REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 1427-1428 OF 2017
[ARISING OUT OF S.L.P.(CRL.) Nos. 122-123 OF 2016]

STATE OF GOA ...APPELLANT

VERSUS

JOSE MARIA ALBERT VALES @
ROBERT VALES ...RESPONDENT

J U D G M E N T

AMITAVA ROY, J.

1. Leave granted

2. The instant assailment of the judgment and order dated 05.03.2013 seeks to annul this verdict of the High Court whereby the charge framed by the Trial Magistrate against the respondent under Section 193 of the Indian Penal Code (for short hereafter to be referred to as the "IPC") has been set aside, having been held to be prematured and in violation of the procedure prescribed by Section 244 of the Code of Criminal Procedure, 1973 (for short, hereafter to be referred to as the "Cr.P.C./Code"), as all evidence on behalf

of the prosecution had not been adduced, the case being one registered on a complaint under Section 340 Cr.P.C. and thus otherwise than on police report and the Trial Magistrate has been directed to examine the remaining witnesses of the prosecution and thereafter decide as to whether any case had been made out against the respondent for framing of charge.

3. The appellant/State, being aggrieved, has questioned the legality and correctness of this view contending in substance that in terms of Section 343 Cr.P.C., the case though registered on a complaint under Section 340 thereof, was to be dealt with as if instituted on a police report for which the rigour of the procedure under Section 244 of Cr.P.C. was inapplicable.

4. The legal issue raised, being of significant moment and consequence in the context of day to day adjudicative relevance, merits a riveted attention.

5. We have heard Mr. Pratap Venugopal, learned counsel for the appellant and Mr. Trideep Pais, learned counsel for the respondent.

6. The factual conspectus is on a limited canvas. It is a matter of record that in Sessions Case No.18/2000 - titled ***State*** *vs.* ***Srikar Naik Kurade and others***, under Sections 120B and 302 IPC along with Section 25 of the Arms Act, 1959 tried by the Court of Sessions, Margao, the respondent was a witness cited by the prosecution. Before his deposition on oath at the trial, his statement was recorded under Section 164 Cr.P.C. by the concerned Magistrate. While testifying in the session's trial, he resiled from this statement so much so that the Sessions Court was of the view that the respondent along with two other witnesses, who had similarly retracted from their earlier statements under Section 164 Cr.P.C. had tendered false evidence warranting initiation of a proceeding for the offence under Section 193 IPC. Accordingly, however without conducting any inquiry as permissible under Section 340 Cr.P.C., and in view of the prima facie satisfaction that the respondent and the other two witnesses have deliberately made contradictory statements on oath in order to screen and/or favour the accused in the session's trial, the Sessions Court by order dated 14.08.2003 directed that they be prosecuted by filing

separate complaints against them under Section 193 IPC. While adopting this course, the Sessions Court recorded that it was not peremptory to hold an inquiry under Section 340(1) Cr.P.C.

7. Accordingly, a complaint was filed on 29.11.2003 under Section 193 IPC against the respondent by the District and Sessions Judge, Margao which was registered as Criminal Case No.380/5/2003/III in the Court of the Chief Judicial Magistrate at Margao.

8. The above facts were set out in the complaint with the elaboration that the statement of the respondent under Section 164 Cr.P.C. was recorded by the learned Magistrate on 18.02.2000 whereas his deposition as PW-22 in the Sessions Case was scripted on 10.10.2002 in course whereof he was declared hostile and was cross-examined by the prosecution. The complaint did set out one set of such irreconcilable versions to highlight the perceived blatant falsehood deliberately resorted to by the witness for helping the accused to escape punishment. The document cited six witnesses understandably in addition to the complainant.

9. In the proceedings that followed, the prosecution examined three witnesses from the list apart from the Additional Sessions Judge who had presided over the session's trial, who were duly cross-examined on behalf of the respondent whereafter the learned Magistrate instead of insisting on the examination of the remaining witnesses in the list, framed charge against the respondent under Section 193 IPC.

10. On 02.07.2008, the application filed by the respondent before the Trial Magistrate for dropping of the proceedings against him having been rejected, he unsuccessfully filed a revision in the Court of the Sessions Judge, whereafter he took the challenge to the High Court. By the impugned order, as aforementioned, the High Court has quashed the charge framed against the respondent proceeding on the premise that the case was one instituted otherwise than on the basis of police report and the offence being triable by warrant procedure, a rigid compliance of Section 244 Cr.P.C. was called for. The charge framed by the Trial Magistrate was held to be unjustified and prematured and after quashing the same, it has directed the Trial Court

to follow the procedure under Section 244 Cr.P.C., by examining the remaining witnesses of the prosecution and thereafter to decide whether any case had been made out for framing of charge against the respondent. The application filed by the prosecution seeking a review or recall of this order by the High Court, filed belatedly was however rejected, there being no clerical mistake or any justification to invoke the inherent powers under Section 482 of the Cr.P.C.

11. The learned counsel for the appellant/State, referring to Section 343(1) Cr.P.C. in particular, has urged that the High Court had fallen in error in interfering with the charge framed against the respondent on the presupposition that the procedure prescribed by Section 244 Cr.P.C. with full rigidity was applicable to the case in hand. It has been argued that in terms of Section 343(1), a Magistrate to whom a complaint is made under Section 340 or Section 341, notwithstanding anything contained in Chapter XV of the Cr.P.C., is required to deal with the case, as if it was instituted on a police report and thus vis-à-vis the offences mentioned in Section 195 of Cr.P.C., the Magistrate, on receiving the complaint, has to deal with it under Sections

238 to 243 Cr.P.C. as if it were instituted on police report to which warrant procedure was applicable. Qua the delay in filing the Special Leave Petition, it has been urged that having regard to the importance of the legal issue involved as well as the explanation provided, it ought to be condoned. Reliance has been placed on the decisions of this Court in ***Pritish*** *Vs.* ***State of Maharashtra and others***[1] and ***Amarsang Nathaji*** *Vs.* ***Hardik Harshadbhai Patel and others***[2].

12. Per contra, the learned counsel for the respondent has argued that having regard to the text of Section 343(1) Cr.P.C. and more particularly the words "as far as may be", the plea that every case registered on a complaint under Section 340 or Section 341 Cr.P.C. ought to be proceeded with as one instituted on police report under Chapter XIX-A i.e. as per the procedure laid down in Sections 238 to 243 is patently flawed. While endorsing the view taken by the High Court, it has been asserted that the decisions cited on behalf

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1 (2002) 1 SCC 253

2 (2017) 1 SCC 113

of the prosecution in support of the contention of applicability of Chapter XIX-A Cr.P.C. are distinguishable. According to the learned counsel in the face of the inbuilt flexibility ingrained in Section 343(1) Cr.P.C. as is apparent from the words "as far as may be" used in the text thereof, it is palpably erroneous to contend that a case contemplated therein would have to be invariably dealt with as one instituted on a police report. Drawing sustenance from the decision of the Bombay High Court in ***Godrej & Boyce Manufacturing Co. Pvt. Ltd.*** *vs.* ***Union of India & Ors.***[3], dwelling on the purport of the words "as far as may be", it has been urged that thereby the learned Magistrate was permitted to adopt the procedure envisaged in Section 244 Cr.P.C.. Contending that the present is a case principally founded on the statements of the complainant and the learned Public Prosecutor in particular and that out of the cited witnesses three of them have already been examined, it ought to be proceeded with as one instituted otherwise than on police report in accordance with the mandate of Section 244 Cr.P.C. Further the delay of 896 days in filing the present appeal apart from being inordinate has remained

3 1992 Crl.L.J. 3752

unexplained for which it is liable to be dismissed in limine on this count alone.

13. We have extended our cautious attention to the contentious assertions as well as the materials presently available on record. Having regard to the inter se bearing of the cognate provisions of the Code, decisively relevant to address the issue, an overview thereof, is indispensable. The expressions “complaint”, “inquiry”, “investigation”, “police report”, “summons-case” and “warrant-case” are defined in Sections 2(d), 2(g), 2(h), 2(r), 2(w) and 2(x) of the Code respectively and are extracted hereinbelow for immediate reference:

> (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.
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> *Explanation.*-A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by

whom such report is made shall be deemed to be the complainant.

(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

(r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

(w) "summons-case" means a case relating to an offence, and not being a warrant-case;

(x) "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

14. As would be evident from the definitions recited, a “complaint” is an allegation made orally or in writing to a Magistrate with a view to take action under the Code against some person, known or unknown, who had committed an offence and does not include a police report. In contradistinction, “police report” means a

report forwarded by a police officer to a Magistrate under Section 173(2), whereas "warrant case" is one relatable to an offence punishable with death, imprisonment for life or punishment for a term exceeding two years, a "summons-case" is one qua an offence which is not a "warrant-case". A clear cut distinction, therefore, has been ordained by the Code between a "complaint" and a "police report" as well as a "warrant-case" and a "summons-case".

15. Notably, "inquiry" means every inquiry other than a trial conducted under the Code by a Magistrate or Court. Distinguished from "inquiry", which is to be undertaken by a Magistrate or a Court, as prescribed, "investigation" includes all proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate), who is authorized by a Magistrate in that regard.

16. Section 195 of the Code deals with prosecution for contempt of lawful authority of public servants for

offences against public justice and for offences relating to documents given in evidence. Sub-section (1) thereof, which is relevant for the present pursuit, clamps an embargo on the cognizance by any court of any offence, as mentioned therein, in clauses (a) and (b) thereof. Whereas, vis-a-vis the offences enumerated in clause (a), such cognizance is permissible only on a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate, in re offences cataglogued in clause (b), a complaint in writing of the Court or by such officer of the Court, as that Court may authorise in writing or of some other Court to which that Court is subordinate, is an imperative precondition.

17. Here, the Court would have to be one in the proceedings whereof or in relation whereto, the offences set- out in clause (b) are alleged to have been committed. Suffice it to state for the instant purpose, that the offences detailed in clauses (a) and (b), having

regard to the punishments prescribed therefor, give rise to "summons" as well "warrant-cases". An offence under Section 193 IPC however would constitute a warrant case.

18. Chapter XIV of the Code dwells on the conditions requisite for the initiation of proceedings under the Code. Section 190 provides that any Magistrate of the first Class and any Magistrate of second class specifically empowered in this behalf under sub-section (2) thereof, may take cognizance of any offence –

> (a) upon receiving a complaint of facts which constitute such offence;
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> (b) upon a police report of such facts;
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> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

19. Avoiding the unnecessary details, it is enough to record that after an information is laid with the police in respect of an offence, as provided for in Chapter XII of

the Code and on completion of the investigation in connection therewith, the officer in-charge of the concerned police station is required to submit a report to the jurisdictional Magistrate empowered to take cognizance of the offence on such report, under Section 173 thereof. This police report as referred to in sub-section (2), needs to be in a form prescribed by the State Government and ought to mention inter alia, the names of the parties, the nature of the information, the names of the persons, who appear to be acquainted with the circumstances of the case, whether an offence appears to have been committed and if so by whom, and whether the accused has been arrested and released. Sub-section (8) of Section 173, however, does not preclude further investigation, even after submission of such report so as to enable the investigating agency to forward to the Magistrate a further report or reports regarding such evidence as may be obtained. This police report, as has been referred to in Section 190, is

one of the inputs available to the Magistrate to take cognizance of any offence, as disclosed thereby.

20. In terms of Section 200, if however a complaint is filed in a court of law, as is contemplated in clause (a) of Section 190, a Magistrate taking cognizance of an offence on the basis thereof, has to examine upon oath, the complainant and the witnesses present, if any and the substance of such examination has to be reduced in writing, to be signed by the complainant and the witnesses and also by the Magistrate. The mandate of examining the complainant and the witnesses is relaxed:

> a) if a public servant acting or purporting to act in the discharge of his public duties or a Court has made the complaint; or
>
> b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192.

21. In terms of Section 202, any Magistrate, on receipt of a complaint of an offence of which he is

authorized to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not, there is sufficient ground for proceeding. The direction for such investigation, however, is not permissible - a) where, it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

22. In an "inquiry", as construed necessary as above, the Magistrate may, if he thinks fit, take evidence of witness on oath and if the offence complained of is

triable exclusively by the Court of Sessions, he would call upon the complainant to produce all his witnesses and examine them on oath. As per Section 204, if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be – (a) a summons-case, he would issue summons for the attendance of the accused in a summons-case, and if it is (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself), before some other Magistrate having jurisdiction.

23. A cumulative review of the provisions pertaining to the cognizance of an offence by the Magistrate on a complaint would evince that a Magistrate, if he thinks fit, even after the examination of the complainant and the witnesses present, at the time of taking cognizance may postpone the issuance of process, if he construes it

to be fit to either cause an inquiry to be made by himself or direct an investigation to be made by a police officer or such other person, as he thinks fit, for being satisfied as to whether or not, there is sufficient ground for proceeding. A Magistrate, however, need not examine the complainant and the witnesses, if a pubic servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint. There is however no restraint on him to cause an inquiry to be made by himself even on such a complaint for the purpose of deciding whether or not there is sufficient ground for proceeding. This allowance is assuredly to secure the ends of justice and to avoid/obviate even the remotest possibility of any avoidable prosecution.

24. Chapter XIX is devoted to trial of warrant cases by Magistrate and enfolds two categories i.e. A -cases instituted on a police report and B- cases instituted otherwise than on a police report. In the former

category i.e. cases instituted on a police report, the successive stages comprehended after the accused appears or is brought before a Magistrate at the commencement of the trial, have been detailed. These are accommodated in Sections 238 to 243.

25. In terms of Section 238, when, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of Section 207 i.e. the accused has been furnished without delay, free of cost, a copy of each of the records/documents mentioned therein, which include the police report, referred to hereinabove and the papers accompanying the same. If upon considering the police report and the documents sent along with it under Section 173 and making such examination if any of the accused, as the Magistrate may think necessary, and if after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the

charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. On the other hand, if upon such consideration and examination if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing, a charge against the accused, which would be read and explained to the latter and he would be asked whether he pleads guilty to the offence charged or claims to be tried. Noticeably, these two eventualities encompassed in Sections 239 and 240 of the Code though contemplate examination of the accused, if the Magistrate thinks it necessary, no witness of the prosecution can be examined at that stage and the Magistrate would decide as to whether the charge is to be framed or not on the basis of the materials available i.e. the police report and the accompanying papers as well as the statement of the

accused, if recorded, of course after affording an opportunity of hearing to both the sides.

26. Whereas Section 241 empowers the Magistrate, if the accused pleads guilty, to record such plea and in his discretion, convict him thereon, in terms of Section 242, the Magistrate would fix a date for examination of the witnesses if the accused refuses to plead guilty or does not plead so, or claims to be tried. After the closure of the evidence of the prosecution, in course whereof, the accused would have a right to cross-examine its witnesses, he would be called upon to enter upon his defence and produce his evidence and after recording his statement, if it is also prayed by him, the Magistrate would issue such process for the attendance of any witness for the purpose of examination and cross-examination, or for production of any document or other thing, unless it is considered that such an application should be refused on the ground that it is vexatious or had been made for the purpose of delay or

for defeating the ends of justice. At the end of the trial, on the completion of the process, as above, if the Magistrate finds the accused not guilty, he shall record an order of acquittal. However, if the Magistrate finds the accused guilty, but does not proceed in accordance with the Sections 325 or 360 of the Code, he would, after hearing the accused on the question of sentence, pass sentence upon him according to law.

27. With regard to cases instituted otherwise than on police report, the procedure is outlined in Sections 244 to 247 of the Code. In terms of Section 244, when in any warrant case, instituted otherwise than on police report, the accused appears or is brought before the Magistrate, the latter shall proceed to hear the prosecution and take all such evidence as may be produced, in support of the prosecution. It is subsequent thereto, as per Section 245, that if upon taking all the evidence so produced, the Magistrate considers, for reasons to be recorded, that no case

against the accused has been made out, which if unrebutted, would warrant his conviction, the Magistrate would discharge him. Section 245(2) empowers the Magistrate to discharge the accused at any previous stage of the case, if, for reasons to be recorded by such magistrate, he considers the charge to be groundless. In case, however, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under the Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing, a charge against the accused, as ordained by Section 246(1). Thereafter, the charge shall be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make. If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon. However, if the accused refuses to plead guilty or does

not plead so or claims to be tried, he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether, he wishes to cross-examine any, and if so, which of the witnesses for the prosecution, whose evidence has been taken and if he elects to do so, the witnesses named by him, would be recalled and, after cross-examination and re-examination (if any), they would be discharged. As per Section 246(6), the evidence of the remaining witnesses for the prosecution would next be taken and after cross-examination and re-examination, if any, they shall also be discharged. It is subsequent thereto, that in terms of Section 247, the accused would then be called upon to enter upon his defence and produce his evidence; and thereafter the provisions of Section 243, applicable for cases instituted on a police report, would apply. Eventually, however, depending upon whether the accused has been found guilty or not, the order of conviction or acquittal would follow.

28. The strikingly distinguishable feature in the procedures to be adopted for cases instituted on a police report and those instituted otherwise than on a police report, lies in the fact that whereas in the former, there is no scope for the prosecution to examine any witness at the stage where the Magistrate is to consider whether a charge is to be framed or not, in cases instituted otherwise than on a police report, after the accused appears or is brought before the Magistrate, the prosecution is required to adduce all such evidence in support of his case, whereupon the Magistrate may discharge the accused, if he is of the view, for reasons to be recorded on the basis of such evidence, that no case had been made out against him, which if unrebutted, would warrant his conviction. However, if the Magistrate is of the opinion, in view of such evidence, or also at any previous stage of the case, that there is ground for presuming that the accused has committed an offence triable under the Chapter and which he is competent to try and adequately punish, he shall frame

a charge against the accused. Subsequent thereto, if the accused refuses to plead guilty or does not plead so or claims to be tried, vis-a-vis the charge, he would be offered an opportunity to cross-examine any of the witnesses of the prosecution, whose evidence had been taken and on which the charge is founded and if the accused elects to avail this opportunity, the witnesses named by him would be recalled and after cross-examination and re-examination, they shall be discharged. Thus, not only the prosecution, in the cases instituted otherwise than on a police report, would have an opportunity to adduce all such evidence in support of its case on which, on a consideration whereof, the accused may be charged or discharged, as the case may be, the latter can avail the opportunity of cross-examining the witnesses only after the charge is framed. As Section 246(6) would authenticate, the prosecution would thereafter have another chance of examining the remaining witnesses, who understandably, if examined, would be subjected to

cross-examination and re-examination before their discharge.

29. Chapter XX deals with trial of summons-cases by the Magistrates in which, after the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused, shall be stated to him and he would be asked whether he pleads guilty or has any defence to make, but it would not be necessary to frame a formal charge. If the accused pleads guilty, the Magistrate would record the plea as nearly as possible in the words used by him and may, in his discretion, convict him thereon. If however, the Magistrate does not convict the accused, he shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution and also hear the accused and take all such evidence as he would produce in his defence and record acquittal or conviction, as the case may be. The other aspects under Chapters XIX and XX on the trial of warrant-cases and

summons-cases by Magistrates, being of no significance qua the issue involved, have not been adverted to.

30. We next turn to Chapter XXVI on the "Provisions as to offences affecting the administration of justice", the center piece of scrutiny. As per Section 340 of the Code, captioned as "Procedure in cases mentioned in Section 195", when upon an application made to it in this behalf or otherwise, any Court is of the opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or as the case may be in respect of a document produced or given in evidence in a proceeding in that Court, such Court may after such preliminary enquiry, if any, as it thinks necessary:

(a) record a finding to that effect;
(b) make a complaint thereof in writing;
(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

31. This power in the eventualities, as enumerated in sub-section (2), can be exercised by the Court to which the former Court is subordinate within the meaning of Section 195(4). Sub-section (3) requires that such a complaint has to be signed by the authorities as mentioned therein. The two essential pre-requisites, as predicated by this provision, are formation of an opinion (1) even if prima facie, that an offence referred to Section 195(1)(b) appears to have been committed in or in relation to a proceeding of the Court or as the case may be in respect of any document produced or given in evidence in a proceeding in that Court and (2) it is

expedient in the interests of justice that an enquiry should be made into such offence.

32. It is no longer *res integra* that the preliminary enquiry, as comprehended in Section 340, is not obligatory to be undertaken by the Court before taking the initiatives as contained in clauses (a) to (e) while invoking its powers thereunder. Section 341 provides for an appeal against an order either refusing to make a complaint or making a complaint under Section 340, whereupon the superior court may direct the making of the complaint or withdrawal thereof, as the case may be. Section 343 delineates the procedure to be adopted by the Magistrate taking cognizance. This provision being of determinative significance is quoted hereinbelow:

> **"343: Procedure of Magistrate taking cognizance: -** (1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

> (2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided."

33. As sub-section (1) of Section 343 would unequivocally testify, a Magistrate to whom a complaint is made under Section 340 or Section 341 shall, notwithstanding anything contained in Chapter XV of the Code i.e. the procedure to be followed by a Magistrate taking cognizance on a complaint, proceed as far as may be to deal with the case as if it was instituted on a police report. Whereas Section 344 prescribes summary procedure for trial for giving false evidence, Section 345 outlines the procedure in certain cases of contempt committed in the view or presence of any Court as mentioned therein. Section 346 prescribes the procedure where the Court considers that the case should not be dealt with in the manner as set-out in

Section 345, whereupon the Magistrate to whom any case is forwarded would proceed to deal therewith, as far as may be, as if it were instituted on a police report.

34. Before dilating on the legislative intendment entrenched in Section 343(1) in particular, expedient it would be to traverse the authorities cited at the Bar for the desired insight into underlying objective of Section 340 and its bearing on the procedure to be adopted by the Trial Magistrate while dealing with a complaint thereunder.

35. The question posed before the Constitution Bench of this Court in ***M.S. Sheriff, P.C. Damodaran Nair*** *vs.* ***State of Madras***[4], was whether an appeal would lie under Section 476-B of the Cr.P.C. (as it was then) from an order of a Division Bench of a High Court directing the filing of a complaint for perjury. Answering in the affirmative, this Court declined however to intervene with the order by observing that the only relevant consideration at that stage being the satisfaction of the

4 AIR 1954 SC 397

High Court as to whether it was expedient in the interests of justice that an inquiry ought to be made into the offence which *prima facie* appeared to have been committed, no interference was warranted. This was more so as the High Court had scrutinized the evidence minutely and had disclosed ample materials on which a judicial mind could reasonably reach the conclusion that it was a matter which required investigation in a Criminal Court and that it was expedient in the interests of justice to have it inquired into. The apparent legal enunciation, as can be discerned, from the above observations is that at the stage of lodging of a complaint under Section 340 Cr.P.C., the decisive consideration is the satisfaction derived by the Complaining Court that it was expedient in the interests of justice that an inquiry ought to be made by a Criminal Court into an offence which otherwise appeared to have been committed in connection with the proceedings before it and affecting the administration of justice.

36. A Constitution Bench of this Court in ***Iqbal Singh Marwah and another*** *vs.* ***Meenakshi Marwah and another***[5], while dealing with the ambit of the restraint contained in Section 195 with regard to lodging of complaint vis-a-vis the offences referred to in sub-section (1)(b)(ii) in particular did rule as well on the import of Section 340 of the Code. It propounded that the language used in Section 340 Cr.P.C. does not make it imperative for a Court to make a complaint regarding commission of an offence referred to in Section 195(1)(b) as the Section is conditioned by the words "Court is of opinion that it is expedient in the interests of justice" which demonstrate that such a course would be adopted only if in the interests of justice, it is required and not otherwise. In elaboration, it was held that before filing of the complaint, the Court may hold a preliminary inquiry and record a finding to the effect that it is expedient in the interests of justice that inquiry should be made into any of the offences referred

5 (2005) 4 SCC 370

to in Section 195(1)(b) and that this expediency would normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document but having regard to the effect or impact, such commission of offence has upon the administration of justice. This elucidation reiterates the pre-requisites for initiating an action under Section 340 of the Code, the impelling factor being the concern for sustaining the purity of the process of administration of justice.

37. We refer to the decision of this Court in ***K. Karunakaran*** *vs.* ***T.V. Eachara Warrier and Anr.***[6], to recall the observations made therein that in an inquiry held by the Court under Section 340(1) of the Code, irrespective of the result of the main case, the only question is whether a *prima facie* case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interests of justice to take such action.

6 (1978) 1 SCC 18

Further, at the trial, the reasons recorded in the order under Section 340(1) should not weigh with the Criminal Court in coming to its independent conclusion whether the offence, as alleged, has been fully established beyond reasonable doubt and it would be for the prosecution to establish all the ingredients of such offence and the decision would be based only on the evidence produced before the Criminal Court during the trial and its conclusion would be independent of the opinion formed by the complaining court under Section 340(1). It was explicated that the fact that the *prima facie* case had been laid out for laying a complaint, does not mean that the charge has been established against a person beyond reasonable doubt which would have to be assayed in details at the trial by the parties who would have opportunity to produce evidence and controvert each others case exhaustively without any reservation.

38. This Court in ***Pritish***[1] did embark upon the purport and scope of Sections 340 and 343 of the Code

and the procedure to be followed by the Trial Magistrate before whom a complaint is made.

39. Dwelling upon the expanse of Section 340, to start with, it was propounded that the hub thereof was the formation of an opinion by the Court, before which the proceedings were pending prior to the complaint, that it is expedient in the interests of justice that an inquiry should be made into an offence which appears to have been committed. It was underlined that though in order to form such an opinion, the Court was empowered to hold a preliminary inquiry, it was not obligatory to do so and even without such preliminary inquiry, the Court could form such an opinion. It was observed that though the Court even after forming such an opinion was not obligated to make a complaint, but once it decides to do so, it has to make a finding to the effect that in the fact situation, it is expedient in the interests of justice that the offence should be further probed into. It was underlined that absence of any

preliminary inquiry would not vitiate a finding if reached, that it is expedient in the interests of justice that an inquiry should be made into the offence which appears to have been committed. This Court recorded as well that the preliminary inquiry contemplated was not for finding as to whether a particular person was guilty or not but only to decide as to whether it is expedient in the interests of justice to inquire into the offence which appears to have been committed. Referring to Section 343 of the Code, it was held that the Trial Magistrate on receiving the complaint has to proceed in accordance with the procedure set out in Chapter XIX and proceed under Section 238 to Section 243 of the Code. Elaborating on these provisions, this Court propounded that as required under Section 238 of the Code, the Trial Magistrate would be required at the outset to satisfy himself that the copies of all relevant documents have been supplied to the accused and consider the complaint and the documents sent with it in terms of Section 239. It was mentioned as well that the

Magistrate could also examine the accused if thought necessary and after hearing the prosecution and the accused could discharge the accused if the allegation against him were found to be groundless.

40. However if the Magistrate was of the opinion that there was ground for presuming that the accused had committed the offence, he would be required to frame a charge in writing against the accused, read and explain the same to him and if he does not plead guilty, to proceed to conduct the trial. This Court emphasized that until this stage, the inquiry would continue before the Trial Magistrate.

41. It was highlighted that the inquiry entrusted to the Trial Magistrate by filing the complaint, as comprehended in Section 2(g) of the Code was to be an inquiry other than a trial and would continue till the Trial Magistrate would either discharge the accused if the allegations are found to be groundless or frame a charge against him in writing, if he was of the opinion

in the aforesaid inquiry that there was ground for presuming that the accused had committed the offence.

42. This Court adverted to the decision of the Constitution Bench in ***M.S. Sheriff***[4], to highlight that the Court at the stage envisaged in Section 340 of the Code would not decide the guilt or innocence of the party against whom the proceedings are to be instituted before the Magistrate and at that stage it was to examine as to whether it was expedient in the interests of justice that an inquiry should be made into any offence affecting the administration of justice and that no expression of the guilt or innocence of the persons should be made while passing the order under Section 340 of the Code. That the scope of the scrutiny under Section 340 Cr.P.C. was to ascertain whether it could decide on the materials available that the matter requires inquiry by a criminal court and that it was expedient in the interests of justice to have an inquiry

into was underscored. It was expressed in clear terms that at the stage of analysis under Section 340 of the Code for the above purpose, there was no legal obligation to afford an opportunity to the persons against whom the complaint could eventually be made.

43. In ***Amarsang Nathaji***[2], the decision of the jurisdictional High Court to file a complaint under Section 340 of the Code against the appellant, in view of false statements made in the documents and declarations offered to be read as evidence which was perceived to have the potential of affecting the administration of justice, was impeached. Therein the two pre-conditions for invocation of Section 340 Cr.P.C. namely, (1) materials on record ought to make out a prima facie case for a complaint for the purpose of inquiry into the offence (as referred to in Section 195(1)(b) and (2) expediency in the interests of justice to cause an inquiry to be made into the alleged offence were enumerated. While observing that a mere

contradictory statement by a person in a judicial proceeding per se might not always be sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code, it was emphasized that in any view of the matter, the Court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offence perceived and that to put it differently, the satisfaction of the Court of the essentiality of such an inquiry in the interests of justice is the pre-requisite to activate the process under Section 340(1). It was however clarified that for the opinion of the Court that for an inquiry into the offence which appears to have been committed the satisfaction has to be *prima facie*. It was held as well that to derive that satisfaction, a preliminary inquiry is not mandatory, if the Court is otherwise in a position to form such an opinion and that even after the formation of such opinion, filing of a complaint is not peremptory. After referring to the decision of the Constitution Bench of this Court in ***Iqbal Singh***

Marwah[5], which explicated *inter alia* that the expediency for the inquiry in the interests of justice would normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document but the effect or impact thereof upon the administration of justice, it was held that in the facts of the case, the Court had not adhered to the requirements prescribed under Section 340 Cr.P.C. to form its opinion. While parting however, with reference to Section 343 of the Code, it was enunciated that the Trial Magistrate having regard to the offences mentioned in Section 340 Cr.P.C. has to follow the procedure for trial of warrant cases under Chapter XIX Part A comprising of Section 238 to Section 243 Cr.P.C.

44. In ***Mohan Lal Jatia*** *vs.* ***Registrar General, Supreme Court of India***[7], the issue as to whether, in terms of Section 343(1) of the Code the Trial Magistrate is mandatorily required to adopt the procedure set out

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in Chapter XIX-B thereof by treating the complaint filed under Section 340 Cr.P.C. to be a case instituted otherwise than on police report fell for scrutiny. The prefatory facts reveal that the complaint was filed following an investigation by the Central Bureau of Investigation (for short, "CBI") on the direction of this Court to inquire into the allegation of filing of false affidavit before it. The CBI on the completion of the investigation submitted its report recommending prosecution amongst others of the appellant under Sections 120B, 193, 218, 468, 471, 420 IPC r/w Section 511 of IPC whereupon a complaint was made under Section 340 Cr.P.C. by the Registrar General of this Court before the concerned Trial Magistrate.

45. The Delhi High Court in the above backdrop of facts and more particularly the investigation conducted by the CBI and the report submitted by it on the basis thereof held that the mandate of Section 343(1) of the Code was clear that either the offences against the

administration of justice should be tried summarily by the concerned Court or if the complaint is filed by the Court regarding such offences, the complaint should be treated as a police report and the trial has to be conducted in the same manner as of a warrant case on police report. It was thus ruled that the procedure prescribed for dealing with the complaint as a case instituted otherwise than on police report would be inapplicable. It was more so as the complaint in the case was preceded by an investigation by the CBI which therefore ruled out the necessity of any pre-charge evidence.

46. The Bombay High Court in ***Godrej & Boyce***[3] did address as well the procedure to be adopted by the Trial Magistrate qua a complaint filed under Section 340 Cr.P.C. After adverting to the 41st Report of the Law Commission of India which eventuated the legislation of the amended Section 343 Cr.P.C. as it stands today, it held that having regard in particular to the term "as far

as may be" applied in Section 343(1) Cr.P.C. that a complaint so filed did not get transmuted to a police report *ipso facto* and that the provision envisaged exceptions in given fact situations. Tracing from the definition of the word "complaint" in Section 2(d) of the Code, it was expounded that when filed under Section 340, the complaint would retain its basic characteristics of not being a police report so much so, that having regard to the flexible text of Section 343(1) Cr.P.C., the proceedings on the basis thereof could not automatically be construed to be a case instituted on a police report. In elucidation, it was observed that where the background of the complaint is one where materials are uncomplicated and not confusing and had been gathered sufficiently and satisfactorily both in regard to quality and quantum, the Trial Magistrate could straightaway proceed as if in a case instituted on a police report as the Court would then be equipped with the necessary materials which have to be furnished to the accused for preparing his defence and nothing more

is needed for commencement and completion of the trial. However, it noted, that in a given case where due to the absence of such an inquiry by the Complaining Court or by reason of its not being exhaustive or adequately detailed an appropriate procedure as in the proceedings instituted on a complaint could be found fair and necessary. It was concluded thus that Section 343 therefore permitted the Trial Magistrate to adopt the complaint procedure in such a situation. The other aspects of the *lis* as examined therein being not of direct relevance for the present purpose are not being adverted to.

47. To disinter in the above forensic backdrop, the legislative intendment ingrained in Section 343(1) in particular, it would be essential to recall at first, the precursor of this provision in the Code of Criminal Procedure, 1898 i.e. Section 476, which was in following terms:

> "**476**: (i) When any Civil, Revenue or Criminal Court is, whether on application

made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195, sub-section (i), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.

[Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.]

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under Section 200.

(3) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the

> decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided."

48. Sub-section (2) of Section 476, as it stood prior to the amendment heralding the present Section 343(1) obligated the Magistrate before whom the complaint was filed by a Court being of the view that an offence under Section 195(1)(b) or clause (c) (as it was then) appeared to have been committed in or in relation to a proceeding in that Court and that it was considered expedient in the interests of justice that an enquiry should be made into such offence, to proceed according to law and as if upon complaint made under Section 200.

49. In the 41st Report of the Law Commission of India, Section 476 of the 1898 Code, amongst others, fell for scrutiny. While observing that Section 476 was intended to be complementary to Section 195 and therefore ,its scope should be neither wider nor narrower than the

latter, it recommended as hereinbelow vis-à-vis Section 476(2):

> "35.3: Under Section 476(2), the Court to which a complaint is made under Section 476 shall proceed "as if upon complaint under Section 200". It was suggested during our discussions that since a complaint is made under Section 476 by a responsible judicial officer (and after inquiry in most cases), the Court to which the complaint is made need not and should not hold another inquiry under Chapter 16 but should issue process under Section 204. It was urged that when a superior Court had made a complaint, it was inappropriate that a Magistrate should again hold an inquiry or dismiss it under Section 203. We, however, felt that there was no justification for totally dispensing with an inquiry under Section 202. The Court making the complaint under Section 476 may not have made a thorough inquiry, and the Court taking cognizance of the offence under Section 195 might like to have more materials before issuing process. The nature of the jurisdiction to be exercised by the Magistrate under Sections 202 and 203 is not always similar to the nature of the proceedings held by the complaining Court under Section 476. For instance, under Section 202, further "investigation" may be ordered, whereas an "inquiry" under Section 476 is of a limited nature. It would not be correct to assume that one will

serve the purpose of the other in every case."

50. In response to the view expressed in course of the deliberations that the Court to which the complaint is made need not and should not hold another inquiry under Chapter XVI, a complaint having been made by a responsible Judicial Officer (and after inquiry in most cases) and that therefore the Trial Magistrate should issue process under Section 204 without further enquiry, the Commission was of the comprehension that there was no justification for totally dispensing with an inquiry under Section 202 as the Court making the complaint under Section 476 might not have made a thorough inquiry and the Court taking cognizance of the offence under Section 195 might in a given case, like to have more materials before issuing the process. This is more so as in its opinion, the nature of the jurisdiction to be exercised by the Magistrate under Sections 202 and 203 was not always similar to the nature of the

proceedings held by the complaining Court under Section 476. This is more so, as the inquiry under Section 476, even if conducted, is of a limited nature and may not serve the purpose of an inquiry under Section 202 in every case.

51. The above view of the Commission and the recommendations stemming therefrom, are in accord with the expression "as far as may be" engrafted in Section 343, the salient features whereof can be deciphered as: (i) a Magistrate dealing with a complaint under Section 340 or Section 341 has to proceed as far as may be to deal with the case as if it were instituted on a police report; (ii) this course the Magistrate would follow notwithstanding anything contained in Chapter XV.

52. Noticeably, the expression "as far as may be" assuredly lends some elasticity, relaxing the otherwise rigour of the legislative mandate to deal with the complaint as a case instituted on a police report. It

cannot be gainsaid that in absence of this discernible flexibility, the Magistrate would be left with no option but to construe the complaint under Section 340 or Section 341 to be a case as if instituted on a police report, Section 343(1) thus clearly marks an exception qua the procedure to be adopted by the Trial Magistrate if the complaint is filed under Section 340 or Section 341 of the Code. To reiterate, barring the perceptible flexibility as contained in the expression "as far as may be", the Magistrate is required to deal with the complaint as a case as if instituted on a police report. The relaxation in this rigour is patently traceable to the views/recommendations of the Law Commission, as recorded hereinabove, whereby in a given fact situation, the legislative mandate to the Magistrate to treat a complaint under Section 340 or Section 341 to be a case as if instituted on a police report notwithstanding it would be open for him, if in his opinion, further materials are required to enable him to proceed and for

that purpose, an inquiry is warranted to undertake that exercise.

53. As noted hereinabove, in cases instituted on police report, as is contained under Chapter XIX, the Trial Magistrate can discharge an accused or frame a charge against him on a consideration only of the police report and the documents, laid under Section 173 and the statement made if any, by the accused in his examination and after affording an opportunity of hearing both the sides. To repeat, at that stage, the prosecution has no scope to examine any witness and thus is not obligated to adduce any evidence in support of its case.

54. Judged from the standpoint of interplay between Sections 340 and 343 of the Code, thus the following eventualities may arise:

a) When a judicial complaint is based on materials collected in the course of preliminary inquiry before the complaint

under Section 340 is filed. This is a situation where in terms of Section 343, the Trial Magistrate shall straightway deal therewith as if it was instituted on a police report as per Chapter XIX-A of the Code.

b) Where the judicial complaint is not preceded by a preliminary inquiry and there is no material either by way of any statement or document and the Trial Magistrate genuinely feels in the cause of justice that even if there is a prima facie satisfaction of the complaining court that the offence mentioned appears to have been committed, he can undertake a summary enquiry and on the completion thereof, may decide on the complaint in accordance with law.

c) Where though no preliminary inquiry had been made before filing of the judicial complaint, the facts are so clear and obvious in endorsement of the prima facie satisfaction that the offence had been committed and that it is expedient in the interests of justice to have the same probed into further by the Trial Magistrate, the Trial Magistrate shall deal with the case as if it was instituted on a police report and follow the procedure under Chapter XIX-A of the Code.

55. That Section 343(1) of the new Code has been cast in the mould, totally different from the one, as in Section 476(2) of the old Code, is crystal clear. Having regard to the recommendations of the Law Commission, as set-out hereinabove, the shift by the amendment is from the detailed procedure, prescribed for a case registered on a complaint i.e. instituted otherwise than

on a police report. This is more so vis-a-vis a complaint case involving an offence to be tried by applying the warrant procedure. Section 343(1) of the Code now enjoins the Trial Magistrate to deal with the complaint under Section 340 or Section 341 by treating it to be a case, as if instituted on a police report. There is indeed a deeming element ingrained in the provision. Further, the expression "as far as may be" does not foreclose wholly, at the same time the discretion of the Trial Magistrate, if he genuinely feels it necessary, to get additional materials on record for his necessary satisfaction to proceed thereafter as required in law. This element of discretion conferred on the Trial Magistrate, in our comprehension, does not either suggest or encourage any irreverence to the complaining court and the legislative intent is to ensure against avertable judicial proceedings in the overall interest of justice. The amendment, while secures an expeditious disposal of the complaint by treating it to be a case instituted on a police report as far as may be

without undergoing the rigour of the elaborate procedure meant for a complaint case, has with the conferment of the discretion on the Trial Magistrate, as above provided the necessary balance to prevent even the remotest possibility of a lame prosecution.

56. In our view, Sections 200, 202, 204, 238 to 243, 340 and 343(1), when juxtaposed to each other, would endorse the availability of a discretion in the Trial Magistrate to conduct a semblance of inquiry, if considered indispensable for proceeding with the complaint in accordance with law. This is more so, amongst others, as a complaint under Section 340 or Section 341 may be filed even without holding a preliminary inquiry into the facts, on which it appears to the complainant Court prima facie that an offence, as contemplated, had been committed and that it is expedient in the interests of justice that an inquiry should be made into such offence by a Magistrate. In the event of a complaint being made after a preliminary inquiry, in which sufficient materials are obtained

following which a complaint is filed, to reiterate, it may not be necessary for the Trial Magistrate to embark upon any further inquiry to complement the same. However, if no such preliminary inquiry is held and a complaint is filed, in the interest of justice and to obviate unwarranted prosecution, the Trial Magistrate may, to be satisfied, feel the necessity of some inquiry, summary though, to decide the next course of action in law. In other words, if the Trial Court on receipt of a complaint is satisfied that the materials on record are adequate enough, it shall, as per the mandate contained in Section 343(1), deal with the case as if instituted on a police report. On the other hand, if the complaint has been filed without a preliminary inquiry, in our estimate, having regard to the inbuilt flexibility in the text of Section 343(1), which cannot by any means be construed to be an unnecessary appendage or surplusage, introduced by the legislature, it would be open for the Trial Magistrate to hold a summary inquiry before proceeding further with the complaint. As in any

case, the cause of justice would be paramount, the mandate in Section 343(1) to the Trial Magistrate to deal with a complaint under Section 340 or Section 341 Cr.P.C. as a case instituted on a police report, if construed to be inexorably absolute, would tantamount to neutering the expression “as far as may be”, which is impermissible when judged on the touchstone of fundamental principles of justice, equity and good conscience as well as of interpretation of statutes. Though expectedly, a complaint under Section 340 or Section 341 Cr.P.C. would be founded on materials in support thereof and would also be preceded by a prima facie satisfaction of the complaining Court with regard to the commission of the offence and the expediency of an inquiry into the same in the interests of justice, the plea of unavoidable compulsion of a Trial Magistrate to treat the same, as a case as if instituted on a police report, by totally disregarding the necessity, even if felt, for further inquiry, does not commend acceptance. True it is that the text of Section 343(1) otherwise portrays a

predominant legislative intent of treating the complaint under Section 340 and Section 341 to be a case, as if instituted on a police report, the presence and purport of the expression “as far as may be” by no means can be totally ignored. This, in our estimate, acknowledges the discretion of the Trial Magistrate to obtain further materials by way of an inquiry even if summary in nature, if genuinely felt necessary in the interest of justice for generating the required satisfaction to proceed in the matter as ought to be in law. However, in exercising such discretion, the Trial Magistrate has to be cautiously conscious of the fact that the complaint pertains to an offence affecting the administration of justice and is preceded by a prima facie satisfaction of the complaining Court that the same might have been committed and that it was expedient in the interests of justice to inquire into the same. In other words, the discretion, as endowed to the Trial Magistrate under Section 343(1) has to be very sparingly exercised and only if it is genuinely felt that further materials are

required to be collected through an inquiry by him only to sub-serve the ends of justice and avoid unwarranted judicial proceedings. This is particularly as the Legislature, while designing Section 343(1) of the Code, was fully conscious of the distinction between cases instituted on police report and otherwise and had amended Section 476(2) of the 1898 Code with due deference to the recommendations of the Law Commission of India.

57. To recount, the Law Commission had in its recommendations, observed that the Court making the complaint under Section 476 (now under Section 340) may not make a thorough inquiry and the Trial Magistrate taking cognizance of the offence then might like to have more materials before issuing the process. It underlined that the nature of jurisdiction to be exercised by the Trial Magistrate under Sections 202 and 203 of the Code is always not similar to the nature of proceedings held by the complaining court under

Section 476 (now under Section 340) and therefore, the inquiry under Section 476 (now Section 340) being of a limited nature, may not in all eventualities, serve the purpose of "investigation" as contemplated in Section 202 of the Code.

58. We are thus of the firm opinion that a Trial Magistrate, on receipt of a complaint under Section 340 and/or Section 341 of the Code, if there is a preliminary inquiry and adequate materials in support of the considerations impelling action under the above provisions are available, would be required to treat such complaint to constitute a case, as if instituted on police report and proceed in accordance with law. However, in absence of any preliminary inquiry or adequate materials, it would be open for the Trial Magistrate, if he genuinely feels it necessary, in the interest of justice and to avoid unmerited prosecution to embark on a summary inquiry to collect further materials and then decide the future course of action as per law. In both the

eventualities, the Trial Magistrate has to be cautious, circumspect, rational, objective and further informed with the overwhelming caveat that the offence alleged is one affecting the administration of justice, requiring a responsible, uncompromising and committed approach to the issue referred to him for inquiry and trial, as the case may be. In no case, however, in the teeth of Section 343(1), the procedure prescribed for cases instituted otherwise than on police report would either be relevant or applicable qua the complaints under Section 340 and/or 341 of the Cr.P.C.

59. Reverting to the case in hand, the complaint was filed by the Trial Court stating that the respondent had committed an offence under Section 193 IPC, he having resorted to falsehood on oath at the trial in order to screen the accused from the crime and to enable him to escape punishment. The offence alleged is one included in Section 195(1)(b) of the Code and is otherwise, having regard to the punishment prescribed, to which, warrant

procedure would be applicable. In course of the arguments, it had transpired that the Trial Magistrate had examined the complainant and some other witnesses before framing charge against the respondent under the above provision of law. The High Court by the order impugned however, to reiterate, had sustained the plea of the respondent that as the complaint ought to have been construed to be a case otherwise than on police report to which warrant procedure was applicable, charge could not have been framed as the prosecution had not adduced all its evidence at that stage, as required under Section 244 of the Cr.P.C. Significantly, no challenge has been made to the legality and/or the validity of the order under Section 340 or the complaint on any ground. It has also not been asserted in the course of arguments that the evidence already recorded is not sufficient to frame a charge, as had been done by the Trial Magistrate.

60. In view of the determination as above, the approach of the High Court is wholly indefensible, as in the face of Section 343(1) of the Cr.P.C., the procedure prescribed for cases instituted otherwise than on police report is not attracted qua a complaint under Section 340 and/or Section 341 of the Code. Even assuming that the Trial Magistrate had examined few witnesses in support of the complaint, it was in the form of a summary inquiry, to be satisfied as to whether the materials on record would justify the framing of charge against the respondent or not and nothing further. Any other view would fly in the face of the ordainment of Section 343(1) of the Cr.P.C. and thus cannot receive judicial imprimatur. The impugned judgment of the High Court in quashing the charge framed by the Trial Magistrate and remanding the case to him to follow the procedure outlined for cases, instituted otherwise than on police report, under Chapter XIX-B is on the face of it unsustainable in law and on facts. It is thus set aside. The appeals are allowed. The Trial Magistrate

would proceed from the stage of framing of charge, strictly in compliance of the letter and spirit of the precept contained in Section 343(1) of the Code. We make it clear that we have not offered any observation on the merits of the charge and the Trial Court would further the proceedings in accordance with law.

.....J.
[ARUN MISHRA]

.....J.
[AMITAVA ROY]

NEW DELHI;
AUGUST 18, 2017.

ITEM NO.1501 COURT NO.11 SECTION II-A
For Judgment

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.)No(s).122-123/2016

(Arising out of impugned final judgment and order dated 05-03-2013 in CRLWP No. 113/2012 30-07-2015 in CRLMA No. 35/2015 30-07-2015 in CRLWP No. 113/2012 passed by the High Court Of Bombay At Goa)

THE STATE OF GOA Petitioner(s)

VERSUS

JOSE MARIA ALBERT VALES ALIAS ROBERT VALES Respondent(s)
(HEARD BY : HON. ARUN MISHRA AND HON. AMITAVA ROY, JJ.)

Date : 18-08-2017 These matters were called on for pronouncement of JUDGMENT today.

For Petitioner(s) Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Mr. Dileep Poolakot, Adv.
Ms. Niharika, Adv.
Ms. Kanika Kalaiyarasan, Adv.*
For K J John And Co, AOR

For Respondent(s) Mr. Trideep Pais, Adv.
Ms. Deeksha Gujral, Adv.
Mr. Gautam Narayan, AOR

Hon'ble Mr. Justice Amitava Roy pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Arun Mishra and His Lordship.

Leave granted.

Appeal is allowed in terms of signed Reportable Judgment.

Pending applications, if any, stand disposed of.

(B.PARVATHI) (TAPAN KUMAR CHAKRABORTY)
COURT MASTER (SH) BRANCH OFFICER
(Signed reportable judgment is placed on the file)