

private purposes. I see no reason for this apprehension. The fact that payment has to be made for copies of judgments must by itself limit the applications to those persons who have a legitimate interest in the judgments required. If the fees for the copies are too small, they could no doubt be increased. While the right of the public to such copies must be recognized, and it is naturally of importance that demands for copies should be complied with as quickly as possible, there is nothing to prevent an officer in charge of such a department from regulating the work of his copying department in supplying copies asked for in such a way as not to interfere with the copyists' other work.

I am satisfied, whether on general principle or on a consideration of the existing statutes or of the rules prescribed by the High Court, that this reference must be accepted and the order of the learned District Magistrate set aside.

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Before Mr. Justice Kendall.

EMPEROR *v.* SOOBA AND OTHERS.*

Criminal Procedure Code, sections 167, 170, 173, 344—Detention of accused in police custody pending prolonged investigation—Remand of accused to custody—Powers of Magistrate regarding period of detention—Bail.

Under section 167 of the Criminal Procedure Code a Magistrate to whom an accused person is forwarded by the police may authorise the detention of the accused for a period not exceeding 15 days in the whole. But that does not mean that a police investigation can in no case involve the detention of the accused in custody for more than 15 days. Under section 344 the Magistrate may remand the accused to custody for a period not exceeding 15 days at a time, and no limit is set to the number of such orders of remand.

The two considerations that should influence the court in deciding whether a remand should be granted are (1) whether sufficient evidence has been obtained to raise a suspicion that the accused may have committed the offence and

*Criminal Revision No. 101 of 1931, from an order of Tej Narain Mulla, Sessions Judge of Allahabad, dated the 19th of January, 1931.

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it appears likely that further evidence may be obtained by a remand, and (2) whether the time asked by the police for the remand is, in the circumstances of the case, reasonable or not. So, where the accused in an alleged case of conspiracy for counterfeiting coin were released on bail, pending police investigation, by the Sessions Judge on the ground that the investigation was taking a long time and the accused might be in jail for seven months before they were put on their trial, but without giving due consideration to the extent and nature of the conspiracy and the difficulty of assembling the evidence, it was *held* that the order for bail was not based on judicially sound reasons and should be cancelled.

While forwarding the accused to a Magistrate for the purpose of obtaining a remand under section 344, it is not required that the report mentioned in section 173 shall also be forwarded at the same time. Section 170 implies a case where the investigation is not complete and therefore the accused is forwarded to a Magistrate for the purpose of a remand; while section 173 implies a case where the investigation has been completed and the accused is forwarded, together with the report or *chalan*, for the purpose of the magisterial inquiry or trial.

The Government Advocate (Mr. *Sankar Saran*), for the Crown.

Messrs. *A. Sanyal* and *Muhammad Husain*, for the opposite parties.

KENDALL, J. :—This is an application made on behalf of the Government for the revision of two orders of the learned Sessions Judge of Allahabad dated December 23, 1930 and January 19, 1931 releasing the opposite parties, who are in all seventeen in number, on bail. These persons have been arrested by the police in connection with alleged offences under sections 240, 241, 232, 235 and 120B of the Indian Penal Code, and in the affidavit filed on behalf of the Crown by the Deputy Superintendent of Police, C.I.D., it is stated that an organization extending over several provinces exists for the purpose of counterfeiting coin, and that the accused in the present case are charged with being members of this organization or conspiracy. The offences are not bailable, but I

am informed that the Magistrate to whom the accused were sent at first released some of them on bail, but when others made an application to the District Magistrate, he refused bail on the ground that the offences were non-bailable, and in consequence applications were made to the Sessions Judge on which he passed the orders which I am now asked to cancel. The first order was passed on the applications of Sooba and Mehardin (opposite party 1 and 2) who had then been in custody for 3 and 2½ months respectively, and the second application was made by 15 others, the dates of whose arrests are given in the order of the Sessions Judge. The latest of these dates is November 16, 1930.

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The Sessions Judge allowed the applications for bail on the general ground that the applicants had been in jail for a long time, and that by the time the investigation was completed they might easily have been in jail for seven months without being put on their trial; but in dealing with the earlier application he remarked that the only section which appeared to him to be applicable was section 167 of the Code of Criminal Procedure, as the case had not reached the stage of an "inquiry" as no evidence of any kind had been recorded by the Magistrate.

This question of procedure has been argued at considerable length before me, and it must be admitted that the law, as laid down in the Code of Criminal Procedure, is not altogether free from ambiguity. Under section 61 no police officer may detain in custody a person arrested without warrant for more than 24 hours in the absence of a special order of a Magistrate under section 167, and under section 167 a Magistrate to whom an accused person is forwarded by the police on the ground that it is believed that the accusation or information against him is well founded, may authorise the detention of the accused for a period "not exceeding 15 days in the whole." This is the section that the learned Sessions Judge considered

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to be applicable, at any rate in the case of the first application, but it is clear that if it does apply, the accused should have been released after 15 days from their arrest. It is in fact admitted on behalf of the Crown that if this section applies the present application for the revision of the Sessions Judge's order must fail.

In arguing the case for fifteen of the accused persons Mr. *Muhammad Husain* was at times, I think, inclined to suggest that a police investigation could in no case involve the detention of the accused in custody for more than fifteen days. The learned Government Advocate, however, relies on section 344, under which the court may postpone the commencement of or adjourn, any inquiry or trial for any reasonable cause and remand the accused to custody, and special attention has been directed to the Explanation to this section, which is: "If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand." There is in the section itself a provision that the Magistrate shall not remand an accused person to custody under this section for a term exceeding 15 days, but no limit is set to the number of such remands that may be ordered by the Magistrate.

Under section 4 of the Code of Criminal Procedure an "inquiry" is defined as including every inquiry other than a trial conducted under the Code by a Magistrate or court, and an "investigation" as including "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". Mr. *Muhammad Husain's* chief argument on the legal question was that if the police wished to detain the accused in custody after the fifteen days prescribed by section 167, they could only proceed by forwarding the accused under section 170 to a Magistrate

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empowered to take cognizance of the offence in cases where there was sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate; and that in this case they must, at the same time, forward a report as prescribed by section 173. Until this report has been forwarded to the Magistrate empowered to take cognizance of the offence, it is argued, the Magistrate cannot take cognizance of the offence under clause (b) of section 190(1), nor can he remand the accused to custody under section 344.

This argument, at any rate as regards the Magistrate's power to order a remand under section 344 without receiving a report under section 173, appears to me to be fallacious. The report under section 173 is to be forwarded as soon as the "investigation" is completed. If, however, it has not been completed, what is the position? According to Mr. *Muhammad Husain's* argument the accused must be released, if the investigation has not been completed and the report forwarded within 15 days from the date of arrest. What room is there then for the operation of section 344, under which a court may postpone the commencement of the Magisterial inquiry in order that further evidence may be obtained by a remand? Section 170, to which reference has already been made, enables an officer in charge of a police station, if there is at least a reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, to forward him under custody to a Magistrate empowered to take cognizance of the offence upon a police report. The section does not direct that the report prescribed by section 173 shall be forwarded at the same time, though it is argued that this implication must be read into section 170. The meaning of the two sections read together seems to me to be definitely different from this interpretation. Section 170 implies a case where the investigation is not complete, but where there is "reasonable ground of

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suspicion to justify the forwarding of the accused" to a Magistrate. If the investigation has been completed and the report or *chalan*, as it is commonly called, has been prepared, the accused is forwarded because the case is ready for the magisterial inquiry or trial, and not because there is merely "reasonable ground of suspicion to justify the forwarding of the accused" to the Magistrate empowered to take cognizance of the offence. If the investigation is not complete and the report is not ready, but the accused may be forwarded on reasonable ground of suspicion, for what purpose is he forwarded? Clearly I think for the purpose set forth in section 344, that the court may remand the accused to custody if it considers that there are reasonable grounds for doing so.

A number of decisions were quoted by Mr. *Muhammad Husain* in support of his argument and I have examined them, but apart from one or two *obiter dicta* they contain little or nothing to help him. The most important of these are the cases of *Queen-Empress v. Engadu* (1), *In re Krishnaji Pandurang Jolekar* (2), and *Nagendra Nath Chakravarti v. Emperor* (3).

It has, however, been argued that even if the above reasoning is correct and section 344 might apply, yet in the present case the accused were actually forwarded under section 167. That there is some doubt on this point appears from the earlier order of the Sessions Judge, who held that section 167 was the only section that was applicable. Mr. *Muhammad Husain* points out that the Magistrate did originally release the accused on bail, and that the number of remands shows that the police must have been acting under section 167 and not section 344.

Whether this be so or not, however, and whether or no section 167 has been quoted in some of the papers, I agree with the learned Government Advocate that the

(1) (1887) I.L.R., 11 Mad., 98.

(2) (1897) I.L.R., 23 Bom. 32.

(3) (1923) 81 Indian Cases, 220.

matter must be settled on broader grounds than this. If section 344 is really applicable to the case, then it seems to me that it is the duty of the Magistrate and of the Judge to apply that section and to be guided by the considerations laid down therein and by no others.

In his second order, at any rate, the learned Sessions Judge has made it clear that he would have ordered the release of the accused on bail for reasons which would have had force under section 344, Criminal Procedure Code, namely that the accused had been detained in custody for some weeks or even months and that the investigation might continue for two months more. Now under section 344 the court may "postpone or adjourn the inquiry or trial for such time as it considers reasonable" and no limit is set to the total period of a series of orders of remand, provided that no single order shall be for a period exceeding 15 days. The Magistrate has a wide discretion, and provided that he is satisfied that sufficient evidence has been obtained to raise a suspicion that the accused may have committed the offence and it appears likely that further evidence may be obtained by a remand, he undoubtedly has the power to order one. In the present instance the Magistrate may have considered the individual cases of different accused, but, if so, this has not been shown to me; and the Sessions Judge has dealt with the accused in a body and released them merely on the general ground that the investigation has continued for a long period and may still go on for some months longer. The Sessions Judge's order carries with it the implication that in no case are accused persons to be detained in custody during a police investigation for as long as seven months. It has, however, been stated in the affidavit on behalf of the Crown that there is a conspiracy in which sixty-six people are involved, of whom 56 have already been arrested, that the conspiracy extends over four provinces, that witnesses have to be summoned from all of them,

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many of them from long distances etc., and that there appear therefore to be adequate reasons for a prolonged investigation. In these circumstances it is very difficult for the court to set down a definite time limit. Mr. *Muhammad Husain* has referred to the case of *Narendra Lal Khan v. Emperor* (1), where the High Court held that there had been unreasonable delay as regards the prisoner who had been in custody for about six weeks, though not in the case of those who had been in jail for three weeks. That appears to have been a case in which the accused were said to belong to a secret society in Calcutta, and the various circumstances that make for the delay in the present case may not have been present. After remarking that an investigation lasting for three weeks or so was not unusual their Lordships remarked: "In the case of offences under section 400 of the Indian Penal Code, which, so far as the difficulty of investigation goes, bear some analogy to the present case, which appears to be based to some extent on evidence of association, the period is usually far greater." It has not been suggested in the present case that the police are purposely delaying proceedings nor has the Sessions Judge come to a finding that the period occupied by the police under investigation is unreasonably long in the circumstances of the case.

On the other hand reasons are given in the affidavit for the Crown to show that it would be against the public interest to release the accused on bail. It is said that they will tamper with the prosecution evidence which consists mostly of their employees, associates, landlords and friends of the accused; that the accused are professional criminals and very desperate; that one of the absconders has recently stabbed four persons to death; that some who are wanted in the case are absconding, and that others will abscond if they are

(1) (1908) I.L.R., 36 Cal., 168 (171).

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released. Some of these allegations are of a general nature. The case however is one of conspiracy. It has been proved by an affidavit, which must be held to be sufficient for the purpose of the present proceedings, that such a conspiracy exists. If it is also proved by sufficient evidence that there is a suspicion that the accused are members of that conspiracy, then, in my opinion, the Magistrate is justified in keeping them in custody for a period that appears to him to be reasonable. There may be distinctions and differences between individual accused, for instance, Mr. *Sanyal*, who appeared on behalf of two of them, has pointed out that they are Hindus and residents of Allahabad, whereas the majority of the accused are Muhammadans from the Punjab. But in considering whether the period is reasonable it is necessary to give due weight to the sworn allegations as to the extent and nature of the conspiracy and the difficulty of assembling the evidence.

The last argument that has been adduced on behalf of the accused is that the Sessions Judge had a discretion to release the accused on bail, and this Court should only interfere with the discretion in exceptional circumstances. If the Sessions Judge has, on a consideration of the circumstances of individual accused, found that they ought to be released, this argument would I think have prevailed. What he has done, however, is to release two of the accused because he believed that section 167 applied to the proceedings, and others because they had been in jail for a period of several weeks or months. In my opinion these reasons are not judicially sound. The section that ought to be applied to the case is section 344, and the two considerations that should influence the Court in deciding whether a remand should be granted are: (1) Whether sufficient evidence has been obtained to raise a suspicion that the accused may have committed the offence and it appears likely that further evidence may be obtained by a remand; and (2)

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whether the time asked by the police for the remand is, in the circumstances of the case, reasonable or not. The reasons given for releasing the accused on bail are (1) that section 167 of the Criminal Procedure Code applies to the case and (2) that the accused may be in jail for seven months before they are put on their trial. The first of these reasons appears to be wrong; the second is not really sufficient.

I therefore accept the application made on behalf of the Crown and cancel the order of the learned Sessions Judge. The Magistrate will have to consider, in the light of the above remarks, the cases of the accused individually when and if a further application is made for a further remand.

APPELLATE CIVIL.

Before Mr. Justice Pullan and Mr. Justice Niamat-ullah.

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RAM CHARITTER MISIR (DEFENDANT) v. SIRAJ TELI
(PLAINTIFF)*

Guardians and Wards Act (VIII of 1890), section 30—Sale of minor's property by certificated guardian—Permission to sell obtained by fraud—Sale voidable, not void—Suit by minor to recover property—Limitation Act (IX of 1908), articles 44, 144—Plea of limitation raised in first court but abandoned in appeal and raised again in second appeal—Practice and pleading.

A certificated guardian of a minor fraudulently obtained the permission of the District Judge to sell the minor's property by misrepresenting that the transaction was a mortgage. The minor brought a suit to recover possession of the property, more than three years after the attainment of majority.
Held—

According to section 30 of the Guardians and Wards Act a transfer made by a certificated guardian without the permission of the District Judge is voidable. If the permission of

*Second Appeal No. 1072 of 1928, from a decree of Shiva Harakh Lal, Additional Subordinate Judge of Ballia, dated the 13th of April, 1928, confirming a decree of Zillur Rahman, Munsif of Ballia, dated the 22nd of August, 1927.