

between two or more plaintiffs will be governed by Order I, rule 1, Civil Procedure Code, subject to rules 2 and 11 of the same order. As the other plaintiffs have agreed in the lower Court to the Advocate-General having the conduct of these suits, the defendant will not be embarrassed nor will the trial be delayed by the procedure which the lower Court has adopted.

The revision petitions therefore fail and are dismissed with costs. (1 set for each petition.)

K.R.

AMBALAVANA  
PANDARA  
SANNADHIGAL  
v.  
THE  
ADVOCATE-  
GENERAL  
OF MADRAS.  
SPENCER, J.

---

## APPELLATE CRIMINAL.

*Before Mr. Justice Abdur Rahim and Mr. Justice Spencer.*

SUNDARASAN, PETITIONER (ACCUSED),

v.

KING-EMPEROR, RESPONDENT.\*

1919,  
July 16 and  
December 19.

---

*Criminal Procedure Code, section 190 (c)—District Magistrate receiving information of offence, as President of District Board—Right to take cognizance under section 190 (c).*

The fact that a District Magistrate, who happens to be also the President of a District Board, receives in the latter capacity information as to the commission of an offence by a servant of the Board, does not debar him from taking cognizance of the offence under section 190 (c) of the Criminal Procedure Code.

*Thakur Pershad Singh v. The Emperor, (1906) 10 C.W.N., 775, dissented from.*

CRIMINAL REVISION PETITION filed under sections 435 and 439 of the Criminal Procedure Code and section 107 of the Government of India Act, 1915, to revise the Order of P. MACQUEEN, District Magistrate of Coimbatore, dated 16th July 1919, taking cognizance of the offence of forgery alleged to have been committed by the accused.

The accused in this case was a clerk employed under the District Board of Coimbatore. A cheque for about Rs. 90 was issued by the Engineer of the District Board in favour of a contractor for work done. On a complaint by the contractor to the Engineer that he had not received payment for the work,

---

\* Criminal Revision Case No. 540 of 1919 (Criminal Revision Petition No. 459 of 1919).

SUNDARASAN  
v.  
KING-  
EMPEROR.

the Engineer instituted an inquiry, and found that the cheque was cashed by the accused at the Taluk Treasury on an endorsement in accused's favour, purporting to have been made by the contractor. The contractor having denied the endorsement, the Engineer reported the matter to the President of the District Board. The President happened to be the District Magistrate. He took cognizance of the offence under section 190 (c), Criminal Procedure Code, and forwarded it to the Deputy Superintendent of Police for investigation and report. The police thereupon filed a complaint before him as District Magistrate, and he transferred the case to the file of the Taluk Magistrate, Avanashi.

*S. Subrahmonya Ayyar* for petitioner.

*Public Prosecutor* for the Crown.

ABDUR  
RAHIM, J.

ABDUR RAHIM, J.—The District Magistrate of Coimbatore, who is also the President of the District Board, had information that a certain cheque had been forged and he has taken cognizance of the offence against the accused under section 190 (c), Criminal Procedure Code. It is argued that he had no such power. But I must admit it is difficult to find any basis for such an argument in face of the language of section 190 (c), which is to the effect that the District Magistrate may take cognizance of any offence 'upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.' There can be no doubt, upon the order recorded by the Magistrate, that he suspected that the accused had committed an offence of forgery and he has set out the facts which led him to that suspicion. Reliance has been placed in support of the petition upon several decisions of the Calcutta High Court, one of which is *Thakur Pershad Singh v. The Emperor*(1). There it is laid down, following two older decisions of the same Court [*In the matter of Surendranath Roy*(2) and *In the matter of Mohesh Chunder Banerjee*(3)], that a Magistrate taking cognizance of an offence is bound to disclose the information, private or otherwise, upon which he issues a warrant for the arrest of the accused. So far as that goes the information is set out in the order of the Magistrate in

(1) (1906) 10 C.W.N., 775.

(2) (1870) 5 Ben. L.R., 274.

(3) (1870) 13 W.R. Crl. Rulings (1).

this case. But it is further observed,

“there is nothing on the record to show that the information, whatever it may have been, which he received was not lodged to him as Collector; and if that were so, it was not open to him as Magistrate to act on that information and proceed to issue warrants against the petitioners. Practically by such action he is making himself a Judge in his own case, for the case seems to be that he with the other co proprietors granted a lease on certain terms to Chamroo Sahoo and that Chamroo has tampered with that lease.”

It is urged that here the information which Mr. MACQUEEN had derived from his position as the President of the District Board and that therefore he could not use that information in order to act under section 190 (c). With all respect to the learned Judges who decided *Thakur Pershad Singh v. The Emperor*(1), it is difficult to see wherefrom they obtained the limitation which they imposed upon section 190 (c), and I find that in a later ruling of the same Court, *Lakhi Narayan Ghose v. Emperor*(2), one of the learned Judges, Mr. Justice CAENDUFF, J., doubted the correctness of that ruling. It seems to me that when a District Magistrate is given such a wide power as to take cognizance of an offence on suspicion, it would be disregarding the express language of the legislature to lay down that he cannot act if his suspicion or knowledge is based on facts which came within his cognizance in another capacity. It may be that in some cases the exercise of such a power by Magistrates may cause considerable hardship and such a power may be liable to be harshly exercised. But we have nothing to do with that. Where certain powers are conferred on the Magistrates by the legislature it is no business of the Court to lay down limitations which are unwarranted by the language of the Code.

The petition therefore must be rejected, but the accused will remain on the same bail pending trial.

SPENCER, J.—I concur. I only wish to add that I agree with the opinion of Mr. Justice CAENDUFF in *Lakhi Narayan Ghose v. Emperor*(2) that the decision in *Thakur Pershad Singh v. The Emperor*(1) goes beyond the provisions of the Code and is not a decision which can be followed without question

SUNDARASAN  
v.  
KING-  
EMPEROR.  
—  
ABDUL  
RAHIM, J.

SPENCER, J.

(1) (1906) 10 C.W.N., 775.

(2) (1910) I.L.R., 37 Cal., 221.

SUNDARASAN  
 v.  
 KING-  
 EMPEROR.  
 SPENCER, J.

Another case, *Jhuna Lal Sahu v. The King-Emperor*(1), was quoted to us. But, as I understand that case, there was a complaint in writing, of which the Magistrate might have taken cognizance under section 190, sub-section (1) (a), and the learned Judges were of opinion that, having such a complaint before him, the Magistrate was not justified in taking cognizance of the same under section 190, sub-section (1) (c), as if it was a matter that had come to his knowledge from a source other than a complaint of facts constituting an offence, as 'complaint' is defined in the Code.

N.R.

---

## APPELLATE CIVIL.

*Before Mr. Justice Ayling and Mr. Justice Coutts Trotter.*

YELLA KRISHNAMMA (PLAINTIFF), APPELLANT,

*v.*

KOTTIPALLI MALI (DEFENDANT), RESPONDENT.\*

*Sale of land—Non-payment of price—Right of vendee to sue for possession—Decree for possession, whether can direct payment of price or be conditional on payment—Transfer of Property Act (IV of 1882), ss. 54 and 55.*

A vendee who has not paid the purchase money for the lands bought by him, is entitled to a decree against the vendor for possession of such lands. The Court cannot make the decree conditional on payment of the purchase money, nor can it decree payment of the price to defendant in the vendee's suit.

SECOND APPEAL against the decree of K. KRISHNAMA ACHARIYAR, Temporary Subordinate Judge of Coacanada, in Appeal Suit No. 120 of 1918, preferred against the decree of K. PURUSHOTTAM PANTULU GARU, District Munsif of Amalapuram, in Original Suit No. 943 of 1916.

The plaintiff sued to recover possession of the suit lands sold to him by the defendant under a registered sale-deed executed by the latter on 16th January 1913. The sale-deed recited that the vendor had already received the purchase money. The

---

(1) (1917) 2 Patna L.J., 657.

\* Second Appeal No. 499 of 1919.