(1975) 04 BOM CK 0011

Bombay High Court (Nagpur Bench)

Case No: Criminal R.A. No, 177 of 1974

State of Maharashtra		APPELLANT
	Vs	
Chandrashekhar Nilkanth Washimkar		RESPONDENT

Date of Decision: April 11, 1975

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 2(g), 204, 208, 209
- Penal Code, 1860 (IPC) - Section 420, 458, 467, 471

Citation: (1975) MhLj 607

Hon'ble Judges: B. A. Masodkar, J

Bench: Single Bench

Advocate: R.V. Patil Authorised by Addl. Govt. Pleader, for the Appellant; B.V. Gaikwad, for the Respondent

Final Decision: Allowed

Judgement

B. A. Masodkar, J.

The State has filed the present revision questioning the validity of the order of September 9, 1974, made by the Additional Sessions Judge, Nagpur in Sessions Case No. 32 of 1974, holding that, to that trial, the provisions of the Code of Criminal Procedure, 1973, are applicable and that the said trial is not governed by the provisions of the Code of Criminal Procedure, 1898 (hereinafter called the new and the old Code). Consequent upon that view, the impugned order is made transferring the trial to Chief Judicial Magistrate, Nagpur, for the offences under sections 467, 458, 471 and 420 of the Indian Penal Code.

2. Few facts that are relevant for the purpose of the present controversy and which are not in dispute are that the committal proceedings under Chapter XVIII of the old Code, concluded by an order of February 27, 1974 and the committal Court framed the charge on the basis of the allegations that the opponent accused was working in

the Bank of Maharashtra and was concerned with forgery and cheating with regard to an amount of Rs. 1400 from the account of one Daulatrao Kakde. It is not necessary to set out further facts of that charge. Suffice it to say that under Chapter XVIII proceedings, the committing Magistrate found that the offence was prima facie made out for trial by the Sessions Court.

3. The new Code became the law as applicable on April 1, 1974. The papers from the committal Court reached the Sessions Court, Nagpur, as is clear from the first order-sheet, on March 18, 1974, and on that date an application on behalf of the accused to continue the accused on the same bail as per Exh. 1 was taken up and considered. There is an order directing that the accused was to continue on the same bail bond as in the committal Court and the case was adjourned for personal appearance of the accused which was fixed on 10-4-74. By that date, the new Code has come into force.

4. When the trial began an objection was raised that because of the provisions of section 484 (2) (a) of the new Code, the proceedings could not be continued under the old Code and as the Sessions trial had not commenced under Chapter XXIII of the old Code which stood repealed as on 1-4-74, the same could not be treated as pending on that day; and that to the trial, therefore, the provisions of the new Code were applicable. This objection found favour with the learned Additional Sessions Judge and the impugned order has been made.

5. Now the only question that falls for consideration is whether looking to the provisions of the old and new Code, and particularly the provisions of section 484 (2) (a) of the new Code, can it be said that on 1-4-74 the trial was pending under the old Code? If the answer is in affirmative, then by virtue of the provisions of section 484 (2)(a) the trial will be governed by the old Code and the order made by the Additional Sessions Judge will have to be set aside. If, on the other hand, the answer is in the negative, then there would be no cause for interference.

6. For the State, it is submitted that the provisions of section 484 (2) (a) of the new Code have not been correctly interpreted and, applied. According to the learned counsel appearing for the State, the word ''trial'' is of narrow as well as of broad amplitude and is not a term defined. The phraseology of the Code has to be understood by the stages indicated by procedural part thereof. In the context of the provisions of section 484 (2) (a), the word ''trial'' will have to be distinguished from the word ''inquiry'' and the learned counsel submits that once the order is made by the committal Court under Chapter XVIII of the old Code before the commencement of the new Code, all that requires is the procedure to be followed in the trial as was contemplated by Chapter XXIII of that Code. In other words, it is contended that steps taken after the order of committal in which it is implicit that the accused has to face his trial, are all included in the term "trial" and, therefore, if it is shown that the order of committal was made prior to the coming into force of the new Code and what remained was that the trial had not commenced as is contemplated by the

procedural part of Chapter XXIII of the old Code, then for the purposes of the new Code, "the trial" has to be treated as pending. Aid is taken of the proviso as is enacted by the Legislature in clause (a) of sub-section (2) of section 484 of the new Code to point out that only when the inquiry is pending, different intention has been indicated expressly. It is also submitted that the word ''pending'' is of wide import and would take in even that what is ''awaiting the trial'' by the competent Court.

7. As against this, it is strenuously urged on behalf of the accused that after all section 484 (2) (a) is a provision in the nature of an exception to the general rule that procedural enactments operate retrospectively and, therefore, the same must be strictly construed. It is contended that unless the proceeding had commenced as required by Chapter XXIII of the old Code and were pending after such commencement the terms of clause (a) of section 484 (2) are not fully answered. Aid is sought from several provision of Chapter XVIII-to make a submission that "inquiry" is not the part of "trial''. Even the order committing the accused to the Court of Session and steps therefor are all the part of that inquiry and not of the trial. Therefore, there is no warrant, according to the learned counsel, to hold that only because an order is made at the conclusion of the inquiry by the committal Court, there is any pendency of the trial. Pendency has to be found out by regard to the relevant provisions of the law that governs the cause and not merely the case itself. It is submitted that at the most, as a result of an order made by the committal Court, there may be a case pending for trial but not a trial pending as such, which is a sine quo non for the application of clause (a) of sub-section (2) of section 484 of the new Code. It is also contended that procedural laws should be beneficially construed in favour of the accused. For better and higher rights, the same should not be wittled down by putting a different construction on the terms of the statute itself. Reliance is placed on the decision of this Court reported in Dagdu Govindshet Wani Vs. Punja Vedu Wani, to point out as to what could be called a trial of a criminal offence. The learned counsel also submit that under the new Code there are better rights like right of claiming discharge from the Sessions Court (S. 227), framing of the charge by that Court (S. 228) and further trial for such offences at a lower level which will give better opportunities of appeals in case there is conviction. The learned counsel submits that though Codes are procedural enactments, these are eminently and inherently intertwined with the valuable rights of persons who face trial and even in case of doubt where two interpretations are possible, the one that furthers the protection and enlarges the remedial rights should be preferred than the one that curtails the same.

8. All these submissions thus clearly turn on the terms of the legislative provision and cannot be considered de hors its context.

9. The relevant provision of the new Code may now be noticed. Section 484 (1) repeals the old Code. Sub-section (2) of that section, however, makes provisions regarding specified savings. Sub-section (2) (a; which is material read as follows:-

"484. * * * *

* * * *

(2) Notwithstanding such repeal.-

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 898), as in force immediately before such commencement, (hereinafter referred to as the old Code), as if this Code had not come into force:

Provided that every injury under Chapter XVIII of the old Code, which is pending at the commencement of the Code, shall be death with and disposed of in accordance with the provisions of this Code."

(Italics added)

10. It will at once appear that the terms of clause (a) are intended to save pending proceedings and permitting its continuance as if the new Code had not been enacted. If the terms of the clause are satisfied, then it will be the old Code which will govern all matters concerning the trial. Such matters would necessarily mean and include relevant forum for trial, jurisdiction of the Court who has the seisin of the case as well as the procedure to be followed at such trial.

11. The savings in new Code are enacted generally to continue the application of the old Code inspite of its repeal. It is plain in these present terms of clause (a) that if the conditions thereof are satisfied, then for the purposes of pending appeal, application, trial, inquiry or investigation pending, the repeal of the old Code would not affect its continuation under that Code, subject to the proviso that makes a different provision for pending and incomplete "inquiry". Strictly speaking such statutory provision itself being clear and being part of the enactment will have to be given effect to irrespective of the procedural differences or seeming inconsistencies between the scheme of the old and new Code. Paramount it is to observe that such approach would accord with the intention of the saving enactment and would further its intention.

12. The general principles, however, underlying statutes repealing old ones and containing clauses of saving are stated by Collins M. R., In re R (1886) 32 Ch. D. 123,131,132: as that of "qualified repeals". Therein, the learned Master of Rolls observes:

"Where you have a repeal and you have also a saving clause, you have to consider whether the substituted enactment contains anything incompatible with the previously existing enactment. The question is, Aye or No, is there incompatibility between the two ? And in those cases the judges, in holding that there was a saving

clause large enough to annul the repeal, said that you must see whether the true effect was to substitute something incompatible with the enactment in the Act repealed; and that, if you find something in the repealing act incompatible with the general enactments in the repealed Act,. then you must treat the jurisdiction under the repealed Act as pro tanto wiped out, That is settled by the cases of In re Busfield (1886) 32 Ch. D. 123,131,132and Hume v. Somerton (1890)25 QBD 239. In both those cases the judges relied upon the incompatibility of the substituted enactments with the old enactments, and held that in consequence of that incompatibility the jurisdiction under the old Act could not remain; but they were prepared to hold that the saving clause would, if there were no incompatibility between the enactments, have the effect of annulling the repeal."

These principles which have taken the shape by judicial usage of the doctrine known as one of "qualified repeal" were enunciated because of the two statutes falling for consideration of the learned Lords. u/s 5 of the Trustees Act, 1950, it was provided that when any person was entitled "jointly with any lunatic or person of unsound mind", which included a criminal lunatic to any stock, the Court had power to make a vesting order. That section was re-enacted as regards any trustee who was a "lunatic or person of unsound mind", by sections 136 and 341 of the Lunacy Act, 1890. Section 340 of that Act expressly provided that the provisions of the Act would not extend to Criminal lunatics. Section 342 of that Act enacted saving in the following terms:-

"The Acts mentioned in the Fifth Schedule are hereby repealed to the extent set forth in the third column of the same schedule. Provided that this repeal shall not affect any jurisdiction or practice established, confirmed, or transferred, or salary or compensation or superannuation secured or under any enactment repealed by this Act."

quoted from

(1 Ch. D. 730 at P. 731.)

It will be apparent that the provisions of section 342 of the Lunacy Act, 1890 which were being considered by the learned Lords did not contain any terms of statutory fiction and was a legislation of saving in general terms. While considering that provision, the celebrated Master of Rolls made the observations supra holding the original jurisdiction conferred by the Trustees Act, 1950, as not affected. Though generally termed, the same are to be understood in the context of law under consideration. Suffice it to observe that legislative provisions may take different form and indicate and approach making this statutory doctrine unavailable.

13. This doctrine of "qualified repeal" on analysis leads to two different results on clear scrutiny and is applicable to provisions of savings which are worded in somewhat general terms compelling comparison of old and new so as to do justice to the cause and to those subject to law. Firstly it recognises, by "repeal", that what

is replaced stands dissolved; and secondly because of ""saving" introduced, that may still be treated as surviving subject to inconsistency between old and new; and upon proof of such inconsistency the repeal is full and complete and inspite of "saving" it is still dead-wood. In other words, here is an endeavour to interest and apply the "saving" clause usually appended by the legislature while enacting legislations in place of old on the test of comparison to find out compatible provisions between old and new. As a sequel, by interpretation, this doctrine purports to save only compatible parts of the repealed statute as the new legislation becomes operative. Though in principle and policy such should be the basic approach, given legislation by introducing clearer and effective "savings" can do away with the need of applying the same. When the Language of saving is clear to keep alive the repealed enactment entirely upon a given field of operation, such an exercise in every case to my mind bristles with a contradiction and inbuilt infirmity. If intention evidenced by such "saving" section is clear, such an attempt canvassed for, to find out and save only compatible provision would in effect lead to super-imposition not called for by the new enactment, resulting in shrinkage of the "saving" section of the enacting statute. The search for inconsistency or incompatibility becomes relevant and can be resorted to provided the saving section itself is ambiguous in this regard being of general type and without such modality there arises clear possibility of erosion of vested rights of those subjected to law. That approach primarily stems out of the anxiety to keep protected the judicial effects upon the things and acts done under the repealed law and further to treat these as lawful inspite of contrary enacted by new legislation and while applying compatible provisions to matters pending. Without even the enactment of a "saving clause" in the text of fresh statute taking place of another, that would be the permissible datum because of the rule of prospectively underlying our basic general principles of interpretations which posit licit security and complete continuity. That is inherent in that when the old enactment yields place to new, subject only to the express extent of the terms of the latter having past projections, the old order still is good, making it further necessary to compare the provisions of two to find provision that would govern the pending matters. Legislature even in such matters has plenary power to effectuate laws and make its measures run both backwards and forwards. For that, its domain is supreme and within its bounds it can evolve its own "time-machine". If the terms of savings are clear, applying only one statute either old or new, then the matter is one of giving effect, to the same.

14. Once such an intention of the legislature can be gathered being unqualified in keeping the repealed statute alive for stated purposes can that still be construed and subjected to qualified terms ? I would hasten for more than one reason to record a negative answer. From the expressions of the enactment if there is no scope to admit qualifications, the saving will have to be enforced fully and completely as enacted; and it should be doubtful in the face of clear language to resort to any doctrinaire approach as being available to the interpreting Court.

Though "qualified repeal" as spelt out above makes a good principle of general application, particularly the laws of procedure by its express terms would rule out its applicability. If the legislature intended that upon satisfaction of the stated state of affairs a particular law or enactment of procedure should hold the field, there is no room- in principle to still embark upon the exercise to find out inconsistencies between old and new. This may be evidenced by the terms of the enacted saving itself. The present new Code in fact by enacting the "saving" under consideration (quoted supra) in terms has done away with the need of application of the doctrine of "qualified repeal" by resorting to a crucial as well critical declaration available in the clause "as if this Code had not come in force". In essence that clause declares that for the matters within the saving section the old Code is the only effective law. All this is very much the part of legislative enactment and as such on the principle that every part of the enacting provision must be given effect to will have to be applied, once the conditions for such application are satisfied without any more qualification as without resort to comparison for finding compatibility or consistency between the two. Such declarations by themselves" would keep the repealed law in full state of animation for the purposes of the matters specified because of the express enactment introducing saving.

15. Inspite of such clear declaratory evidence, if an exercise to find out incompatibility were to govern interpretation, that may lead unto the defeating of such savings enacted by the new law and may whittle down its efficacy. There may be one and several reasons for enacting savings in this manner including the one that the things or state of affairs that have already emanated because of or under the old statute should, notwithstanding the new enactment, be still continued and completed as per its terms. In such cases it should be impermissible course to interpret saving by a modality that involves state of instability implicit in the process of interpretation. The doctrine of "qualified repeal", which permits an interpreter to find out the inconsistency and to hold that only to the extent it is not inconsistent the old Act would be applicable only when the saving enacted is not clear in its declaration and its purposes; and there is therefore scope to hold that injustice may ensue unless the doctrine is not resorted to. In any other case law being clear, interpreter in all fairness, is not clothed with any authority to add or construct something which the legislature did not expressly intend. It is common experience now that with the hoary experience of all the past the field of legislative innovations has reached a stage indicating that it has truly unending horizon. While enacting "savings" there is no static of compulsive formula. Legislature may usher in the new measure of law by use of language, which keeps the repealed law applicable to matters fully saved. No inhibitions can be thought of about such an approach. Each "saving" therefore in given repealing statute will have to be understood, applied and given effect to in its context and upon its terms and to further its clear intention inferable from legislative language. For, it is primordial that every statute as it is made must be given effect to!, though by its terms the result would be that for the

things that are past and pending it will be the repealed Act that will be effective law while the new would remain inapplicable.

16. To denote such consequence the expressions like the one " as if this Code had not come into force" (supra) in the present provision are enacted. That clause is clear and needs no definition and will have to be given effect to. In overlooking the same the interpreter would be evolving a third category by finding provisions from old Code upon the touchstone of consistency or compatibility and applying those only. Such a course is unnecessary and unwarranted. It is well settled that the phrase "as if" is meant to indicate that the legislature intended to introduce a deeming provision in enacting part. While applying legislative deeming, a fiction is available for enforcement and that has to be given full effect to on the footing, although in reality the law has been repealed, it continues to apply by virtue of the deeming enacted.

17. This statement and position on interpretation shows that firstly saving clause as is enacted will have to be construed and effort to give effect to it without curtailing its ambit has to be resorted to as the basic principle. Once its terms are found, the results indicated by such clause without any implied reservation are the part of the law and would be operative and effective so as to apply a given law as enacted part of new Code itself. Domain of finding out inconsistency or incompatibility would not be available if the saving is full and clear and by creating a fiction for the purposes of keeping the repealed enactment in force for specified causes that may be past or pending. To such savings the doctrine of "qualified repeal" would not afford any answer at all. Even if legislature were to enact such saving that keeps the whole enactment repealed, alive, as far as the matters expressly saved that will have to be applied. For, that would also further the express intendment of the saving clause in a repealing statute upon its true interpretation.

18. It is no doubt true that inconsistent and incompatible set of legislations should not be allowed to be operative in and over the same said subject governed by the statute. But the legislature in its own wisdom may indicate in express terms how the old and new statutes should be applied and to what matters keeping open the question of limited inquiry as to which statute would govern at a given point of time the concerned subject matter. By applying "saving" of such type which keeps repealed law applicable to past and pending matters while makes new law for the others may give rise to a controversy of different type hinging upon the competence or validity of the law-making, but that would not affect the clear terms enacted by the saving statute.

When saving section lays down clear conditions and directs that the matters within it must be governed by old i. e. repealed law, natural result always is to have two sets of laws in operation because of such saving governing fields of clear demarcation. The legislative premises in such matters would upon analysis and in fact do not collide for it postulates only one law holding the field either the one

newly made or the other-though repealed but kept revived by enacting fiction, operating upon defined area or subject of legislation. If the fields are clearly marked out by statutory conditions then there is hardly any scope for comparing the old and new by constructing channels of consistency or of compatibility while construing savings enacted. Structurally if the matter is clear saving section enjoys untainted legislative bliss and is law available for enforcement.

19. Let us now turn to consider the present saving section in its entirety. Its analysis can be put in severally as follows:-

Firstly it repealed old Code:

Secondly it enacts saving opening with a non-obstante clause which means that inspite of repeal the repealed Code will still be law upon the matters specifically stated. That is further emphasised by enacting a deeming provision to be fully operative by use of the term "as if";

Thirdly conditions for applying the savings are stated-without any ambiguity being that (i) appeal, application, trial, inquiry or investigation was instituted under the old Code and (ii) was pending as such immediately be- fore the new Code came into force;

Fourthly if the conditions stated in thirdly are satisfied the appeal, application, trial, inquiry or investigation has to be continued and concluded by following the old Code notwithstanding the new Code has come into force;

Fifthly an exception to generality of four above is that only pending "inquiry" would be continued and as such governed by the provisions of the new Code and not the old one.

20. Thus the only question under this saving clause that is of prime importance is to find out pendency of the matters specifically within its ambit and if that is so found follow the injunction enacted. Upon proof of pendency of appeal, application, trial and investigation this section enjoins that new Code would not be the law applicable. This specific layout of the saving, on plain reading, does away with the requirement to either compare the provisions of two Codes or to find out incompatibility of respective provisions so as to follow the rule of "qualified repeal''. There is no such scope left and the matter is made amply clear; the logical legislative effect being that to the pending appeal application, trial and investigation the old Code would alone apply. This may be because Legislature while enacting these two Codes in these regards, did not conceive of any incompatibility between the two for the procedure as well the substantive features now legislated. Even if comparison was permissible and undertaken it appears those do accord well with each other. It is obvious that in both of these Codes contemplations attending these matters are common and almost are identically enacted. Except making procedural changes the jurisdiction of the Court of Session and the concept of the trial by the Court of

Session is not in any manner fundamentally affected or changed. The hierarchy of the Courts is now reorganised by introducing the Court of Chief Judicial Magistrate, but as far as the stages by which the guilt of the accused has to be adjudicated, there is no fundamental or juridical change brought about. However having done away with "Inquiry" in details by committing Court as was conceived by old Code and having substituted a summary procedure therefore, pending "inquiry" only is made to govern by the new thinks incompatible between these two Codes with regard to savings and interpreter may not enlarge upon it.

21. Let us now turn to find out whether with regard to present case saving is available or not. That will have to be answered by finding out whether "trial" was "pending" immediately before the date the new Code was enforced.

22. The word "trial" is neither defined by the new Code nor was defined in the old Code. As is the legislative history, both the terms, "inquiry" and "trial", were statutorily defined only in the Code of 1872. By the Code of 1882 the definition of the word "trial" was omitted and when 1898 Code was made the law, that position keeping the word ''trial'' undefined, continued. In 1973 Code too, there is no definition available as far as the term "trial" is concerned. In section 2 (g) of the new Code, the word "inquiry" has been defined with a little alteration of the similar definition in the old Code in section 4(1) (k). Instead of the verb ''"includes", the new Code has used the verb "means". That change shows that the present definition is made exhaustive rather than illustrative which was the contemplation under the old Code as therein the definition was inclusive one. "Inquiry" under the new Code as well as the old Code is different than the "trial" of an offence, to hold which the jurisdiction is conferred upon a Magistrate or Court constituted for that purpose. "Trial" has been distinguished from other inquiries which may be carried on by other authorities under the Code. Distinction between these two is obvious enough in that trial is judicial adjudication that may eventually result in finding a person guilty while "inquiry" would not lead to that result. The word "trial" has been used at several places in the new Code as was the position in the old Code and it is indeed unnecessary to refer to all those provisions. Suffice it to observe that its connotation has to be gathered in the context the term occurs at different places.

23. In the new Code, Chapter XIII has been enacted with regard to jurisdiction of Criminal Courts and provisions like section 177 indicate ordinary place or place of inquiry and trial. Chapter XVIII which substituted in substance the old Chapter XXIII is headed by the title "Trial before a Court of Session" Chapter XIX "Trial of warrant cases by Magistrate". Chapter XX "Trial of summons cases by Magistrates" and Chapter XXI "Summary Trials". Chapter XXIII of the new Code deals with evidence in inquiries and trials, while Chapter XXIV lays down provisions as to inquiries and trials. There is Chapter XVI introduced in the new Code under the title "Commencement of proceedings before Magistrate". The provisions of that Chapter altered the requirements of Chapter XVIII of the old. Code to a large extent. It will be

relevant to take into account few of the provisions under this Chapter XVI of the present Code. Section 204 deals with issue of process where the Magistrate forms an opinion that there is sufficient ground for proceeding with the case. After the supply of copies of police reports to the accused and other documents if the case is triable by a Court of Session as required by section 208, section 209 enables the Magistrate if it appears to him to commit the case to the Court of Session. Section 209 provides further as to how accused has to be dealt with during and until the conclusion of the trial as well enjoins the Court to transmit the record for trial by the Court of Session. For the purpose of Chapter XVI, therefore, these are the commencement of proceedings before the Magistrate which is a pre-trial stage in an offence within the cognisance of Court of Session and the trial itself has to be held in accordance with the provisions of Chapter XVIII of the new Code. Once orders u/s 209 are made committing the accused for trial in the Court of Session it is that Court which comes in seisin of the case and upon such order accused awaits his trial before the Court of Session. If therefore an order u/s 209 is passed then "the trial" of the accused could remain pending to be conducted in the manner indicated by Chapter XVIII of the new Code.

24. Under the old Code too, though the provisions were more elaborate pre-trial stage had to be an inquiry before the Magistrate. Chapter XVIII of old Code provided for inquiry into cases triable by the Court of Session or High Court and laid down the procedure therefor. When the proceedings were, instituted on a police report, the procedure laid down by section 207A was enjoined to be followed. Inter alia for the present purposes it is sufficient to observe that, that included taking of evidence under sub-section (4), the accused being entitled to cross-examine witnesses as provided by sub-section (5), further consideration of the evidence and the documents under sub-section (6), hearing the parties under sub section (7) and in case of the opinion being formed that the accused should be committed for trial, framing of charge under sub-section (7), followed by recording of explanation of the accused under sub-section (8) and taking the list of defence witnesses as provided by sub-section (9), binding over the witnesses and further notifying the order of committing as required by sub-section (14) of that section. Transmission of record was provided by sub-section (15) and taking the bail until and during the trial of the accused as per sub-section (16). All these steps which can be termed as pre-trial steps are now dispensed with by the new Code and in its place procedure indicated by section 209 in Chapter XVI of the new Code is enacted. Pre-trial stage is now compressed one but is not dispensed with. Procedurally thus there is no material alteration. There is still the requirement of Magistrate making an order u/s 20'' though he is not called upon to frame charge. That was done away with as an unnecessary formality for it did involve duplication of procedural stage and further the Court holding the trial being always competent to frame the charge. Such change cannot in any manner be termed to" introduce incompatibility.

25. These procedural steps also highlight the difference as understood by these codes between the words ""inquiry" and ""trial", Inquiry u/s 207-A of Chapter XVIII of the old Code would not firstly, by an order under sub-section (6) where Magistrate comes to the conclusion that no grounds for committing the accused for trial were made out and proceeds to discharge the accused, or secondly, by an order that may result in Magistrate committing the accused for trial by the Court of Session or thirdly, in an order holding that the accused would be tried by the same or any other Magistrate. Therefore, in all these three contingencies, once the order was made either of discharge or for trial the inquiry did come to an end. If it is a case of the third type where the Magistrate himself decides to try the accused or sends him before another Magistrate for trial, that would be the beginning of another stage in the proceedings against the accused. Similar to be the result under sub-section (7) followed by the other requirements, as is indicated by the sub-sections that follow. Once the inquiry is complete wherein it is found by the Magistrate that the accused has to be tried by the Court of Session, two legal consequences ensued viz. (1) within the contemplation of the Code inquiry came to an end and (2) the accused person against whom the order of committal was made came within the cognizance of the Court of Session to be tried in the manner provided therefor. The format of the present statutory layout of Chapter XVI of the new Code and particularly of section 209 are neither inconsistent nor incompatible with this scheme but in substance is similar if the case was to be tried by the Court of Session.

26. Once this position is reached, it follows that under the procedure prescribed by the old and new Code the record as well the accused and his trial comes within the cognizance of the Court of Session upon order being made by Magistrate empowered to make such order. Thereafter he can be effectively dealt with by the Court of. Session for all purposes involving his discharge, acquittal or conviction. The moment therefore the pre-trial inquiry concludes it has to be found that the accused and the cause awaits the trial by the Court of Session. For all purposes his trial begins to pend since and upon the decision taken by the Magistrate empowered to commit him for trial by the Court of Session.

27.What was provided for by Chapter XXIII of the old Code was procedural part of the trial to be followed by the Court of Session. By the various provisions as contained in that Chapter that procedure was laid down. Part A of Chapter XXIII dealt with preliminaries regarding that procedure while Part B with commencement of proceedings. The phrase "commencement of trial" used in margin of section 271 and also in the body of the section has to be understood in the context of the proceedings contemplated by the Chapter itself. Though the word "trial'' would be indicative of all the stages when once the case is called and the accused is brought before the Court leading unto the hearing of the evidence and final pronouncement of the judgment, it cannot be said that the word "trial" would not take in all the proceedings in Court prior to the stage when the accused appears before the Court

by reason of the summons or warrant issued as a result of the direction given by the committal order to be present in the Court of Session. Though normally the word "trial" would mean beginning of the hearing of the cause by explaining the charge (see Dagdu Govind Want''s case (supra), there is no reason to exclude from its scope the cognizance taken by the Court either on perusal of the record or on perusal of the police report or as a result of the order made by the committal Court. The Code of Criminal Procedure in substance creates a machinery competent for taking cognizance of the offences and it would be reasonable to include in that the stage of perusal of papers eventually leading in issuance of process to accused by the competent Court as the part of the word "trial" itself though the accused may not physically be present before the Court. There is no good reason to exclude all this process from the conspectus of the term "trial". For, that involves the Magistrate or the Court concerned applying its mind to the record put before it and deciding to proceed either because of the earlier order or because of the law to call upon the person accused before itself to answer the allegations that may take shape of a charge. That by itself satisfies the test of taking cognizance of offences as it involves judicial embarking upon the cause. Such cognizance for the present premises may ensue at the end and upon the order having been made in inquiry by the Magistrate under Chapter XVIII and particularly u/s 207A of the old Code if the case was instituted on the police report and under new Code upon order u/s 209 thereof. Once such a competent order was made and the case terminated to Court of Session because of that order, it would stand cognized by the Court of Session. It follows therefore that once the papers reach the concerned Court of Session for the purpose of the Code, the trial of the offence would be pending before that Court and will have to be treated as pending as such. The conceptual contents of the terms "pending" do also indicate the same said results.

28. Here the word "pending" that calls for definition has to be read along with the term "trial" as used in clause (a) of sub-section (2) of section 484 of the new Code and is a derivative from the verb "to pend". It means "impending", "remaining undecided", "not terminated", "awaiting" etc. (Chambers Twentieth Century Dictionary, Page 983). Reading this meaning of ''pending'' in this manner in the clause, it is obvious that a trial which has not reached the stage of decision or termination would remain undecided and has to be treated as "pending". The Legislature, it appears, has undoubtedly used the word "pending" as commonly applicable to the words appeal, application, trial, inquiry or investigation. From this it was submitted that for "pending", it is of essence that the process must have commenced, for that which itself has not begun or originated cannot pend or cannot remain in the state of indication. This was the approach urged by the learned counsel appearing for the accused because of the terminology available in section 271 of Chapter XXIII of the old Code which used the phrases "commencement of proceedings", "commencement of trial". It was submitted that unless the stage indicated by section 271 had in fact begun, the word "pending" in clause (a) of

sub-section (2) of section 484 of the new Code would never be answered. Undoubtedly, the argument is ingenious. It however overlooks clear implication of the wider phraseology and contemplation of the term "pend". Even a stage of awaiting or commencement is enough in a given case to indicate pendency. Undoubtedly the pendency of each of the above will depend on matters of procedural stages involved in them and Courts will have to find out as to when the same would begin to pend in considering all the relevant provisions in that regard as well the contemplation of the statutory process having'' bearing upon each.

29. As stated earlier, the provisions of section 271 of the old Code though used the phrase "commencement of proceedings", in effect and in substance, indicated a step in the trial which began to pend before the Court of Session upon the order made at the close of the inquiry by the Magistrate u/s 207A of that Code. The very fact that the old Code required the Magistrate to frame a charge and explain the same to the accused as well take the list of defence witnesses and further notify the order of committal in the manner indicated and direct everybody concerned to appear before the Court of Session, also subscribes to such result only. For thereafter trial could end or terminate either in the discharge, acquittal or conviction of the accused by an order to be made by the Court of Session. Unless, therefore, any of those results are reached by the competent order made by the Court of Session, the proceedings after the order made by the committal Court would always remain pending against the accused. Thus the phrase "commencement" on which emphasis was put would not affect the pendency of the trial. Even without actual commencement "trial" would and will have to be treated as pending, as it embraces all stages after the end of "inquiry" till the final decision by the Court competent to try the accused charged with an offence within its cognisance.

30. In legal parlance the word "pending" has been interpreted so as to contain the stage indicating that the matter or cause has not concluded while the Court having cognizance of it is able to make the order on the matters in issue. In Lt. Col. S.K. Kashyap and Another Vs. The State of Rajasthan, the Supreme Court following its earlier decision in the case of Asgarali Nazarali Singaporawalla Vs. The State of Bombay, , observed:

"The word ''pending'' will ordinarily mean that the matter is not concluded and the Court which has cognizance of it can make an order on the matter in issue. The test is whether any proceedings can be taken in the cause before the Court or Tribunal where it is said to be pending. The answer is that until the case is concluded it is pending."

This too highlights the inbuilt contemplative core of the term "pending". From this angle also it can be seen that with regard to the trial of offences by the Court of Session the same would remain pending till it is concluded and till that Court has jurisdiction to make effective orders on the matters in issue. This would be the immediate position of the cause once the order is made by committing Court

directing trial of the accused by the Court of Session.

31. Judged and understood in such a way, the term "pending" in clause (a) of sub-section (2) of section 484 of the new Code with regard to trial would take in all stages after the committal order is made, notwithstanding that commencement of actual hearing of the case has not ensued or begun or the accused is not brought before the Court of Session.

32. The proviso to clause (a) extracted above which enacts an exception also indicates the same state of result with regard to the expression "pending" trial as it directs that the inquiry under the old Code before the Magistrate under Chapter XVIII will have to be continued if it was so pending on 1-4-1974 in accordance with the provisions of the new Code. This proviso too aids understanding of the main provision of clause (a). If inquiry has been completed, in that effective orders were made, by the Magistrate under Chapter XVIII of the old Code, then it would be obvious that for the purposes of the proviso the same will not be treated as pending and what ensues as a result of termination of inquiry in a given case being the trial has to be treated as pending and that would be continued because of sub section (2) (a) of section 484 of the new Code, under the provisions of the old Code as if the new Code has not come into force. Keeping "inquiry" and "trial" and the procedural conspectus of these together, it is easy to infer from this that in all cases where "inquiry" is not pending and is completed directing trial, what remains pending is the latter. If such an integrated approach is not reached about the pendency of "trial" the scheme of the Code in this regard would lead to some-what inconsistent results. This would be evident because under the old Code a competent order at the end of inquiry directing trial was already made, what remained being the holding of the trial itself by the competent Court under that Code. If under such circumstances pendency of the trial is not inferred or implied, then by mere fact that the new law has been made applicable, the order competently made directing trial by the Court of Session would be put in jeopardy. Interpretation that subjects the valid orders competently made to such results cannot be opted for. So as to achieve security and uniformity in the context of the scheme available in the old Code for trial of offences by the Court of Session, it will be reasonable to hold that upon the order being made after the completion of the inquiry for the purposes of that Code the trial would remain pending. By such construction the orders competently made are given effect to and the same are not put in jeopardy.

33. This discussion would indicate that there is no ambiguity in the saving clause and once the trial was in the stage of pendency, it will have to be conducted and concluded as per the provisions of the old Code. Even assuming that there is scope to find out any incompatibility between the provisions of the repealed and the present Code, it cannot be said as indicated earlier that in the matter of trial there exists any shouting incompatibility or inconsistency injurious to the interest of the Litigant. Only because certain offences are directed to be tried by the Chief Judicial

Magistrates, incompatibility or inconsistency with regard to trial cannot be inferred. It would be also right, therefore, to hold that there is no substantive or material departure in the matter of trial of the accused for the offence with which he was charged by the committal Court upon holding inquiry under the old Code. Procedurally the set up is substantially the same in the new and the old Codes. Even upon the doctrine of "qualified repeal" no other result would follow.

34. It would appear from the facts stated above that when the new Code was applied as a law on April I, 1974 the inquiry under the old Code was already over as the order committing the accused to trial by Court of Session was made and as such the trial will have to be treated as pending since on and before that date.

35. That being the position in that the trial was pending immediately before the new Code was made applicable, the impugned order cannot be upheld and has to be set aside. The revision thus succeeds and is allowed. The Additional Sessions Judge, Nagpur, is directed to recall the case from the file of Chief Judicial Magistrate and to proceed with the trial of the accused as was provided for by Chapter XXIII of the old Code.