Narayandas Kedarnath Daga Vs. the State of Maharashtra

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Court : Mumbai

Decided On : Aug-29-1963

Reported in : (1964)66BOMLR17

Judge : Gokhale and ;Patel, JJ.

Appeal No. : Criminal Revision Application No. 967 of 1962

Appellant : Narayandas Kedarnath Daga

Respondent : The State of Maharashtra

Judgement :

Patel, J.

1. His Lordship after stating the facts proceeded. As a result of the investigation made by the Special Police, two charge-sheets were filed, one with regard to the case which resulted in the first commitment and another which resulted in the second commitment.

2. In order that these accused, should be tried, expeditiously, the State Government made a special appointment of Mr. Mahimtura as a Special Judicial Magistrate for Bombay and Nagpur District and invested him with the powers of a Presidency Magistrate. This notification was issued on May, 27 1960, and immediately thereafter the charge-sheet was filed. In due course another notification was issued on September 15, 1961, by which Mr. B.N. Deshmukh, Additional Sessions Judge, Greater Bombay, was appointed to be an Additional Sessions Judge for Nagpur Sessions Division to exercise jurisdiction in the Court of Sessions for the Nagpur Sessions Division and. by Clause (2) he was required to sit for the cases committed by Mr. Mahimtura at Bombay within the Greater Bombay Sessions Division.

3. The first ground urged, by Mr. Bhatt is based on the right to equality. The allegations against the accused are that in pursuance of the conspiracy to commit the breach of trust of the funds of Model Mills amounting to Rs. 34,92,500 between May, 1956 and April, 1958, large amounts were drawn from the, funds of the Model Mills for meeting the losses suffered by accused No. 1 and for discharging the personal liability of accused Nos. 1 and 2 in the Union Bank of India and for also providing finances to Swadeshi Oil Mills. It was further alleged that the investigations also showed that whenever more funds were required for making payments to Harakchand Mohanlal for the said purpose, false and inflated stocks of cotton, cloth and yarn were shown in the record of Model Mills at the instance of accused Nos. 1 and 3 and also in the statement supplied to the Bank, that on the security of stocks which did not exist large amounts were borrowed from the Punjab National Bank and

it was cheated. It is argued that at least four persons Dinshaw D. Patel, Jagannath Rant, Gajanand Maske and S.D. Mundra, who admitted that they had shown inflated stocks in the books of the Mills and submitted such statements to the Bank under the orders of accused Nos. 1 and 3 and who are cited as witnesses at Nos. 4, 5, 8 and 11 respectively in the list, were, on their admitted statements, as much criminals as the applicants are alleged to be, and though on their own showing they had complicity at least in the statements regarding stocks and also fabricating the records in connection with the same, they have been deliberately omitted from the charge-sheet by the police which they had no power to do. This, he contends, amounts to preferential treatment to those by misusing their powers and the whole charge sheet and every thing connected with it, therefore, is illegal and bad since Article 14 of the Constitution ought to apply. It is also complained that though accused No. 1 pointed out to the learned Magistrate that under the provisions of Sections 190 and 204 of the Criminal Procedure Code it was his bounden duty on his suspicions being aroused that an offence was committed by those persons to issue process against them and require the police officers to place them before him as accused along with the petitioners, he refused to take action. It is argued that the procedure adopted by the police and by the learned Magistrate amounts in effect to exonerate those witnesses from prosecution and pardon contrary to the provisions of Section 337 and it should not be permitted.

4. Mr. Khambatta contends-and in our view rightly-that even on the assumption that Article 14 can possibly mean as is contended for, it is impossible to say that those four witnesses are on an equal footing with the present accused. We have carefully perused their statements and those statements show that they were told that it was necessary for raising funds for the purpose of the Mills that the stock should be inflated. It may be that rightly or wrongly in order to benefit the Mills they carried lout the desire of accused Nos. 1 and 3. They were ordinary employees of the Mills and were serving the Mills for a long time and there is nothing to show that they knew that the funds were being misused by accused No. 1 for his own purpose. Moreover, except their own statements there is no evidence against them. Mr. Bhatt contended that as this aspect of the matter was not mooted before the learned Magistrate, the other evidence against them was not brought to his notice. He says he would be in a position to show that there was evidence against these witnesses apart from their statements which would show their complicity. It is obvious that though the accused may have given statements before the police, these statements would not be admissible in evidence against themselves. The other evidence, even if any, could be only very meagre and unsubstantial.

5. Mr. Khambatta is also right when he says that no amount of evidence that any one could produce would show that these four witnesses could have at all known at any time the conspiracy between the accused before the Court to misappropriate funds of the Mills for the personal purpose of accused Nos. 1 and 2. Moreover, these four witnesses who were ordinary employees have not received a pie of the funds belonging to the Mills and, therefore, it is wrong to Say that the police and the learned Magistrate have misused the powers and violated the equality rule even if applicable.

6. Mr. Bhatt argues that the powers of police are circumscribed by the Code and they have no right to select a particular accused for being charge-sheeted before the Court. In this connection Mr. Khambatta invited our attention to the decision in H.N. Rishbud v. State of Delhi : 1955CriLJ526 wherein it is observed (p. 201):

Thus, under the Code investigation, consists generally of the following steps : (1)... (2)...(3)...(4)...(5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.

In this connection we may refer to Sections 169 and 170 of the Criminal Procedure Code. Section 169 enables the police officer to release a person in custody on his executing a bond for appearing before a Magistrate if and when required if in his opinion there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 170, the counterpart of Section 169, contains the marginal note to this effect 'Case to be sent to Magistrate when evidence is sufficient'. It says that if it appears to the officer upon investigation that there is sufficient evidence or reasonable ground as aforesaid (i.e. reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate) such officer shall forward the accused under custody to a Magistrate. Therefore, even if the police officers may not have to some extent an absolute choice, they have to exercise some discretion in the matter and cannot merely because there is some suspicion of an offence charge-sheet an accused; there must be sufficient evidence to justify them in forwarding the accused to the Magistrate. In view of the fact that substantially the evidence against them consists of the statements of those witnesses themselves which would not be admissible against them, the police officers were not bound to charge-sheet those persons along with the present accused against whom there was more than ample evidence to justify their being charge-sheeted. We do not think that in exercising their discretion the police officers were animated by any ill-motive against any of the accused with the result that even if Article 14 applied, since the exercise of the power in the present case is bona fide there is no question of the article having been violated for ulterior purpose even if it is assumed that an accused is entitled to ask that another accused should be tried along with him.

7. Moreover, even if it were assumed that these four witnesses were guilty, in our view, there is no warrant for saying that they should be charge-sheeted under the same charge-sheet along with the accused or that they should be tried with these accused as is contended for. By resorting to this argument, the whole attempt on the part of the accused is to prevent these four appearing as witnesses against them and their evidence being availed of by the prosecution. In our view, equal treatment does not mean and can never mean that irrespective of other considerations those persons should also be charged along with the accused in the same trial. We are not satisfied that there is any compelling law which requires the prosecution to charge-sheet all accused in the same trial in respect of even the same offence, even if all of them are parties to it. The provisions regarding joinder of accused are enabling provisions and no accused can with ulterior purpose or otherwise insist that the other accused be also put up along with him for trial.

8. Mr. Bhatt says that during the hearing he asked if the Public Prosecutor was prepared to examine Dinshaw D. Patel and other of those witnesses and when he replied in the affirmative he intimated that he proposed to make an application under Sections 190 and 204 to the learned Magistrate for taking action against them, the Public Prosecutor refused to examine those witnesses. Moreover in the midst of Mr. Gandhi's arguments on this aspect the Public Prosecutor gave up the charges regarding the offences under Section 420 and Section 477A in relation to the alleged cheating of the Punjab National Bank Ltd. It is argued that this attempt on the part of the prosecution was not justified and the charge-sheet must proceed as : a whole. We

are by no means satisfied that the Public Prosecutor was in error in dropping the charges under Section 477A and Section 420 of the Penal Code even against the present accused. It is obvious that these four witnesses could, if at all they were involved, be involved only in reference to the inflation of the stocks in the records of the Mills and the statements that were furnished to the Bank. If at all there was any conspiracy to draw more funds from this Bank, it could have no relation to the first conspiracy which was for the purposes of withdrawing the funds of the Mills for the use of accused Nos. 1 and 2. It would seem that even though in the charge-sheet both the charges were clubbed together, there would be a clear misjoinder of charges and even if the Public Prosecutor had insisted upon their being included therein, it is doubtful if the Court would have directed a single trial both for the first conspiracy and the offences under Section 409 and for offences under Sections 420 and 477A of the Penal Code, if those accused by any chance were charge-sheeted along with the present accused.

9. In our view, there is also no substance in the contention that the learned Magistrate was bound under Section 190, Clause (c) read with Section 204 to take cognizance of the alleged offence by reason of what appeared in the police report to issue process against any of those witnesses. The words in Section 190 are:.any Presidency Magistrate...may take cognisance of any offence-...

(c) upon information, received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

Section 204 requires that for the issue of a process a Magistrate must be satisfied that there is sufficient ground for proceeding. In our view, under Section 190 there is scope for the exercise of discretion by the learned Magistrate though, of course, not unrelated to his conclusion about there being sufficient material for proceeding against those persons. The learned Magistrate in this connection observed:

It is true that the statement of D.D. Patel and also the statements of some other witnesses contain material which to some extent incriminate them. But I cannot say that the material is of such a nature that it shows that they are guilty of the offences mentioned in the charge-sheet. Simply because some witnesses say something which to some extent incriminate them, it is no part of my imperative duty to have them arrested and brought before me for trial along with the present accused as submitted by accused No. 1.

In our view, the learned Magistrate is fully justified in taking the view that he has expressed. As we said, there is no law which compels the Magistrate to direct their arrest and direct them to be charged along with the accused to be tried along with them. The whole attempt, as we said, is to shut out their evidence being received against the accused. Apart from this, the learned Magistrate is justifiably entitled to come to a conclusion that the evidence is not sufficient for him to proceed against those witnesses.

10. It is argued that Section 337 of the Criminal Procedure Code is a specific provision which enables the prosecution to obtain the evidence of a necessary witness who is an accomplice with the other accused and because of this specific provision no other mode is open to the prosecution for obtaining such evidence. Reliance is placed for this purpose upon the Privy Council judgment in Nazir Ahmad v. King-Emperor . In our view, there is no force at all in the contention raised. It is not even alleged by

the accused that those witnesses have been granted pardon by the police nor is there anything to show that any pardon was intended as such. What the police officer has done is to refuse to charge-sheet these witnesses under the same charge-sheet along with these accused in exercise of his discretion as in his view there was not sufficient material for putting up those witnesses for trial. The section has no possible application even if we assume that this is the only mode intended by the Criminal Procedure Code for obtaining the evidence of an accomplice.

11. It is argued that by the process adopted the accused are deprived of a contention that the evidence of those witnesses would not be admissible against them. That may be so. However we do not see under what provision can the accused claim such a right. The Criminal Procedure Code gives an accused person certain rights of defence but there is no provision in the Criminal Procedure Code which gives the accused a right to demand that someone else even if an accomplice he tried along with him. It is impossible to accept the contention that the accused is entitled to insist that those persons must be tried along with himself. Sir John Beaumont in Emperor v. Keshav Kortikar (1934) 37 Bom. L.R. 179, with respect, rightly observed that if the witnesses were not accused along with the applicants there is no provision of law which makes their evidence inadmissible. In this connection one may refer to Section 30 of the Evidence Act which provides that when more than one person are being jointly tried for the same offence, a confession is made by anyone of the accused affecting himself or some other of such accused the Court may take into consideration such confession as against such other persons as well as against the person who made such confession. It is true that the words 'may take into consideration' cannot mean that it should be treated on an equal footing with sworn testimony of a person. But if in law even a confession given by an accused can be considered by a Court, even though that confession has never been the subject of cross-examination, one fails to see any reason in principle why if an accomplice who is never an accused in the same trial along with the person against whom he gives evidence and which evidence is subject to cross-examination by the accused cannot be treated as evidence and should be regarded as inadmissible. It may be that the same witness may become an accused separately but that does not detract from his evidence as a witness; ultimately it rests with the Court what weight to attach to the evidence of such a witness. That, however, is a different matter.

12. The learned Chief Justice has also pointed out in the said case that merely because a police officer acts improperly in not charging such persons along with the accused even after mentioning their names it does not necessarily render the evidence inadmissible. Even assuming, therefore, that in the present case there was some irregularity on the part of the police officer, in our view, so far as the accused are concerned, they are not entitled to insist that the evidence of those witnesses should be rendered unavailable by directing their trial along with these accused.

13. The second contention raised on behalf of accused No. 1 is regarding the appointment of the Special Magistrate and the powers conferred upon him to try these accused. It is argued that the Criminal Procedure Code as amended by this State does not empower the appointment of a Special Magistrate as has been done in the present case for two Sessions Districts. It is argued that in order that an appointment of a Special Magistrate under Section 14 of the Act should be valid, he should be capable of being subordinate to a particular Sessions Judge as provided by Section 17. In the present case, as shown by the notification, he has been appointed Special Judicial Magistrate having jurisdiction over area comprising Greater Bombay

and Nagpur District and since there are separate Sessions Judges for Greater Bombay and Nagpur, under no circumstances it is argued can the requirement of Section 17 be satisfied. Section 17 of the Criminal Procedure Code provides that

All Judicial Magistrates appointed under Sections 12 and 14...shall be subordinate to the Sessions Judge and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and benches;

In our view, there is really no anomaly as is attempted to be made out by Mr. Bhatt. The position has been well explained by Mr. Justice Raghubar Dayal in Lalta Prasad v. State : AIR1952All70 , who was dealing with the Central Act where instead of the words 'Sessions Judge' the words are 'District Magistrate'. The learned Judge points out that the subordination of a Special Magistrate to the Sessions Judge is on the principle that he will be subordinate to a particular Sessions Judge with respect to the eases of that sessions division and not with respect to the eases of another sessions division if he as a Special Magistrate has jurisdiction over several sessions divisions. If, therefore, the learned Special Magistrate were exercising jurisdiction in respect of cases arising in the Nagpur Sessions Division he would have been subordinate to the Sessions Judge at Nagpur and if he exercised jurisdiction in respect of eases arising in Bombay Division then he would be subordinate to the Sessions Judge of Bombay. It is, however, countered by Mr. Bhatt that this would be a good argument in eases where such Special Magistrate is supposed to hear several cases some of which arise in one Sessions Division and some in another Sessions Division. He says that in the present case there is only one single case and the section, therefore, cannot have any application. We cannot accept this contention. In the present case it is clear on the materials before us that the conspiracy may as well have taken place in Bombay and at least some of the offences were committed within the jurisdiction of the Bombay Court. The offence, therefore, would have been triable in Bombay as if the offences had been committed within the Bombay Division and under these circumstances by the reasoning adopted in the case above cited, since Mr. Mahimtura, the Special Magistrate, was dealing with the case as if it arose in Bombay, he would be subordinate to the Sessions Judge in Bombay. It is possible that he may not have occasion to deal with a case arising in Nagpur arid, therefore, no case of subordination arises. That, however, does not make his appointment invalid on the ground urged by the petitioners.

14. It is then contended that the State Government was not entitled to confer the powers of the Presidency Magistrate or any Magistrate on Mr. Mahimtura. Reliance for this purpose is placed upon Section 14 of the Code of Criminal Procedure which enables the State Government to appoint Special Magistrates. The section, so far as is relevant, reads as follows:

The State Government may...confer upon any person who holds or has held any judicial post...all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate in respect to particular cases or to a particular class or classes of cases, or in regard to cases generally in any local area. Such Magistrates shall be called Special Judicial Magistrates....

It is argued that the Criminal Procedure Code contains provisions which confer powers upon a Presidency Magistrate, upon a Judicial Magistrate of the First Class, upon a Judicial Magistrate of the Second Class and upon a Judicial Magistrate of the

Third Class. There is no provision in the whole of the Criminal Procedure Code which has conferred any powers on Judicial Magistrates as such. Schedule IV shows what additional powers can be conferred on each class of the Judicial Magistrates under Section 37. The Magistrates referred to there are First Class, Second Class and Third Class Magistrates. Division (B) of Part I of that Schedule refers to the powers which can be conferred on such Magistrates by a Sessions Judge. He argues that under the Code no powers are conferred on a Judicial Magistrate as such and as under the above provisions the powers can be conferred only on Magistrates of First, Second and Third Class, the powers which the State Government has conferred on Mr. Mahimtura as Special Judicial Magistrate cannot be sustained.

15. There seems to be an obvious fallacy in the argument advanced. The words 'all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate' used in Section 14 of the Code mean 'Judicial Magistrate' defined in Section 6-A which shows that 'Judicial Magistrate' is a genus and the five Divisions of it are the species. The words are upon 'a Magistrate' and not upon 'such Magistrate' which mean 'any Judicial Magistrate'. When the section says 'powers conferred or conferrable...upon a Judicial Magistrate' it only means that the State Government is given a choice as to whether it will vest the named person with powers of a Presidency Magistrate or that of a Magistrate of the First Class or Second Class or Third Class. True under Section 6-A 'Judicial Magistrates' include Special Magistrates as a class. That cannot make any difference. The Legislature must be presumed to be aware of the general scheme of the Criminal Procedure Code when it amended the section. It must, therefore, have known that under the Central Code there were no Special Magistrates at all, and consequently there were no powers conferred upon such Magistrates as a class. The categories of Magistrates, namely Judicial and Executive, have been created after the judicial and executive functions were separated and under Section 6-A. 'Judicial Magistrates' were divided into the five classes named in Section 6-A. Knowing this it has used the words '...under this Code on a Judicial Magistrate' in Section 14 and not 'on such Magistrate' in which case alone the section can carry the meaning contended for. In the present case the State Government has conferred the powers of a Presidency Magistrate on Mr. Mahimtura, that is a power conferred by the Code on a Magistrate who is a Judicial Magistrate and is, therefore, conferrable upon him by the State under Section 14 for procedural purposes. The jurisdictional power which is conferrable on the Judicial Magistrate, First Class, of taking cognizance of the offence under Section 190 has also been conferred upon Mr. Mahimtura in respect of the case arising out of information referred thereto. In our view, it cannot be said that the State Government was not entitled to confer the powers which it had conferred on Mr. Mahimtura.

16. In this connection the decision in Jagannath v. State of Maharashtra : AIR1963SC728 may be referred to. In that case Mr. Gehani who was holding the post of a Presidency Magistrate was appointed a Special Magistrate under Section 14 and was invested with the powers of a Presidency Magistrate for the area comprising Greater Bombay and Ratnagiri District for the trial of the particular case involved there. It was held by the Supreme Court that the Government of Maharashtra could appoint Mr. Gehani a Special Judicial Magistrate having jurisdiction over Greater Bombay and the District of Ratnagiri and could confer upon him the powers of a Presidency Magistrate in respect of the trial of the case known as the Deogad Gold Seizure Case. It is true that in that case the arguments that are being urged were not urged before their Lordships. It is not necessary to consider whether we are bound by the decision or not since in this case we are not in a position to uphold the arguments

advanced by Mr. Bhatt, as we are clearly of the view that the appointment is -perfectly legal and so is the conferment of powers upon the learned Magistrate.

17. It was then contended that the power given to the Special Magistrate in respect to 'the criminal Case SPE's RC No. 3/1959 CIA (Model Mills Case) against Shri Khushalchand B. Daga and others' would not enable him to try two cases (1) against Khushalchand B. Daga and others and (2) against Khushalchand B. Daga and another. It may be recalled that out of the same information numbered above, two offences were discovered and accordingly two charge-sheets were forwarded to the learned Special Magistrate. In the first set several accused were charge-sheeted along with accused No. 1 while in the second only accused Nos. 1 and 3 were charge-sheeted. It is argued that the case against 'Khushalchand B. Daga and others' does not include and cannot include the case against 'Khushalchand B. Daga and another' nor can it include the two cases, the subject-matter of the charge-sheets. In our view, there, is no substance in either of the contentions. The power of a Presidency Magistrate is conferred upon the Special Magistrate in respect of the whole of the information referred to there, and if the information gives rise to more than one offence, it must by necessity include reception of several charge-sheets as a result of that information.

18. It is further urged by Mr. Bhatt that the appointment of Mr. Deshmukh as the Additional Sessions Judge also of Nagpur Division is illegal. For this purpose lie relies upon Section 9 of the Criminal Procedure Code as applied to this State. Sub-section (1) of Section 9 requires the State Government to establish a Court of Session for every sessions division and appoint a Judge of such Court in consultation with the High Court. Sub-section (3) of Section 9 enables the State Government in consultation with the High Court to appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts. Sub-section (4) enables the State Government to appoint a Sessions Judge of one sessions division in consultation with the High Court to be also an Additional Sessions Judge of another division and in such case he may sit for the disposal of eases at such place or places in either division as the State Government may direct. It is argued by Mr. Bhatt that evidently the appointment of Mr. B.N. Deshmukh to be an Additional Judge of Nagpur cannot be justified either under Sub-section (3) or Sub-section (4) of Section 9 of the Criminal Procedure Code.

19. The reason why he says Sub-section (5) of Section 9 does not apply is that the last words 'one or more such Courts' only mean that the Court or Courts of Additional Sessions Judge and Assistant Sessions Judge who may be appointed to exercise the jurisdiction of the Sessions Court only within that particular sessions division. Mr. Bhatt relied upon the observations of Mr. Justice Patkar in Emperor v. Lakskman Naryngikar : (1931)33BOMLR675 S.B. where the learned Judge observed as follows (p. 694):.I think, therefore, that the Additional Sessions Judge and the Assistant Sessions Judge appointed under Section 9(3), though exercising jurisdiction as a Sessions Court, are, while exercising their functions in respect of particular cases which have been made over to them, different Courts to the Sessions Judge who has been appointed under Section 9(1) of the Code of Criminal Procedure.

The question arose out of an application for transfer. It seems that disturbance had taken place at a place called Chirner, 13 miles from Panvel, and 47 accused were sent up before the Magistrate who committed them for trial before the Sessions Court at Thana under several sections of the Penal Code. Normally the trial would have taken

place at Thana with a jury. However, the then Bombay Government issued a notification under Section 193(2) of the case directing Mr. N.R. Gundil, Assistant Judge and Additional Sessions Judge, Thana, to try the case committed by the said Magistrate and under Section 9(2) he was further directed to hold his Court for trial of the case at Alibag. It was while considering the question of powers of transfer that the said observations were made. The other learned Judges decided this case on different grounds. The Court was not interpreting the amplitude of Section 9, Sub-section (3). It seems to us that the word 'such' in Sub-section (5) relates to the 'Court' referred to in the earlier part of the said section, and that is Sub-section (1) which, as we have said, requires the State Government in every sessions division to establish a Court of Session for every sessions division. It is in reference to 'such Court' or 'Courts' that the State Government is given power under Sub-section (3) to make necessary appointments. The power is given to the State Government to appoint either Additional Sessions Judges or Assistant Sessions Judges not only to exercise jurisdiction in 'such Court' but to exercise jurisdiction in one or more such Courts. The most natural meaning would be that Additional and Assistant Sessions Judges may be appointed who could be empowered to exercise jurisdiction in one or more Sessions Courts which means Sessions Court of different sessions divisions. There is no reference to one or more Sessions Courts in the same sessions division. Since we hold that the State Government had the power of appointing Additional Sessions Judge to exercise jurisdiction both in the Sessions Court at Bombay and Sessions Court at Nagpur, the contention pointedly made with reference to Sub-section (4) of Section 9 falls to the ground. It was suggested that if we construe Sub-section (3) as above, Sub-section (4) may become redundant. That cannot be so. It is obvious that Sub-section (3) gives power to the State Government to appoint Additional Sessions Judges and Assistant Sessions Judges to exercise their jurisdiction in one or more Courts while Sub-section (4) enables the State Government to appoint a Sessions Judge of one sessions division to be also an Additional Sessions Judge of another division. This power is given to meet a contingency when a Sessions Division has not enough work for a Sessions Judge in which case he can be provided for work in another division. Even if Sub-section (4) has to be resorted to, it is possible to rely upon Section 19 of the General Clauses Act by reason of which it is possible to include an Additional Sessions Judge who exercises the powers of Sessions Judge in the division within the meaning of the words 'Sessions Judge'. By reason of what we have stated above with regard to Sub-section (3), however, it is not necessary to consider this question further.

20. The rest of the judgment is not material to this report.