in the permit, which should not exceed two years from the date of permit. The letter, Ex. D-11 written by the Chief Engineer, Corporation of Madras, 2-1/2 months after the date of filing of the complaint in Court, will not hold the petitioner. The question as to whether the petitioner is entitled to continue the construction in 1983 on the basis of a permit obtained in 1961, though the foundation had been constructed immediately thereafter, has to be determined, not on the basis of Ex.D-11,but upon the construction of the relevant provisions of the Act. Sec. 362 (a) of the Act, penalises commencement of any construction without the permission of the Commissioner, Continuing construction in 1983 without the prior permission, as required under Sec. 242 (2) of the Act, falls within Sec. 362 (a)of the Act.

12. In the result,the appeal is allowed, the judgment of the learned Magistrate is set aside and the respondent is convicted for an offence under Sec. 362 of the Act and sentenced to pay a fine of Rs. 100/-

———

SELVANATHAN @ RAGHAVAN AND 9 OTHERS v. STATE BY INSPECTOR OF POLICE, MADRAS AND OTHERS.

In the Madras High Court.
(Full Bench)
Rathnavel Pandian, OCJ.,
David Annoussamy and
P.K. Sethuraman, JJ.,
Cr. R. C. No. 821/86, Cr.M.P. Nos. 6452,
6900/82, 1907/83 & 2904/86.
Nov. 16, 1988.

1989 (1) MWN (Cr) 117

The Code of Criminal Procedure, Ss. 397 & 401 — 482 — 56 — 57 — 75 — 154 — 161, 162, 164 — 173 — 207 — 172(3) — 363(5) — The Constitution of India, Art. 22 — 226— The Criminal Rules of Practice, Rr. 339, 177 & 76 — The Evidence Act, Ss. 74 & 76 — The Madras Police Standing Orders, O. 647 — F.I.R. — Since the expression, ''informant'' appearing in S.154(2) Cr.P.C. does not exclude the accused, giving information about the crime, and the accused is entitled to get a copy of the information free of cost, as per Sec. 154(2) Cr. P. C. — if the first information is laid by the accused himself, there would be no legal impediment to furnish a copy of the FIR to the accused, who, as per Sec. 50(1) Cr. P. C. has to be informed of the full particulars of the offence for whice he is arrested and other grounds for such arrest and it would be

in conformity with the cherished fundamental right guaranteed under Art. 22 of the Constitution — *remand report* and order passed thereon, the accused is not entitled to a copy of the remand report in view of the embargo placed by Sec. 172 (3) — the accused is entitled to a copy of the order of the Magistrate passed on remand report-the accused is entitled to a copy of the complaint made to the Magistrate which was reduced in writing by him— both as contemplated under Sec. 363 (5) Cr.P.C. — all on payment of charges-inquest report-the accused is not entitled to the copies of the inquest report and statements recorded u/s. 174 Cr. P. C. — post mortem certificate, requisition given by police officer to medical officer for conducting post mortem and medically treating the injured, rough sketch of scene and observation maghazar, before final report is forwarded to Magistrate as contemplated u/s. 173(2) Cr. P. C. — after an order is passed by the Magistrate on the basis of the affidavit by the police officer, the accused is entitled to get a copy of the same as well as the order of the Magistrate.

Facts

a. *Reference to Full Bench — questions for determination — The liberty of the subjects (citizens) visa vis their entitlement to certain copies of documents in criminal proceedings, before forwarding a police report u/s. 173 Cr. P.C. to a Magistrate.* (*para*-1)

b. **Documents referred to** in these petitions and revision case —

1. FIR — in a case investigated by police.
2. FIR — in a case investigated by CBI. E.O.W., Madras.
3. FIR — in a case investigated by vigilance and anti-corruption.
4. Remand report.
5. Order of the Magistrate passed on the remand report.
6. Affidavit filed by investigating officer, seeking police custody of the accused and order passed by Magistrate thereon.
7. Endorsement and order made by Magistrate regarding complaint made by accused as regards ill-treatment by police.
8. Inquest report u/s. 174 Cr. P. C.
9. Statements recorded during inquest.
10. Requisition by police officer to medical officer to conduct post-mortem.
11. Requisition by police officer to medical officer for medical treatment of injured person.
12. Post-mortem certificate.
13. Wound certificate.
14. Rough sketch of the scene of occurrence.
15. Observation Maghazar.

(para-2, 3, 4, 5, 6)

c. Petitions for supply of the above documents were dismissed by the concerned Magistrates. (para-2,3,4,5,6)

d. The present petitions seek direction of H.C. to direct the concerned Magistrate to supply certified copies of the documents prior to filing of police report u/s. 173 Cr. P. C. (para-2,3,4,5,6)

e. Madras H. C. Bench consisting of two judges (who form part of the present full bench) and a single judge, have referred the questions, in view of the cleavage of views in this regard. (para-7A)

Held

f. Having regard to the importance of these questions, F. B. has invited members of the Bar, especially those practising on the criminal side, to assist the court in deciding the issues; and they are (notwithstanding the counsels for the concerned parties and the

public prosecutor), *T. S. Arunachalam, N. T. Vanamamalai, B. Sriramulu, S. Pichai M. K. Karpaga Vinayagam, V. M. Lenin, P. Venkatasubramaniam, P. Rathinam and T. M. Vasudevan.* (para-3)

g. In State of Madras V.S. Krishnan (73, L. W. 713) the Madras H. C. (FB) held that statements recorded u/s. 164 Cr. P. C. would be public documents falling u/s. 74 (i) (iii) of Evidence Act; the accused will be entitled to copies of the same as a person interested; but his right to obtain such copies, before filing of the charge sheet has been taken away by implication of the provisions of s. 173 (4) Cr. P. C. (para-38)

h. On the basis of the principles laid down by the F. B. (Supra), Maheswaran, J., has ruled in Muthuswamy in re (1982 L. W. (Crl.) 60) that the accused is not entitled even to a copy of FIR before the police report (charge sheet) is filed. (para-38)

i. The view taken by Maheswaran, J., is not a correct one because (1) in the F. B case, "the question referred to was whether the statements recorded u/s. 164 Cr. P. C. fell u/s. 74 (i) (iii) of Evidence Act and if so, whether the accused would be entitled to copies of the same at any stage of the investigation, even before the filing of the charge sheet, and(2)the F. B. has not considered the constitutional mandate envisaged u/Art. 22 (1) of the Constitution; i.e. the framers of the Cr. P. C. have now introduced a new provision S. 50 in conformity with Art. 22 (1); further the view expressed by F. B. that the accused's right to obtain copies of the documents before filing of police report u/s. 173 (4) Cr. P. C. (old) (corresponding to S. 207 Cr. P. C. (new)) and that the accused will be so entitled only in accordance therewith, cannot hold good in view of the new provision of S. 50 which is in conformity with Art. 22 (1). (para-38)

j. **Arrest** - Exposition of principle -

i. arrest is undoubtedly a serious inroad into the fundamental right of the personal liberty and hence it has to be strictly in accordance with law. (para-29)

ii. the question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty, to go where he pleases; when used in the legal sense, in the procedure connected with criminal offences,an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence; the essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority; accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested. (Mad. H. C., F .B. quoted) (para-29)

iii. Arrest may be called the beginning of imprisonment (Dalton quoted) (para-30)

k. **Arrest and Art. 22 (1)** of the Constitution:-

i. According to the Cl. (1), the arrestee is entitled to know the grounds of his arrest as soon as possible. (para-30)

ii. The corresponding new S. 50 Cr.P. C. requires communication to the arrestee, of the full particulars of the offence for which he is arrested or other grounds of such arrest. (para-30)

iii. The object of S.50 Cr.P.C. which is mandatory, is that the citizen's liberty cannot be curtailed except in accordance with law; arrest and dentention, without communication of grounds are violative of S.50 Cr.P.C. and as such illegal. (para-29)

iv. Art. 22 (1) & (2) confer four rights on the arrested person ; and they are -

a. arrestee shall not be detained in custody without being informed as soon as may be, of the grounds of his arrest,

b. the arrestee shall have the right to consult and be represented by a lawyer of his own choice,

c. person arrested and detained in custody shall be produced before the nearest Magistrate, within 24 hours of his arrest and

d. arrestee is not to be detained in custody beyond the said period of 24 hours, without the authority of a magistrate. (para-30)

v. "This is what Dr.B.R. Ambedkar said while moving for insertion of Art. 15A (as amended in the draft bill of the Constitution) which corresponded to present Art. 22:-

"Art. 15-A, merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in Cl. (1) and Cl. (2) are already to be found in the Criminal Procedure Code and thereby probably it might be said that we are really not making any fundamental change. But we are, as I contend, making a fundamental change, because what we are doing by the introduction of Art. 15-A is to put a limitation upon the authority both of Parliment as well as the Provincial Legislature not to abrogate these two provisions, because they are now introduced in our constitution itself. (Dr. B. R. Ambedka'r speech in the Constituent Assembly quoted by S.C.) (para-30)

l. **First Information** - What is ?

i. the expression, "first information" or "first information report" is not defined in Cr. P. C; but these are always understood to mean, "information recorded u/s 154 of the code". (para-8)

ii. the word, "information" occuring in S.154 Cr.P.C. means something in the nature of a complaint or accusation or atleast information of a crime given with the object of setting the criminal law in motion and the police starting the investigation. (para-8)

iii. to constitute an 'information' as 'first information report' within the meaning of S.154 Cr.P.C. the following conditions are to be satisfied, viz.,

a. it must relate to the commission of a congnizable offence,

b. it must be given to an officer incharge of a police station,

c. it must be reduced to writing either by the informant (complainant) himrelf or under his direction,

d. it must be read over to the informant if it is written under his direction,

e. it must be signed by the informant, and

f. the substance of the information shall be entered in a book to be kept by an officer incharge of the police station in such Form as the State Government may prescrib in this behalf (general diary, otherwise known as station diary or station house register) (para-8)

m. **Conflicting opinions-**
There is a conflict of judicial pronouncements of H.C. as to the question of entitlement of the accused to obtain a copy of F.I.R. before the police report (charge sheet) is filed u/s. 173 Cr.P.C. (para-15)

n. A statutory duty was cast on the police officer u/s. 173(4) Cr. P. C. (old) to furnish to the accused, free of cost, copies of the documents referred to therein on which the prosecution proposes to rely, whereas u/s. 207 Cr. P. C. (new) such duty has been shifted to the Magistrate. (para-16)

o. **Counsels' collective plea** for directions — In view of Art. 22 (1) and (2) and S.50 (1) & (2) Cr. P. C., an accused is entitled to a copy of FIR recorded u/s. 154 Cr. P. C.

on payment of charges, if not free, even before the police report u/s. 173 (2) Cr. P. C. is forwarded to the magistrate and before the stage of sec. 207 Cr.P.C. — *contentions countenanced.* (para-20)

p. **Counsel T.S. Arunachalam** — The expression "communication," in S. 50 Cr.P.C. is a strong word, meaning that sufficient knowledge of the basic facts constituting full particulars of the offence for which a person is arrested or other grounds for such arrest, should be imparted effectively and fully in writing to the arrestee, so that he could understand the cause of his arrest; in a case where the FIR does not disclose the commission of a cognizable offence, the accused, has to file a copy of the FIR, if he approaches the H. C. for quashing the proceedings by invoking its jurisdiction in denying the furnishing of a copy of the F.I.R. to him *on payment of charges.—contention accepted.* (para-36)

q. **Counsel N.T. Vanamamalai** — The person who is affected as envisaged u/s. 363 (5) Cr. P. C. and R. 339 Criminal Rules of Practice, is entitled to get copies of FIR, etc., even prior to the filing of police report u/s. 173 (2) Cr. P. C. in view of the fact that the said documents are public documents falling u/s. 74 (iii) Evidence Act, the accused is entitled to copies, at any stage (of the criminal case) and therefore it would include the time from the filing of FIR; and this position is made clear by R. 339 Crimical Rules of practice, reading, "**copies of any portion of the record of a criminal case must be furnished to the parties concerned**" an different from earlier corresponding R. 177 reading, "copies of any portion of the *record of a criminal trial* must be furnished to the parties concerned". — *contentions cosidered.* (para-34)

r. **Special public prosecutor B. Sriramulu** - S.50 Cr.P.C. is a procedure established by law and therefore it should be scrupulously and strictly followed; it is to be construed that even oral communication of grounds is enough; which will be a legal compliance of Art.- 21 (1) of the Constitution; but the accused is not entitled to get copies of all documents except those such as FIR which could be furnished under the specific provisions before the charge sheet is filed, and copies of those documents which are not covered by the specific provisions cannot be furnished to the accused as there is a clear bar u/s. 173 Cr. P. C. — *contention considered.* (para-35)

s. **Addl. prosecutor G.R. Edmund**- S.50 Cr.P.C. requires, that when a person is arrested without a warrant, "communication of the full particulars" of the offence for which he is arrested or other grounds for such arrest shall be made to him and it would not necessarily mean, "communication in writing", as such the accused has no justification to claim a copy of FIR, before the charge sheet is filed even on payment of charges; further if such a copy is furnished to the accused, it would enable him to tamper with the prosecution witnesses and thus hinder the course of justice.—*contentions considered but not fully countenanced.* (para-37)

t. The cherished legal right vested in the accused u/Art. 22 (1) of the Constitution and Sec. 50 (1)Cr.P.C. to obtain full particulars of the offence or the grounds for his arrest, is based on well settled principles of law, as enunciated in a number of judicial pronouncements. (para-39)

u. Anyone who is arrested shall be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him.(Arts.3 and 29 of the Universal Declaration of Human Rights, 1948 and Art. 9 (2) of the International covenant of civil and political rights, published by United Nations, 1978 quoted) (para-39)

v. Accused is entitled to get a copy of the information, free of cost, as per S. 154 Cr.P.C. if the first information is laid by him and so there would be no legal impediment to furnish a copy of FIR to the accused, who as per Sec. 50 (1) Cr. P. C. has to be

informed of full particulars of the offence for which he is arrested or other grounds for such arrest. (para-39)

w. Where the accused intends to file a petition to quash the FIR by invoking S. 482 Cr. P. C. in case the FIR does not disclose the commission of a cognizable offence, or a petition u/Art. 226 of the Constitution seeking the issuance of a writ of Habeas Corpus for setting him at liberty on the ground that the accusations made against him do not warrant his detention, he has to get a copy of the FIR and file the same before the H. C. (para-40)

x. When there is a constitutional right to the accused to engage a counsel of his choice, to defend him, that right could be exercised only in case he is informed of the nature of the allegations or the charge levelled against him. (para-40)

y. Though in the heading of S. 50 Cr. P. C. the word "informed" is used, in the body of the section, the expression "communicate" is found. In legal parlance there is a lot of difference between the expression, "inform" and "communicate", Sec. 50 (1) Cr. P. C. has to be approached only with reference to the word used in the heading of this section. Though a section does not mean that any technical or precise language need be used,it demands that all the particulars of the offence for which the accused is arrested should be communicated to him. (para-40)

z. If the word, "communication", is construed as oral also, then it could lead to a dispute, when the accused alleges that full particulars of the grounds have not been communicated to him, and the court may not be in a position to come to a definite conclusion as to what kind of communication was made; it will always be desirable to give the particulars of the grounds in writing; if the "grounds" are only verbally explained and nothing in writing is left with him; then the purpose of S.50 Cr.P.C. is not served and strictly complied with. (para-40)

za. The expression "full particulars" will take into its fold-

a. the name & residence of the informant,
b. place of occurrance,
c. the date and time of occurrance,
d. the brief description of the offence complained of with reference to the provisions of law,
e. the details of property involved, if any and,
f. the name of the police station and crime number. (para-42a)

zb. Though S.50 Cr.P.C. does not state, in specific terms, that a copy of the FIR containing full particulars of the offence or the grounds, should be given in writing to the accused as u/s. 154 Cr.P.C. as per which a copy of the information as recorded u/s.154(1) should be given, free of cost, to the informant yet, in order to avoid any controversy regarding the communication of full particulars it would be desirable that the particulars enumerated supra be communicated to the arrestee, in writing and free of cost, which would be in strict compliance of Art. 22 (1) of the Constitution as well as S.50 Cr.P.C. (para-42a)

zc. In cases of mass arrest the particulars may be communicated first orally and then in writing as expeditiously as possible. (para-42a)

zd. Even though failure to communicate the particulars u/s. 50 Cr.P.C. in writing, would not render the arrest and the subsequent investigation, illegal because arrest takes place before the prescribed communication; yet failure to communicate, would have a deterrent effect on judicial remand which follows the arrest; there is a duty cast on the Magistrate to satisfy himself whether the statutory formalities have been strictly complied with or not. In case of non-compliance, the Magistrate can limit the judicial

remand in the first instance to such period as would be necessary, thereby affording an opportunity to police officer to communicate in writing the full particulars. (para-42a)

ze. Notwithstanding such communication in writing at the time of arrest or subsequent thereto the accused is entitled to a copy of FIR even before the final report is forwarded u/s. 173 (2) Cr.P.C. on application and on payment of charges. (para-42)

zf. **Remand Report** —

1. Ss. 167 & 309 Cr.P.C. empower the Magistrate or court respectively, to grant time to facilitate the police to obtain further evidence by remanding the accused; and this a reasonable cause for remand. (para-45)
2. remand report is nothing but an application submitted by the investigating officer containing the sum and substance of the case diary relating to the materials so far collected. (para-45)
3. remand report is not one of the documents mentioned in S. 207 Cr. P. C. and it is not covered by the expression "any other document or relevant extract thereof". (para-45)
4. There is a clear and express provision prohibiting the accused and his agents from calling for the police diaries and seeing them; but in the exempted events contemplated in S. 172 (3) the diary becomes available to the accused viz. for cross examining a police officer u/s. 161 and for contradicting him u/s. 145 Evidence Act. (para-46)
5. Case diary is the genus and remand report is the species and therefore, the prohibition made u/s. 172 (3) Cr.P.C. with regard to genus will apply on all fours to its species. (para47)
6. In case certified copy of the remand report is furnished to the accused containing the information so far collected with all the particulars then there is every likelihood of the accused tampering with the evidence and collection of further evidence, thereby hindering and stultifying the course of investigation. (para-47)

zg. **Order passed on remand report-**
Orders passed on remand report are judicial orders; the accused may require the order of remand and in case he intends to challenge the validity of remand and therefore he is entitled to copy of the same as contemplated u/s. 363 (5)-on appplication and on payment of prescribed charges. (para-49)

zh. **Complaint made by the accused and order made thereon-**
The accused is entitled to a copy of his complaint made to the Magistrate which was reduced to writing by the Magistrate in the discharge of his judicial function - on applications made and on payment of prescribed charges. (para49)

zi. **Inquest Report :-** Post Mortem certificate - Requisition given by the Police Officer to the Medical Officer for conducting post-mortem and medically treating the injured, rough sketch of the scene of occurrance - observation Maghazar-Entitlement to copies.

zj. **Counsels Rangavajulu and N. T. Vanamamalai :-**
"While the investigating police officer is given an option to furnish copies of all or any documents referred to in S.173 Cr.P.C. there may not be any conceivable or justifiable reason for denying the grant of copies of these documents before the stage of S.207 Cr.P.C. If Ss. 173 (7) & 207 Cr.P.C. are to co-exist, S.173 (3) should prevail; as per S.363 (5) any person affected by a judgement or order passed by criminal court, is entitled to a copy of the record" and on that basis an accused is entitled to them before the charge sheet is filed. - ***contention is not accepted*** (paras-55,57)

zk. **Special Prosecutor B. Sriramulu** -Ss.173 & 207 are specific provisions overriding the general law, viz. Evidence Act and hence copies of the documents have to be furnished only after filing of police report; there is a clear demarcation between the specific provisions and the general law and hence, even if these documents are construed as public documents u/s. 74 (i) (iii) Evidence Act, they could not be furnished before filing of police report, on account of the implied restrictions as borne out from the combined reading of Ss. 173 (2) & 207 Cr. P. C. and therefore the accused is entitled to copies, only as per the specific provisions which are fair, just and in consonance within the Art.21 of the Constitution; S. 173(7) Cr.P.C. comes into effect only after the completion of investigation followed by a final report by the police and not earlier to it. — *contention accepted as having much force.* (para-56, 56a)

zl. **Counsel N. T. Vanamamalai** - R. 339, Criminal Rules of practice which contains the words, "any portion of record of a criminal case" would indicate the entitlement of the accused at any time on payment of charges — *contention not accepted.* (para-59)

zm.

i. Sec. 174 Cr. P. C. was intended to apply to a case where inquest is necessary and investigation under this section is limited in its scope and confined to the ascertainment of the actual cause of death and it is not necessary that all the witnesses have to be examined during inquest; the statements recorded during inquest are not substantive evidence except to the extent of using them for contradiction u/s. 145 Evidence Act. (para-49a)

ii. It is required to obtain the opinion of the medical officer as to the causa causans (immediate cause) of death (para-50)

iii. It is during the course of the investigation the investigating officer in order to ascertain the nature of the injury and the probable manner in which the injury has been caused and the nature of the weapon that could have been used etc. obtains a copy of the wound certificate from the medical officer, on a requisition in that behalf. (para-51)

iv. **Rough sketch** is prepared by investigating officer during investigation and the main purpose of which is to exhibit in the court. (para-52)

v. **Observation maghazar** is prepared during investigation noting all the relevant details of the scene locality; there is no specific provision which requires preparation of this and to draw a topography but nevertheless prepared only as part of investigation in the process of collection of materials. (para-53,54)

zn. Under the present Cr. P. C. there is no duty on the officer incharge of the police station to furnish to the accused free of cost these documents; that duty is now cast on the Magistrate u/s, 207 Cr. P. C. ; if sub-section (7) of Sec. 173 is read in conjunction with sub-section (5) it would make it clear that sub-section(7)would come into operation only after a police report is forwarded. (para-56,a)

zo. The expression "other part of the record" in Sec. 363 (5) Cr. P. C. would not refer to the documents referred to in Ss. 173 & 207 Cr. P. C. but only to the records of the court with reference to the case; the "record" in legal parlance would mean 'an official contemporaneous memorandum stating the proceedings of a court or official copy of legal papers used in a case". Therefore in the context of Sec. 363 (5) Cr.P.C. it would pertain only to the subject matter of the order and is quiet distinct from the expression "documents" referred to in S. 173 (7) Cr. P. C. and the furnishing of copy of part of the record also is only after the judgment or the order, as the case may be is pronounced; hence no argument would be permitted to be advanced relying on S. 363

(5) Cr. P. C. for the plea that the accused is entitled to copies of the said documents referred to u/s. 173 before the police report is forwarded u/s. 173 (2) (i). (para-57)

zp. In Rule 339 as it originally stood as R. 177, the expression "any portion of the record of a criminal trial" is used. (para-59)

zq. The Cr.P.C. has provided that certain documents are not to be given to the accused before the police report is forwarded and in respect of some others it has prescribed the stage at which the copies are to be given and as such a prescription as per the scheme of the code excludes the right to get them earlier; therefore the rules cannot be construed to have given any right to the parties to obtain copies against the provisions of the code. At any rate Rule. 339 does not postulate that the accused is entitled to copies at any stage i.e. even before forwarding the police report and even on payment of prescribed charges. (para-59)

zr. Cr.P.C. lays down the procedure to be followed in every investigation or inquiry into trial for every offence; the cardinal rule of interpretation is that the language used by the legislature is the true depository of the legislative intent and that words and phrases occurring in a statute are not to be taken out in an isolated or detached manner dissociated from the context. But to be read together and construed in the light of the purpose and the object of specific provisions of Cr·P.C. itself. (para-62)

zs. The accused is not entitled to certified copies of the inquest report, statements recorded u/s.174 Cr.P.C. post mortem certificate, requisition by police officer to Medical Officer for conducting post mortem and medically treating the injured, rough sketch of the scene place and observation maghazar, before the final report u/s.173 (2) Cr. P. C. is forwarded to the Magistrate. (para-62)

zt. **Affidavit of the investigating officer requesting the custody**
Rule 76 Criminal Rules of Practice states that the Magistrate shall not grant remands to police custody unless he is satisfied that there is good ground for doing so and shall not accept the general statements made by the officer to the affect that the accused may give further information. The rule requires that request for police custody shall be accompanied by an affidavit setting out briefly the prior history of the investigation and the likelihood of further clues which the police expects to derive by having the accused in custody ; the affidavit is sworn by the investigating or other police officer not below the rank of the sub-inspector of police; the Magistrate grants custody on the perusal of the affidavit and at the end of the police custody the Magistrate shall question the accused whether he had been in any way interfered with during the custody period. (para-63)

zu. The affidavit drawn in accordance with R.76 without any extraneous material, cannot be said to be a "record" within the meaning of Sec. 363 (5) Cr. P. C. before the stage of passing any order thereon. (para-63)

zv. So, till an order is passed by the Magistrate, the accused is entitled to get a copy of the affidavit; but once an order is passed on the basis of the affidavit, the same becomes part of the record and hence at that stage thc accused is entitled to get a copy of the affidavit as well as the order passed thereon - on application made and on payment of the prescribed charges. (para-64)

Finding

The Refrencer are answered as indicated above

N.T. Vanamamalai for *Ashok Kumar & V. Babu, Rangavajulu, Krishnamoorthy, K. Swami Durai, P.M. Sundaram* and *S. Pichai,* for petitioners.

G.R. Edmund, Addl. Public Prosecutor, *B. Sriramulu,* Special Public Prosecutor for respondents.

T. S. Arunachalam, Senior Counsel, *M. Karpaga Vinayagam*, *P. Venkatasubramaniam*, *P. Rathinam & T. M. Vasudevan-Advocates* invited by the Court to assist it,

Reference to Full Bench to determine the question viz., the liberty of the citizens visa vis the entitlement to be furnished with copies of certain documents in criminal proceedinge before forwarding police report u/s, 173 Cr.P.C. to a Magistrate.

Order

1. On references, all the above cases have come up before this Full Bench for the determination of certain vital and important questions which require careful examination as regards the liberty of the subject and their entitlement to certain copies of the documents in the criminal proceedings before forwarding a police report to a Magistrate on completion of investigation as contemplated under S. 173(2), Cr.P.C., (hereinafter referred to as "The Code"

2. Crl. M.P. No.6452 of 1982 is filed under S. 482, of the Code by the accused in Crime No. 1351 of 1988 on the file of the Court of the VI Metropolitan Magistrate, Madras, for directions to the Magistrate to furnish certified copies of :

a. Remand report dated 16th November, 1982 ;
b. Affidavit filed by the investigating officer seeking police custody of the accused
c. Order of the Magistrate dated 16th November, 1982 made on the remand report;
d. Endorsement and order made by the learned Magistrate regarding any complaint made by the arrestee as regards any illtreatment meted out to him at the hands of the police ;

3. Crl. M. P. No. 6900 of 1982 is filed under S.482 of the Code by A1 to A14 in Crime No.275 of 1982 on the file of Tiruvallur Police Station for a direction to the Magistrate to issue a certified copy of the F.I.R., which prayer has been turned down on the strength of the decision in *Muthuswamy, In re.*[1] 1982 L.W. (Crl.) 60.

4. Crl. M.P. No. 1907 of 1983 is filed under S.482 of the Code by the accused in R. C. No. 1 of 1983 on the file of the C. B. I., F.O.W., Madras, for a direction to the Additional Chief Metropolitan Magistrate, E.O.I Egmore, Madras, to furnish him a certified copy of the F.I.R.

5. Crl. M.P. No. 2903 of 1984 is filed under S.482 of the Code by the accused in Crime No. 6 of 1983 on the file of the Vigilance and Anti-Corruption, Salem, for a direction to the Chief Judicial Magistrate, Salem, to furnish him a certified copy of the F.I.R. in the said case.

6. Crl. R. C. No 821 of 1986 is a revision filed against the order passed by the 17th Metropolitan Magistrate, Saidapet, Madras, dismissing the petition filed by the accused praying for furnishing the certified copies of the first information report, remand report and the order made thereon, inquest report, the statements recorded during the inquest under S.174 of the Code, the post mortem certificate, the requisition given by the police officers to the Medical Officer to conduct post-mortem examination and to treat the injured, the rough sketch of the scene place and the observation maghazar prepared by the investigating officer.

7. Having regard to the importance of the questions, we invited the members of the Bar, especially those practising on the criminal side, to assist the Court in deciding the issues. Accordingly apart from the learned counsel appearing for the parties concerned and the learned Public Prosecutor, Messrs. N.T. Vanamamalai and T.S. Arunachalam, learned Senior Counsels. and Messrs, B. Sriramulu, S. Pichai, M. Karpagavinayagam, V.M.Lenin, P.Venkatasubramaniam, P. Rathinam and T.M.Vasudevan, advocates assisted the Court by making their detailed submissions.

7A. A Bench of this Court presided over by two of us, viz., Ratnavel Pandian, J. (*as he then was*) and David Annoussamy, J. in the above criminal miscellaneous petitions and K. M. Natarajan. J., in Crl. R. C. No. 821 of 1986, have referred the questions arising both in the miscellaneous petitions and the revision case respectively to be decided

by a Full Bench in view of the cleavage of views in this regard. In all these cases, the common question that arises for considera—tion is :

"Whether the accused is/are entitled to the certified copies of the first information report, remand report and the order passed thereon by the Magistrate, the complaint, if any, made by the arrestee at the time of remand and the order passed thereon by the magistrate, the inquest report, the state-ments recorded during the inquest under S. 174 of the Code, the post mortem certifi-cate, the requisition given by the police officers to the medical Officer for conducting the necropsy (post mortem) and for treating the injured, the rough sketch of the scene place and the observation maghazar prepar-by the investigating officer?"

8. Now, we shall, first of all, examine the question with reference to the grant of copy of the first information report even before a police report under S. 173 (2) is forwarded.

WHAT IS A FIRST INFORMATION REPORT?

The expression "first information" or "first information report" is not defined in the Code. But these words are always un-derstood to mean "information recorded under S. 154 of the Code". The word infor-mation' occurring in the said Section means something in the nature of a complaint or accusation or at least information of a crime given with the object of setting the criminal law in motion and the police starting the investigation. Sub-S(1) of S 154 in Chap.XII dealing with the recording of first informa-tion, reads as follows :

"154. Information in cognizable cases :

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in-charge of a police sta-tion, shall be reduced to writing by him or under his direction, and be read over to the informant;and every such information,whet-her given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

A cursory reading of the Section extracted above shows that the following conditions are to be satisfied to constitute an informa-tion as first information report' within the meaning of the said Section, viz.,

(1) It must be an information relating to the commission of a congnizable offence ;
(2) It must be given to an officer in charge of a police station;
(3) It must be reduced to writing either by the informant (complainant) himself or un-der his direction;
(4) The information must be read over to the informant if it is written under his direction;
(5) It must be signed by the informant; and
(6) The substance of the information should be entered in a book to be kept by an officer in charge of the police station in such a form as the State Government may prescribe in this behalf (General Diary, otherwise known as Station Diary or Station House Register).

9. The very object of insisting on a first information report regarding the commision of an offence is to obtain early information regarding the alleged criminal activity and record the circumstances before there is time for the parties concerned to embelish or develop the case as circumstances present themselves to them The Supreme Court in *Thulia Kali* v. *State of Tamil Nadu*[1], while pointing out the importance of a first information being laid without delay has observed:

"Delay in lodging the first information report quite often results in embellishment which is a creature of after thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

See also *Emperor* v. *Khwaja*[2] and *Apren Joseph* v. *State of Kerala*[3] A first information

1. 1974 L.W. (Crl.) 30 S.C. (S.N.) = A.I.R. 1973 S.C. 501.
2. A.I.R. 1945 P.C. 18.
3. 1974 L.W. (Crl) 36 (S.N.) = A.I.R. 1973 S.C. 1.

report is neither an encylopaedia; nor the be all or the end all of the case; nor is it a substantial piece of evidence (See *Abdul Hammeed* v. *State of Tripura*.[1] It is an extremely vital and valuable document on the basis of which the entire edifice of the prosecution is generally built up and upon which an investigation should be, and ordinarily is, commenced by the police under Chapter XII of the Code.

10. Whether a person brought as an accused on the basis of the information (FIR) is entitled to a copy of the same? The above question whether the accused is entitled to have a copy of the first information report, which is a valuable document as pointed out supra, even before the police report (which is commonly known as 'charge sheet') is forwarded to the Magistrate on completion of the investigation as contemplated under S.173 (2) of the Code still remains a controversial issue, and there are divergent opinions in this regard. This Court, in "A Manual of Instructions for the Guidance of Magistrates in the Madras State"(published before the Amendment Act of 1955) under Serial No. 26, dealing with the grant of copies, examined the stage at which the accused is entitled to ask for copies of certain documents, such as first information reports, inquest reports, statements recorded under S. 164 of the Code, etc., and instructed that copies of first information reports, and search lists could be furnished to the accused at any stage of the trial, and that copies of charge sheets, inquest reports, statements recorded under S.162 of the Code and referred charge-sheets should not be furnished to the accused or to any other person, but copies of the statements recorded under S.164 of the Code could be granted to the accused at any stage even before the commencement of the enquiry or trial. After the amendment of the Code in the year 1955. Serial No.226 was substituted in the year 1959 in P. Dis. No.270 of 1959,the relevant portion of which reads thus :

"If the statement recorded under S.162, Cr. P.C., or any portion thereof has been used to contradict the witness the relevant portion of the statement in the case-diary may be marked as an exhibit by the magistrate, who shall cause copies of the portions marked prepared in his office. These copies can then be substituted in the case records for the original case diary. In any event the portion of the case diary containing the relevant statement will have to be marked and the case diary must form part of the records. Copies can be used for reference. Of course, formal proof of the statements in the case diary recorded under S.162, Cr. P.C., can be sought only when the police officer who recorded the statement is examined before the Magistrate.

Other Records : Copies of most of them have to be supplied free before the commencement of enquiry or trial. Documents for which copies maybe granted before filing of charge-sheet may be specified,such as Village Magistrates'reports,F.I.Rs.,inquest report without the statements recorded, statements under S.164, Cr. P.C., wound certificates and search lists.

Charge sheets : Copy will be given free soon after filing of the same. Memorandum of information may be excluded as full copies of statements under S.162, Cr. P.C., are being granted.

Referred Charge Sheets: Not to be granted except where on further investigation, a charge sheet is filed, as it will then become a document referred in S.173 (4), Cr. P.C., (as amended).

11. At the end of the ninteenth Century (1897) in *Queen Empress* v. *Arumugham*,[2] a similar issue arose as to whether reports made by the police officer in compliance with Ss.157, 169 and 173 of the Code of Criminal Procedure, 1898, were publicdocuments within the meaning of S.74 of the Indian Evidence Act, and consequently an accused person was entitled before trial to have copies of such reports. This question, on reference was decided by a Full Bench of this Court consisting of four Judges. Collins C.J., and Benson, J., two of the four learned Judges held that the reports under S.173 Cr.P.C. were not public documents, whilst the other two learned Judges, viz., Shophard and Subramania Ayyar, JJ. held that reports under S. 173, Cr.P.C. were public documents, and, therefore, the accused was entitled to have a copy of the same. (It

1. A. I. R. 1958 Tripura 1.

2. I.L.R. 20 Mad. 189 (F.B.)

seems that though the four learned Judges were divided equally on this question, the opinions expressed by Collins, C.J. and Benson J. are supposed to have prevailed under the provisions of the Letters Patent. Though it is not relevant for the further discussion on this question, it may not be out of place to mention here that this judgment came up for adverse criticism at the hands of the Law Reporters, who have not agreed with the opinions expressed by Collins C.J., and Benson. J. (See 1897 Madras Law Journal, Vol. VII,. page 341). Thereafter in *Emperor* v. *Muthia Swamiyar* (I. L. R. 30 (1907) Mad. 466) a question was referred to a Division Bench consisting of Benson, J. and Wallis, J., for determination whether an accused person under remand was, before the commencement of the preliminary enquiry entitled to copies of statements of various persons recorded by the Second Class Magistrate under S. 164 of the Criminal Procedure Code; and ultimately, this question was answered in the negative (It may be pointed out that though the question arose only with regard to the refusal of the grant of copies of the statements recorded under S. 164 Cr. P. C., the observations only related to the statements recorded under S. 162 Cr. P. C.).

12. A single Judge of the Patna High Court (Chapman, J.) in *Dhanpat Singh* v. *Emperor*, (A.I.R. 1917 Patna 625) while answering a question with regard to the right of an accused to obtain copies of first information, expressed his view thus :

"It might be well for the Local Government to consider whether facility should not be given to accused persons to obtain copies from the Police of first information at least even before the trial commences in the magistrate's Court. It is vitally necessary that an accused person should be granted a copy of the first information at the earliest possible stage in order that he may get the benefit of legal advice. To put difficulties in the way of his obtaining such a copy is only creating a temptation in the way of the officers who are in possession of the originals."

13. Thereafter, in 1960, a question came up for consideration before Somasundaram J. (sitting singly), whether copies of statements under S. 164 of the Code could be granted before the filing of the charge-sheet. The learned Judge, after referring to Ss. 74 to 76 of the Indian Evidence Act, the decision in *Queen Empress* v. *Arumugham* (I.L.R. 20 Madras 189 (F.B.) and the decision in *Emperor* v *Muthia Swamiyar* (I.L.R. 30 (1907) Mad. 406), observed :

"..... on a consideration of the provisions of Ss. 74 and 76 of the Evidence Act, and the decision in I.L.R 20 Mad, 189 (F.B.) and the other provisions of the Code relating to both, the grant of copies and to the prohibition of granting copies, it seems to me that the decision in I.L.R. 30 Mad. 466, requires reconsideration."

and referred the matter to be decided by a Full Bench, and formulated the following question :

"Whether statements recorded under S. 164, Cr. P. C., fall under S. 74 (1) (iii) of the Indian Evidence Act and if so whether the accused will be entitled to copies of the same under S. 76 of the Evidence Act at any stage of the investigation and even before the filing of the charge-sheet and whether there are any provisions in the Criminal Procedure Code or any other law prohibiting granting of copies at the stages mentioned above ?"

The Full Bench comprised of Somasundaram J. (who referred the question) and Ramachandra Iyer and Anantanarayanan, JJ. (as they were then). The judgement of the Full Bench is reported in *State of Madras* v. *G. Krishnan* (A. I. R. 1961 Mad. 92 (F.B). The latter two learned Judges of the Full Bench, after going deep into the question, gave two different, but concurrent, judgments, with which Somasundaram J. agreed Ramachandra Iyer J. (as he then was) has concluded in paragraph 36 of his judgment as follows :

"Our answer to the question therefore can be stated thus : (1) The statements recorded under S. 164, Cr . P. C., would be public documents falling under S. 74 (1) (iii) of the Indian Evidence Act. (2) The accused will be entitled to copies of the same as a person interested; (3) But his right to obtain such copies before the filing of the charge-sheet has been taken away by implication by the provisions of S. 173 (4), Cr. P. C. and that he will be entitled to the copies of the documents only in accordance therewith".

Ananthanarayanan, J., (as he then was) concluded thus :

"It could no doubt be urged that S. 174 (4), Crl. P. C., does not include words such as 'notwithstanding anything contained in S. 76 of the Indian Evidence Act'. But that is obviously because S. 76 refers to a far wider class of persons entitled to inspect and to obtain copies of public documents. It has no necessary limitation of reference to accused persons or to cirminal cases. The argument that S. 173 (4) merely deals with the exceptional case of the obtaining of copies free of cost, as distinguished from the terms of S. 76 of the Indian Evidence Act, does scant justice to its phrasing, scope and intendment.

I have no doubt that this is an instance of legislative wisdom, a limitation imposed upon considerations of a balance of opposing interests and opposing principles. We must presume that the legislature introduced this implied restriction as to the point of time at which the accused would obtain copies of such 'public' documents affecting him, well realising that here, as elsewhere, considerations of the liberty and rights of an individual, and of public interest and justice may conflict, and need a harmonisation based upon the broadest equities I would answer the reference as proposed by my learned brother."

The crux of the decision is that though the statements or confessions recorded under S. 164, Crl.P.C. would be public documents falling under S. 74 (1) (iii) of Evidence Act, and that the accused would be entitled to copies of the same as a person interested, S. 173(4) of the Code should be construed as impliedly prohibiting the grant of copies earlier than the time prescribed by it and that the said implied prohibition, would itself imply repeal or abrogation in part of the right under S. 76 of the Evidence Act. The Full Bench held that the copies of statements under S. 164 Crl. P. C., cannot be granted to the accused before the filing of the charge-sheet.

14. The question of entitlement of the accused to ask for a copy of the first information report in respect of the offence under which he is arrested, came up for consideration before Krishnaswamy Reddy, J., in *Chinnappan* v. *State* (1975 T.L.N.J. 482 = Crl. M.P. Nos. 3950 and 4131 of 1975). The learned Judge ruled that the accused, after arrest or if he is likely to be arrested is entitled to a copy of the first information report from the concerned Magistrate on payment of the necessary charges.

15. The same issue again came up before Maheswaran, J., in *Muthusamy, In re* (1982 L.W. Crl. 60). The learned Judge dissented from the view taken by Krishnaswamy Reddy, J., in *Chinnappan* v. *State* (1975 T.L.N.J. 60) (*supra*), and following the judgment of the Full Bench in *State of Madras* v. *G. Krishnan* (A.I.R. 1961 Mad. 92 F.B. = 1961-1-M.L.J. 65 = 73 L.W. 713 = 1960 M. W. N, 782 = I.L.R. 1961 Mad. 1) and referring to S. 207 of the present Code, held,

"I feel that the entire scheme of the Act is that the investigation into an offence should necessarily be kept confidential and that copies to the accused could be furnished only after the chargesheet is filed".

Thus, there is a conflict of judicial pronouncements of this Court as the question of
m entitlement of the accused to obtain a copy of the first information report before the police report (charge-sheet) is filed under S. 173(2) of the Code. This conflict of views taken by the learned Judges of this Court has necessitated these references to this Full Bench.

16. For a proper understanding and further discussion on this issue, we would like to re-produce some of the provisions of the Code of Criminal Procedure, 1955, and of the Code of 1973 and give a comparative table of sub-Ss. (4) and (5) of S. 173 of the Code of 1955, as substituted by S. 23 of the Crl.P.C. (Amendment Act XXVI of 1955), in the place of old sub-S.4, which was inserted by the Code of Criminal Procedure (Amendment Act XVIII of 1923).

By S.29 of the Amendment Act (XXVI of 1955), a new Section viz, S.207A, dealing with the procedure to be adopted in proceedings instituted on police report was inserted. For our purpose, we reproduce sub-S. (3) of S.207A, Crl. P. C., 1898, as under :

Code of Criminal Procedure, 1898 (As amended by Act XVIII of 1923)	Code of Criminal Procedure, 1955 (As amended by Act XXVI of 1955)
SECTION 173 :	*SECTION 173 :*
(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial; Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost	(4) After forwarding a report under this section, the officer incharge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost a copy of the report forwarded under sub S.(1) and the first information report recorded under S. 154 and of all other document or relevant extracts thereof on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under S. 164 and the statements recorded under sub-S. (3) of S. 161 of all the persons whom the prosecution propose to examine as its witnesses. (5) Notwithstanding anything contained in sub-section (4), if the police officer is of opinion that any part of any statement recorded under sub-S. (3) of S. 161 is not relevant to the subject matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, he shall exclude such part from the copy of the statement furnished to the accused and in such a case, he shall make a report to the Magistrate stating his reasons for excluding such part, Provided that at the commencement of the inquiry or trial, the Magistrate shall, after perusing the part so excluded and considering the report of the police officer, pass such orders as he thinks fit and if he so directs, a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused.
"At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in S. 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished."	"In any case where the proceeding has been instituted on a police report, the Magistate shall without delay furnish to the accused, free of cost, a copy of each of the following : (i) The police report ; (ii) The first information report recorded under S.154 ; (iii) The statements recorded under sub-S (3) of S.161 of all persons whom the prosecution proposes to examine as its witnesses,excluding there from any part in regard

In the present Code of 1973, a new Section (S.207) relating to the supply of copy of police report and other documents, to the accused has been introduced. That section reads as follows :

to which a request for such exclusion has been made by police officer under sub. S.(6) of S. 173 ;

(iv) The confessions and statements, if any, recorded under S.164;

(v) Any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-S(5) of S.173;

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in cl.(iii) and considering the reasons given by the police officer for the request,direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused ;

Provided further that if the Magistrate is satisfied that any document referred to in Cl. (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court."

A comparative study of S.173(4) of the old Code and S.207 of the new Code reveals that in a proceeding instituted upon a police report, there was a statutory duty on the police under S.173(4) of the old Code to furnish to the accused free of cost copies of the documents referred to therein on which the prosecution proposed to rely, whereas under the new Code, under S.207, the duty of furnishing free of cost, copies of the documents referred.to therein is shifted to the Magistrate. Even in the trial of warrant-cases by the Magistrate under Chapter XIX of the new Code, under S.238, it is obligatory on the part of the Magistrate to satisfy himself that he has complied with the provisions of S.207 of the Code. Though in summons cases instituted on police report, no similar duty is specifically cast on the Court as in S.238 of the Code to see that the copies referred to in S.207 are delivered to the accused, none-the-less free copies have to be supplied to the accused by the Magistrate in view of the obligatory provisions of S.207. In *In re, Veerappa* (A.I.R. 1959 Mad. 405), it has been held that in summons case also, it is the duty of the Magistrate to see that S. 173 (4) (of the old Code) corresponding to S. 207 of the new Code is complied with.

17. In *Gurbachan Singh v. State of Punjab* (A.I.R. 1957 S.C. 623), while dealing with the scope and object of S. 173(4) of the old Code, as amended by Act XXVI of 1955, the Supreme Court has observed thus :

"There is also the fact that before the amendment the accused had to request the Court to refer to the statements made to the police officer and furnish him with a copy thereof in order that the same may be used for contradicting the witness, but as it now stands, no such request is necessary because there is, as will be shown later, a provision to the effect that copies should be given eariler. S.173 relates to the report of the police officer and sub-S (4) is practically a new provision. There is also a new sub-S. (5) added.

It is clear from this new sub-S.(1) that when the police officer after completing the investigation sends his report to the Magistrate copies of the statements and documents referred to should be furnished to the accused. The object of this provision is to put the accused on notice of what he has to meet at the time of the inquiry or trial. The unamended sub-S.(4) had only laid down that a copy of the report forwarded to the Magistrate, shall, on application, be furnished to the accused before the commencement of the inquiry or trial. There was no compulsion to furnish him with copies of the statements, documents, etc.

We may now refer to the new provision inserted in the (old) Code as S.207-A relating to the procedure to be adopted in proceedings instituted on police report relating to enquiry into a case triable by a Court of Session.

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Sub-S. (4) makes a radical change in the manner of recording evidence in the Committing Court, for it lays down that only witnesses, to the actual commission of the offence, as may be produced, by the prosecution need be examined by a Committing Magistrate. Other witnesses, who

support the prosecution story in diverse particulars, need not be examined by the Committing Court. Sub-S. (4) of S. 173, read with Sub-S. (3) of S. 207-A makes ample provision for the defence to be in possession of all the statements and documents before the inquiry begins, but nowhere is it stated either in S. 173 (4) or S.207-A (3) that the statements in connected cases should be supplied to the accused. In this connection, we may also refer to S.251-A inserted in Chapter XXI, relating to the trial of Warrant Cases by Magistrates. Sub-S. (1) of S. 251-A corresponds to S. 207-A (3). Even here there is no reference to the statements in connected cases."

See also *Narayan Rao v. State of Andhra Pradesh* (A.I.R. 1957 S.C. 737).

18. Under S.207 of the new Code, the supply of documents cannot be refused by the Magistrate on any ground other than the ground enumerated in Cl.(iii)of that Section. A combined reading of Ss. 173(6)and 207(iii) read with the first proviso to that Section shows that if the police officer while forwarding under S. 173 (5) to the Magistrate all documents or relevant extracts therefor on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation and the statements recorded under S.161 of all the persons whom the prosecution proposes to examine as its witnesses, is of the opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate the part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request; and in such a contingency the Magistrate might, after perusing any such part of the statement, as is referred to in Cl.(iii) of S.207 and considering the reasons given by the police officer for the request under S.173(6), direct that a copy of that part of the statement or such portion thereof, as he thinks proper, shall be furnished to the accused. S.208 of the Code is a new introduction, and it deals with the supply of copies of documents and statements to the accused in respect of cases exclusively triable by a Court of Session instituted on a complaint or otherwise than on police report. The duty of supplying the copies under S.208 also is cast on the Magistrate, who is obliged to furnish to the accused, free of cost, a copy of each of the documents enumerated under Cls. (i) to (iii) of S.208.

19. Thus, we find that there is an obligation on the part of the Magistrate in a proceeding instituted on a police report to furnish to the accused, free of cost, a copy of the first information report recorded under S.154 along with copies of the police report and other statements. The police report (which we commonly call as charge-sheet, which expression appears to have been borrowed from the Madras Police Standing Orders—Form 87 esvolved presumably prior to the Code of Criminal Procedure), as pointed out by one of us, David Annoussamy J. in his order in Crl. Revision case No. 184 of 1982 (*Vedagiri* v. *State*, 1982 Crl. R.C. No. 184, order dt. 1—12—1985)—is a report prepared in the form prescribed by the State Government on completion of investigation of a case and forwarded to the magistrate empowering him to take cognizance of the offence on the said report as defined under S. 173 (2) which provision, when read with S.207 indicates that a copy of the first information report recorded under S. 154 of the Code has to be furnished by the magistrate to the accused, free of cost, only after the submission of the police report (charge-sheet). But the question, now posed for our consideration is, whether the accused is entitled to obtain a copy of the first information report recorded under S. 154 of the Code on payment of charges, if not free of cost, before the police report is forwarded to the magistrate.

20. All the learned counsel who rendered assistance to the Court placed reliance on Art. 22(1) and (2) of the Constitution of India and S.50(1) and (2) of the Code, in support of their submission that an accused is entitled to a copy of the first information report recorded under S. 154 of the Code, on payment of charges, if not free, even before the police report unde r S. 173 (2) is

forwarded to the magistrate and before the stage of S. 207. We shall now reproduce these two provisions.

Article 22(1) and (2) of the Constitution:

"22. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice."

"(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

S. 50(1) and (2) of the Code:

"50.(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."

In this connection, reference also can be made to S. 104 of the Customs Act and S. 35 (1) of the Foreign Exchange Regulation Act, which provisions are analogous to S. 50 of the Code, enjoining a duty on the arrester to inform the arrestee of the grounds for his arrest· Before the introduction of S. 50 of the Code, a question whether, an arrestee has a right to be informed of the reasons or grounds for his arrest, arose before the Supreme Court and the various High Courts, and the answers were given affirmatively by a number of authoritative judicial pronouncements which we would refer to in the succeeding portion of this order in appropriate places.

21. In the text book, "Burn's Justice of The Peace" by Rev. Richard Burn, D.C.L., which deals in detail with the law of arrest without warrant, it is stated in Volume I, page 302, that,

"Where a constable acts without warrant by virtue of his office of constable, he should, unless the party be previously acquainted with it, notify that he is a constable, or that he arrests in the Queen's name, *and for what*".

22. In "Hale's Pleas of The Crown" Volume 2, Ch. X, P. 82, dealing with arrest by a private person on suspicion, it is state,

"not that in all arrests he must acquaint the party with the cause of his arrest."

23. "Archibald's Metropolitan Police Guide" (7th Ed. p. 713) affirms the proposition that the general rule is that, in arresting without warrant on suspicion, the person making the arrest, whether constable or private person, should at the time state on what charge the arrest is being made.

24. The above propositions laid down in the above text books are supported by a number of English judicial decisions. In *Christie* v. *Leachinsky* (Vol. I. H. L. 1947 A. E. R. 567) a question arose before the House of Lords that if a policeman arrests without warrant when he entertains a reasonable suspicion of felony, is he under a duty to inform the suspect of the nature of the charge, and if he does not do so, is the detention a false imprisonment? It was held that an arrest without warrant either by a policeman or by a private person can be justified only if it is an arrest *on a charge which is made known to the person arrested*, unless the circumstances are such that the person arrested must know the substance of the alleged offence, (e.g., where the alleged wrongdoer is caught red handed), or where he forcibly resists arrest. Viscount Simon, with reference to the above passages in the text books and the other English decisions, observed thus :

"1. If a policeman arrests without warrant on reasonable suspicion of felony, or of other

crime of a sort which does not require a warrant he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.

2. If the citizen is not so informed, but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment.

3. The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances as such that he must know the general nature of the alleged offence for which he is detained."

4. The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, *prima facie*, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed.

5. The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g., by immediate counter-attack or by running away.

Lord Simonds, who was also a party to that judgment, expressed his view as follows:

"First, I would say that it is the right of every citizen to be free from arrest unless there is in some other citizen, whether a constable or not, the right to arrest him. I would say next that it is the corollary of the right of every citizen to be thus free from arrest that he should be entitled to resist arres tunless that arrest is lawful. How can these rights be reconciled with the proposition that he may be arrested without knowing why he is arrested? It is to be remembered that the right of the constable in or out of uniform is, except for a circumstance irrelevant to the present discussion, is the same as that of every other citizen. Is citizen A. bound to submit unresistingly to arrest by citizen B. in ignorance of the charge made against him? I think, my Lords, that cannot be the law of England. Blind, unquestioning obedience is the law of tyrants and of slaves. It does not yet flourish on English soil. I would, therefore, submit the general proposition that it is a condition of lawful arrest that the man arrested should be entitled to know why he is arrested, and then, since the affairs of life seldom admit an absolute standard or an unqualified proposition, see whether any qualification is of necessity imposed on it. This approach to the question has, I think, a double support. In the first place,the law requires that,where arrest proceeds on a warrant, the warrant should state the charge on which the arrest is made. I can see no valid reason why this safeguard for the subject should not equally be his when the arrest is made without a warrant The exigency of the situation, which justifies or demands arrest without a warrant, cannot, as it appears to me,justify or demand either refusal to state the reason of arrest or a mis-statement of the reason. Arrested with or without a warrant, the subject is entitled to know why he is deprived of his freedom, if only in order that he may without a moment's delay take such steps as will enable him to regain it."

Further, Lord Simonds, after citing a single passage from the speech of Lord Cranworth, C.J., *Hooper v. Lane*, (6 H.L. Cas. 443, 550) *reading* :

"(The Sheriff)is bound,when he executes the writ, to make known the grounds of the arrest,in order, among other reasons, that the person arrested may know whether he is or is not bound to submit to the arrest."

registered his view,

"Here is a clear illustration of the principle on which I base this opinion that, if a man is to be deprived of his freedom, he is entitled to know the reason why.'

Lord Du Paroq pointedly observed thus :

"The omission to tell a person who is arrested at, or within a reasonable time of,

the arrest with what offence he is charged cannot be regarded as a mere irregularity. Arrest and imprisonment without a warrant, on a charge which does not justify arrest, are unlawful and, therefore, constitute false imprisonment, whether the person making the arrest is a policeman or a private individual.

It was decided by the House of Lords in the celebrated case in *Bird* v. *Jones* (1846-7-Q.B. 742) that a police officer who arrests a person must, in ordinary circumstances, tell him the true grounds for his arrest and that if he does not do so, the arrest is unlawful. The rule enunciated in *Christie* v. *Leachinsky* (Vol. I-H.L. 1947 A.E.R. 567) and *Bird* v. *Jones* (1846-7-Q.B. 742) is now incorporated in the English Act which provides that if a person is arrested, he must be informed at the time of his arrest or as soon as practicable the grounds for his arrest.

25. Before a Division Bench of the Allahabad High Court in *Vimal Kishore Mehrotra* v. *State of U.P.* (A.I.R. 1956 All. 56 — 1956 Crl. L. J. 13), a similar matter came up for decision. The petitioner in that case was informed that he had been arrested under the Criminal Law Amendment Act, 1932. The learned Judges deciding the case observed :

"S.7, Criminal Law Amendment Act prohibits several acts. It may be that prohibition of some of these acts is unconstitutional. But it does not follow that prohibition of other acts also is unconstitutional. It is possible to separate the valid part from the invalid parts.

The object underlying the provision in Art. 22(1) that the ground of arrest should be communicated to the person arrested appears to be this. On learning about the ground for arrest, the man will be in a position to make an application to the appropriate Court for bail, or move the High Court for a writ of habeas corpus. Further, the information will enable the arrested person to prepare his defence in time for purposes of his trial.

xx xx xx xx

It is not necessary for the authorities to furnish full details of the offence. But the information should be sufficient to enable the arrested person to understand why he has been arrested."

An identical question arose in *Madhu Limaye* v. *State* (A.I.R. 1959 Punjab 506), wherein the petitioner was arrested and taken to the police station, and at the time of his arrest, he was told that he was being arrested for the offence of abetment of the offence punishable under S. 7 of the Criminal Law Amendment Act, 1932, and for the offence punishable under S. 143 read with S. 117, I.P.C. The detention of the petitioner therein was challenged to be *ultra vires* of the Constitution and illegal on the ground that the provisions of Art. 22 of the Constitution of India were violated, for no grounds of arrest had been given to the petitioner at the time of arrest, as envisaged by the said Article. A single Judge of the Punjab High Court, making reference to *Vimal Kishore Mehrotra* v. *State of U.P.* (A.I.R.1956 All. 56 — 1956 Crl. L.J. 13) *and Christie* v. *Leachinsky* (1947-1-All E.R. 567), *held ;*

"It is apparent that mere stating the sections of any penal provision is not giving information to the arrested person of the grounds for which his liberty is curtailed.

And pointed out :

"It is well recognised that at common law a man is not to be deprived of his liberty except in due course and process of law and that if a man is to be deprived of his freedom, he is entitled to know the reason why. Telling a person, he is arrested under some sections of some enactment is not providing him with any information, much less grounds of arrest."

After having said so, the learned Judge concluded :

"For all these considerations, I have no hesitation in concluding that the arrest of the petitioner in the itstant case was wholly repugnant to the constitutional guarantee as contemplated by Art. 22(1) of the Constitution of India."

See also *State of M.P.* v. *Shobharam* (A.I.R. 1966 S.C. 1910).

26. In *Panchanan Mondal v. The State,* (1971 Crl. L. J. 875) it was contended that the accused was entitled to a copy of the F. I. R. as part of the record. It was held by a learned Single Judge of the Calcutta High Court in that case, that the question was one of 'stage' and the provisions contained in S.157(1) of the Code by themselves did not entitle the accused to such a copy, and copies of all documents sent to Court and forming part thereof cannot as such be granted to the accused irrespective of the stage reached in the case. It was held by the learned judge that, although F.I.R. formed part of the record, the accused would not be entitled, merely on that footing to a copy thereof irrespective of the stage reached, independently of the other provisions in the statute, and of other considerations, entitling him to have the same. In view, however, of the other specific provisions in the different statutes, the learned Judge held that 'the case of F.I.R. is different and the accused is entitled to a copy thereof on payment of the legal fees therefor at any 'stage'.

27. Before a Division Bench of the Gauhati High Court comprised of Baharul Islam and D. Pathak, JJ in *Ajit Kumar v. State of Assam* (1976 Crl. L. J. 1303) the petitioner therein Ajit Kumar appearing in person submitted that his detention was violative of S. 50 of the Code, and consequently, the P.R. bond that he had to execute was also a nullity and prayed that he should be freed from that bond. The Division Bench cancelled the P.R. bond executed by the petitioner and freed him from detention, holding :

"....The provision of S. 50 Cr.P.C. is mandatory and must be strictly complied with. A citizen's liberty cannot be curtailed except in accordance with law. Even if any communication about the offence was orally made by the respondent No. 3 (in that case) to the petitioner, we do not know what kind of communication was made, whether the communication of the full particulars or the mere section of the offence was told to the petitioner. In the circumstances, we hold that the arrest and detention of the petitioner by the respondent No. 3 was in violation of S. 50 Cr. P. C. They are illegal, and consequently, the P. R. bond that had to be executed by the petitioner, was also a nullity. However, the other prayer of the petitioner for quashing the case was not accepted. See also *Sri Nooral Huda* alias *Nanak* v. *S. C. Jail, Naini, All. and others,* (1984-2-Crimes 44.)

28. As pointed out in *A. R. Antulay* v. *R.S. Nayak* : (A.I.R. 1984 S.C. 718.)

"S. 4 (1) provides for investigations, inquiry or trial for every offence under the Penal Code according to the provisions of the Code. S. 4 (2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of Crl. P. C. but subject to any enactment for the time being in force regulating the manner or place of investigation inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Crl. P.C. In other words, Criminal P.C. is the parent statute which provides for investigation, inquiring into and trial of cases by criminal Courts of various designations."

"It is a well-established canon of construction that the Court should read the section as it is and cannot rewrite it to suit its convenience; nor does any canon of construction permit the Court to read the section in such manner as to render it to some extent otiose"

Having regard to the above principles, we have to read, construe and interpret S.50 as it stands in the light of Art.22(1) of the Constitution of India, but not in a manner as to render it otiose.

29. Arrest is undoubtedly a serious inroad into the fundamental right of the personal liberty of the subject, and hence it has to be strictly in accordance with law. Indeed, the law relating to the exercise of the power of arrest should be as strictly construed as possible so that light or flippant interference with the most valued of the fundamental rights guaranteed by the Constitution may be rendered difficult, if not impossible. The meaning of the expression

"arrest" came up for consideration before a Full Bench of this Court, to which one of us (Ratnavel Pandian J., as he then was) was a party, in *Rohsan Beevi* v *Joint Secretary to the Government, Tamil Nadu, Public Dept, etc.* (1983 L.W. (Crl.) 289 (F.B.). The full Bench, after referring to the Lexical meaning of the word "arrest" in the various dictionaries and the connected provisions observed thus:

"From the various definitions which we have extracted above, it is clear that the word 'arrest' *when used in its ordinary and natural sense*, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. *When used* in the *legal sense* is the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested."

30. In *Christie* v. *Leachinsky*, Vol. (1- H.L, 1947 A.E.R. 567) Lord Du Pareq stated:

"Arrest (as is said in DALTON'S 'Country Justice' 1727 Ed. 580) 'may be called the beginning of imprisonment..."

The fundamental right of protection against arrest is set forth in Art. 22 of the Constitution. According to Cl(1) the arrestee is entitled to know the grounds of his arrest as soon as possible. The corresponding new provision in S. 50 of the Code requires that the police officer or other person arresting any person without a warrant must forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. If the arrest is not for a non-bailable offence, the police officer must also inform the arrested person, as contemplated by S. 50(2) of the Code that he is entitled to be admitted to bail and must also give him an opportunity to furnish bail. Further, the police officer has to ensure under S.56 of the Code that the person arrested without a warrant must be produced before a Magistrate having jurisdiction without unnecessary delay. The provision of S.50 of the Code is mandatory in nature and must be strictly complied with. The object of this provision is that the citizen's liberty cannot be curtailed except in accordance with law. Arrest and detention of a person without communication to him the grounds of his detention are in violation of S. 50 of the Code and as such illegal, as pointed out in *Ajit Kumar Sarmah* v. *State of Assam.* (1976 Crl. L.J. 1303).

30. Art.22(1) of the Constitution embodies a rule which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal systems where the Rule of Law prevails. Cls. (1) and (2) of Art 22 confer four rights on a person who has been arrested : firstly, the arrestee shall not be detained in custody without being informed as soon as may be of the grounds of his arrest, secondly he shall have the right to consult and be represented by a lawyer of his own choice, thirdly, every person who has been arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of his arrest; and fourthly, he is not to be detained in custody beyond the said period of 24 hours without the authority of a Magistrate. The two requirements of Cl.(1) of Art. 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also to know exactly what the accusation against him is, so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him. See also *State of M.P.* v. *Shobaram* (A. I. R. 1966 S. C. 1910) and Order 662 of the Madras Police Standing Orders. Cl. (2) of Art. 22 provides the next and most material safeguard that the arrested person must be produced before a Magistrate within 24 hours of such arrest, so that an independent authority exercising judicial powers may without delay apply its mind to his case. The Code (old) contained analogous provisions in Ss. 60 and 340 (corresponding Sections in the new Code being Ss. 56 and 303) but our Constitution makers were anxious to make these safe-

guards an integral part of fundamental rights. See *In re Madhu Limaye* (A.I.R. 1969 S.C. 1014). In that case, the Supreme Court in the context of examining the scope of Art. 22 has referred to the speech of Dr. B. R. Ambedkar, which he would like to reproduce, as found in paragraph 11 of that judgment;

"This is what Dr. B.R. Ambedkar said while moving for insertion of Art. 15A (as numbered in the draft Bill of the Constitution) which corresponded to present Art. 22:

"Art. 15A merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in Cl. (1) and Cl. (2) are already to be found in the Criminal Procedure Code and thereby probably it might be said that we are really not making any fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of Art. 15A is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate these two provisions, because they are now introduced in our Consitution itself."

As stated in *Ram Narayan Singh v. State of Delhi*, (A.I.R. 1953 S.C. 277) the Supreme Court has often reiterated that those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law, and when ever that is not done, the aggrieved person would be entitled to a Writ of Habeas Corpus directing his release.

31. S.50 of the Code is newly introduced in conformity with Art. 22(1) of the Constitution of India, whereas S.57 (corresponding to S.61 of the old Code) and S. 167(1) are in conformity with Art.22(2) of the Constitution of India. The provisions of S.50 are mandatory and must be strictly and scrupulously complied with. Otherwise, the arrest of a person without communication to him the full particulars of the grounds of his arrest is in violation of S.50 of the Code, and as such the arrest and detention followed are illegal, and hence the arrestee has got a right to move the Court to release him of his detention by virtue of the conferment of that valuable right vested in him under S.50 of the Code. S.50 of the Code which is in conformity with Art.22(1) of the Constitution enables a person arrested to move the Court for a writ of habeas corpus for his release in case S.50 of the Code and Art.22(1) of the Constitution are infringed. As pointed out in *Govind Prasad* v. *State of West Bengal*, (1975 Crl. L.J. 1249.) S.50 confers a valuable right and a non-conformance to its mandatory provisions is a non-conformance to the procedure established by law, and the arrested person should be granted bail. In order to have the action of the arrester to be in conformity with the legal and constitutional provisions, it must be an arrest properly and lawfully made in terms of the spcific provisions of the Code and the Constitution. In the well-known case of *Taylor* v. *Taylor*, (Reported in (1876) I Ch. D. 426.) Jessel, M.R., observed that:

"....When a statutory power is conferred for the first time upon a court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted . . ."

This principle was approved of and applied by their Lordships of the Judicial Committee in the case of *Nazir Ahmed* v. *The King Emperor*. (Reported in (1936) 63 Ind. App.372: 37 Crl. L.J.897) Lord Roche, delivering the judgment of the judicial Committee, observed that :

"the rule which applies is a different and not less well recognised rule, viz, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

The Supreme Court reiterated the said principle in *State of Uttar Pradesh* v. *Singhara Singh*, (A.I.R. 1964 S. C. 358) and stated :

"The rule adopted in *Taylor v. Taylor* (Reported in (1876) 1 Ch. D. 426.) is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were

not so, the statutory provision might as well not have been enacted".

32. In this connection, reference can be made to S.75 of the Code, as per which a police officer or other person executing a warrant of arrest should notify the substance thereof to the persons to be arrested, and if so required, should show him the warrant. The object of S.75 is that the accused should be led to know clearly and briefly the charge against him and before what Court he has to appear. If an arrest without notifying the substance of the warrant is made, that arrest is unlawful - *vide Gafur, In re* (23 Calcutta 869).

33. After the advent of the Constitution of India, the attention of the police officers has been invited to Art.22 of the Constitution by way of insertion of the same in O.647 of the Madras Police Standing Orders which reads as follows :

"Part 111 of the Constitution of India contains Fundamental Rights which are guaranteed to the citizens. Art.22 of the Constitution relating to the protection against arrest and detention is reproduced below.....

"22 (1)...
to
22 (7)...."

As S.50 was not in the Crl. P.C., at the time O.647of the Police Standing Orders was inserted, evidently that provision of S.50 of the Code has not been specifically referred to in this order, though reference to Art. 22 (1) sufficiently protects the rights of an arrested person on being informed as soon as may be of the grounds for such arrest, on the principle of which S.50 of the Code is newly introduced.

34. Mr. Vanamamalai would state that the law prevailed at the time when the case *State of Madras v. G. Krishnan* (A. I. R. 1961 Madras 92 (F. B.) : 73 L. W. 713), was decided on 22nd August, 1960, was the majority view of the Supreme Court in the decision in *A. K. Gopalan* v. *State of Madras* (A. I. R. 1950 S. C. 27:63 L. W. 638), to the effect that the expression "the procedure established by law" occurring in Art. 22 of the Constitution means "the procedure prescribed by the law of the State", but that view was overruled by the decisions in *R. C. Cooper v. Union of India* (A. I. R. 1970 S. C. 564), and in *Menaka Gandhi v. Union of India* (A. I. R. 1978 S. C. 597), in the latter of which decisions it has been held :

".... the procedure contemplated byArt. 21 must answer the test of reasonableness in order to be in conformity with Art. 14. It must be 'right and just and fair and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Art. 21 would not be satisfied."

and, therefore, in view of the present position of law as enunciated by the Supreme Court, it will be reasonable, just and fair that the person who is affected as envisaged under S.363 (5), Crl. P.C., and R.339 of the Criminal Rules of Practice (as per which copies of any portion of the record of a criminal case must be furnished to the parties concerned on payment of proper stamp and authorised fee for copying. and where the Judge's notes form the only record of the evidence, copies of these notes should be given) is entitled to get copies of the F.I.Rs. etc., even prior to the filing of the police report under S.173 (2) of the Code, in view of the fact that the said documents are public documents falling under S.74(iii) of the Evidence Act. In that view, according to learned Counsel, the proposition expressed in *G.Krishnan's* case,(AIR 1961 Mad. 92 (F.B.): 73 L.W. 713) is no more good law. He would continue his argument stating that in other words, the position is that under S.76 of the Evidence Act, the accused is entitled to copies at any stage of the criminal case, and, therefore, it would include the time from the filing of the first information report. He continues his submission stating that as per S. 76 of the Evidence Act, the accused is entitled to copies of the documents in a criminal case at any stage of the criminal proceeding, which would include a copy of the first information report, and this position is now made clear by the present R.339 of the Criminal Rules of Practice, reading, "Copies of any portion of the record of *a criminal case* must be furnished to the parties concerned . . . " as different from the earlier corresponding Rule, viz., R.177, reading, "Copies of any portion of the record of *a criminal trial* must be furnished to the parties concerned . . . ", and thus the present rule entitles the accused to get copies

of any portion of the record of a criminal case at any stage.

35. Mr. Sriramulu after taking us elaborately through the Full Bench decision in *G. Krishnan's case* and S.50 and some other provisions of the Code, submitted that S.50 is a procedure established by law, that therefore, the procedure should be scrupulously and strictly followed, and that in order to avoid any controversy as to whether S.50 (1) has been strictly complied with, if that Section is to be construed that even oral communication is enough, the grant of a copy of the first information report to the accused, will be a legal compliance in the true spirit of that section and Art 22(1) of the Constitution of India. But he would add that the accused are not entitled to get copies of all documents, except those such as first information reports, which could be furnished under the specific provisions before the charge-sheet is filed, and that copies of those documents not coverd by the specific provisions cannot be furnished to the accused as there is a clear bar under S. 173 of the Code. He cited the decision in *Govind Prasad* v. *State of West Bengal.* (1975 Crl. L.J. 1249).

36. Mr. T. S. Arunchalam, learned Counsel assisting the Court as Amicus Curiae, has argued that the expression "communicate" in S. 50 of the Code is a strong word, meaning that sufficient knowledge of the basic facts constituting the full particulars of the offence for which the person is arrested or the other grounds for such arrest should be imparted effectively and fully to the arrestee in writing so that the arrestee could understand the cause of his arrest. Then he relies on the observation of the Supreme Court in *State of M.P.* v. *Shobharam,* (A. I. R. 1966 S.C. 1910.) which we extract below;

"There are three rights and each stands by itself. The first is the right to be told the reason of the arrest as soon as an arrest is made, the second is the right to be produced before a Magistrate within twenty four hours and the third is the right to be defended by a lawyer of one's choice. In addition there is the declaration that no person shall be deprived of his personal liberty except by procedure established by law".

Then relying on the decisions in *Surinder Singh* v. *Central Government* (A. I. R. 1986 C.S. 2166.) and *State of West Bengal* v. *Swapan Kumar Guha,* (1982 M.L.J. Crl. 359) which are to the effect that if the first information report does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received, would continue his argument that in a case where the first information report does not disclose the commission of the cognizable offence, the accused, if he approaches the Court for quashing the proceedings by invoking the inherent jurisdiction of the High Court under S. 482 of the Code, has to file a copy of the first information report, and therefore, there can be no legal support or justification in denying the furnishing of a copy of the first information report to the accused on payment of charges.

37. Learned Public Prosecutor, relying on the analogy of the judgment of the Full Bench in *State of Madras v, G. Krishnan* would urge that the accused is not entitled to get free copy of the document till a police report (charge-sheet) is filed, as contemplated under S.173(2) of the Code, and what S.50 of the Code requires, when a person is arrested without warrant, is communication of the full particulars of the offence for which he is arrested or other grounds for such arrest, which communication would not necessarily mean communication in writing, and as such the accused has no justification to claim a copy of the first information report before the charge-sheet is filed even on payment of charges, and if such a copy is furnished to the accused, it would enable the accused to tamper with the prosecution witnesses and thus hinder the course of justice.

38. Now, we shall examine the principles laid down in the Full Bench decision in *State of Madras v. G. Krishnan* (A. I. R. 1961 Mad. 92 (F.B.) : 73 L.W. 713.) and see whether, in the light of the discussion made above that decision holds good for the proposition that the accused is not entitled to a copy of the first information report till a final report is filed as contemplated under S.173(2) of the Code. In that Full Bench decision, it has been held that the statements recorded under S.164 of the code would be public documents falling under S.74(1) (iii) of the Indian Evidence Act, that the accused will be entitled to copies of the

same as a person interested, but his right to obtain such copies before the filing of the charge-sheet has been taken away by implication of the provisions of S.173(4) of the old Code and that he will be entitled to the copies of the documents only in accordance there with. It is only on the basis of the principles laid down in the above decision, Maheswaran J., has ruled in *Muthusamy In re* (1982 L. W. (Crl.) 60.) that the accused is not entitled even to a copy of the first information report before the Police report (charge-sheet) is filed before the Court. In our opinion, the view taken by Maheswaran, J., is not a correct one for the reasons to be presently mentioned. Firstly, in the Full Bench case, the question referred to for decision was whether the statements under S.164 of the Code fall under S.74(1) (iii) of the Indian Evidence Act. and if so, whether the accused would be entitled to copies of the same at any stage of the investigation, even before the filing of the charge-sheet. Secondly, the Full Bench has not considered the constitutional mandate envisaged under Art.22(1) of the Constitution. Above all, the framers of the Code have now introduced a new provision, S.50 in conformity with Art.22(1) of the Constitution. Further, the view expressed by the Full Bench that the accused's right to obtain copies before the filing of the charge-sheet has been taken away by the implication of the provisions of S.173 (4) of the old Code (corresponding to S.207 of the new Code) and that he will be entitled to copies of the documents only in accordance therewith, cannot hold good in view of the new provisions of S.50 of the Code in conformity with Art.22(1) of the Constitution.

39. The cherished legal right vested in the accused under Art.22(1) of the Constitution and S.50(1) of the Code to obtain full particulars of the offence or the grounds for his arrest, is based on well settled principles of law, as enunciated in a number of judicial pronouncements which we have already referred to. In this connection, it would be useful to bear in mind Articles 3 and 29 of the Universal Declaration of Human Rights, 1948 and Art 9(2) of the International Covenant of Civil and Political Rights, published by the United Nations (New York 1978) at page 24, reading,

"Any one who is arrested shall be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him."

Further, if the first information is laid by the accused himself, he is entitled to get a copy of the information free of cost as per S. 154(2) of the Code, since the expression "informant" appearing in S.154(2) does not exclude the accused giving information about the crime. When it is so, we are unable to understand as to what would be the legal impediment to furnish a copy to the accused, who as per S.50(1) has to be informed of the full particulars of the offence for which he is arrested or other grounds for such arrest.

40. There is yet another compelling reason, and that being, if the accused intends to file a petition to quash the first information report by invoking S.482 of the Code, in case the first information report does not disclose the commission of a cognizable offence, or a petition under Art.226 of the Constitution seeking the issuance of a writ of habeas corpus for setting him at liberty on the ground that the accusations made against him do not warrant his detention, he cannot do so unless he gets a copy of the first information report, and files the same before the Court. (*State of West Bengal* v. *Swapan Kumar Guha*). Further when there is a constitutional right to the accused to engage a counsel of his choice to defend him, that right could be exercised only in case he is informed of the nature of the allegations or the charge levelled against him. The argument of learned Public Prosecutor is that what S.50 of the Code demands is that the person arrested is only to be informed of the grounds of arrest and of his right to bail, and the said provision does not specifically and expressly require a copy of the first information report to be furnished to the accused, as under S.154(2) of the Code. Though in the heading of S.50 of the Code, the word "informed" is used in the body of the section, the expression "communicate" is found. In legal paralance, there is a lot of difference between the expression "inform" and "communicate". As Patanjali Sastri, J., pointed out in his separate judgement in *Income-tax Commissioner* v. *Ahmedbhai Umarabhai & Co.*, (A.I.R. 1950 S.C. 134) "marginal notes in an Indian Statute, as in an Act of Parliament, cannot be referred to for the purpose of construing the statute. Nor can the

title of a Chapter be legitimately used to restrict the plain terms of an enactment." See also *Balraj Kunwar v. Jagatpal Singh.* (26 Allahabad 393 : 31 I. A. 132 P. C.) Hence, in the light of the above decisions. We have to approach S.50(1) only with reference to the specific word used in that Section, and not with reference to the word used in the heading of the section. This section requires the arresting person to communicate to the arrestee the *full particulars* of the offence for which he is arrested or the other grounds for such arrest. Though the section does not mean that any technical or precise language need be used, it demands that all the particulars of the offence for which the accused is arrested should be communicated to him. If it is to be construed that the communication could be oral also, then it would lead to a dispute, when the accused denies that full particulars of the ground have not been communicated to him. Even if any communication of the offence is orally made to the accused, the Court may not be in a position to come to a definite conclusion as to what kind of communication was made, whether communication of the mere particulars of the offences was made or whether mere section of the offence was told to the arrestee. Therefore, in order to avoid any controversy or dispute, it will always be desirable to give the particulars of the grounds in writing. We may point out at this juncture that the Supreme Court in *Lallubhai Jogibhai* v. *Union of India,* (A.I.R 1981 S.C. 728) while interpreting the word "communicate", observed that if the 'grounds' are only verbally explained to the arrestee and nothing in writing is left with him, then the purpose of S.50 of the Code is not served and strictly complied with.

41. As repeatedly pointed out by the authoritative judicial pronouncements of the Supreme Court and the various High Courts, it is unconstitutional, illegal, unjust and unfair not let the arrestee know the accusation against him or the full particulars of the offence or the grounds on the basis of which the arrest has been effected. To expect an arrestee to blind and unquestioned obedience in ignorance of the particulars of the offence or the accusation made against him is only the law of the tyrants. After the advent of the Constitution of India, in our view, it should not be allowed to flourish or exist on our soil. Every person subjected to arrest is entitled to know why he is deprived of his freedom. It is only with this underlying principle, S. 50 is now introduced in the Code.

42. So much for principles. Coming to practical purposes, we are of the view that certain facts have to be borne in mind. As we have pointed out already, as per the new Code, a copy of the First Information Report is to be given after the final police report is forwarded on completion of investigation to the Magistrate empowered to take cognizance of the offence and before the stage of the commencement of the proceedings before the Magistrate, as per S.207 of the Code. S. 50 of the Code does not contemplate the furnishing of a copy of the First Information Report to the arrestee at the time of arrest. S.50 which is mandatory, provides that any person arrested without warrant shall forthwith be communicated with full particulars of the offence for which he is arrested or other grounds for such arrest and that if the arrest is made in a bailable case, he shall be informed of his right of entitlement to bail. Even a cursory reading of S.50 which provision is in conformity with Art. 22(1) of the Constitution of India, clearly indicates that the arrestee should be communicated, not the specific provision of the Section of the offence for which he is arrested, or the gist of the offence, but the full particulars of the offence, for which he is arrested, though the Section does not disclose in detail what are the nature of the particulars or pieces of information to be furnished to the accused.

42. (a) The First Information Report, as it reaches the Magistrate, contains three elements, viz

(1) The information relating to the commission of a cognizable offence received by the police,which is usually called the complaint
(2) The record of that information by the police as contemplated under S.154 of the Code and

(3) The report of the police officer in charge of a police station as per S.157 of the Code.

The said first Information Report in Form No.81 appended to the Madras Police Standing Orders contains details other than those

contemplated under S.50 of the Code like the date of despatch from the police station, steps taken regarding investigation, explanation for delay in investigation, etc. The provisions of Art.22 (1) of the Constitution of India and S.50 of the Code, as they stand, do not require the supply of the First Information Report as such. On the other hand, there may be cases in which the First Information Report is a cursory one and does not contain the name of the accused and the nature of his involvement in the case, and all those details may come to light only in the course of investigation preceding the arrest. In such a case, the mere supply of a bald First Information Report will not satisfy the requirements of S.50 of the Code. The expression "full particulars" will take into its fold:—(1) the name and residence of the informant; (2) place of occurrence. (3) the date and time of occurrence; (4) the brief description of the offence complained of with reference to the provisions of law; (5) the details of property involved, if any, and (6) the name of the police station and crime number. Though S.50 of the Code, as we have stated earlier does not state in specific terms that a copy of the First Information containing the full particulars of the offence or the grounds should be given in writing to the accused as under S.154 of the Code, as per which a copy of the information as recorded under S.154(1) should be given free of cost, to the informant, in order to avoid any controversy with regard to the communication of the full particulars, we are of the firm view that it would be desirable that the particulars enumerated by us above be communicated to the arrestee in writing and free of cost, which would be in strict compliance of Art. 22(1) of the Constitution of India and S.50 of the Code. If the investigating officer, for the purpose of convenience prefers to give a copy of the first information report itself, such a course would be a welcome measure and would meet the requirements of S.50 of the Code in its true tenor and spirit. We are alive to the situation that there may be cases of mass arrest in which it may not be possible for the concerned police officer to communicate forthwith in wriring the full particulars of the offence, in which event, the particulars may be communicated first orally and then in writing as expeditiously as possible. In this connection, we would like to express our view that the failure to communicate the particulars as required under S.50 of the Code in writing would not render the arrest and the subsquent investigation, illegal, because arrest takes place before the prescribed communication and any lapse in respect of this subsequent fact would not vitate the very arrest itself. However, failure to communicate the particulars as required by S.50 would have a deterrent effect on the judicial remand which follows the arrest. No doubt, is true that if a duty is cast on the arresting officer to comply with certain statutory formalities, there is a corresponding duty cast on the Magistrate who is called upon to pass remand orders to satisfy himself whether the statutory formalities have been strictly complied with or not. In case the Magistrate is not satisfied that the requirements of S.50 of the Code have not been complied with, he can limit the judicial remand in the first instance to such period as would be necessary, thereby affording an opportunity to the police officer to communicate in writing the full particulars of the offence for which the accused is arrested or the other grounds of such arrest. This view is fortified by some of the provisions of the enactment dealing with preventive detentions, such as Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, National Security Act, Tamil Nadu Act 14 of 1982, etc., wherein there are specific provisions permitting the authority making the order of detention to communicate the grounds on which the said order has been made within a specified period. which provisions are held to be valid in conformity with Art.22(1) of the Constitution of India, though the copy of the order of detention has to be served on the detenu forthwith. Be that as it may, now coming to the prayer in these petitions, for the discussions made above, we hold that the accused,not withstanding the communication of the full particulars in writing at the time of arrest or subsequent thereto, as indicated above, is entitled to a copy of theFirst Information Report even before the final report (charge-sheet) is forwarded to the Magistrate under S.173 (2) of the Code on application and on payment of charges.

43. *Whether the accused is entitled to copies of the remand report and the complaint, if any, made by the arrestee at the time of remand and the orders passed thereon by the*

Magistrate ? There are two sections in the Code, Ss. 167 and 309 of the Code (corresponding to S. 344 of the old Code), which empower the Magistrate or the Court respectively to grant time to the police in connection with the investigation of the case. Under S.167 of the Code, if any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by S.57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the investigating officer shall forward the accused to the nearest Magistrate with a copy of the entries in the diary relating to the case. Thereafter, under S.167 (2) of the Code, the Magistrate to whom an accused person is forwarded, whether he has or has not jurisdiction to try the case, from time to time, may authorise the detention of the accused in such custody as such Magistrate thinks fit, for a period not exceeding fifteen days in the whole. If a Magistrate, who has no jurisdiction to try the case or commit it for trial and who has authorised the detention of the accused, considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having jurisdiction.

44. The section then applicable for furtner detention is S.309 of the Code. As per sub-S (2) of S.309 of the Code, if the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by warrant remand the accused if in custody. The remand of the accused person to custody cannot be for a term exceeding fifteen days at a time.

45. Explanation (1) of the said Section reads that 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. As a Division Bench of the Calcutta High Court held in *Superintendent & Remembrancer of Legal Affairs, Government of West Bengal v. Bidhindra Kumar Roy* (A. I. R. 1949 Calcutta 143), this Explanation indicates that further remand may be granted before submission of the charge-sheet because this Explanation contemplates a stage prior to submission of the charge-sheet, and that time is wanted for further investigation. A reading of these two sections shows that the Magistrate while passing the order of detention of the accused in the first stage under S.167 (2) of the Code has to satisfy himself by going through the entries in the diary transmitted to him relating to the case that the detention of the accused is necessary. The remand under S.309 of the Code arises at the second stage when investigation is not completed within fifteen days and more time is needed for collecting further evidence; provided the evidence so far collected is sufficient to raise a suspicion that the accused might have committed the offence and it appears likely that further evidence may be obtained by a remand of the accused. Therefore, even at the stage when further remand is made at the second stage,on going through the case diary and the other connected records, the Court has to satisfy itself that the material so far obtained raises a suspicion that the accused might have committed an offence and that further evidence may be obtained by extension of the remand of the accused, after the expiry of the period of fifteen days in terms of the order under S.167 of the Code.Neither S.167 of the Code nor S.309 of the Code which contains the provision for authorising detention and the provision of remand and the extension of remand of the accused respectively contemplates expressly any report by the police, which in practice is called '*remand report*' O.593(1)of the Madras Police Standing Orders dealing with "Further uses of the case diary" reads thus :

"Remands should be applied for on case diary forms. S.167(1) Crl. P.C., requires a copy of the case diary to be sent when remand is sought. The investigating officer should, therefore, prepare an additional carbon copy of the case diary when he is aware that he will have to send a prisoner for remand."

However, it is the practice in vogue to submit a report under the name "Remand report" containing such particulars and necessary information apart from furnishing entries in the case diary or copies there of, on perusal and examination of which the Magistrate should take a decision as to whether or not the accused has to be detained in

custody or continued to be kept in remand (judicial remand) as the case may be. In other words, remand report is nothing but an application submitted by the investigating officer containing the sum and substance of the case diary relating to the materials so far collected. Under S.207, remand report is not one of the documents enumerated therein to be furnished to the accused free of cost by the Magistrate; nor could it be said that the expression "any other document or relevant extract thereof" mentioned in S.207(v) would include remand report.

46. An argument was advanced that remand report is a public document within the definition of S.74(1) (iii) of the Evidence Act and as such S.76 of the Evidence Act clothes any person, who has a right to inspect the said public document in the custody of a public officer, with a right to obtain and demand a copy thereof on payment of legal fees therefor. In support of this proposition, reliance was placed on a judgment of the Division Bench of the Kerala Hight Court consisting of Raghavan, C.J , and Bhaskaran, J, in *Circle Inspector of Police, Attingal v. Velu.* (I.L.R.1973-1-Kerala50) in which it had been held that :

"....The remand report submitted by the police, whether in relation to the remand under S.167, or extension of remand under S.344 of the Code, is a public document within the meaning of S.74 of the Evidence Act."

Even assuming that it is a public document, it has to be seen whether there is any other statutory provision which takes away or qualifies the right granted under S.76 of the Evidence Act. In *State of Madras v. G. Krishnan.* (A.I.R. 1961 Mad. 92 (F.B.)—73 L.W.713) the Full Bench went to the extent of laying down the law, when examining the question of grant of a certified copy of a statement under S. 164 of the Code thus :

"There is no express provision in that Code which prohibits the granting of copies of such statements. But it is not always necessary that a statute should necessarily be explicit in the matter. The language of the statute may be such that a prohibition can be implied."

Therefore, we have to consider whether there is any prohibition of the right of the accused to obtain a certified copy of the remand report, either impliedly or explicitly. Sub-S. (2) and (3) of S. 172 of the Code, which are relevant for our purpose, read as follows:

"172 (1).....

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court; but, if they are used by the police officer who made them to refresh his memory or if the Court uses them for the purpose of contradicting such police officer, the provisions of S.161 or S.145, as the case may be, of the Indian Evidence Act, 1872, shall apply." (Sub-S.(2) of the old Code corresponds to the above present sub-Ss. (2) and (3)).

The above sub-S.(3) makes it absolutely clear that neither the accused nor his agents are entitled to call for the police diary of a case, either during inquiry or trial ; nor the accused and his Counsel are entitled to see the same, merely because the entries in the case diary are referred to by the Court, except under circumstances when the entries are used by the police officer who made them, to refresh his memory or the Court uses them for the purpose of contradicting such police officer., Therefore there is a clear and express provision prohibiting the accused and his agents from calling for the police diaries and seeing them; but in the two exempted events contemplated in S. 172 (3), the diary becomes available to the accused, viz., for cross-examining a police officer under S.161 of the Evidence Act and for con radicting him under S.145 of the Evidence Act.

47. The Kerala High Court, in *Circle Inspector of Police, Attingal v. Velu,.* (I.L.R. 1973-1-Kerala 50) rejected the argument advanced before it by the learned Government Pleader that under S.172 (2) of the old Code, there is a bar against the accused calling for the case diary or seeing it even where the Court. during the course of an enquiry or trial, sends for and uses such diary in aid of such enquiry or trial and observed:

' This prohibition,as we view it is only against the use by the accused of the case

diary as such, but not against "remand report" submitted by the investigating officer. The Legislature has consciously provided a safeguard with respect to the claim for inspection of the case diary by the accused. The same safeguard, there would have been, with respect to the "remand report" also, if the legislature had any intention to treat it as a privileged document beyond the reach of the accused. The correct position seems to be that the prohibition contained in sub-S (2) of S.172 Crl. P.C., against the right of the accused to inspect the case diary, does not extend to the "remand report."

With great respect to the learned Judges, we are unable to subscribe to that conclusion, firstly because the question of the Legislature treating the remand report as a privileged document beyond the reach of the accused does not arise, since the Code does not contemplate a remand report being submitted to the Magistrate. Secondly, when the learned Judges themselves have expressed the view that the Legislature has consciously provided a safeguard with respect to the claim for inspection of the case diary by the accused, then the same analogy should apply to the invented remand report by practice, which is nothing but only a sum and substance of the case diary. Thirdly, if the certified copy of the remand report is to be furnished to the accused on the ground that the Legislature has not placed any prohibition, then it would tantamont to furnishing a copy of the substance of the case diary itself in other form, which the Legislature has prohibited by a statutory inhibition in that behalf. In other words, the case diary is the genus and the remand report is only a species, and, therefore, the prohibition made under S.172 (3) with regard to the genus, (i.e., entries in the case diary) will apply on all fours to its species(i.e , remand report). In case a certified copy of the remand report is furnished to the accused containing the information so far collected with all the particulars, then there is every likelihood of the accused tampering with the evidence and collection of further evidence inthat line,thereby hindering and stultifying the course of investigation.

48. In fact, this problem arises only on account of the investigating officer sending a 'remand report' which is not contemplated under law. Therefore, we hold that the judicial remand should be applied by the concerned police officials in strict compliance with the provisions of S.167 of the Code and O.593(1) of the Madras Police Standing Orders. In such a case, the accused would not be entitled to a copy of the requisition for remand in view of the embargo placed by S.172(3) of the Code. If any other record besides the remand report is forwarded to the Magistrate under any name, a copy of the same will have to be furnished to the accused once an order is passed on the basis of such document other than the requisition for remand, as per the provisions of S.363 (5) of the Code on payment of charges. So far as the requisition for remand is concerned, we hold that the accused is not entitled to a copy of the same.

49. The next issue for consideration is, whether the accused is entitled to copies of the order made by the Court on the remand report as well as the complaint, if any,made by the accused, and the order made thereon. The orders made on the remand report are orders passed by the Magistrate in the course of his judicial proceedings. In other words, they are all judicial orders. Recording of the complaint made by the accused at the time of remand is also part of the judicial function of the Magistrate. It may be mentioned here that the accused may require the order of remand in case the accused intends to challenge the validity of remand. Therefore, the accused on application and on payment of the prescribed charges, is entitled to a copy of such order as contemplated under S.363(5) of the Code (corresponding to S.548 of the old Code). Similarly, the accused is also entitled to a copy of his complaint made to the Magistrate which was reduced to writing by the Magistrate in the discharge of his judicial function, on application made in this behalf and on payment of prescribed charges, in the absence of any statutory inhibition. Hence, the accused is entitled to get copies of the order passed in the first stage while ordering the detention of the accused under S.167 of the Code, and also the order of remand and extension of remand under S.309 of the Code and also the copy of his complaint, if any, made by him and reduced by the Magistrate into writing at the time of remand and the order, if any, passed thereon.

49A. *Whether the accused is entitled to obtain certified copies of the inquest report, statements recorded under S. 174 of the Code, the post mortem certificate, the requisition given by the police officer to the Medical officer for conducting post mortem and medically treating the injured, the rough sketch of the scene place, and the observation mahazar prepared by the investigating officer ?*

S.174 of the Code was intended to apply to a case where inquest is necessary. The investigation under this section is limited in scope and confined to the ascertainment of the actual cause of death, as to whether in a given case, death was accidental, suicidal, homicidal or caused by any other reason. It is not necessary that all the witnesses are to be examined during the inquest. As pointed out by the Supreme Court in *Shakila Khader* v. *N. Nausher Gama* (A.I.R. 1975 S.C. 1324).

"In an inquest, all the witnesses need not be examined as an inquest under S. 174, Cr. P. C. is concerned with establishing the cause of the death and only evidence necessary to establish it need be brought out".

In *Marudamuthu Kudumban* v. *King-Emperor* (I. L. R. 1950 Madras 750 : 25 L. W. 599), it has been ruled that the accused is not entitled to the copies of the inquest statements, and that the procedure which governs the copies of statements under S. 162, Crl. P. C., would govern also the grant of copies of statements, made at the inquest. (See also *Razik Ram* v. *J. S. Chouhan* (A. I. R. 1975 S. C. 667) and *Narpal Singh* v. *State of Haryana* (A. I. R. 1977 S. C. 1066 : 1977 L. W. Crl. 50. (S. N.) : 1977 Crl. L. J. 642). Such inquest statements, as the case of the statements recorded under S. 162 of the Code, should not be got signed by the deponents, and the statements recorded during the inquest in the course of the investigation are not substantive evidence, but those statements could be used for contradicting the witnesses under S.145 of Evidence Act.

50. Under S.174(1) of the Code, the officer holding the inquest has to draw out a report of the apparent cause of death describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner or by what weapon or instrument (if any), such marks appear to have been inflicted and such report prepared in the presence of two or more inhabitants of that neighbourhood should be signed by the officer holding the inquest and other persons or by so many of them as occur therein, and the said report should be forwarded to the Magistrate. In Order 605(3) of the Madras Police Standing Orders, it is stated that in case of trial for culpable homicide, the report of the preliminary investigation under S.174 of the Code should invariably be exhibited by the prosecution in the trial. The inquest report so drawn out being a report of what the officer holding the inquest actually found on inspection of the dead body and what he ascertained by questioning the persons present should not be admitted as evidence either for the prosecution or for the defence, but it would only be open to the defence to cross-examine the witness in the light of any material that they might find from the inquest report, but the inquest report itself could not be admitted as evidence and could not be used directly for showing that the prosecution witnesses had given some other version before the said officer. In *Pandurang v. State of Hyderabad,* (A.I.R. 1955 Madras 216) it has been observed that it is questionable how far an inquest report is admissible except under S.145 of the Evidence Act.

51. When there is any doubt regarding the cause of death or when for any other reason, the officer holding the inquest considers it expedient to do, he shall, subject to such rules as the State Government may prescribe, forward the body with a view to its being examined to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless, as contemplated under S. 174 (3) of the Code. The most important feature for which the necropsy, i.e. post mortem examination is asked for is to obtain the opinion of the Medical Officer as to the *causa causans* (immediate cause)of death. As per G.O.204, Pub. dated 28-3-1892, Medical Officers have to supply a copy of the post mortem notes on application from on officer not below the

rank of Station House Officer, and in addition thereto, the Medical Officers should furnish the police with all possible information calculated to assist the elucidation of the case either orally or in writing. (See Order 615 of the Madras Police Standing Orders). It is during the course of the investigation, the investigating officer, in order to ascertain the nature of the injury and the probable manner in which the injury has been caused, and the nature of the weapon that could have been used, etc. obtains a copy of the wound certificate from the Medical Officer concerned on a requisition in that behalf. The wound certificates will be delivered to the police by the concerned Medical Officers as per G.O. 204, Public, dated 28—3--1892 (See also Order 614 of the Madras Police Standing Orders).

52. The rough sketch, plan or map of the scene place is prepared by the investigating officer during investigation giving all the necessary and relevant details of the scene place, the main purpose of which is to explain to the Court the scene spot, and to enable the investigator to refresh his memory at a later stage.

53. The observation mahazar is also one prepared during investigation noting down all the relvant details of the scene locality.

54. Though there is no specific provision requiring the investigating officer to prepare the observation mahazar and to draw a topography, these documents are prepared only as part of the investigation in the process of collection of materials relating to the case.

55. Now, we pass on to the next question as to whether the accused is entitled to copies of these documents, even before the filing of the charge-sheet. Mr. N. T. Vanamamalai and Mr. Rangavajjula, placing heavy reliance on S. 173 (7) of the Code, strenuously urged that whilst a police officer investigating the case is given option to furnish to the accused copies of all or any of the documents referred to in sub-S. (5) of S. 173, there may not be any conceivable or justifiable reason for denying the grant of copies of the documents referred to above before the stage of S. 207 to the accused. According to Mr. Rangavajjula, if Ss. 173(7) and 207 of the Code are to co-exist, S. 173(7) should prevail. Both the learned Counsels drew the attention of this Court to S. 363 (5) of the present Code (corresponding to S. 548 of the Old Code) as per which any person affected by a judgment or order passed by a Criminal Court is entitled to a copy of the judgment or order or of any deposition or other part of the record on an application made in this behalf and on payment of the prescribed charges; and they supplemented their arguments stating that the affected party is entitled to a copy of the other part of the record also on the basis of which any order is made, before the charge-sheet is filed. In support of this contention, Mr. N. T. Vanamamalai relied on a judgment of the Supreme Court in *Superintendent and Remembrancer, Legal Affairs, West Bengal* v. *S. Bhowmick* (A. I. R. 1981 S. C. 917 : 1981 L.W. Crl. 39 S.N.).

56. Mr. Sriramulu, relying on the decision of the Supreme Court in *Maru Ram* v. *Union of India* (A. I. R. 1980 S. C. 2147), contended that Ss. 173 and 207 are specific provisions overriding the general law, viz., Evidence Act, and therefore, the copies of the documents have to be furnished only according to these specific provisions as per which the accused is entitled to get copies of the documents only after the police report is forwarded. According to him, there is clear demarcation between the specific provision and the general law, and hence even if these documents are construed to be public documents within the meaning of S. 74(1) (iii) of the Evidence Act, these documents could not be furnished to the accused before the police report (charge-sheet) is submitted on account of the implied restriction as borne out from a combined reading of Ss.173(2) and 207 of the Code. Mr. Sriramulu would further submit that the ruling relied on by Mr. N.T. Vanamamalai, viz, *Superintendent and Remembrancer, Legal Affairs, West Bengal* v. *S.Bhowmick* (A.I.R.1981 S.C. 917 : 1981 L.W.Crl 39 S.N.) cannot be availed of, on the ground that the Supreme Court examined that case only with reference to the provisions of the old code since the occurrence in that case was much earlier to the commencement of the new Code, and secondly, the question that arose in that case was entirely different from the one now put forth by Mr. N.T. Vanamamalai.

56a. Relying on the decision in *Assistant Customs Collector, Bombay v. L.R. Melavani*

(A.I.R. 1970 S. C. 962 : 1970 Crl. L.J. 885.) wherein the applicability of S.173 of the old Code came to be examined and wherein it has been pointed out,

"That provision is attracted only in a case investigated by police officer under Chapter of the Criminal Procedure Code, followed up by a final report under S.173, Crl. P.C."

And another decision in *Gurbachan Singh v. State of Punjab,* (A.I.R. 1957 S.C. 623) wherein it has been observed:

"It is clear from this new sub-section (S. 173 (4) of the old Code) that when the police officer after completing the investigation sends his report to the Magistrate copies of the statements and documents referred to should be furnished to the accused."

Mr. Sriramulu urged that the procedure laid down under the Code of Criminal Procedure is the procedure duly established under law, and, therefore, the accused is entitled to copies of these documents only as per the specific provision which is fair and just and which is in consonance with Art.21 of the Constitution of India. In continuation of his argument, learned Counsel submitted that S. 173, and 207 are specific provisions overriding the general law, and, therefore, any plea that the accused is entitled to copies of these documents on payment of charges on the basis of Ss. 173(7) and 363(5) of the Code cannot be countenanced. According to him, S. 173(7) comes into effect only after the completion of the investigation followed by a final report by the police, and not earlier to it. We see much force in the submission made by Mr. Sriramulu for the following reasons ; S. 173(7) of the Code reads thus:

"Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-S. (5). "

Sub-S. (4) of S. 173 of the old Code cast a statutory duty on the officer in charge of the police station to furnish to the accused free of cost the documents contemplated therein. There is no such duty on the police officer under the present Code, but that duty is now cast on the Magistrate to furnish to the accused free of cost the documents enumerated in S. 207, in a case instituted on police report. However, the present sub-S. (7) of S. 173, newly introduced, leaves the matter of granting of copies of the documents mentioned in sub S. (5) of the new Code, to the convenience of the police officer investigating the case. Nevertheless, the present Sub-S.(7) corresponds to, and replaces, sub-S. (4) of of S. 173 of the old Code. If sub-S. (7) is read in conjunction with sub-S. (5) of S.173, it would make it clear that sub-S. (7) would come into operation only after a police report as contemplated in sub-S. (2) (i) of S. 173 is forwarded to the Magistrate. Therefore, the submission made by Mr. N. T. Vanamamalai and Mr. Rangavajjula on the basis of sub-S(7) cannot be accepted.

57. S.548 of the old Code came under Chap. XLVI under the heading 'Miscellaneous" of the old Code. S. 363 (5) of the new Code, corresponding to S.548 of the old Code, comes under the heading "Judgment" in Chap.XXVII. The expression "other part of the record" appearing in sub-S (5) of S.363 would not refer to the documents referred to in Ss.173 and 207 Crl. P.C., but would only refer to the records of the Court with reference to the case. The expression "record" in legal paralance would mean "an official contemporaneous memorandum stating the proceedings of a Court or official copy of legal papers used in a case" *(Shimmel* v. *People* (108 Colo 592,121, P.2d.491, 493) as defined, in Black's Law Dictionary Fifth Edn). Therefore, in the context of S.363(5), it would pertain only to the subject matter of the order and is quite distinct from the expression "documents" referred to in sub-S. (7)of S.173, and the furnishing of the copy of the part of the record also is only after the judgment or order, as the case may be, is pronounced. Therefore, as per S.363 (5), an aggrieved person is entitled to a copy of any order or part of the record on which that order is based only after the order is passed, subject to the express exclusions which may be found in the Code. Hence, no argument could be permitted to be advanced relying on S 363 (5) for the plea that the accused are entitled to get copies of the documents referred to in S.173 before a police report is forwarded under S.173(2)(i).

58. Citing the decision of the Supreme Court in *Ram Jethmalani* v. *Director, C.B.I.*

C.I.A.-I, New Delhi, (1987 Crl. L.J. 570) in which it has been held that statements which are recorded by the police officer under S.161, Crl.P.C., are acts of a police officer, or public officer, or record of acts of public officers, that all documents which may be handed over to such police officer to substantiate the statements made to the police officer would also be part and parcel of the record of acts of the police officer, that the statements recorded and documents filed in support of the statements with public officers would be public documents within the meaning of S.74, Evidence Act, and that it cannot be said that as the statement as recorded by the police officer is not a record within the meaning of S. 35, Evidence Act, it cannot be a public document within the meaning of S.74, Evidence Act, Mr. Vanamamalai would urge that in the light of the above proposition of law laid down by the Supreme Court, there cannot be any impediment in granting copies of the above said documents. As rightly pointed out by Mr. Sriramulu, the decision of the Supreme Court in *Ram Jethmalani* v. *Director, CBI, SPE, CIA-I New Delhi*, (1987 Crl. L. J. 570) cannot be availed of for the proposition that the accused are entitled to copies of the abovesaid documents even before the police report is forwarded, for the reason that the petitioner (Ram Jethmalani) in that case sought a writ of mandamus for permitting him inspection of statements and documents in possession of respondent (Director C. B. I.), relating to the investigation and final report under S.173, Criminal P.C.; in respect of a criminal case and to grant him copies or to make copies of certain documents in order to prove his case in a libel action instituted by him in the Queen's Bench Division of the High Court of Justice in England. Secondly in that case the final report under S.173 of the Code has already been forwarded to the Magistrate. In other words, the investigation in that case was over. Thirdly, the copies were dircted to be given to the petitioner therein on the petitioner giving an affidavit of undertaking that he shall not use it against the State.

59. Yet another argument was advanced by Mr. N.T. Vanamamalai, relying on Rule 339 of the Criminal Rules of Practice stating that the words "any portion of the record of a Criminal case" would indicate that the accused can get any document at any time on payment of charges. As pointed out earlier, in Rule 339, as it originally stood as Rule 177, the expression "any portion of the record of a Criminal trial" was used. As stated by the Full Bench in *State of Madras* v. *G. Krishnan* (A.I.R. 1961 Mad. 92 F. B. : 73 L. W. 713), the present rule (R. 339) entitles the accused to get copies of any portion of a record of a criminal case on payment of proper stamp and authorised fee for copying. Learned Public Prosecutor would contend that the record of a criminal case gets constituted only from the time the Magistrate takes cognizance of the case, and that is, the stage of S. 207 and that the accused cannot get copies earlier. It is obvious that the Rules are subject to the provisions of the Code, and that the Rules cannot travel beyond the Act, and must be read subject to its provisions. (*Pratap Singh* v. *Shri Krishna Gupta* (A.I.R. 1956 S.C. 140) As found earlier, the Code has provided that certain documents are not to be given to the accused before the police report is forwarded to the Magistrate. In respect of some others, it has prescribed the stage at which the copies are to be given, and as such a prescription as per the scheme of the Code excludes the right to get them earlier. Therefore, the Rules cannot be construed to have given any right to the parties to obtain copies against the provisions of the Code. At any rate, R. 339 does not postulate that the accused is entitled to copies at any stage, i.e., even before the forwarding of the police report to the Magistrate on payment of prescribed charges.

60. Besides, we may point out that as per S. 173 (5), the police officer has to forward to the Magistrate along with his report (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and (b) the statements recorded under S. 161 of all persons whom the prosecution proposes to examine as its witnesses. Under sub-S.(6) of that Section if the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate the part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted

to the accused and stating his reasons for making such request. The Magistrate, to whom such a request is made, as per the first proviso to S. 207 may, after perusing any such part of a statement as is referred to in Cl. (iii) of S. 207, and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused. This contingency will arise only after the report has been forwarded to the Magistrate, because sub-S. (6) of S. 173 will come into play only after the documents are forwarded to the Magistrate along with a report, viz., the report contemplated under S. 173(2)(i) in accordance with sub-S.(5) of that Section.

61. In this connection, we would like to stress that the purpose of the Code of Criminal Procedure is that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of by roaming over a vast number of authorities in order to discover what the law ought to be. See *Bank of England* v. *Vagliano Brothers* (1891 A.C. 107)
In short, it is not the province of a Judge to disregard or go outside the letter of the enactment. The law of procedure is meant to aid, and not to hamper the administration of justice. As pointed out in *Kalesha* v. *Emperor* (62 M.L.J. 71 : A.I.R. 1931 Madras 797), "*The Criminal Procedure Code is not devised on behalf of the prosecution or on behalf of the accused, but on behalf of justice.*" (Under lining is ours).

62. The Code lays down the procedure to be followed in every investigation or inquiry into or trial for every offence, whether under the Indian Penal Code or under any other law. The cardinal rule of interpretation is that the language used by the Legislature is the true depository of the Legislative intent and that words and phrases occuring in a statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and of the object of the specific provision of the Code itself; and, there fore, every section of the Code should be given a proper interpretation adhering to the ordinary meaning of words used and to the grammatical construction; and it is not proper for Courts by way of interpretation to read words in a section which are not found in it or to infer meanings which the actual words used cannot bear. For all the foregoing reasons, we hold that accused are not entitled to certified copies of the inquest report, statements recorded under S.174 of the Code, Post-mortem certificate, requisition given by the police officers to the Medical Officer for conducting post-mortem and medically treating the injured, rough sketch of the scene place, and observation mahazar prepared by the investigating officer, before the final report is forwarded to the Magistrate, as contemplated under S.173(2) of the Code.

63. *Whether the accused is entitled to a copy of the affidavit of the investigating officer requesting the accused for his custody?* S. 167 of the Code empowers a Magistrate to whom an accused person is forwarded under this Section to make an order of detention of the accused to such custody, viz., whether judicial custody or police custody, as the Magistrate thinks fit, for a term not exceeding 15 days as a whole. As per sub-Ss. (3) and (4), the Magistrate authorising the detention of the accused to the police custody should record his reasons for so doing, and if the said Magistrate is other than the Chief Judicial Magistrate, he should forward a copy of his order with his reasons for making it, to the Chief Judicial Magistrate. Rule 76 of the Criminal Rules of Practice states that the Magistrates shall not grant remands to the poilce custody unless they are satisfied that there is good ground for doing so and shall not accept a general statement made by the investigating or other Police Officer to the effect that the accused may be liable to give further information, that a request for remands to Police custody shall be accompanied by an affidavit setting out briefly the prior history of the investigation and the likelihood of further clues which the police expect to derive by having the accused in custody, sworn by the investigating or other police officer, not below the rank of a Sub Inspector of Police and that the Magistrate, after perusing the affidavit and satisfying himself about the request of the police officer shall entrust the accused to police custody; and at the end of the police custody, the Magistrate shall question the accused whether he had in any way been interfered with during the period of custody.

See also amended Order 670 of the Madras Police Standing Orders and G.O. Ms. 1734, Home, dated 24th May, 1963.

64. A careful analysis of these provisions shows that the affidavit of the police officer demanding police custody of the accused is based on any information received by him during the course of the investigation,which information needs further probe. The Magistrate, before ordering police custody has to satisfy himself not only by perusing the contents of the affidavit, but also the entries in the case diary on the basis of which the affidavits are to be sworn to by the police officers. Hence the affidavit drawn in accordance with Rule 76 of the Criminal Rules of Practice without any extraneous material, cannot be said to be a 'record' witnin the meaning of S.363 (5) of the Code before the stage of passing any order thereon. So, till an order is passed by the Magistrate, there is no right whatsoever for the accused to get a copy of the affidavit. But, once an order is passed on the basis of the affidavit filed by the police officer the said affidavit becomes a part of the record. It may be pointed out in this connection that there is no specific legal embargo under S.172 (3) of the Code disentitling the accused to get a copy of such affidavit which does not form part of the case diary. Needless to say that the police officer swearing to such affidavit should be extra cautious in drafting the affidavit with the particulars only necessary for that purpose. In view of this legal position, we hold that after an order is passed by the Magistrate on the basis of the said affidavit the accused will be entitled to get a copy of the same as well as the order passed thereon, on application and on payment of the prescribed charges.

65. Incidentally, Mr. N.T. Vanamamalai advanced an argument that the accused are entitled to copies of statement recorded under S.161 of the Code on payment of charges, even before the final report is forwarded under S.173 (2) (i) of the Code, on the ground, firstly those statements are public documents within the meaning of S.74 of the Evidence Act, and secondly, in view of S.173 (7) of the Code. Though this question does not arise in these references the above argument cannot be countenanced for the elaborate reasons given in the preceding paragraphs of this order.

66. In the result, the references are answered as indicated above.

67. Before parting with this order we feel that we would be failing in our duty if we do not place on record our appreciation of the valuable services rendered by the learned Additional Public Prosecutor, Special Public Prosecutor for Central Bureau of investigation, learned senior Counsel and other learned Counsels both appearing for the petitioners and as amicus curiae in lucidly analysing and presenting the various propositions of law which have been of immense help to us in rendering this order.

(Ref. : HEAD-NOTES)

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3. The Code of Criminal Procedure, 1898, (as amended by Act XVIII of 1923), S.173-207(A)-157-168-161-251-60-340-61-344-548.
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6. The Constitution of India, Art. 22(1) & (2)-14-21
7. The Customs Act, S.104.
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Latters patent—

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10. The Criminal Law Amendment Act, 1932,S.7.
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12. The Draft Bill of the Constitution, Art. 15A.
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12. 1975 TNLJ 482
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16. 1960 MWN 782 (State of Madras v. G. Krishnan)
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18. AIR 1959 Mad. 405 (Veerappa In re)
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21. (Mad HC.) Crl.R.C. No. 184/1982 dt. 1—12—85 (Vedagiri v. State)
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26. 1956 Cr.L.J. 13 (Vimal Kishore Mehrotra v. State of A.P.)
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28. AIR 1966 SC 1910 (State of M.P. v. Shobharam)
29. 1971 Cr.L.J. 875 (Panchanan Mondal v. The State)
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