proceedings are governed by the law then in force and are not affected by a subsequent change or amendment of the law, I do not think that the amendment has any application to pending proceedings in which cognizance has already been taken including the proceeding now before us. It is however clear that

"no person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which he sues; and if an Act of Parliament alters that mode of procedure he has no other right than to proceed according to the altered mode".

Therefore in case of all proceedings in which cognizance has to be taken in future the amendment will apply and the only proper mode in which cognizance can be taken in such cases is that indicated in Clauses (a) and (b) of Section 190 of the Code of Criminal Procedure.

Sen, J.

43. I fully agree with the answers propounded by my Lord P.B. Mukharji J., to the questions referred to the Full Bench. I would like to add a few observations.

44. When a Magistrate takes cognizance of an offence on a complaint, he may direct an inquiry u/s 202 Cr.'' P. C. and may dismiss the complaint u/s 203 Cr. P. C. on the result of such inquiry, or even without making any such inquiry. He may transfer the case for disposal to another Magistrate subordinate to him. Further, having taken cognizance of a case whether on a complaint or on a police report, a Magistrate is competent to take proceedings against all who from the evidence; appear to be offenders; his power is not limited; to proceeding against the persons named in the complaint Or the police report. When a Sessions Judge takes cognizance on commitment, he must try the accused committed to his Court or transfer the case for hearing to an Additional or Assistant Sessions Judge; he cannot dismiss the case without holding a trial; and his power as a Court of original jurisdiction is limited to the persons committed to his Court for trial. In view of the aforesaid differences, it is reasonable to conclude that taking of cognisance by a Sessions Court under/Section 193 Cr. P. C. means only having jurisdiction to try the case committed in accordance with the prescribed procedure or to transfer it to an additional Sessions Judge Or an Assistant Sessions Judge.

45. A Special Court is deemed to be a Sessions Court trying cases without a jury for the-purpose of application of provisions of the Criminal Procedure Code except in so far as has been expressly provided for to the contrary in the Special Act, vide Section 5(2) of the Act. The wording of Section 5(1) of W. B. Criminal Law Amendment Special Courts Act, 1949, viz., "A Special Court may take cognizance of offences. without the accused being committed to Criminal Court) for trial" at once recalls the wording of Section 193 Cr. P. C.

"Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf";

and indicates, even apart from Section 5(2) of the Act, that a Special Court is deemed to be a Sessions Court, and is to proceed as such, except when otherwise expressly provided. The manner in which the trial is to be held is expressly provided in the Act, but the manner in which the cognizance is to be taken, is not (before the amendment of 1960) expressly provided, and so the Special Court (before such amendment) could only take cognizance in the manner of a Sessions Court, but without the formality of a commitment by a Magistrate, the distribution by the State Government taking the Place of such commitment and giving jurisdiction to the Special Court to try the particular case. A Special Court cannot transfer a case distributed to it by the Government, to another Court; it must try out a case distributed to it, and cannot refuse to exercise its jurisdiction in this respect. No doubt it ought to be clear from the order of distribution and the records of the Magistrate what is the case distributed to the Court for trial; if it is not, it is open to the Special Court to request the State Government, or the Public Prosecutor, to produce the papers relating to the case on which the order of distribution was made- Cognizance, for the Special Court, means only being aware of the particular case for the purpose of exercising its jurisdiction by proceeding to try the case; awareness of the particular case may come from the order of distribution taken with the records of the Magistrate, or where necessary, from the papers on the basis of which the State Government'' made the order of distribution.

46. The very fact that a case is being distributed to the Special Court for trial, indicates the facts of the case are known and have been considered; it therefore appears to be quite illogical that after the order of distribution of a case for trial, there should be a petition of complaint filed in the Special Court, as if a new case is just to start from the initial stage of a complaint- If a fresh complaint is filed, it might be conceivable that the petition of complaint filed before the Special Court relates to a different case concerning the same accused, and not the particular case the'' Government had in contemplation when making the order of distribution. It is this aspect of the matter, among others, that convinces me that the filing of a petition of complaint after the case has been distributed to a Special Court for trial, is against the original scheme of the Act.

47. The filing of a police report containing the result of investigation is not open to objection to the same extent, if the first information report on the basis of which the investigation proceeded is mentioned in the order of distribution. But this is open to the objection that Section 173 of the Code does not apply to a "Special Court; it applies to submission of a police report before a Magistrate. Further, the stage of submission of a report of the investigation is prior to the distribution by the

Government such report is meant to be submitted to the Government, so that it may after proper consideration make the order of distribution of the case for trial. It is hardly necessary to repeat the objection already pointed Out by my Lord to the entertainment of a complaint or police report by a Special Court for the purpose of taking cognizance viz., that Section 190(1) of the Code by its terms applies to Magistrate specified in that section, and does not apply to Sessions ''Courts.

48. I fully agree with the view expressed by my Lord that the provision introduced by the amending Act of 1960, that a Special Court may take cognizance in the manner prescribed by. Clauses (a) and (b) of Section 190(1) of the Code, represents an alteration of the law as to the mode of taking cognizance by a Special Court and this amendment can by no means help the decision of the question as to the proper mode Of taking cognizance by a Special Court before the 1st February, 1961, when the amendment came into force.

49. It should be added that though cognizance by a Special Court could not be taken (before the amendment) on a complaint or a police report, there could be nothing to prevent the public prosecutor, or the police officer-in-charge of the case, from submitting a precis of the facts of the case at the commencement of the proceedings before the Special Court, for the convenience of the Court; this could not affect the validity of the proceedings when the proceedings were commenced on a valid order of distribution of the case. A petition of complaint or a police report, from time to time placed before the Special Court after receipt of the order of distribution of the case by that Court, may be treated as such precis of the facts of the case; and even though superfluous, it cannot be deemed to have invalidated the proceedings before the Special Court if the Court otherwise had jurisdiction to proceed with the particular case.

Debabrata Mookerjee, J.

50. I agree that the questions raised in this Reference should be answered in the way my Lord Mr. Justice P.B. Mukharji has answered them. I wish, however, to add a few words of my own.

51. The preamble of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 recites the expediency of speedy trial in the public interest of certain offences specified in the schedule to the Act, It provides for the establishment of Special Courts and prescribes the qualifications of Judges to preside over such Courts. It abrogates local jurisdictional limits arid confers a general state-wide jurisdiction on every Special Court. It excludes the jurisdiction of other Courts to try scheduled offences which are made triable by Special Courts only, and enacts that the distribution amongst Special Courts of cases involving offences specified in the schedule to be tried by them shall be made by the State Government. It then declares the status of Special Courts in the hierarchy of Courts in the country, and while equating them with the Courts of Session, hastens to distinguish them by

providing that unlike Courts of Session, Special Courts may take cognizance of offences without the accused being committed for trial. It preserves the Code of Criminal Procedure and makes its provisions applicable to trials under the Act only to the extent they are not inconsistent with it and directs that a Special Court shall follow the procedure prescribed by the Code for trial of warrant cases by Magistrates instituted otherwise than on police report.

52. This is a hurried summary of such of the provisions of the Special Courts Act as fall to be considered in the present context.

53. The decisions of this Court which are under examination in this Reference have held that an Order of distribution made by the State Government u/s 4 (2) of the Act is only an executive order which cannot relieve Special Courts of their duty to take cognizance of offences before they can be tried. The Act having nowhere indicated how and upon what material cognizance is taken, Special Courts are obliged to follow "the accepted mode" of taking cognizance prescribed in Section 190 (1) of the Code of Criminal Procedure. Of the three ways specified in Sub-section (1) Clause (c) is ruled! out on the ground of what is described as "practical difficulty" and Clause (b) is held to be inapplicable by reason of the amendment of Section 5 of the Special Courts Act introduced in 1956 which directs trial of offences by Special Courts in accordance with the procedure of trial of warrant cases by Magistrates instituted otherwise than on a police report. The residuary Clause (a) is alone held applicable to Special Courts which have been pronounced competent to proceed to trial only upon taking cognizance of offences on complaint.

54. Until lately, no concept in the law procedure was perhaps more widely and yet less precisely known than the concept of taking cognizance of crimes. But doubts have been set at rest by the Supreme Court''s decision in the case of R.R. Chari Vs. The State of Uttar Pradesh, . In this case the Supreme Court approvingly referred to a decision of this Court by Das Gupta, J. (as he then was) and held that a Court takes cognizance when it applies its mind to the facts for the purpose of proceeding in a particular way prescribed by the law. For example, upon a complaint of an offence, the Magistrate concerned takes cognizance u/s 190 (1) (a) of the Code of Criminal Procedure when he applies his mind to the facts stated and does so for the purpose of proceeding in a particular way indicated in the subsequent provisions of the chapter dealing with complaints to Magistrates. Where however the Magistrate applies his mind for taking action of some other kind) to wit, to direct an investigation u/s 156 (3) or to order the issue of a search warrant, he cannot be said to have taken cognizance of any offence. Thus the taking of cognizance involves a decision to proceed according to tile prescribed procedure for disposal of the matter by the Court itself.

55. Applying the principles to the Special Court it can be said that it takes cognizance when St applies its mind to the suspected commission of a scheduled offence with a view to proceed in accordance with the procedure prescribed in the Act.

56. The decisions under review have held that a Special Court is limited to a complaint upon which alone it can take cognizance of a scheduled offence. This view presupposes that the Act contains no provision or inadequate provision for initiation of proceedings, or more precisely, for the taking of cognizance by the Special Court. It is to be recalled that the application of the Code of Criminal Procedure has been expressly excluded by the Act to the extent the Code is inconsistent with its provisions. Section 4 (2) of the Act provides for distribution by the State Government of cases to Special Courts to be tried by them. The order of distribution appears not only to confer jurisdiction on a particular Court to try a particular case, it also directs trial by the Court concerned. The provision is that cases are distributed among-Special Courts "to be tried by them". The language employed is not without significance. The words "to be tried by them" appear to be meaningful words. If the only purpose of the sub-section was to confer jurisdiction on particular Special Courts to try particular cases and nothing more, that purpose might well have been achieved with-out the words "to be tried by them'"; there would have been no diminution of sense Or loss of con-''tent if the sub-section was framed without them. It is well known that cognizance precedes trial. Judicial cognition takes place before judicial determination. Under the ordinary law of procedure it is not unoften that one Court takes cognizance of an offence and another Court thereafter comes to try it. There may be some controversy as to when exactly a trial begins; but there can be no controversy that cognizance which starts the judicial process of determination of guilt or innocence is the first step, a pre-condition of trial. Section 4(2) appears to be a composite provision enacted to confer jurisdiction to try particular cases as well as to provide for cognizance without which no trial can take place. The Special Court has to apply its mind to the suspected commission of the offence for the purpose of determining the issue or guilt or innocence in accordance with the procedure prescribed by the Act. Trial without cognizance would be an absurdity and no one can dispute absurdity to the legislature by suggesting that it provided for trial without the precondition of cognizance being fulfilled, It must therefore be held that by providing for distribution of cases amongst Special Courts "to be tried by them", the legislature provided, by necessary implication, for cognizance to be taken on the order of distribution itself. If such is the result of Sub-section (2) of Section 4, then it must be held that there is no scope for the view that Special Courts are reduced, in the matter of taking cognizance of offences, to act on the analogy of principles embodied in Section 190(1) of the Code of Criminal Procedure, So read Section 4(2) is as much a provision conferring jurisdiction on a particular Court to try a particular case, as an implied provision authorising the taking of cognizance by that Court. The Act excluded the operation of the Code where provision has been made in the Act itself. In my opinion, the provision of the Act for distribution amongst Special Courts of cases to be tried by them being impliedly also a provision for taking cognizance, would exclude the relative provisions of the Code contained in Section 190(1).

57. There is yet another difficulty in calling in aid Section 190(1) of the Code. That section speaks of cognizance of offences by Magistrates and can have no application to Special Courts. The modes of taking cognizance there indicated are only appropriate to a class of Courts and cannot he taken to set a pattern for all Courts. Indeed, the Code itself prescribes a different mode for the Court of Session. The section enshrines no principles; it is factual; it evolves no standard which transcends the bounds of different Courts in the country.

58. It may perhaps be said that in view of Section 5(1) of the Act which expressly speaks of cognizance, Section 4(2) will not bear the construction that it provides lay implication for cognizance ''to be taken by Special Courts. This view may appear plausible at first sight but Section 5(1) properly read makes plain the true purpose of enacting the sub-section which is more to emphasise the difference between Special Court and Courts of Session than to make a positive provision as to the manner and the material upon which cognizance may be taken. Section 193 of the Code forbids Courts of Session to take cognizance of offences as Courts of Original Jurisdiction except upon commitment made by Magistrates duly empowered in that behalf. That bar is lifted by Section 5(1) of the Act, and the Special Court is empowered to take direct cognizance, despite the provision that it is deemed to be a Court of Session trying cases without a jury. The governing idea of the sub-section is the removal of the bar to direct cognizance which results in contrasting Special Courts with Courts of Session, Thus viewed, the sub-section is not primarily a provision relating to the taking of cognizance of offences by Special Courts.

59. Even assuming that Section 5(1) provides for the taking of cognizance, it is not a complete provision since it does not indicate how or on what material it is to be taken. Recourse must therefore be had either to some other provision of the Act failing which, to a provision of the Code to determine the question. If Sub-section (2) of Section 4 of the Act is the complementary provision, which I think it is, then cognizance must be taken on the order of distribution itself, and no refer-once can be made to the Code since the Code prevails only where the Act fails. Distribution of cases for trial is an express provision; the vesting of jurisdiction to try a particular case is the apparent result; but the implication of prior cognizance as a pre-condition of trial of the cases so distributed is no less obvious. If, however, any doubt still remained Section 5(1) would resolve it, since it expressly speaks of cognizance; and these two provisions between them contained in Sections 4(2) and 5(1) of the Act by their combined operation, make the position plain that cognizance is taken by Special Courts on the order of distribution itself.

60. The question then arises as to the sufficiency of materials for purposes of cognizance in the orders made by the State Government distributing cases to Special Court. It has been said that since such orders do not usually disclose facts constituting the offences alleged, it is impossible for a Special Court to apply its judicial mind and take cognizance. Assuming that an order distributing a case to a

Special Court is cryptic in the sense that it does not set out sufficient particulars, it would still be an order in terms of Section 4(2) of the Act. Presumably the legislature thought that the judicial process of determining guilt or innocence of the person charged should start on the basis of such order. There can be no doubt that the taking of cognizance which is an essential preliminary to trial, is a judicial act. But if by "judicial act" is meant an act involving a discretion to take cognizance or refuse to take it, I am afraid the law docs not give such discretion. It would perhaps be more precise to say that the taking of cognizance is the act of a Court or tribunal charged with judicial duty. An order declining cognizance on the ground of insufficiency of materials is an order unknown to the law. Can a Court Or tribunal refuse to take cognizance on such ground? Can a Magistrate acting u/s 190(1) (a) of the Code refuse to take cognizance on the ground that the complaint does not disclose the facts with sufficient fullness? In my opinion he cannot; he can surely dismiss the complaint u/s 203 of the Code if the allegations do not disclose an offence. Cognizance can be declined only when the Magistrate is not competent to take it in which event he directs the complainant to the proper court. Similarly a Special Court can decline cognizance only when the allegations do not disclose the commission of a scheduled offence. But where there is no want of competence, cognizance cannot be declined. A Court of Session cannot decline cognizance and refuse to proceed with the trial of the person charged on the ground that the order of commitment does not disclose sufficient details to warrant the trial although the accused has been committed to it by a Magistrate duly empowered in that behalf? Upon a commitment made the trial before the Court of Session has to proceed. The cognizance which it takes as a Court of Original Jurisdiction is almost a compelled decision which leaves no scope for the exercise of what may be called judicial discretion to proceed or decline to proceed with the case. In my view, the legislature has not left to Courts and Tribunals the option of taking cognizance or of refusing to take it. The person aggrieved has the right to compel the Court''s attention; and when the Court complies and decides to dispose it of in accordance with the prescribed procedure, it takes cognizance. Insufficient materials would entail the risk of dismissal of the complaint or of discharge of the person complained against. But that stage is reached only after cognizance has been taken. Similarly paucity of materials in a government order distributing a case to a Special Court cannot be a ground for declining cognizance; it may be a ground for an order of discharge of the person accused, in terms of section 253(2) of the Code which is part of the procedure made expressly applicable to trials before Special Courts.

61. I agree that in actual practice there will be not only an order u/s 4(2) of the Act distributing a case to a Special Court, there will also be supplementary materials provided by the Magistrates record to which the Special Court can apply its mind- In my opinion, however, the order of distribution itself containing even a bare allegation of the commission of a scheduled offence would entitle a Special Court to take cognizance. The case may fail but cognizance cannot be declined.

62. Returning to the decisions which have held that cognizance cannot be taken by Special Courts in terms of Section 190(1) (b) by reason of the amendment introduced in 1956 in Section 5 of the Special Courts Act, I am constrained to ob-serve that the amendment relates only to procedure of trial and does not relate hack to the mode of taking cognizance. I have said that Section 190(1) of the Code is not attracted at all to a proceeding before the Special Court when it takes cognizance of an offence; the order of distribution u/s 4(1) of the Act is the basis on which cognizance is taken. Of the two kinds of procedure prescribed for the trial of warrant cases, one of them has been made expressly applicable to trials before. Special Courts. It cannot be said since the prescribed procedure follows cognizance taken otherwise than on a police report. Special Courts were for that reason precluded from taking cognizance on the report in writing of police officers. But this is academic since I have held that Special Courts do not take cognizance of offences in any of the ways indicated in Section 190(1) of the Code, but they do so on the order of distribution made by the State Government in terms of Section 4(2) of the Act.

63. It remains to notice the amendment introduced in Section 5 of the Act and the insertion of a new Section 5A by the amending Act of 1961. I have not been able to see much merit in these amendments except that they seek to conform to the opinions expressed by this Court in the decisions under review. One of these amendments merely engrafts into the Special Courts Act, some of the provisions of Section 190(1) of the Code. They provide for the taking of cognizance by Special Courts in the manner indicated in Clauses (a) and (b) of Sub-section (1) of Section 190 of the Code. The new Section 5A merely preserves the jurisdiction of Magistrates under the Code during investigation by the police of all offences specified in the schedule to the Special Courts Act. These arc procedural amendments which have retrospective effect. As is well known if a statute deals merely with procedure and does not affect the rights of parties, it must be held to apply to all actions pending as well as future. If in a pending case cognizance has been taken by a Special Court either on a complaint or on a police report the proceeding, it may perhaps be argued, should be held valid by reason of the amendments having retrospective effect. In any event Section 5 thus amended acquires a more positive approach but it seems to have left unaffected section 4(2) of the Act. Strictly speaking, in view of the frame of the questions and the state of the law when they were framed and referred, the proper effect of these amendments does not, in my opinion, fall to be considered.

D.N. Das Gupta, J.

64. The circumstances leading to this Full Bench Reference are as follows; In Criminal Appeals Nos. 377 of 1958 and 393 of 1959 (Cal) it was held on the 6th July, 1959, by a Division Bench of this Court consisting of N.K. Sen, J. and myself that the cognizance of offences which a Special Court is required to take u/s 5 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, is to be taken on a

complaint. That view was reaffirmed by the same Bench on the 22nd December, 1959, in Criminal Revision Cases Nos. 1545 to 1S48 of 1959 (Cal). Another Division Bench (S.K. Sen and K.C. Sen, JJ.) was of the view in Criminal Revision Case No. 1557 of 1959 that cognizance is taken by the Special Court on the order of distribution of cases involving offences specified in the Schedule to the Act, made by the State Government u/s 4(2) of the aforesaid Act and on receipt of the record from the court of the Magistrate. In the judgment which was delivered by S.K. Sen, J. on the 31st August, 1960, His Lordship observed:--

"As we take a view different from that taken by another Bench of this Court it is necessary for us to refer the question as to the mode of taking cognizance by a Special Judge for the decision of a Full Bench.""

The points for decision of the Full Bench were formulated as follows;--

"(1) Does the Special Judge appointed under the West Bengal Criminal Law Amendment! (Special Courts) Act, 1949, to whom the case has been allotted by a notification u/s 4 Sub-section (2) of the Act need a petition of complaint for taking cognizance of the case or does he take cognizance when on receiving the government notification and the record of the case from the court of the Magistrate, he applies his mind to the facts of the case, and (2) was this point rightly decided in the unreported decisions in Criminal Appeals Nos. 377 of 1958 (Cal) and 393 of 1959 and Criminal Revision Cases Nos. 1545 to 1548 of 1959".

65. For a proper appreciation of the points of Reference it is necessary to know what the powers and jurisdiction of a Special Court are and what procedure is to be followed by the Court in the trial of cases. A Special Court is a creature of a Special enactment, the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, (Act XXI of 1949), hereinafter referred to as the Act. Special Courts are constituted u/s 2 of the Act. A Special Court is not a Court of Session strictly so called "nor a Court of a Magistrate but it partakes of the character of both. "A Special Court shall be deemed to be a Court of Session trying cases without a Jury" (Section 5(2)). That indicates that in fact the Special Court is not a Court of Session butt shall be deemed to be so as provided in Section 5(2). A Special Court may pass any sentence authorised by law (Section 5(3)). Regarding appeal and revision a Special Court is subordinate to the High Court which

"may, subject to the provisions of Section 7 regarding transfer of cases, exercise so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898, on a High Court as if a Special Court were a Court of Session trying cases without a jury within the local limits of the High Court''s jurisdiction."

In trying accused persons a Special Court shall follow the procedure prescribed by the Code of Criminal Procedure for the trial of warrant cases by Magistrates instituted otherwise than on a police report. (Section 5(1)). The expression

"instituted otherwise than on a police report" was inserted by the West Bengal Criminal Law Amendment Act, 1956, (West Bengal Act XXVI of 1956) which came into force on the 24th August, 1956.

66. Section 5(1) of West Bengal Act XXI of 1949 provides "A Special Court may take cognizance of offences without the accused being committed to his Court for trial .....". That means that Section 193 of the Code of Criminal Procedure does not apply and the Special Court; which is deemed to be a Court of Session does not require any order of commitment to take cognizance. Therefore, the question arises on what material does the Special Court take cognizance. It cannot possibly take cognizance on the order of distribution of case made by Government u/s 4(2) or the Act as it docs not contain adequate and sufficient materials on which the court can apply its mind judicially. The order merely contains the names of the accused, their fathers'' names, their address and the sections of the Acts under which they are charged. Those materials are wholly insufficient for any Court of law to apply its mind judicially in order to take cognizance. This difficulty was all along present to the mind of S.K. Sen, J. and in his judgment His Lordship observed,

"Cognizance indicates that for the purpose of taking action in the case judicially a Court: applies his mind to the facts of the case. In the circumstances it is difficult to say that merely on receiving the Government notification by which the case is allotted or distributed to him by the State Government a Special Court can take cognizance .....".

Realising that difficulty S.K. Sen, J. observed,

"..... but if the papers in connection with the case which were before the Magistrate during investigation of the case are laid before the Special Judge along with the order of the Government distributing the case, the Special Judge may find out from those papers what the facts of the case are and take cognizance.

Now the Magistrate''s records relating to Criminal Revision No. 1557 of 1959 out of which this Full Bench Reference has arisen contain some remand petitions made by the police u/s 167 of the Code of Criminal Procedure, surety bonds furnished by the accused and some miscellaneous papers which furnish no materials on which the Special Court can judicially apply its mind and take cognizance. No doubt the remand petitions contain certain allegations made by the police for taking adjournments in order to enable them to continue the investigation but it would be improper for any Court to take cognizance of any offence on those allegations made in a remand petition. That would also be dangerous in principle. Reliance is placed in the order of reference on certain observations in the decision of the Supreme Court Case of Bhajahari Mondal Vs. The State of West Bengal, , namely,

"The order sheet of the Special Court shows that the records of the case State v. B. C. Mondol u/s 161/116 of the Indian Penal Code were received by the Special Judge on December 23, 1952 and the Special Court took cognizance of the case ..... The

crucial date for the purpose of determining the jurisdiction of the Court would be the date when the Court received the records and took cognizance of the case and took any step in aid of the progress of the case ....--... ".

In the case of Bhajahari Mondal Vs. The State of West Bengal, the accused was arrested for offering a bribe to a person who was acting as a juror in a Sessions trial. Kapur, J. delivering the judgment of the Supreme Court observes in the judgment,

"The First Information Report for an offence under Sections 161/116 of the Indian Penal Code was made soon after. And after investigation a report was made1 by the police officer-in-Charge, Burdwan Police Station which resulted in the case being sent to the Special Judge, Burdwan".

His Lordship then says that on November 27, 1952, the order of distribution of the case was made by the State- Government u/s 4 (2) of the Act. His Lordship proceeds to observe,

"The order sheet of the Special Court shows that the records of the case'' State v. B.C. Mondol under Sections 161/116 of the Indian Penal Code were received by the Special Judge on December 13, 1952, and the Special Court took cognizance of the case, the appellant was summoned for appearance on January 22, 1953 and he did appear on that day ..... ".

It is clear from, the judgment that there was a First Information Report in the case and that there was investigation by the police. Obviously the report which was submitted by the police after investigation was the report u/s 173 o the Code of Criminal Procedure and that report was submitted before a Magistrate. Quite obviously the records which were received by the Special Judge were the Magistrate''s records and there can be no doubt that those records contained the charge-sheet which had been submitted by the police after investigation under sections 161/116 of the Indian Penal Code. In the ultimate analysis it comes to this that the Special Court took cognizance on the charge-sheet which the Magistrate''s records contained.

67. Our attention has been particularly drawn to the observations in the judgment of their Lordships of the Supreme Court,

"The crucial date for the purpose of determining the jurisdiction of the Court would he the date when the Court received the records and took cognizance of the case and took any step in aid of the progress of the case and not when the evidence of the witnesses began to be recorded".

That passage has to be read with reference to the context. Certain dates would be relevant in this connection. The order of distribution u/s 4 (2) of the Act was made on the 27th November, 1952. The records of the case were received by the Special Judge on the 23rd December, 1952, on which date he took cognizance. The examination of witnesses commenced on the 29th January, 1954. On the 10th

February, 1954, a charge u/s 165A of the Indian Penal Code was framed against the accused and he was convicted after trial under that section- At the time the Special Judge took cognizance of the offence, Section 165A of the Indian Penal Code was not an offence specified in the Schedule of the West Bengal Act XXI of 1949. That section was included on the 9th May, 1953, in the Schedule'' by the West Bengal Criminal Law Amendment (Special Courts) Amending Act 15 of 1953, that is, subsequent to the date on which the Special Judge took cognizance of the offence under Sections 161/116'' of the Indian Penal Code Kapur, J. observed:

"The notification did not mention Section 165A of the Code and at the time when the Special Judge purported to take cognizance ho had no jurisdiction to do so and to try the case, as the offence u/s 165A was not in the Schedule of the West Bengal Act, 1949, as amended in 1952".

His Lordship proceeded to observe :

"The crucial date for the purpose of determining the jurisdiction of the Court would be the date when the Court received the record and took cognizance of the case and took any step in aid of the progress of the case and not when the evidence of the witnesses began to be recorded. u/s 4 of West Bengal Act (W. B. XXI of 1949) as amended by the Act of 1952 the jurisdiction of the Court arises when the notification is issued distributing the'' case to a particular Special Court giving the name of the accused and mentioning the charge or charges against him which roust be under one of the offences specified on the Schedule. In the absence of any of these elements the Special Court would have no jurisdiction".

That merely indicates the point of time when the jurisdiction of the Special Court arises. His Lordship was also stating the fact that the Court received the record and took cognizance but that is not an authority for the proposition that the Special Court does not take cognizance on a complaint or report in writing of facts constituting the offence made by a police officer but takes cognizance on receipt of the Magistrate''s record whether that record contains Or not any materials for taking cognizance. In the case of Bhajahari Mondal Vs. The State of West Bengal, , the Special Judge took cognizance after the record was received and that was obviously because it contained materials on which cognizance could be taken, namely, the charge-sheet. Indeed the word "record" is too vague and indefinite to form the basis of taking cognizance. It may contain good materials for doing so. It may contain none.

68. Lastly, our attention !ns been drawn to the observations of the Supreme Court in the case of Bhajahari Mondal Vs. The State of West Bengal, that Section 529 of the Code of Criminal Procedure

"applies to Magistrates and would not apply to a Special Judge whose jurisdiction arises not on his taking cognizance u/s 190 of the Code of Criminal Procedure but on the case for an offence specified in the Schedule being distributed to him by the

State Government by notification. The defect of jurisdiction, therefore, cannot be cured by Section 529 (e) of the Code of Criminal Procedures".

Now by those observations the Supreme Court did not lay down that cognizance was not taken by the Judge u/s 190 of the Code of Criminal Procedure but on the order of distribution made by Government, I would.'' reproduce what I observed in Criminal Revn. Cases Nos. 1545 to 1548 of 1959 (Cal).

"In that case their Lordships of the Supreme Court were criticising thee view of the High Court that jurisdiction of a Special Court arises from his taking cognizance u/s 190 of the Code of Criminal Procedure. Their Lordships pointed out that the jurisdiction of a Special Court arises out of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, on distribution of the case and not on taking cognizance u/s 190 of the Code of Criminal Procedure. The Supreme Court was not on the point whether cognizance may be taken by the Special Court u/s 190 or not. I am not satisfied that the Supreme Court is laying down the proposition that the Special Court is precluded from taking cognizance u/s 190 or that the Special Court takes cognizance on the order of distribution made by the State Government. All that the case decides is that the'' jurisdiction of the Special Court arises out of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, and that the defect of jurisdiction cannot be cured by the provisions of Section 529 (e) of the Code of Criminal-Procedure".

69. Next question is what was the mode of taking cognizance under the Act. The Act did not lay down any mode of taking cognizance. Two Division Bench decisions of this Court may be referred to in this connection. One was under the Tribunal of Criminal Jurisdiction Act, 1952, (Act XIV of 1952) the case of 59 Cal WN 306 and the other was under the West Bengal Special Courts Ordinance (Ordinance III of 1949), the case of 54 Cal WN 753. The Judgment in the former case was delivered on the 12th April, 1954, by Das Gupta, J. and Deba-brata Mookherjee J. agreed. Das Gupta, J. observed ;

"Sub-section 2 of Section 4 provides that ''the distribution amongst the Tribunals of cases involving scheduled offences to be tried by them shall be made by the State Government''. Section 5 of the Act provides that : ''A Tribunal may take cognizance of scheduled offences without the accused being committed to it for trial. The position, therefore, clearly is that before a Special Tribunal under the Act can assume jurisdiction to try a scheduled offence-two things are necessary, first, that the case in winch the scheduled offence is alleged to have been committed has been distributed to the Tribunals by the State Government and, secondly, that the Tribunal has taken cognizance of the scheduled offence--which, it may be observed, can be done either on a petition of complaint or a report in writing of such facts made by the police officer".

Incidentally it may be observed that in that case there was a report in writing made by a police officer.

70. The provisions in Section 5 (1) of the-Act regarding taking of cognizance are the same as in Section 5 of the Tribunals of Criminal Jurisdiction Act, 1952, with minor verbal alterations.

71. The judgment in the other case also was delivered by Das Gupta, J. and Lahiri, J. concurred (54 Cal WN 753) The judgment was delivered on the 27th April, 1950. It was decided in that case that since a Court constituted under the Ordinance might take cognizance without the accused being committed to Sessions for trial, it was not necessary that the Magistrate should take cognizance u/s 190 (1) of the Code of Criminal procedure. I do not find anything in this decision which is inconsistent with the decision of Das Gupta, J. reported in 59 Cal WN 306. Das Gupta, J. observed in 54 Cal WN 753 :

It is argued that ..... the provisions in Section 190 (1), Criminal Procedure Code, as regards the taking cognizance of cases apply in this case, but no cognizance was taken of the offences in this case u/s 190 (1) of the Criminal Procedure Code. There is in my opinion no substance in this contention. Section 190 (1) of the Criminal Procedure Code provide"; for cognizance being taken by Magistrates, Section 393 provides that a Court of Session cannot take cognizance of cases without commitment by a Magistrate- In cases which are tried by a Session.; Court, it is, therefore, necessary, first that the Magistrate should take cognizance u/s 190 (1) of the Criminal Procedure Code, for otherwise, the Magistrate cannot hold an enquiry under the chapter, and cannot commit, and secondly, that the Sessions Judge takes cognizance on the commitment by the Magistrate.

Section 6 of the Ordinance provides that a Court constituted under the Ordinance may take cognizance of offences without the accused being committed to Sessions for trial. Section 193 of the Criminal Procedure Code does not therefore, apply to trials under the Ordinance. As no commitment is necessary, it is not necessary that any Magistrate should take cognizance of the offence u/s 190 (1) Cr. P. C. Consequently, the fact that no Magistrate took cognizance of the offences tried in this case, does not make the cognizance taken u/s 6 of the Ordinance illegal".

72. In 54 Cal WN 753 Das Gupta, J. did not deal with the point as to in what manner the Court took cognizance u/s 6 of the Ordinance hut His Lordship was more explicit on point of taking cognizance in the later case (59 Cal WN 306).

73. In 59 Cal WN 306 Das Gupta and Debabrata Mookerjce, JJ. took the view that cognizance could be taken either on a complaint or on a report in writing of facts constituting the offence made by a police officer.

74. In his judgment N.K. Sen, J. with whom I agree, observed,

"The Special Court cannot in view of the amendment of Section 5 (1) of Act XXI of 1949 by Act XXVI of 1958 take cognizance upon charge-sheet because he was not entitled to follow the procedure for trial u/s 251A". The reasoning was that since the procedure for trial was the procedure laid down for the trial of cases instituted otherwise than on a police report, the cognizance was correspondingly to be taken on a complaint. The implied assumption was that the part of the proceeding designated as trial included the mode of taking cognizance. Therefore the question arises when a trial may be said to commence and what cognizance is. In Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, it was stated by Das Gupta, J. as follows:

"What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s 190 (1) (a), Criminal Procedure Code he must not only have applied his mind to the contents of the petition hut ho must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter,--proceeding u/s 200 and therefore sending it for enquiry and report u/s 202- When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some either kind, e.g, ordering investigation u/s 156 (3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence".

In the Supreme Court Case of R.R. Chari Vs. The State of Uttar Pradesh, Kania, C. J. stated, referring to the above extract, that that was the correct approach to the question before His Lordship.

75. On a further consideration of the whole matter I think that the taking cognizance of an offence is something which is not included in the procedure for trial of a case. Cognizance is something different from the initiation of proceedings. The fact that for the trial under the Act the procedure laid down for the trial of cases instituted otherwise than on a police report has to be adopted does not necessarily imply that cognizance has correspondingly to be taken on a complaint and that cognizance cannot be taken on a charge-sheet. By way of an explanation I would like to add that my attention was not drawn to the decision reported in 59 Cal WN 306 at the time when Criminal Appeals Nos. 377 of 1958 and 393 of 1959 (Cal) were argued. Now on a fuller consideration of the matter I am of the view that cognizance may be taken by a Special Court under the Act either on a complaint or on a report in writing of facts constituting the offence made by a police-officer.

76. The necessity of a complaint after an Order of distribution by the State Government has been doubted. Ordinarily such an order is made after police investigation. But it is possible to think at least of one instance where there may not be any investigation by the police, namely, a case u/s 417, Indian Penal Code, the offence under that section being non-cognizable. If the police is not empowered by

the Magistrate to investigate, there cannot be investigation by the police and there cannot be a charge-sheet. But if there be distribution of a case by Government involving an offence u/s 417, Indian Penal Code, where there has been no investigation by the police, the Special Court would require a complaint to take cognizance.

77. It was held by N.K. Sen, J. and myself that cognizance could be taken by the Special Court only on a complaint. By the West Bengal Criminal Law Amendment (Special Courts) (Amending) Act, 1960, (West Bengal Act 24 of 1960) which received the President''s assent on the 1st February, 1961, Section 5 (1) of the Act has been amended by inserting after the words "cognizance of offences" the words "in the manner laid down in Clauses (a) and (b) of Sub-section (1) of Section 190 of the Code of Criminal Procedure". The Legislature has amended the Act by providing that cognizance may be taken not only on a Complaint but also on a report in writing of facts constituting the offence made by a police-officer. It adopts the views of Das Gupta and Debabrata Mookerjee, JJ. expressed in 59 Cal WN 306. It is significant that the Legislature has not thought it tit and proper to amend the Act by providing that cognizance may be taken on the order of distribution made u/s 4 (2) of the Act.

78. To sum up: Before taking cognizance the Special Court must apply its mind judicially to the facts of the case. A Magistrate''s record may not contain adequate materials for enabling the Court to do so, as in the present case--Criminal Revision No. 1557 of 1959. The order of distribution made by the State Government u/s 4 (2) of the Act does not contain sufficient materials for enabling the Court to apply its mind judicially, as in the present case. The order of distribution is as follows :

"Government of West Bengal Law (Judicial) Department. Notification No. 7386-J.'' Dated, Calcutta, the 25th August, 1959.

In exercise of the power conferred by sub-s. (2'' of Section 4 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949- (West Bengal Act XXI of 1949), the Governor is pleased to distribute to the Calcutta Additional Special Court constituted by notification No. 5771J, dated 9th August, 1959 u/s 2 of the said Act, the following cases involving offences specified in the schedule to the said Act, to be tried by the said Special Courts:

CASES.

(a) The State

versus

(1) Prafulla Kumar Das, store keeper of North Garage, Calcutta Corporation, son of late Benode Behari Das, of 36 B, Satchasipara Boad, Calcutta (2). .....

Accused No. (1) for offences under Sections 409, I. P. C. and 409/120-B. I. P. Code. Accused Nos. (2) to (10) for offences under sections 409/120-B. I. P. Code. Accused

Nos. (2) to (4) and (7) to (10) for offences u/s 409/109 I.P.C.

(b) The State

versus

(1) Prafulla Kumar Das, Store keeper, of North Garage, Calcutta Corporation, son of late Benode Behari Das, of 36 B, Satc''hasipara Road, Calcutta (2). .....

Accused No. (1) for offences under Sections 409. I. P. C. and 409/120-B, I. P. Code. Accused Nos. (2) to (10) for offences u/s 409/120-B I. P. C- Accused Nos. (2) to (4) and (7) to (10) for offences u/s 409/1 109 I. P. C

(c) The State

versus

(1) Prafulla Kumar Das, Store keeper of North Garage, Calcutta Corporation, son of late Benode Behari Das, of 36 B, Satchasipura Road. Calcutta (2). .....

Accused No. (1) for offences under Sections 409. I. P. C. and 409/120-B. I. P. Code. Accused NOS. (2) to (10) for offences u/s 409/120-B. I. P. C. Accused Nos. (2) to (4) and (7) to (10) for offences u/s 409/1 109 I. P. C.

(d) The State

versus

(1) Prafulla Kumar Das, Store keeper, of North Garage, Calcutta Corporation, son of late Benode Behari Das, of 36 B, Satchasipara Road. Calcutta, (2). .....

Accused No. (1) for offences under Sections 409, I. P. C. and 409/120-B, I. P. Code. Accused Nos. (2) to (10) for offences Under Sections 409/120-B, I. P. C. Accused Nos. (2) to (4) and (7) to (10) for offences under Sections 409/ 109 I. p. C. ....

By Order of the- Governor,

Sd: A.K. DAS,

Deputy Secretary to the Government

of West Bengal."

The State Government is not required u/s 4 (2) to furnish any materials other than those ordinarily furnished in the order of distribution and it has not done so in the present case. Section 4 (2) merely provides that the distribution of cases shall be made by the State Government It is sufficient compliance with the provisions of this section if only the order distributing a case is made and communicated. The State Government is not required to do more. If the provision of taking cognizance was altogether omitted from the Act as a superfluity the position would have been different. The Special Court could then assume jurisdiction on the order of

distribution and thereafter proceed with the trial. But so long as the position of taking cognizance is there, the Court must apply its mind judicially to the facts of the case which can only be properly furnished either in a petition of complaint or in a report in writing of facts constituting the offence made by a police-officer.

79. I would, therefore, answer the questions before the Full Bench as follows:

(1) The Special Court under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, does not take cognizance of an offence on the order of distribution made by the State Government u/s 4 (2) of the Act but needs either a petition of complaint Or a report in writing of facts constituting the offence made by a police-officer, for taking cognizance.

(2) Accordingly in so far as Criminal Appeals Nos. 377 of 1938 and 393 of 1959 and Criminal Revision Nos. 1545 to 1545 of 1959 took the view that cognizance could not be taken on a report in writing of facts constituting the offence made by a police-officer, they were wrongly decided.