

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 695 of 2007
CRAN 1 of 2019

ARUMOI BASU THAKUR
VS.
THE STATE OF WEST BENGAL

For the Petitioner : Mr. Jayanta Narayan Chatterjee, Adv.
Mr. Supreen Naskar, Adv.
Ms. Sreeparna Ghosh, Adv.
Ms. Pritha Sinha, Adv.

For the State : Mr. S.G. Mukhopadhyay, Id. P.P.
Mr. Sandip Chakraborty, Adv.

Hearing concluded on : 29th March, 2023

Judgement on : 13th April, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 the Criminal Procedure Code, 1973 challenges the proceeding of Special Case No. 3 of 1998 in connection with the Park Street Police Station Case No. K/DD/72 dated 2nd February, 1995 under section 120B/420/467/468/471 of the I.P.C. The investigation culminated into submission of charge sheet under Section 120B/420/467/468/471 of the I.P.C. read with Section 13(1)(d)(ii) of the Prevention of Corruption Act is pending before the learned Special Judge 5th Court, Calcutta together with all orders passed therein including the order dated 30th October 2006.

2. Briefly stated, Ms. M.V. Suprabha Menon, Manager (Marketing) and Branch Manager of Rashtriya Ispat Nigam Limited (a Government of India enterprise), Visakhapatnam Steel Plant of 1, AJC Bose Road Calcutta-700020 informed the Officer-in-charge of Park Street Police Station in writing that Gopal Bajoria, Director of M/s Shiva Wire and Steel Products Ltd. lifted different types of materials from Rashtriya Ispat Nigam Limited against credit between May 1994 and October 1994. A sum of Rs. 80,00,000/- was lying outstanding from M/s Shiva Wire and Steel Products Ltd. As a security for credit, Gopal Bajoria, had submitted bank guarantee vide No. 6/93 dated 18th February 1994 for a sum of Rs. 65,00,000/-. Such bank guarantee was issued by State Bank of India, Lilua Branch, Howrah. Gopal Bajoria also issued cheques amounting to Rs. 6,00,000/- in favour of Rashtriya Ispat Nigam Limited but those cheques were dishonoured by the banker of the drawer of the cheque.
3. As the information disclosed offence cognizable in nature, Park Street P.S. Case No. 72 dated 7th February, 1995 was registered. Police took up investigation and submitted charge sheet against Gopal Bajoria, M/s Shiva Wire Steel Products Ltd., Arumoy Basu Thakur and Sanjay Agarwal of Rashtriya Ispat Nigam Limited under Section 120B/420/467/468/471 of the I.P.C. read with Section 13(1)(d)(ii) of the Prevention of Corruption Act. Major part of investigation was done by officer below the rank of Assistant Commissioner, however, charge sheet was filed by the Assistant Commissioner.

4. Learned Trial Court took cognizance of the offence. Accused Arumoy Basu filed an application seeking discharge on the ground that the investigation was not conducted following the statutory mandate of Section 17 of the Prevention of Corruption Act which vitiates the investigation as well as the proceeding. Learned Trial Court however, by order dated 30th October 2006 was pleased to reject the application.
5. Mr Jayanta Narayan Chattejee, learned Counsel appearing for the petitioner, drawing the Court's attention to the provision of Section 17 of the Prevention of Corruption Act submits that when statute mandates that no police officer below the rank of an Assistant Commissioner of Police shall investigate any offence under the Prevention of Corruption Act in the metropolitan areas of Calcutta, there cannot be any departure from such statutory mandate. The departure from the statutory mandate would result into utter illegality, and is bound to vitiate the entire proceeding. According to Mr. Chatterjee, learned Trial Court ought to have appreciated this mandate of law and ought to have discharged the accused person from the proceeding.
6. It is further adverted by Mr. Chatterjee that with a specific object legislature has enacted the provision of Section 17 of the Prevention of Corruption Act to provide a safeguard to the public servant and for that, considered it necessary to provide a substituted safeguard from harassment by requiring the investigation be conducted by a Police Officer of designated high rank and for this reason the said provision shall have to be considered as mandatory. Mr. Chatterjee in order to

buttress his point relies upon the decision of Hon'ble Apex Court pronounced in the case of **H. N. RISHBUD AND INDER SINGH VS. STATE OF DELHI** reported in **AIR 1955 SC 196**. It was held by Hon'ble Apex Court:-

"6. It is in the light of this scheme of the Code that the scope of a provision like section 5(4) of the Act has to be judged. When such a statutory provision enjoins that the investigation shall be made by a police officer of not less than a certain rank, unless specifically empowered by a Magistrate in that behalf, notwithstanding anything to the contrary in the Code of Criminal Procedure, it is clearly implicit therein that the investigation (in the absence of such permission) should be conducted by the officer of the appropriate rank. This is not to say that every one of the steps in the investigation has to be done by him in person or that he cannot take the assistance of deputies to the extent permitted by the Code to an officer in charge of a police station conducting an investigation or that he is bound to go through each of these steps in every case. When the Legislature has enacted in emphatic terms such a provision it is clear that it had a definite policy behind it. To appreciate that policy it is relevant to observe that under the Code of Criminal Procedure most of the offences relating to public servants as such, are non-cognizable. A cursory perusal of Schedule II of the Code of Criminal Procedure discloses that almost all the offences which may be alleged to have been committed by a public servant, fall within two chapters, Chapter IX "Offences by, or relating to, public servants", and Chapter XI "Offences against public justice" and that each one of them is non-cognizable. (Vide entries in Schedule II under sections 161 to 169, 217 to 233, 225-A as also 128 and 129). The underlying policy in making these offences by public servants non-cognizable appears to be that public servants who have

to discharge their functions- often enough in difficult circumstances should not be exposed to the harassment of investigation against them on information levelled, possibly, by persons affected by their official acts, unless a Magistrate is satisfied that an investigation is called for, and on such satisfaction authorises the same. This is meant to ensure the diligent discharge of their official functions by public servants, without fear or favour. When, therefore, the Legislature thought fit to remove the protection from the public servants, in so far as it relates to the investigation of the offences of corruption comprised in the Act, by making them cognizable, it may be presumed that it was considered necessary to provide a substituted safeguard from undue harassment by requiring that the investigation is to be conducted normally by a police officer of a designated high rank. Having regard therefore to the peremptory language of sub-section (4) of [section 5](#) of the Act as well as to the policy apparently underlying it is reasonably clear that the said provision must be taken to be mandatory.”

7. In **STATE OF MADHYA PRADESH VS. MUBARAK ALI** reported in **AIR 1959 SC 707** Hon’ble Apex Court held:-

“[Section 3](#) (as it stood before the [Prevention of Corruption \(Amendment\) Act, 1955](#) (50 of 1955):

"An offence punishable under [section 161](#) or [section 165](#) or [section 165A](#) of the Indian Penal Code (Act 45 of 1860) shall be deemed to be a cognizable offence for the purposes [of the Code](#) of Criminal Procedure, 1898 (Act 5 of 1898), notwithstanding anything to the contrary contained therein.

4. (1) Where in any trial of an offence punishable under [section 161](#) or [section 165](#) of the Indian Penal Code (Act 45 of 1860), it is proved that an accused person has accepted or obtained, or has agreed to

accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said [section 161](#), or, as the case may be, without consideration or for a consideration which he knows to be inadequate.”

The Act was passed, as the preamble indicates, to make more effective provisions for the prevention of bribery and corruption among public servants. It introduced a definition of the offence of criminal misconduct in discharging an official duty and new rules of presumption against accused in the case of the said offence. But in the year 1952, by Act 59 of 1952, presumably on the basis of the experience gained, [s. 5A](#) was inserted in the Act to protect the public servants against harassment and victimization. If it was in the interest of the public that corruption should be eradicated, it was equally in the interest of the public that honest public servants should be able to discharge their duties free from false, frivolous and malicious accusations. To achieve this object, [ss. 5A and 6](#) introduced the following two safeguards: (1) no police officer below the rank-(a) in the presidency towns of Madras and Calcutta, of an assistant commissioner of police, (b) in the presidency town of Bombay, of a superintendent of police and (c) elsewhere, of a deputy superintendent of police, shall investigate any offence punishable under [s. 161](#), [s. 165](#) or [s. 165A](#) of the Indian Penal Code or under sub-s. (2) of [s. 5](#) of the Act, without the order of a presidency magistrate or a magistrate of the first class, as the case may be, or make any arrest therefor without a warrant-see [s. 5A](#); (2) no court shall take

cognizance of an offence punishable under [s. 161](#) or [s. 164](#) or [s. 165](#) of the Indian Penal Code or under [s. 5\(2\)](#) of the Act, alleged to have been committed by a public servant, except with the previous sanction, of the appropriate Government see [s. 6](#). These statutory safeguards must be strictly complied with, for they were conceived in public interests and were provided as a against frivolous and vexatious prosecutions. While in the case of an officer of assured status and rank, the legislature was prepared to believe them implicitly, it prescribed an additional guarantee in the case of police officers below that rank, namely, the previous order of a presidency magistrate or a magistrate of the first class, as the case may be. The magistrate's status gives assurance to the bonafide⁸ of the investigation. In such circumstances, it is self-evident that a magistrate cannot surrender his discretion to a police officer, but must exercise it having regard to the relevant material made available to him at that stage. He must also be satisfied that there is sufficient reason, owing to the exigencies of administrative convenience, to entrust a subordinate officer with the investigation. This Court in [H. N. Rishbud and Inder Singh v. The State of Delhi](#) (1) emphasised the necessity to adhere strictly to the provisions of [s. 5A](#) of the Act. Jagannadhadas, J., who delivered the judgment of the Court, observed at p. 1159:

"When, therefore, the Legislature thought fit to remove the protection from the public servants, in so far as it relates to the investigation of the offences of corruption comprised in the Act, by making them cognisable, it may be presumed that it was considered necessary to provide a substituted safeguard from undue harassment by requiring that the investigation is to be conducted normally by a police officer of a designated high rank. Having regard therefore to the peremptory language of subsection (4) of [section 5](#) of the Act as

well as to the policy apparently underlying it, it is reasonably clear that the said provision must be taken to be mandatory.”

After adverting to the argument advanced on behalf of the State, learned Judge closed the discussion thus at p. 1162:

"We are, therefore clear in our opinion that [section 5\(4\)](#) and [provisoto section 3](#) of the Act and the corresponding section 5-A of Act LIX of 1952 are mandatory and not directory and that the investigation conducted in violation thereof bears the stamp of illegality.”

This Court again considered the scope of [s. 6](#) of the Act in [Biswabhusan Naik v. The State of Orissa](#) (1). One of the questions raised there was that the sanction given by the Government was invalid. In rejecting that contention Bose, J., observed at p. 95 :

"The judgment of the Judicial Committee relates to clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943, but the principles apply here. It is no more necessary for the sanction under the [Prevention of Corruption Act](#) to be in any particular form, or in writing or for it to set out the facts in respect of which it is given than it was under clause 23 of the Order which their Lordships were considering. The desirability of such a course is obvious because when the facts are not set out in the sanction proof has to be given aliunde that sanction was given in respect of the facts constituting the offence charged, but an omission to do so is not fatal so long as the facts can be, and are provided in some other way ”.

While the former decision emphasises the importance of the protection given by the Act to public servants against harassment, the latter decision points out the desirability of giving all the necessary facts in an order giving sanction-the

same applies to an order of a Magistrate-and also the necessity of proof aliunde of the said facts in case the facts are not disclosed in the sanction. Applying the said two principles, we must hold that in a case where an officer other than the designated officer, seeks to make an investigation, he should get, the order of a Magistrate empowering him to do so before he proceeds to investigate and it is desirable that the order giving the permission should ordinarily, on the face of it, disclose the reasons for giving the permission. For one reason or other, if the said salutary practice is not adopted in a particular case, it is the duty of the prosecution to establish, if that fact is denied, that the Magistrate in fact has taken into consideration the relevant circumstances before granting the permission to a subordinate police officer to investigate the case.”

8. In **UNION OF INDIA & ORS. VS. T. NATHAMUNI** reported in **(2014) 16 SCC 285** Hon’ble Apex Court held:-

“12. It is clear that in the case of investigation under the [Delhi Special Police Establishment Act](#), an officer below the rank of Inspector cannot investigate without the order of a competent Magistrate. In the present case, order of the Special Judge was obtained by filing an application. That order dated 24.9.2009 shows that it was passed on request and in the interest of justice, investigation pursuant to such order did not suffer from want of jurisdiction and hence, in the facts of the case, the High Court erred in law in interfering with such investigation more so when it was already completed.”

9. According to Mr. Chatterjee, the Prevention of Corruption Act was passed, as the preamble indicates, to take more effective provisions for the prevention of bribery and corruption among public servants. If it was in the interest of the public that corruption should be

eradicated, it was equally in the interest of the public that honest public servants should be allowed to discharge their duties free from false, frivolous and malicious acquisition. It is with such object, statute mandates that no police officer below the rank of Assistant Commissioner of Police shall investigate into the offence under the Prevention of Corruption Act, if it is committed within the presidency town of Calcutta. When statute mandates that the investigation should be conducted by an officer in the rank of Assistant Commissioner of Police, it has to be conducted by the police officer holding the post of Assistant Commissioner and not by any officer subordinate to him. In this particular case the investigation was completed by the Sub-Inspector of Police. Arrest, seizure, examination of witnesses and the recording of their statement under Section 161 of the Code of Criminal Procedure, everything was conducted by that officer, only the report in the final form was signed by the Assistant Commissioner of Police. Such an action cannot be held to have satisfied the statutory requirement. Therefore, according to Mr. Chatterjee, non-compliance of the provision of Section 17 of the Prevention of Corruption Act will have fatal impact on the criminal proceeding itself. Mr. Chatterjee submits that this is a fit case where provision of section 482 of the Code of Criminal Procedure should be invoked to set aside the impugned order as well as to quash the proceeding.

10. Refuting such contention of Mr. Chatterjee, learned Public Prosecutor Mr. S.G. Mukhopadhyay submits that the case was registered on the basis of the information received by the police under

Section 154 of the Code of Criminal Procedure. The complicity of the public servants did not transpire at that point of time. The moment, the complicity of public servants came to the fore, prosecution took appropriate steps in compliance with the statutory mandate as laid down under Section 17 of the Prevention of Corruption Act. The investigation was concluded and report under Section 173 of the Code of Criminal Procedure was submitted by the designated Police Officer. It is further contended that the argument so advanced by Mr. Chatterjee, if considered to be correct factually, then at best it could be said that there was irregularity in holding the investigation. Without any element to show that such irregularity caused serious prejudice to the accused person, the proceeding cannot be said to have been vitiated. In support of his contention Mr. Mukherjee, learned Public Prosecutor places reliance upon the decision of Hon'ble Apex Court, pronounced in the case of **STATE OF M.P. VS. ROMESH C SHARMA** reported in **(2005) 12 SCC 628** wherein Hon'ble Apex Court held:-

“5. Learned Counsel for the State contended that the impugned order of the High Court is contrary to the settled principle of law enunciated by this Court in a catena of decisions and it is liable to be set aside. Avoiding multiplicity, we may refer to a decision of this Court rendered in the case of State of M. P. v. Ram Singh, (2000) 5 SCC 88. This Court in Ram Singh (supra), after noticing the various decisions of this Court, inter alia, held that a defect or illegality in the investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. In a recent decision in the case of Union of India v. Prakash P.

Hinduja in which one of us (G. P. Mathur, J.) is the author of the judgment after noticing the various decisions of this Court pointed out in paras 20 and 21 of the judgment as under : (SCC pp. 209-10)

“20. Thus, the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer-in-charge of the police station in Court under Section 173(2), Cr. P.C., this field being exclusively reserved for the investigating agency.

21. An incidental question as to what will be the result of any error or illegality in investigation on trial of the accused before the Court may also be examined. Section 5A of the Prevention of Corruption Act, 1947, provided that no police officer below the rank of a Deputy Superintendent of Police shall investigate any offence punishable under Section 161, Section 165 and Section 165A, I.P.C. or under Section 5 of the said Act without the order of a Magistrate of the First Class. In H. N. Rishbud v. State of Delhi the investigation was entirely completed by an officer of the rank lower than the Deputy Superintendent of Police and after permission was accorded a little or no further investigation was made. The Special Judge quashed the proceedings on the ground that the investigation on the basis of which the accused were being prosecuted was in contravention of the provisions of the Act, but the said order was set aside by the High Court. The appeal preferred by the accused to this Court assailing the judgment of the High Court was dismissed and the following principle was laid down: (AIR pp. 203-04, para 9)

'9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises.

A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e., Sections 193 and 195 to 199.

These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of

Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial.'

The Court after referring to Parbhu v. Emperor and Lumbhardar Zutshi v. R, held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial. This being the legal position, even assuming for the sake of argument that C.B.I. committed an error or irregularity in submitting the charge-sheet without the approval of C.V.C., the cognizance taken by the learned Special Judge on the basis of such a charge-sheet could not be set aside nor could further proceedings in pursuance thereof be quashed. The High Court has clearly erred in setting aside the order of the learned special Judge taking cognizance of the offence and in quashing further proceedings of the case."

11. He also relied on the decision pronounced in **STATE OF MADHYA PRADESH VS. VIRENDER KUMAR TRIPATHI** reported in **(2009) 15 SCC 533** wherein Hon'ble Apex Court held:-

"11. Coming to the appeal filed by the accused one of the questions is whether the investigating officer was authorized to conduct the investigation. The investigation was carried on

by the duly authorized officer namely the Dy. Superintendent of Police under [Section 17\(c\)](#) of the Act. The broader issues raised need not be looked into. The function of investigation was merely to collect evidence and any irregularity and illegality in the course of collection of evidence can hardly be considered by itself to affect legality of trial by a competent Court of the offence so investigated.”

12. According to Mr. Mukherjee a defect or illegality in investigation, however serious, has no direct bearing on the competence of or the procedure relating to the cognizance or trial unless there is a serious manifestation of prejudice.
13. Chapter XII of the Code of Criminal Procedure is about information to the police and their power to investigate. Section 154 of the Code of Criminal Procedure envisages that upon disclosure of information relating to the commission of cognizable offence, given orally or otherwise, the Officer-in-charge of the police station is under obligation to register an FIR. The investigation primarily consists of the ascertainment of the facts and circumstances of the case. Investigation is defined under Section 2(h) of the Code of Criminal Procedure and it includes all the proceedings under the code for collection of evidence, conducted by a Police Officer or by any person (other than a Magistrate) who is authorised by the Magistrate in this behalf. By definition, it includes all the proceedings under the code for the collection of evidence and for the above purpose the investigating officer has been given power to require before himself, the attendance of any person, acquainted with the facts and circumstances of the case. He has also the authority to examine such

person orally either by himself or by a duly authorised deputy. The officer examining any person, in the course of investigation may reduce the oral statements into writing. Under this Chapter, police officer in charge of a police station has the power to cause search of any place for the seizure of anything, believed to be necessary for the purpose of investigation. The search is to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose of search and seizure. Thus it can be said that in course of investigation following steps are to be taken: –

- a) ascertainment of facts and circumstances of the case
- b) discovery and arrest of the suspected offender
- c) collection of evidence relating to the commission of offence either by way of examining various persons including the accused person and reducing the statement into writing; also by causing search and seizure of things, considered necessary for the purpose of investigation and to be produced at the time of trial
- d) Investigating Officer is to opine after considering the materials collected in course of investigation, as to whether a case has been made out to send the accused person for the trial and in that event filing of the charge sheet under Section 173 and Section 157 of the Code of Criminal Procedure envisages that upon receipt of information or otherwise the officer in charge of police station has reason to suspect the commission of an offence, he is otherwise empowered to investigate, shall send report to the Magistrate, empowered to take cognizance and shall proceed in person, or shall depute one of his subordinate officers to proceed to the spot to

investigate the facts and circumstances of case. Section 168 of the Code of Criminal Procedure suggests that when the subordinate Police Officer shall have to submit a report after holding investigation to the Officer-in-charge of the police station and apprise him about the result. Sub-Section 3 of Section 173 of the Code of Criminal Procedure envisages where a superior officer of police has been appointed under Section 158, the report shall be submitted through that officer who, pending the orders of the Magistrate, direct the Officer-in-charge of the police station to make further investigation.

14. The scheme of the Code of Criminal Procedure therefore suggests the permissibility for holding investigation by a subordinate officer and final step in the investigation regarding formation of opinion as to whether or not there is a case to place the accused person on trial is to be decided by that officer who is responsible for the investigation. Taking lumen from the scheme of the Code of Criminal Procedure, when the provision of Section 17 of the Prevention of Corruption Act is considered, it becomes clearly implicit that the investigation should be conducted by the officer of the appropriate rank. This is not to say that each and every step in the investigation has to be done by that officer only or that he cannot take assistance of the deputies to the extent permitted by the Code of Criminal Procedure or that he is bound to go through each of the steps during investigation. I have carefully perused the judgements relied upon by learned counsel for the petitioner as well as learned Public Prosecutor and I find that by several judicial pronouncement it has become a settled principle of law and it is no more *res integra* that a defect or illegality in

investigation, however serious, has no direct bearing on the competence or the procedure relating to the cognizance or to the trial unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. The scheme of the Code of Criminal Procedure does not indicate the intention of the legislature that an investigation by an officer of a lower rank can be said to cause prejudice.

15. In ***Union of India & Ors. (supra)***, the Hon'ble Apex Court held:-

“13. The question raised by the respondent is well answered by this Court in a number of decisions rendered in a different perspective. The matter of investigation by an officer not authorized by law has been held to be irregular. Indisputably, by the order of the Magistrate investigation was conducted by Sub-Inspector, CBI who, after completion of investigation, submitted charge-sheet. It was only during the trial, objection was raised by the Respondent that the order passed by the Magistrate permitting Sub-Inspector, CBI to investigate is without jurisdiction. Consequently, the investigation conducted by the officer is vitiated in law. Curiously enough the respondent has not made out a case that by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of justice has been caused. It is well settled that invalidity of investigation does not vitiate the result unless a miscarriage of justice has been caused thereby.”

16. In ***H.N. Rishbud (Supra)***, the Hon'ble Apex Court held:-

“9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic

scheme *of the Code* in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in *section 190* of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. *Section 190* of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings." The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e. *sections 193* and *195* to *199*. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But *section 190* does not. While no doubt, in one sense, clauses (a), (b) and (c) of *section 190(1)* are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of *section 190(1)*, (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation *section 537* of the Code of Criminal Procedure which is in the following terms is attracted:

"Subject to the provisions herein before contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice."

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in [Prabhu v. Emperor](#)(1) and [Lumbhardar Zutshi v. The King](#)(2). These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

17. Under such facts and circumstances of the case, I do not find any infirmity in the order passed by learned Trial Court on 30th October 2006 warranting interference.
18. In absence of manifestation of any miscarriage of justice or prejudice, caused to the petitioner, I am not inclined to invoke the provision of Section 482 of the Code of Criminal Procedure to quash the proceeding.
19. Consequently the criminal revisional application is not accepted and is dismissed however without cost. With the dismissal of the revisional application, application, if any, stands disposed of. Interim order of stay if any stands vacated.
20. Let a copy of the judgement be sent down to learned trial court, for information and necessary action.
21. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)