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SINGH-  
SOHAN SINGH  
v.

SIRI GOPAL.

TEK CHAND J.

acknowledgement made, or debt raised, by one of the quondam partners does not bind the other. See also to the same effect *Ganda Singh v. Bhag Singh-Bhagwan Singh* (1).

The result, therefore, is that on the findings of fact arrived at by the learned District Judge, Siri Gopal is not liable on the *hundi*.

The appeal fails and is dismissed. As the learned District Judge was not quite correct in some of the propositions of law which he had laid down, I leave the parties to bear their own costs in this Court.

N. F. E.

*Appeal dismissed.*

### REVISIONAL CRIMINAL.

*Before Abdul Qadir and Monroe JJ.*

RASHID AHMAD AND ANOTHER (ACCUSED)

Petitioners

*versus*

THE CROWN—Respondent.

Criminal Revision No. 1503 of 1931.

*Criminal Procedure Code, Act V of 1898, sections 156, 202: Cognisable offence—Complaint to Magistrate—who ordered police enquiry—Police instead of submitting a report, challenging the accused—whether competent to do so.*

A private complaint under section 420, Indian Penal Code, was sent to the Police by the Magistrate under section 202 of the Criminal Procedure Code, for investigation and report, in the following terms:—"The offence is a cognizable one; hence let this complaint be sent to the Inspector, Police in charge of the Kotwali, Delhi, for making investigation." The complaint was entered by the Police in the register and was placed before the Magistrate with a complete *chalan* under which the Magistrate proceeded to try the case and, after

hearing evidence for the prosecution, to formulate a charge against the accused under section 420 of the Penal Code. On revision it was contended that if a Magistrate is seized of a case and sends for a report under section 202, Criminal Procedure Code, the powers of the police under section 156, Criminal Procedure Code, are ousted.

*Held*, that the function of investigating cognizable cases has been conferred on the police in most general terms by the Code. No power is given to Magistrates to restrain the police in their investigation, but the Magistrate is given power to obtain their assistance in having investigations made either under section 156 (3) or section 202. The powers given to the police by the former section are not affected when an order to investigate under section 202 is made: and though it is not open to the Magistrate when a complaint has been made to him, to direct the police to make a charge in the same case, it is open to the police to do so, if they think proper.

*Nurnahomed Rajmahomed v. Emperor* (1), dissented from.

*Isaf Nasya v. Emperor* (2), distinguished.

*Case reported by Mr. E. R. Anderson, Sessions Judge, Delhi, with his No. 1291 of 16th December, 1931.*

FYAZ HUSSAIN SHAH, for Petitioners.

C. H. GARDEN-NOAD, Government Advocate, for Respondent.

*Report of the Sessions Judge.*

The facts of this case are as follows:—

A private complaint under section 420, Indian Penal Code, having been filed in Court against the accused Hafiz-ud-Din and Rashid Ahmad, the Magistrate sent the complaint under section 202, Criminal Procedure Code, for investigation and report to the Police. Instead of submitting a report, the Police

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after making an enquiry drew up a charge sheet and challaned both the accused. The Magistrate has taken proceedings on this chalan, and the accused have come up on the revision side to have the proceedings quashed.

The proceedings are forwarded to the High Court with a recommendation that the proceedings be quashed on the authority of *Nurmahomed Rajmahomed v. Emperor* (1), where it was held that, when a Magistrate has referred a complaint for investigation under section 202, the Police are not entitled after investigation to send up the accused for trial under a charge sheet, as if they had taken cognizance of the case under their ordinary powers of investigation. The only action they can take is to make a report to the Magistrate. In *Isaf Nasya v. Emperor* (2), it was held that when a Magistrate takes cognizance of a complaint under section 191-A and examines the complainant under section 200 and orders a police enquiry under section 202 it is for him to pass the necessary order on the Police Report either under section 203 or 204. His order directing the police to submit a charge sheet to some other Magistrate is without jurisdiction. I have not been referred to any decision of the Lahore High Court on this point, and as it seems necessary that there should be a ruling by the Lahore High Court on this very important question, I submit the case to the High Court for orders.

## ORDER OF THE HIGH COURT.

MONROE J.

MONROE J.—This petition has been referred to a Division Bench by order of the Chief Justice who has stated the question for determination to be “whether, when a Magistrate has taken cognizance of an offence

(1) 1929 A. I. R. (Bom.) 72.

(2) 1928 A. I. R. (Cal.) 24.

on a complaint made to him and has directed an investigation to be made by a police officer, the police are entitled, after investigation, to send up the case for trial under a charge sheet, as if they had taken cognizance of it under their ordinary powers of investigation."

The matter has been argued before us by Mr. Fayaz Hussain Shah for the petitioner and Mr. Carden-Noad, Government Advocate, for the Crown.

A private complaint under section 420, Indian Penal Code, was filed in Court by Bihari Lal against the accused Hafiz-ud-Din and Rashid Ahmad and others: the Magistrate sent the complaint under section 202, Criminal Procedure Code, for investigation and report to the police in the following terms:—  
 "The offence is a cognizable one: hence let this complaint be sent to the Inspector Police in charge of the Kotwali, Delhi, for making investigation and report. The report to come up on the 8th May 1931." A report was made by the Inspector, dated 12th May 1931, in the following terms:—In compliance with your order, the complaint in case No. 172 under section 420, Indian Penal Code, was entered in the register and the complete chalan is being put up herewith. The Magistrate then proceeded with the case under the police chalan and on the 15th August 1931 after hearing evidence for the prosecution formulated a charge against the accused under section 420, Indian Penal Code. The object of the present application is to stop the pending trial on the ground, as stated by the learned counsel for the accused, that if a Magistrate is seized of a case and sends for a report under section 202, Criminal Procedure Code, the powers of the police under section 156, Criminal Procedure

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Code, are ousted and he relies on *Isaf Nasya v. Emperor* (1) and *Nurmahomed Rajmahomed v. Emperor* (2), as authorities for his proposition. Mr. Carden-Noad contends that the police powers under section 156 are independent of magisterial powers; and that the first of the cases cited on which the judgments in the second rely does not support the proposition laid down by the learned counsel for the petitioners. In section 156, Criminal Procedure Code, the power of investigation is given to the police in cognizable cases without fetter or condition. The suggested restriction on their powers is not expressed, nor is there anything in section 202, Criminal Procedure Code, to indicate the suspension of the powers of the police by the receipt by a Magistrate of a private complaint. There is, therefore, no express prohibition of the course adopted in the present case. The learned counsel for the petitioner suggests that because inconvenience might arise from the co-existence of a complaint and chalan in the same case, we ought to hold that the course adopted is impliedly prohibited. He has not cited any authority for so bold an interpretation of a statute, unless the decisions referred to above support his argument. In the first case cited *Isaf Nasya v. Emperor* (1), the point involved in the present case was not discussed; what was brought before the Court in revision in that case was the order of a Magistrate under section 202: Mr. Justice Duval in his judgment said: "in giving that order he did not observe that it was for him to pass the necessary order on the police report either under section 203 or section 204. His order, therefore, directing the police, if they found the case to be established, to submit a charge sheet to the Magistrate concerned (in

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(1) (1927) I. L. R. 54 Cal. 303: 1928 A. I. R. (Cal.) 24. (2) 1929 A. I. R. (Bom.) 72.

this case the Sub-Divisional Officer of Nilphamari) appears to us to have been without jurisdiction," and "the whole of the proceedings of the Sub-Divisional Officer, Nilphamari, accepting the charge sheet and proceeding with the case without any order by the District Magistrate under section 204 of the Criminal Procedure Code, or any order of transfer of the case to him under section 192 are without jurisdiction."

From the first extract quoted it will be seen that the whole basis of the complaint was that the proceedings were taken in pursuance of an order of the Magistrate purporting to be made under section 202 but incapable of justification under that section: and if the original order was bad, it was held to follow that the future proceedings based on it were vitiated; but the independent powers of the police were not discussed and it is not a necessary inference from the decision that if the police had acted on their own responsibility and not on a bad order of the Magistrate, their action could have been questioned. In the second case *Nur-mahomed Rajmahomed v. Emperor* (1), the proposition of the learned counsel for the petitioners was expressly laid down—namely, that after an order under section 202, sending a case to the police for investigation, the police had no power to send up the accused for trial on a charge sheet. The authority cited for this proposition is *Isaf Nasya v. Emperor* (2) (*supra*) and the judgments show no further reasons for the decision. This case is, therefore, a direct authority in favour of the petitioners but it is not supported by the earlier case from Calcutta on which it purports to be based. The function of investigating cognizable cases has been conferred on the police in most general terms

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(1) 1929 A. I. R. (Bom.) 72.

(2) (1927) I. L. R. 54 Cal. 303;  
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by the Code. No power is given to Magistrates to restrain the police in their investigation, but the Magistrate is given power to obtain their assistance in having investigations made either under section 156 (3) or section 202. It is difficult to see how it can be imputed to the Legislature that by conferring the latter power it meant by implication to limit the general power of the police already given by the Code.

In my opinion *Nurmahomed Rajmahomed v. Emperor* (1), was wrongly decided by reason of the misinterpretation of the decision in *Isaf Nasya v. Emperor* (2). I think that the powers given to the police by section 156 are not affected when an order to investigate under section 202 is made: and though it is not open to the Magistrate when a complaint has been made to him, to direct the police to make a charge in the same case, it is open to the police to do so, if they think proper. If the decision in *Isaf Nasya v. Emperor* (2), has been correctly interpreted as laying down the contrary (with which interpretation, as I have said, I do not agree), then I think with all respect to the eminent judges who decided it that that decision would be difficult to justify and I am not, therefore, inclined to follow it.

Mr. Carden-Noad has also argued that even if the procedure adopted in this case is wrong then by reason of section 529 of the Code, this Court ought not now to interfere with these proceedings. That section provides (*inter alia*) that if any Magistrate not empowered by law to take cognizance of an offence under section 190, sub-section (1), clause (b), erroneously in good faith does so, his proceedings shall not be set aside merely on the ground of his not being so empowered.

(1) 1929 A. I. R. (Bom.) 72.

(2) (1927) I. L. R. 54 Cal. 303 :  
 1928 A. I. R. (Cal.) 24.

In the view that I have taken of this case, it has become unnecessary to consider the result of this argument.

For the reasons given above I would refuse this application.

ABDUL QADIR J.—I agree.

N. F. E.

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ABDUL QADIR.

*Revision dismissed.*

**MISCELLANEOUS CRIMINAL.**

*Before Tek Chand J.*

SHAMSHAD ALI KHAN (COMPLAINANT)

Petitioner

*versus*

MOHAMMAD AMIN KHAN AND OTHERS (ACCUSED)

Respondents.

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July 27.

**Criminal Miscellaneous No. 130 of 1932.**

*Criminal Procedure Code, Act V of 1898, section 526: Transfer of case—Magistrate recording complainant's evidence at 9 o'clock at night—in contravention of High Court circular letter No. 2167-G., dated the 2nd April 1924.*

*Held, that the examination of witnesses for the complainant after 9 o'clock at night in contravention of the directions of the High Court, as contained in its circular letter No. 2167-G., dated the 2nd April 1924, is a sufficient ground for the transfer of the case.*

*Mst. Daya Wanti v. Bita Nand (1), referred to.*

*Petition under section 526, Criminal Procedure Code, for transfer of the case from the Court of Chaudhri Mohammad Anwar Khan, Magistrate, 1st class, Rohtak, to some other Court of competent jurisdiction.*