PETITIONER:
PRAMATHA NATH TALUQDAR

Vs.

RESPONDENT:
SAROJ RANJAN SARKAR

DATE OF JUDGMENT:
21/12/1961

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
KAPUR, J.L.
HIDAYATULLAH, M.

CITATION:
1962 AIR 876 1962 SCR Supl. (2) 297
CITATOR INFO :
RF 1971 SC2372 (11)
F 1977 SC2432 (4)
RF 1983 SC 595 (10)
R 1986 SC1440 (9,11)
R 1988 SC1883 (257)
F 1992 SC1894 (11)

ACT:
Criminal Complaint-Scope of enquiry-Second complaint on same facts but fresh evidence-When can be entertained-Exceptional circumstances-Manifest error-Code of Criminal Procedure, 1898 (Act 5 of 1898) ss. 200, 202, 203, 204-Criminal Matter-Special Bench-Validity of Constitution-Calcutta High Court (Appellate) Rules-Sanction-Abetment by conspiracy-Code of Criminal Procedure 1891 (Act 5 of 1898), s. 196A-Indian Penal Code, 1860 (XLV of 1860), ss. 107, 109, 120A, 120B.

HEADNOTE:
On March 17, 1954, Promode Ranjan a brother of N. R. Sarkar filed a complaint under s. 200 Code of Criminal Procedure against Pramathanath and S. M. Basu alleging offences punishable under ss. 467, 471 and 109 of the Indian Penal Code, before the Chief Presidency Magistrate in respect of a document appointing Pramathanath as the Managing Director of N. R. Sarkar & Co. and the minutes of the Board meeting resolving the same. It was alleged therein that the signatures of N. R. Sarkar on those documents were forgeries. After considering the evidence of the Handwriting Expert the Magistrate dismissed the complaint. Promode Ranjan preferred a revision petition to the High Court. The High Court dismissed the revision Petition. By an application dated January 6, 1956, when the revision petition was pending, attention of the High Court was drawn to the fact that the minutes dated January 16, 1948, had been typed on a letter bearing at the top in print "Telephone City 6091" where as the City Exchange had not come

into existence till December 1948. The Supreme Court granted special leave against the dismissal of the revision petition by the High Court but the appeal was withdrawn.

On April 3, 1959, Saroj Ranjan, another brother of N.R. Sarkar, laid a complaint on the same facts and allegations

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against the appellants, in addition alleging the further fact about the City Exchange in support of the allegation that the minutes were forged dishonestly and fraudulently and used as genuine. Neither in this complaint nor before the High Court had it been stated as to when it came to be known that on the purported date of the minutes the City Exchange was not in existence. The Presidency Magistrate issued process against the appellants. The appellants went up in revision to the High Court. The matter was first heard by a Division Bench and was later referred to a larger Bench of three Judges which dismissed the revision petition. In these appeals on special leave it was contended by the appellants that the second complaint ought not to have been entertained, that the constitution of the special Bench was illegal and that as the complaint alleged criminal conspiracy sanction under s. 196A of the Code of Criminal Procedure was required.

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Held, that the enquiry contemplated by ss. 200 to 204 Code of Criminal Procedure is for the purpose of enabling the Magistrate to find out if sufficient grounds exist for issuing process.

Vadilal Panchal v. Daltaraja Dulaji Chandigaonkar, [1961] 1 S.C.R. 1, Gulab Khan v. Gulab Mohammad Khan A.I.R. 1927 Lah. 30 and Ram Gopal Ganpat Ruia v. State of Bombay, (1958) S.C.R. 688 referred to.

Per S. K. Das, J.-The law does not prohibit altogether the entertainment of a second complaint when a previous complaint on the same allegations has been dismissed under s. 203 of the Code of Criminal Procedure. But a second complaint containing more or less the same allegations can be entertained only in exceptional circumstances. It is not possible nor desirable that the exceptional circumstances must be stated with particularity or precision. Generally speaking, the exceptional circumstances may be classified under three categories: (1) manifest error in the earlier proceeding, (2) resulting miscarriage of justice, and (3) new facts which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings. Where the previous order of dismissal was passed on an incomplete record or on a misunderstanding of the nature of the complaint, a second complaint may be entertained. Where a Magistrate misdirects himself as to the scope of an enquiry under s 202, Code of Criminal Procedure, and the mistake, made gives a wrong direction to the whole proceeding on the first complaint, the order of dismissal passed thereon would be due. to a manifest error resulting in a miscarriage of justice. In such a case, a second

complaint is entertainable.
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Per Kapur and Hidayatullah, JJ.-There is no legal bar to the entertainability of a second complaint. It is only when the Magistrate had misdirected himself, with regard to the scope of the enquiry under s. 203, Code of Criminal Procedure, or has passed an order misunderstanding the nature of the complaint or the order is manifestly unjust or absurd or the order is based on an incomplete record can it be said that there is such a manifest error or a manifest miscarriage of justice that a second complaint on the same allegations may be entertained. The other exceptional circumstances in which a second complaint may be entertained is when it is supported by fresh and further evidence.
Case-law referred to.
In the case of fresh evidence it must be such as could not have been with due diligence on the part of the complaint adduced on the earlier occasion.
Queen Empress v. Dole Gobinda Das I.L.R 28 Cal. 211, Dwarkanath Mandal v. Daniradha banerjee, I.L.R. 28 Cal. 692 (F.B.) disapproved.
Allah Ditta v. Karam Bakshi, 12 Lah, 9 Ram, Narain Chowdhary v. Punachand Jain, AIR 1949 Pat. 255, Hansabai v. Ananda, A.I.R. 1949 Bom. 384 and Doraiswami v. Subramania, A I. R. 1918 Mad. 484, approved.
In the present case permitting the second complaint to proceed would be a gross abuse of process.
Held, further, concurring with S.K. Das, J., that the Special Bench was properly constituted.
Per S. K. Das, J.-On the first complaint the Presidency Magistrate had misdirected himself regarding the scope of the enquiry under ss. 203 and 204 of the Code of Criminal Procedure and it was a manifest error. The facts about the City Exchange urged and fresh evidence were decisive of a prima facie case for issuing process and it was an exceptional circumstance justifying entertaining the second complaint and not to permit the trial of the case in such circumstances would be a denial of justice.
Kumariah v. C. Naicker, A.I.R. 1946 Mad, 167 and Ramanand v. Sheri, I.L.R. 1. 56 All 425, referred to.
Though Chapter II of the Rules of the High Court (Appellate Side) in terms applies to Civil cases, their substance could be applied to criminal cases by the Chief Justice in constituting a larger bench.
The substance of the allegations in the complaint amounted to an offence of abetment by conspiracy under
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s. 107 Indian Penal Code and not the offence of Criminal Conspiracy as defined by s. 120A and therefore sanction under s. 196A of the Code of Criminal Procedure was not necessary. The distinction between the two offences lies in that the first requires an overt act in pursuance of the agreement whereas the second makes the

agreement to do the unlawful act itself punishable.

Basirul Hag v. State of West Bengal [1953] S.C.R. 826 and Mulachy v. The Queen, (1868) L.R. 3 H.L. 306, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 75 and 77 of 1961.

Appeal by special leave from the judgment and order dated December 22-23, 1960, and from the order dated March 17, 1961 of the Calcutta High Court in Cr. Revision Nos. 1019 and 681 of 1959.

C.K. Daphtary, Solicitor General of India, and I. N. Shroff, for the appellant (in Cr. A. No. 75/61).

Purushottam Trikamdas, Prasunchandra Ghosh, S.C. Mitter and I. N. Shroff, for the appellant (in Cr. A. No. 77 of 1961).

M. C. Setalvad, Attorney General of India, Alak Gupta, S.N. Andley, Rameshwar Nath and P.L. Vohra for the respondents.

1961. December 21. The judgment was delivered by

S.K. Das, J.-I regret that I have come to a conclusion different from that of my learned brethren in these appeals. I proceed now to state the necessary facts, the arguments advanced before us and my conclusions on the various questions urged.

By an order dated April 10, 1961 this Court granted special leave asked for by the two appellants herein, Pramatha Nath Talukdar and Saurindra Mohan Basu, to appeal to this Court from two orders made by the High Court of Calcutta, one dated December 22/23, 1960 and the other dated March 17, 1961. By the first order a Special
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Bench of the Calcutta High Court dismissed two applications in revision which the appellants had made to the said High Court against an order of the Chief Presidency Magistrate of Calcutta dated April 11, 1959 by which the said Magistrate issued processes against the two appellants for offences alleged to have been committed by them under ss. 467 and 471 read with s. 109 of the Indian penal Code on a complaint made by Saroj Ranjan Sarkar, respondent herein. By the second order a Division Bench of the said High Court refused the prayer of the appellants for a certificate under Art. 134(1)(c) of the Constitution of India that the case was a fit one for appeal to this Court. This refusal was based primarily on the ground that the order sought to be appealed from was not a final order within the meaning of the Article aforesaid.

In pursuance of the special leave granted by this Court four appeals were filed, two against the order dated December 22/23, 1960 and the other two against the order dated March 17, 1961. The two appeals numbered 76 and 78 of 1961 from the order dated March 17, 1961 were withdrawn on the ground that special leave having been granted against the order of the Special Bench dated

December 22/23, 1960, the appellants did not wish to press the appeals from the later order dated March, 17, 1961. Therefore, the present judgment relates to the two appeals numbered 75 and 77 of 1961 which are from the judgment and order of the Special Bench dated December 22/23, 1960.

The principal question which arises for decision in these two appeals is whether a second complaint can be entertained by a Magistrate who or whose predecessor had, on the same or similar allegation, dismissed a previous complaint, and if so in what circumstances should such a second complaint be entertained. The question is one of
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general importance and has given rise to some divergence of opinion in the High Courts.

Let me first state the facts which have led to the filing of the second complaint in the present case. Saroj Ranjan Sarkar, who is the youngest brother of the late Nalini Ranjan Sakar-a well-known public man, financier and industrialist of Bengal-filed a petition of complaint in the court of the Chief Presidency Magistrate, Calcutta. On April 3, 1959, I do not pause here to state the allegations made in that petition, a shall have occasion to refer to them in detail later on. The complaint was filed against four persons-the appellants herein and two other persons, Narendra Nath Law and Amiya Chakravarty. A previous complaint on more or less the same allegations was made by Promode Ranjan Sarkar, second brother of the late Nalini Ranjan Sarkar. That complaint was made on March 17, 1954 and was dismissed under s. 203 of the Code of Criminal Procedure by the then Chief Presidency Magistrate, Shri N. C. Chakravarti, on August 6, 1954. Thereafter, an application in revision was made by Promode Ranjan Sarkar to the High Court of Calcutta, which gave rise to Revision Case No. 1059 of 1954. This application in revision was dismissed on July 8, 1955 by Debabrata Mookerjee, J. Promode Ranjan Sarkar then applied for a certificate under Art. 134(1)(c) of the Constitution, but such a certificate was refused by a Bench of the Calcutta High Court on September 1, 1955. Promode Ranjan Sarkar applied for special leave from this Court and obtained such leave on February 13, 1956. An appeal was filed in pursuance of that special leave, but ultimately Promode Ranjan Sarkar withdrew his appeal by filing a petition on February 3, 1959. In that petition he stated that at the intervention of Common friends and well-wishers of the parties, he had settled his disputes with the respondents therein and did not want to proceed with the appeal
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The appeal was accordingly withdrawn on March 12, 1959. Then, within about 22 days of that order, Saroj Ranjan Sarkar filed the complaint which has given rise to the present proceedings. For convenience and brevity, I shall refer to Promode Ranjan Sarkar's complaint as the first complaint and Saroj Ranjan Sarkar's as the second complaint.

It is necessary here to give a little more of

the background history of the second complaint. As stated earlier, the late Nalini Ranjan Sarkar was a well-known person in Bengal. He was the Governing or Managing Director of N. R. Sarkar & Co. Ltd., which managed several public limited companies, such as, Hindustan Development Corporation Ltd., Hindustan Heavy Chemicals Ltd., and Hindusthan Pilkington Glass Works Ltd. He was also closely connected with the Hindusthan Co-operative Insurance Society Ltd., of which he held a large number of shares. On January 4, 1948 he obtained leave of absence from the Directors of N. R. Sarkar & Co. Ltd. for a period of one year with a view to joining the Ministry in West Bengal and he assumed office as Finance Minister of the West Bengal Government on January 23, 1948. Later, the leave granted to him for one year was extended. He owned 4649 shares of N. R. Sarkar & Co. Ltd. Pramatha Nath Talukdar, who was a paid employee of the Hindusthan Co-operative Insurance Society Ltd. up to the end of July, 1953 was also a Director of N. R. Sarkar & Co. Ltd. He held 299 shares of the said company. Promode Rajan Sarkar held 50 shares. Santi Ranjan Sarkar; son of a deceased brother of Nalini Ranjan Sarkar, held one share. Thus, it would appear that Nalini Ranjan Sarkar was the owner of the largest number of shares of N. R. Sarkar & Co., Ltd., and for all practical purposes he controlled the affairs of that company. On July 31, 1951 Nalini Ranjan Sarkar executed a deed of trust in respect of 3649 shares out of the
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shares held by him in N. R. Sarkar & Co. Ltd. By the said trust-deed he appointed Promode Ranjan Sarkar, Pramatha Nath Talukdar and Narendra Nath Law as the trustees; but the beneficiaries under the trust-deed were his four brothers, namely, Promode Ranjan Sarkar, Pabitra Ranjan Sarkar, Prafulla Ranjan Sarkar and Saroj Ranjan Sarkar, as also Santi Ranjan Sarkar, the son of a deceased brother. It was alleged that the balance of 1000 shares held by Nalini Ranjan Sarkar was kept in custody with Pramatha Nath Talukdar and according to the case of the complainant these shares were kept in deposit with Pramatha Nath Talukdar for the benefit of the complainant and this brothers. Nalini Ranjan Sarkar died on January 25, 1953. It was alleged that a few days after the funeral ceremony had been performed, Saurindra Mohan Basu casually informed Promode Ranjan Sarkar that his brother Nalini Ranjan Sarkar had executed two documents to wit, an unregistered deed of agreement dated January 19, 1948 by which Pramatha Nath Talukdar was appointed Managing Director of N.R. Sarkar & Co. Ltd. and a deed of transfer of 1000 shares dated February 5, 1951 in favour of Pramatha Nath Talukdar. Promode Ranjan Sarkar and his brothers did not give credence to the information conveyed, and wanted to see the documents. It was alleged that this request was not complied with. On July 31, 1953, i.e. about six months after the death of Nalini Ranjan Sarkar Pramatha Nath Talukdar resigned from his salaried post under the Hindusthan Co-operative Insurance Society Ltd. and sought to assume control of N. R.

Sarkar & Co. Ltd. as its Managing Director. This led to some trouble between Promode Ranjan Sarkar and the appellants and also to some correspondence between Promode Ranjan Sarkar on one side and N. R. Sarkar & Co. Ltd. on the other, details whereof are not necessary for our purpose.
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On September 22, 1953 a meeting of the Board of Directors of N.R. Sarkar & Co. Ltd. was held. It was alleged that the meeting was held irregularly without any agenda and a resolution was adopted, despite Promode Ranjan Sarkar's protest, by which the appointment of Pramatha Nath Talukdar as Managing Director of N. R. Sarkar & Co. Ltd. was renewed for seven years. In September, 1953 Promode Ranjan Sarkar formally wrote to N.R. Sarkar & Co. Ltd. for inspection of the alleged deeds of agreement and transfer. On October 1, 1953 an inspection was taken, and on October 13, 1953 Promode Ranjan Sarkar was allowed to take photographs of the relevant portions of the documents. On this occasion Promode Ranjan Sarkar also inspected the minutes of the proceedings of N. R. Sarkar & Co. Ltd. and it was alleged that the proceedings dated January 16, 1948 purporting to bear the signature of Nalini Ranjan Sarkar were forged. The main allegations in the first and second complaints related to three documents and were to the effect "that in order to assume complete control over N. R. Sarkar & Co. Ltd. and the concerns under its managing agency, the accused persons entered into a criminal conspiracy with one another and others unknown, to dishonestly and fraudulently forge a deed of agreement, a deed of transfer and make a false document, to wit, minute book of N. R. Sarkar & Co. Ltd. and in pursuance thereof dishonestly and fraudulently forged and or caused to be forged and used as genuine the said documents". It will be noticed that three documents were stated to have been forged, and they were-

(1) An unregistered deed of agreement purporting to have been executed by the late Nalini Ranjan Sarkar as Governing Director of N. R. Sarkar & Co. Ltd. on January 19, 1948 appointing Pramatha Nath Talukdar as the Managing Director of N. R. Sarkar & Co. Ltd. on a remuneration of Rs. 1500-100-2000 per month. This document bore
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the signature of Saurindra Mohan Basu as a witness attesting the signature of Nalini Ranjan Sarkar, which signature was stated to have been forged.

(2) A transfer deed in respect of 1000 shares of N. R. Sarkar & Co. Ltd. which were said to have been entrusted to Pramatha Nath Talukdar, transfering them to the latter for and alleged consideration of rupees one lac purporting to have been executed by the late Nalini Ranjan Sarkar on February 5, 1951 with Saurindra Mohan Basu as the attesting witness both for the transferor and the transferee.

(3) Minutes of the proceedings of the Board meeting of N.R. Sarkar & Co. Ltd. dated January 16, 1948 purporting to bear the signature of the

late Nalini Ranjan Sarkar and containing a resolution to the effect that the Governing Director approved of a draft agreement of appointment between the Company and Pramatha Nath Talukdar for appointing the latter as Managing Director of the Company and that the Board of Directors approved of the said draft agreement.

Of the aforesaid three documents the one relating to the alleged transfer of 1000 shares referred to as (2) above, is the subject of a separate suit stated to be now pending in the Calcutta High Court. That document is not, therefore, directly the subject matter of the second complaint. As to the unregistered deed of agreement referred to as (1) above, it may be stated that the original document could not be later found, and on behalf of the appellants and other accused persons it was stated that the document was not in their possession or control. As stated earlier, Promode Ranjan Sarkar had obtained a photostatic copy of the relevant portions of the document. As to this document the main allegation of the complainant was that it was engrossed on a rupee stamp-paper which had been issued, on renewal, in the name of P.D. Himatsinghka & Co., a firm of solicitors in Calcutta

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and evidence was led at the enquiry into the first complaint that the paper was stolen from that firm and furthermore that the signature on the document purporting to be that of Nalini Ranjan Sarkar was not his signature at all. With regard to the minutes of the proceedings dated January 16, 1948 the allegation was that the minutes were typed on a sheet of paper bearing the letter-head N.R. Sarkar & Co. Ltd. with telephone number "City 6091" printed thereon; but the City Exchange did not come into existence until December, 1948 and the telephone connection relating to number "City 6091" was obtained for the first time by the Hindusthan Co-operative Insurance Society Ltd. on or about March 18, 1949; and therefore the paper with the letter-head N. R. Sarkar & Co. Ltd. with telephone number "City 6091" printed thereon could not have been in existence on the alleged date of the proceeding of the Board of Directors, namely January 16, 1948. In the second complaint certain other circumstances were also alleged in support of the allegation that the unregistered deed of agreement dated January 19, 1948 and the minutes of the proceedings dated January, 16, 1948 were forged. It is, however, unnecessary to refer to those circumstances in detail here.

The learned Chief Presidency Magistrate, Shri Bijayesh Mukherjee, who dealt with the second complaint considered all the relevant materials and came to the following conclusions:

(1) there was no delay in making the second complaint, if one had regard to the circumstances which led to the first complaint and the withdrawal of the appeal in the Supreme Court on March 12, 1959 arising out of the order made on the first complaint;

(2) the dismissal of the first complaint and

the application in revision arising therefrom by Debabrata Mookerjee, J. did not, as a matter of law,
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operate as a bar to the entertainment of the second complaint.

(3) the second complaint was not an attempt at blackmail; and

(4) the relevant materials in the record showed prima facie that the minutes of the proceedings dated January 16, 1948 were forged and so also the unregistered deed of agreement dated January, 19, 1948.

The learned Chief Presidency Magistrate then said:

> "Prima facie, I am satisfied about the truth of the allegations the complaint makes. That apart, the complaint is for an offence triable by a Court of sessions. And the materials I see before me are such as in my opinion may lead a reasonable body of men to believe the truth thereof. Judged so, there is in my opinion sufficient ground for proceeding within the meaning of section 204 of the procedure Code.

On the question as to which of the four accused persons against whom process should issue, the learned Chief Presidency Magistrate came to the conclusion that there was a prima facie case against two of the accused persons only, namely, Pramatha Nath Talukdar and Saurindra Mohan Basu. Saurindra Mohan Basu, it may be stated here, was a solicitor of N.R. Sarkar & Co. Ltd. and had attested the signature of Nalini Ranjan Sarkar on the unregistered deed of agreement. The learned Chief Presidency Magistrate held that there was no sufficient ground for proceedings against the other two accused persons, namely, Narendra Nath Law and Amiya Chakravarty.

Against the aforesaid order of the Chief Presidency Magistrate two applications in revision were filed by the appellants herein. These applications
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in revision were first heard by a division Bench of two Judges of the Calcutta High Court, P. B. Mukherjee and H. K. Bose, JJ. In view of the importance of the questions raised in the two applications in revision and some earlier decisions of the Calcutta High Court bearing on those questions to which I shall presently refer, P.B. Mukherjee, J. came to the conclusion that the applications should be referred to a larger Bench to be constituted by the Chief Justice under the rules of the Court. H.K. Bose. J. (as he then was) was inclined to take the view that the applications in revision must fail, but in deference to the views expressed by P.B. Mukherjee, J. agreed that the applications should be referred to the Chief Justice for constituting a larger Bench. The matter was then referred to the learned Chief Justice, who constituted a Special Bench of three Judges to hear the two applications in revision. This Special Bench heard the two applications in revision and dismissed

them by its order dated December 22/23, 1960.

Three questions were agitated before the Special Bench. The first was whether the Special Bench was lawfully in seizin of the case and was competent to deal with the applications in revision. The second was whether the learned Chief Presidency Magistrate had jurisdiction to take cognizance of the offences alleged, in the absence of a sanction under s. 196A of the Code of Criminal Procedure. The third and the principal question was whether it was open to the learned Chief Presidency Magistrate to entertain a second complaint on the same allegations when his predecessor had dismissed the first complaint; and if it was open to him to entertain the second complaint should he have entertained it in the circumstances of the present case ? The Special Bench unanimously decided these three questions against the appellants and further came to the conclusion that there was no undue delay in making the second

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complaint; neither was it frivolous nor made in bad faith. It further expressed the view that it saw no reasons to differ from the finding of the learned Chief Presidency Magistrate that there was a prima facie case against the two appellants.

Now, as to the first question. Chapter II of Rules of the High Court at Calcutta (Appellate Side) deals with the constitution and powers of the Benches of the Court. Rule 1 of the said chapter says in effect that a Division Bench for the hearing of appeals from decrees or orders of the Subordinate Civil Courts shall consist of two or more Judges as the Chief Justice may think fit; there is a proviso [proviso (ii)] to the rule which says that on the requisition of any Division Bench, or whenever he thinks fit, the Chief Justice may appoint a special Division Bench to consist of three or more Judges for the hearing of any particular appeal, or any particular question of law arising in an appeal, or of the any other matter. It is clear that the rule and the proviso deal with the hearing of appeals from decrees or orders of the Subordinate Civil Courts; in other words, they deal with civil matters. Rule 9 of the same chapter deals with criminal matter and sub-r. (1) of the said rule says that a Division Bench for the hearing of cases on appeal, reference, or revision in respect of the sentence or order of any Criminal Court shall consist of two or more Judges. There is no proviso to this rule similar to the proviso to r. 1, referred to earlier, and the argument is that in the absence of such a proviso it was not open to the Division Bench consisting of Mukherjee and Bose, JJ. to refer the case back to the Chief Justice for the constitution of a larger Bench (though it was open to the Chief Justice to constitute originally a Division Bench of three Judges to hear the case), and if the Judges were equally divided in opinion, s. 429 of the Code of Criminal procedure would apply and the case had to be laid before another Judge and judgment given according to the

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opinion of the third Judge. I am unable to accept this argument as correct. It is clear from the rules in Chapter II that the constitution of Benches is a matter for the Chief Justice and r. 13 in Chapter II says that a Full Bench appointed for any of the purposes mentioned in Chapter VII, rr. 1 to 5, shall consist of five Judges or three Judges as the Chief Justice may appoint. Now, r. 1 in Ch. VII says inter alia that whenever one Division Bench shall differ from any other Division Bench upon a point of law or usage having the force of law, the case shall be referred for decision by a Full Bench and r. 5 says that if any such question arises in any case coming before a Division Bench as Court of Criminal Appeal, Reference or Revision, the Court referring the case shall state the point or points on which they differ from the decision of a former Division Bench, and shall refer the case to a Full Bench, for such orders as to such Bench seem fit. In his judgment P.B. Mukherjee, J. referred to two earlier decisions of the Calcutta High Court, Nilratan Sen v. Jogesh Chandra Bhattacharia(1) and Kamal Chandra Pal v. Gourchand Adhikary (2) and observed that the question as to whether those decisions were good law arose in the case and he gave that as a reason for referring the case to the Chief Justice for the constitution of a larger Bench. Even if rr. 1 and 5 in Chapter VII may not, strictly speaking, apply to the present case because the Division Bench consisting of Mukerjee and Bose JJ. did not formulate the point or points on which they differed from the earlier Division Bench decisions referred to by Mukherjee, J., I think that the principle of those rules would apply and it was open to the Chief Justice, on a reference by the Division Bench, to constitute a larger Bench to consider the case. I am also in agreement with the view expressed by the Special Bench that the absence of a proviso to r. 9 in Chapter II correspon-

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ding to the proviso to r. I does not take away the inherent power of the Chief Justice to refer any matter to Bench of three Judges. Sub-rule(1) of r. 9 itself provides that a Division Bench for the hearing of cases on appeal, reference, or revision in respect of the sentence or order of any Criminal Court shall consist of two or more Judges. Therefore, it was open to the Chief Justice to constituted Bench of three Judges for the hearing of the case and in my view it made no difference whether he constituted such a Bench originally or on a reference back by the Division Bench. I further think that the Chief Justice must have the inherent power to constitute a larger Bench in special circumstances. Take, for instance, a case where one Judge of the Division Bench feels, for a sufficient and good reason, that he should not hear the case. It is obvious that in such a case the matter must be referred back to the Chief Justice for the constitution of another Bench. The Chief Justice, I think, must possess such an inherent power in the matter of constitution of Benches and in the exercise

thereof he can surely constitute a larger Bench in a case of importance where the Division Bench hearing it considers that a question of the correctness or Otherwise of earlier Division Bench decisions of the same Court will fall for consideration in the case. Section 229 of the Code of Criminal Procedure does not apply to such a case because it is not a case where the Judges composing the Court are equally divided in opinion. Rather it is a case where the Judges composing the Division Bench consider that the case is one of such importance that it should be heard by a larger Bench.

My conclusion, therefore, is that there was nothing illegal in the Division Bench consisting of Mukherjee and Bose. JJ. referring the case back to the Chief Justice; nor was there anything illegal in the Chief Justice constituting a special Bench of

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three Judges to hear the applications in revision. The special Bench constituted by the Chief Justice was lawfully in seizin of the case and was competent to deal with it. The objection as to the jurisdiction of the special Bench to hear the case was, in my opinion, rightly overruled by it.

Now, as to section. Section 196A of the Code of Criminal Procedure may be read first. That section is in these terms:

> "196A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code.
>
> (1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless authority from the "State Govern upon complaint made by order or under authority from the "State Government" or some officer empowered by the "State Government" in this behalf, or
>
> (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the "State Government", or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the "State Government", has, by order in writing, consented to the initiation of the proceedings:
>
> Provided that where the criminal conspiracy is one to which the provisions of subsection (4) of section 195 apply no such consent shall be necessary."

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The argument before us on behalf of the appellants has proceeded on the footing that in para 5 of the second complaint Saroj Ranjan Sarkar had alleged that the accused persons had entered into a criminal conspiracy with one another and other

persons unknown, to dishonestly and fraudulently forge certain documents and in pursuance thereof either forged or caused to be forged those documents and used them as genuine. This allegation, it is argued attracted cl. (2) of s. 196A inasmuch as the object of the conspiracy was to commit non-cognizable offences under ss. 467 and 471 of the Indian Penal Code; therefore, it was necessary to obtain, by order in writing, the consent of the State Government or of the Chief Presidency Magistrate to the initiation of the proceedings and such consent not having been obtained, the issue of processes by the Chief Presidency Magistrate violated the provisions of s. 196A of the Code of Criminal procedure. The special Bench repelled this argument on the following grounds. It pointed out the distinction between the offence of criminal conspiracy as defined in s. 120A and punishable by s. 120B and the offence of abetment by conspiracy as defined in the clause, secondly, in s. 107 of the Indian Penal Code. It then pointed out that the Chief Presidency Magistrate did not take cognizance of the offence of criminal conspiracy to commit forgery which would be punishable under s. 120B read with s. 467 of the Indian Penal Code, but he took cognizance of the offence of abetment of forgery punishable under s. 467 read with s. 109 of the Indian Penal Code and for this offence no sanction under s. 196A of the Code of Criminal Procedure was necessary. The special Bench further expressed the view that the primary offences which the second complaint disclosed where the offence of forgery, of using forged documents as genuine, and of abetment of the said offences and as cognizance of these offences did not require sanction or

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prior consent of the authorities mentioned in s. 196A, the order of the Chief Presidency Magistrate could not be said to have violated the provisions of that section.

The correctness of these views of the special Bench has been very seriously contested. I may make it clear at the very outset that the mandatory provisions of s. 196A of the Code of Criminal Procedure cannot be evaded by resorting to a mere device or camouflage.

The test whether sanction is or is not necessary does not depend on mere astuteness of drafting the petition of complaint. For example, in the second petition of complaint under consideration before us the heading indicated that the offences in respect of which the petition of complaint was filed were offences under ss. 467, 471 and 109 of the Indian Penal Code; but in para. 5 of the petition the allegation was that the accused persons had entered into a criminal conspiracy with one another and others unknown, to forge certain documents. It would not be proper to decide the question of sanction merely by taking into consideration the offences mentioned in the heading or the use of the expression "criminal conspiracy" in para. 5. The proper test should be whether the allegations made in the petition of

complaint disclosed primarily and essentially an offence or offences for which a consent in writing would be necessary to the initiation of the proceedings within the meaning of s. 196A(2) of the Code of Criminal Procedure. It is from that point of view that the petition of complaint must be examined. There is another principle laid down by this Court which should be kept in mind. The allegations made in the complaint may have more than one aspect; and may disclose more than one offence. What would be the position when some of the offences disclosed do not require any sanction while others require sanction ? This question was considered by this Court in

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Basir-ul-huq v. State of West Bengal(1). That was case in which the accused person lodged information at a police station that X had beaten and throttled his mother to death and when the funeral pyre was in flames, he entered the cremation ground with police; the dead body was examined and the complaint was found to be false. On the complaint of X the accused person was charged with offences under s. 297, Indian Penal Code (trespass to wound religious feelings) and s. 500, Indian Penal Code (defamation). It was contended that as the complaint disclosed offences under s. 182 and 211, Indian Penal Code, the Court could not take cognizance of the case except on a complaint by the proper authority under s. 195 of the Code of Criminal Procedure. It was held that the facts which constituted the offence under s. 297 where distinct from those which constituted an offences under s. 182, as the act of trespass was alleged to have been committed after the making of the false report, so s. 195 was no bar to the trial of the charge under s. 297. It was further held that as regards the charge under s. 500 where the allegations made in a false report disclose two distinct offences, one against a public servant and the other against a private individual, the latter is not debarred by provisions of s. 195 of the Code of Criminal Procedure from seeking redress for the offence committed against him. Referring to s. 195 of the Code of Criminal Procedure Mahajan, J. who delivered the judgment of the Court said:

> "The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for an offence under section 182 can be taken cognizance of. It does not further provide that if in the course of the commission of that offence other distinct offences are committed, the magistrate is debarred from taking cognizance in respect of those offences as well. The allegation made

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> in a complaint may have a double aspect, that is on the one hand these may constitute an offence against the authority of the public servant or public justice, and on the other hand, they may also constitute the offence of defamation or some other distinct offence. The section does not per se bar the

cognizance by the magistrate of that offence, even if no action is taken by the public servant to whom the false report has been made. x x x x

As regards the charge under section 500, Indian Penal Code, it seems fairly clear both on principle and authority that where the allegations made in a false report disclose two distinct offences, one against the public servant and the other against a private individual, that other is not debarred by the provisions of section 195 from seeking redress for the offence committed against him."

Keeping the aforesaid two principles in mind let me examine the second complaint in this case in order to find out what essential offences the allegations made therein disclosed. Paragraph 5 of the petition of complaint on which much reliance has been placed on behalf of the appellant alleges (1) that the accused persons entered into a criminal conspiracy with one another and others unknown, to forge certain documents; (2) that in pursuance of the conspiracy those documents were forged; or caused to be forged; and (3) that the documents so forged were used as genuine. The paragraph then recited three documents which were said to have been forged. It is thus clear that apart from the conspiracy, the second complaint alleged that offences under ss. 467 and 471 of the Indian Penal Code had also been committed. The special Bench rightly pointed out that the offences under ss. 467 and 471 of the Indian Penal Code were distinct from the offence of criminal conspiracy and did not require any prior consent for the initiation of

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Proceedings therefor under s. 196A(2) of the Code of Criminal Procedure. The question, of therefore, boils down to this: in view of the allegation that there was a criminal conspiracy, was the chief Presidency Magistrate debarred from taking cognizance of the case even though certain other distinct offences were alleged which did not require sanction ? I am in agreement with the special Bench that the answer to the question must be in the negative. Furthermore, it appears to me that though the expression "criminal conspiracy" occurs in para. 5 of the complaint, the facts alleged in the petition of complaint essentially disclose an offence of abetment by conspiracy. This brings us to the distinction between the offence of criminal conspiracy as defined in s. 120A and the offence of abetment by conspiracy as defined in s. 107 of the Indian Penal Code. Section 120A which defines the offence of criminal conspiracy and s. 120B which punishes the offence are in Ch. VA of the Indian Penal Code. This Chapter introduced into the criminal law of India a new offence, namely, the offence of criminal conspiracy. It was introduced by the criminal Law Amendment Act, 1913 (VIII of 1913). Before that, the sections of the Indian Penal Code which directly dealt with the subject of conspiracy were these contained in Ch. V and s. 121 (Ch. VI) of

the Code. The present case is not concerned with the kind of conspiracy referred to in s. 121A. The point before us is the distinction between the offence of abetment as defined in s. 107 (Ch. V) and the offence of criminal conspiracy as defined in s. 120A (Ch. VA). Under s. 107, second clause, a person abets the doing of a thing, who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and an order to the doing of that thing. Therefore, in order to constitute the offence of abetment by conspiracy, there

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must first be a combining together of two or more persons in the conspiracy; secondly, an act or illegal omission must take place in pursuance of that conspiracy, and in order to the doing of that thing. It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed. It is worthy of note that a mere conspiracy or a combination of persons for the doing of a thing does not amount to an abetment. Something more is necessary, namely, an act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing for which the conspiracy was made. Before the introduction of Ch. VA conspiracy, except in cases provided by ss. 121A, 311, 400, 401 and 402 of the Indian Penal Code, was a mere species of abetment where an act or an illegal omission took place in pursuance of that conspiracy, and amounted to a distinct offence. Chapter VA, however, introduced a new offence defined by s. 120A. That offence is called the offence of criminal conspiracy and consists in a mere agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means; there is a proviso to the section which says that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. The position, therefore comes to this. The gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy. Where, however, the agreement is to do an illegal act which is not an offence or an act which is not illegal by illegal means, some act besides the agreement is necessary.

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Therefore, the distinction between the offence of abetment by conspiracy and the offence of criminal conspiracy, so far as the agreement to commit an offence is concerned, lies in this. For abetment by conspiracy mere agreement is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for. But in the offence of

criminal conspiracy the very agreement or plot is an act in itself and is the gist of the offence. Willes, J. observed in Mulcahy v. The Queen (1):

> "When to agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means."

Put very briefly, the distinction between the offence of abetment under the second clause of s. 107 and that of criminal conspiracy under s. 120A is this. In the former offence a mere combination of persons or agreement between them is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for; in the latter offence the mere agreement is enough, if the agreement is to commit an offence.

So far as abetment by conspiracy is concerned the abettor will be liable to punishment under varying circumstances detailed in ss. 108 to 117. It is unnecessary to detail those circumstances for the present case. For the offence of criminal conspiracy it is punishable under s. 120B.

Having regard to the distinction pointed out above, I am of the opinion that para. 5 of the second complaint, though it used the expression "criminal conspiracy" really disclosed an offence of abetment by conspiracy. It made no allegation
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of any agreement between the several persons at a particular place or time. It said that the accused persons complained against entered into a conspiracy to forge certain documents were forged or caused to be forged. In other words, an illegal act was done in pursuance of the conspiracy and furthermore the documents so forged were used as genuine. Having regard to these allegations in para. 5 of the second complaint, I am unable to hold that the learned 'Chief Presidency Magistrate was wrong in taking cognizance of the offence of abetment by conspiracy, for which offence no consent or sanction under s. 196A of the Code of Criminal Procedure was necessary. Therefore, there was violation of the provisions of that section.

In this view of the matter it is unnecessary to consider the correctness or otherwise of the further view expressed in some of the decisions (see, for example, State of Bihar v. Srilal Kejriwal (1) to which the special Bench has referred) that there the matter has gone beyond a mere conspiracy and substantive offences are alleged to have been actually committed in pursuance thereof, ss. 120A and 120B are wholly irrelevant. That view has not been accepted as correct by some of the other High Courts. In the State of Andhra Pradesh v. Kandimalla Subbaiah (2) this Court held that offences created by ss. 109 and 120B, Indian Penal Code were distinct offences, though for a reason stated somewhat differently from what I have stated. It further held that where a number of offences were committed by several persons in pursuance of a

conspiracy, it was not illegal to charge them with those offences as well as with the offence of conspiracy to commit those offences, though it was not desirable to charge the accused persons with conspiracy with the ulterior object of letting in evidence which would otherwise be inadmissible and furthermore, it was undesirable to complicate a
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trial by introducing a large number of charges spread over a long period. The question was treated as one of propriety rather than of legality. The question of sanction was also considered in that case, but in view of the order of remand passed, no opinion was expressed thereon.

The special Bench expressed the view that it was not necessary to go to the extent of saying that in a case of this nature ss. 120A and 120B became wholly irrelevant. The special Bench proceeded on the footing that irrespective of whether ss. 120A and 120B became wholly irrelevant or not the second complaint undoubtedly disclosed an offence of abetment by conspiracy and it was open to the Chief Presidency Magistrate to take cognizance of that offence. I think that there are no good reasons for holding that the view taken by the special Bench is not correct. In my opinion, the special Bench rightly overruled the objection as to the alleged violation of the provisions of s. 196A of the Code of Criminal Procedure.

Now, I come to the third and principal question agitated in these appeals. On behalf of one of the appellants, Saurindra Mohan Basu, Mr. Purushottam Trikumdas has argued before us that when the first complaint containing more or less the same allegations was dismissed under s. 203 of the Code of Criminal Procedure by the Chief Presidency Magistrate, it was not at all open to his successor to entertain the second complaint. He has put the matter as one of law and has argued that the only way of getting rid of an order of dismissal under s. 203 of the Code of Criminal Procedure known to the Code of Criminal Procedure is to have it act aside in accordance with the procedure laid down in ss. 436 and 439 of the Code. He has further argued that, as a matter of law, a second complaint is not entertainable as long as the order of dismissal under s. 203 of the Code
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of Criminal Procedure is not set aside by a competent authority. His argument is that the two decisions in Nilratan Sen v. Jogesh Chandra Bhattacharjee(1) and Kamal Chandra Pal v. Gourchand Adhikary (2) should be held as good law. Section 403 of the Code of Criminal Procedure is relevant to this argument. It embodies the well-established rule of common law that a man may not be put twice in peril for the same offence and that no man should be vexed with several trials for offences arising out of identical acts. An Explanation appended to the section says inter alia that the dismissal of complaint or the discharge of accused person is not an acquittal for the purposes of the section. If the

Legislature had intended that the dismissal of complaint or the discharge of an accused person would be a bar to fresh proceeding on the same allegations unless the order of dismissal or discharge were set aside by a higher court, it would have said so either explicitly or by omitting the Explanation altogether. Therefore, the effect of the Explanation is that under s. 403 a fresh trial is barred only in cases of acquittal or conviction by a court of competent jurisdiction, coming within the purview of sub-s. (1) thereof. This aspect of the question was considered in Queen Empress v. Dolegobind Dass (3), which was a case dealing with a previous order of discharge of the accused person. In that case, Maclean, C. J. referred to the decision in Nilratan Sen's case and said:

> "There is no express provision in the Code to the effect that the dismissal of a complaint shall be a bar to a fresh complaint being entertained so long as the order of dismissal remains unreversed' (see per Benerjee, J. in Nilratan Sens' v. Jogesh Chandra Bhattacharjee (supra). I agree in that. If, then there be no express provision
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> in the Code, what is there to warrant us in implying or in effect introducing into the Code a provision of such serious import x x x? In the absence of any other provision in the Code to justify such an implication x x x x I can appreciate no sound ground for the Court so acting; were it to do so it would go perilously near to legislating, instead of confining itself to construing the Acts of the Legislature."

The question was then considered by a Full Bench of the Calcutta High Court in Dwarka Nath Mondul v. Beni Madhab Banerjee (1) and it was held by the Full Bench (Ghose, J. dissenting) that a Presidency Magistrate was competent to rehear a warrant case triable under Ch. XXI of the Code of Criminal Procedure in which he had earlier discharged the accused person. Nilratan Sen's case(2) and Kamal Chandra Pal's case(3) were referred to in the arguments as summarised in the report, but the view expressed therein was not accepted. Dealing with the question Princep, J. said:

> "There is no bar to further proceedings under the law, and, therefore, a Magistrate to whom a complaint has been made under such circumstances, is bound to proceed in the manner set out in s. 200, that is, to examine the complaint, and, unless he has reason to distrust the truth of the complaint, or for some other reason expressly recognised by law, such as, if he finds that no offence had been committed, he is bound to take cognizance of the offence on a complaint, and, unless he has good reason to doubt the truth of the complaint, he is bound to do justice to the complainant, to summon his witness and to hear them in the presence of the accused."

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The same view was expressed by the Madras High Court in In re. Koyassan Kutty (1) and it was observed that there was nothing in law against the entertainment of a second complaint on the same facts on which a person had already been discharged, inasmuch as a discharge was not equivalent to an acquittal. This view was reiterated in Kumariah v. Chinna Naicker (2), where it was held that the fact that a previous complaint had been dismissed under s. 203 of the Code of Criminal Procedure was no bar to the entertainment of a second complaint. In Hansabai Sayaji v. Ananda Ganuji (3) the question was examined with reference to a large number of earlier decisions of several High Courts on the subject and it was held that there was nothing in law against the entertainment of a second complaint on the same facts. The same view was also expressed in Ram Narain v. Panachand Jain (4), Ramanand v. Sheri (5), and Allah Ditta v. Karam Baksh (6). In all these decisions it was recognised further that though there was nothing in law to bar the entertainment of a second complaint on the same facts, exceptional circumstances must exist for entertainment of a second complaint when on the same allegations a previous complaint had been dismissed. The question of the existence of exceptional circumstances for the entertainment of a second complaint is a question to which I shall come later. At the present moment, I am considering the argument of Mr. Purshottam Tricumdas that the law prohibits altogether the entertainment of a second complaint when a previous complaint on the same allegations had been dismissed under s. 203 of the Code of Criminal Procedure. On this question the High Courts appear to me to be almost unanimously against the contention of Mr. Purshottam Tricumdas, and for the reasons given in the decisions to which I have earlier referred, I

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am unable to accept his contention. I accept the view expressed by the High Courts that there is nothing in law which prohibits the entertainment of a second complaint on the same allegations when a previous complaint had been dismissed under s. 203 of the Code of Criminal Procedure. I also accept the view that as a rule of necessary caution and of proper exercise of the discretion given to a Magistrate under s. 204(1) of the Code of Criminal Procedure, exceptional circumstances must exist for the entertainment of a second complaint on the same allegations; in other words, there must be good reasons why the Magistrate thinks that there is "sufficient ground for proceeding" with the second complaint, when a previous complaint on the same allegations was dismissed under s. 203 of the Code of Criminal Procedure.

The question now is, what should be those exceptional circumstances ? In Queen Empress v. Dolagobind Dass (1), Maclean, C. J. said:

> "I only desire to add that no Presidency Magistrate ought, in my opinion, to rehear a

case previously dealt with by a Magistrate of coordinate jurisdiction upon the same evidence only, unless he is plainly satisfied that there has been some manifest error or manifest miscarriage of justice."

Thus, according to this decision, the exceptional circumstance must be such as would lead the Magistrate to think that the previous order of dismissal was due to a manifest error or resulted in a manifest miscarriage of justice. In re. Koyassan Kutty (2) Sadasiva Aiyar, J. formulated the test of exceptional circumstances in the following words:

"Taking it then that the discharge was proper and legal, there is no doubt nothing in law against the entertainment of a second
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complaint on the same facts as a discharge is not equivalent to an acquittal; but I think that unless very strong grounds are shown a person who has been charged once and discharged ought not to be harassed again on the same charge. It is not alleged that new facts have been discovered which the police did not know when they brought the first charge."

In this decision the test formulated was the discovery of new facts which were not known when the first charge of complaint was made. In Kumariah v. Chinna Naicker(1) the same test was again applied when it was observed:

"There is nothing to indicate that there was no proper investigation on the previous complaint or that there was any necessity for investigating the second complaint. x x x No additional witness had been cited in the second complaint, nor, as pointed out by the Additional Magistrate, was it alleged that any other kind of evidence had been discovered or was likely to be forthcoming."

It is worthy of note, however, that Kuppuswami Aiyar, J. did not say that the discovery of a new fact or new evidence must be of such a character that it was not known to the complainant when the prior complaint was brought and dismissed. In Hansabai Sayaji v. Ananda Ganuji (2) it was pointed out that the circumstance that the second complaint was filed by a person other than the one who made the first complaint made no difference and the test laid down in some early Rangoon High Court decisions [Ma The Kin v. Nga E Tha (3) and U Shwe v. Ma Sein Bwin (4)], was accepted as the correct test. In Ma The Kin's case (supra) the test was thus expressed:
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"It is the duty of a Magistrate, therefore, who receives a complaint in a case where there has been a previous order of dismissal or discharge, not to issue process, unless he is plainly satisfied that there has been some manifest error or manifest miscarriage of justice, or unless new facts are adduced which the complainant had not knowledge of or could not with reasonable diligence have brought forward in the

previous proceedings."

It will be noticed that in the test thus laid down the exceptional circumstances are brought under three categories; (1) manifest error, (2) manifest miscarriage of justice, and (3) new facts which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings. Any exceptional circumstances coming within any one or more of the aforesaid three categories would fulfil the test. In Ram Narain v. Panachand Jain (1) it was observed that an exhaustive list of the exceptional circumstances could not be given though some of the categories were mentioned. One new category mentioned was where the previous order of dismissal was passed on an incomplete record or a misunderstanding of the nature of the complaint. This new category would perhaps fall within the category of manifest error or miscarriage of justice.

It appears to me that the test laid down in the earliest of the aforesaid decisions. Queen Empress v. Dolegobind Dass (2), is really wide enough to cover the other categories mentioned in the later decisions. Whenever a Magistrate is satisfied that the previous order of dismissal was due to a manifest error or has resulted in a miscarriage of justice, he can entertain a second complaint on the same allegations even though an earlier complaint was dismissed under s. 203
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of the Code of Criminal Procedure. I do not think that in a matter of this kind it is either possible or even desirable that the exceptional circumstances must be stated with any more particularity or precision. The learned Advocate for the respondent argued before us that a new category should be added and he called it "frustration of justice". I am of the view that apart from any question of felicity of this new expression, this new category does not give any more assistance towards explaining the exceptional circumstances which must exist before a second complaint on the same allegations can be entertained. I am content in this case to proceed on the footing that, the Magistrate must be satisfied that there was a manifest error or a miscarriage of justice before he can entertain a second complaint on the same facts.

In this case, two exceptional circumstances were adverted to before us. One is that the learned Chief Presidency Magistrate who dealt with the first complaint completely misdirected himself as to the true scope and effect of ss. 203 and 204 of the Code of Criminal Procedure and this, it is contended, resulted in a manifest miscarriage of justice when he dismissed the first complaint under s. 203 of the Code of Criminal Procedure. I am of the view that there is substance in this contention. Section 203 of the Code of Criminal Procedure states that the Magistrate may dismiss the complaint, if, after considering the statement on oath, if any, of the complainant and the witnesses and the result of the investigation or enquiry, if any, under s. 202, there is in his

judgment no sufficient ground for proceeding. Section 204 lays down that if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding, he shall issue a summon or a warrant, as the case may require. What is the true scope and effect of the expression
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"sufficient ground for proceeding" occurring in the aforesaid two sections ? This was considered by this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker (1). With reference to ss. 200, 202 and 203 of the Code of Criminal Procedure it was there observed:

> "The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not any that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial."

It was further observed that if the Magistrate had not misdirected himself as to the scope of an enquiry under s. 202 and had applied his mind judicially to the materials before him, it would be erroneous in law to hold that a plea based on an exception could not be accepted by in arriving at his judgment. In another decisions of this Court Ramgopal Genapatria Ruia v. State of Bombay (2) the expression "sufficient grounds" occurring in ss. 209, 210 and 213 of the Code of Criminal Procedure was considered and it was held that the expression did not mean sufficient grounds for the purpose of conviction but meant such evidence as would be sufficient to put the accused upon trial by the jury dealing with the first complaint the learned Chief Presidency Magistrate proceeded to consider not whether there was
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sufficient ground for proceeding within the meaning of ss. 203 and 204 of the Code of Criminal Procedure but whether there was sufficient evidence for conviction of the accused persons. In my opinion, this approach was completely wrong and resulted in a manifest miscarriage of justice. The learned Chief President Magistrate said:

> "In cases depending on circumstantial evidence in order to justify any inference that an offence has been committed the incriminating facts must be incompatible with innocence of the person accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. If the circumstances are found to be as consistent with the guilt of the accused, no inference of guilt can be drawn. In the present case the circumstances above equally may lead to the inference that the document was ante-

dated and might or might not have been forged. Therefore the circumstances are not precise to be of any value as evidence."

These observations clearly show that the learned Chief Presidency Magistrate misdirected himself as to the true scope and effect of ss. 203 and 204 of the Code of Criminal Procedure. He did not keep in mind the true purpose of the enquiry before him which was to ascertain whether there was evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the accused persons. He further failed to keep in mind that ss. 203 and 204 of the Code of Criminal Procedure did not say that a regular trial for judging the guilt or otherwise of the person complained against should take place at that stage. It was not for learned Chief Presidency Magistrate to apply the test whether the circumstances were or were not incompatible with the, innocence of the accused persons. The
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purpose of the enquiry before him was merely to ascertain prime facie the truth or falsehood of the complaint. Instead of holding an enquiry into the complaint, the learned Chief Presidency Magistrate proceeded as though he was trying the ease itself on merits. I consider that this mistake on the part of the learned Chief Presidency Magistrate gave a wrong direction to the whole proceedings on the first complaint and the order of dismissal passed by him was due to a manifest error and resulted in miscarriage of justice.

The second exceptional circumstance is as to the presence of the telephone number "City 6091" printed on the sheet of paper on which were typed the minutes of the proceedings dated January 16, 1948. When the first complaint was dealt with by the Chief Presidency Magistrate no evidence was led to show that the City Exchange did not come into existence until December, 1948 and that the telephone connection relating to that particular number was obtained for the first time by the Hindusthan Co-operative Insurance Society Ltd. on or about March 18, 1949. This I think, would be a new matter which was not considered when the first complaint was dismissed under s. 203 of the Code of Criminal Procedure. There was a good deal of argument as to whether this matter relating to the City Exchange was known to the complainant and his brothers from before, and if so, why they did not bring it to the notice of the learned Chief Presidency Magistrate who dealt with the first complaint. it appears that an application dated June 7, 1955 was made before Debabrata Mookerjee J. who heard the application in revision with regard to the first complaint. In that application certain statements were made with regard to the City Exchange. Those statements did not, however, include any averment as to the knowledge of the complainant, Promode Ranjan Sarkar, about
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the facts relating to the City Exchange and telephone number "City 6091". The application merely stated that the facts stated therein were

matters of public history and it was essential in the ends of justice to take judicial notice thereof. Debabrata Mookerji, J. apparently rejected this application but did not record any formal orders on that date. He recorded formal orders after he had dismissed the application in revision. He said therein that he was not prepared to take into consideration the facts alleged in the application dated June 7, 1955 as they related to new matters. The argument on behalf of the appellants before us is that the facts relating to the City Exchange were not new matters, because the complainant, Saroj Ranjan Sarkar, nowhere said that he did not know them before. The argument, therefore is that it does not fulfil the test of "new facts which the complainant have no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings". The learned Advocate for the respondent has, in my opinion, rightly submitted that it is somewhat illogical to say at one stage of the proceedings that the matter was a new matter and could not, therefore, be taken into consideration and at a later stage to say that it is not a new matter and therefore could not be taken into consideration.

This much, however, is clear that the matter relating to the City Exchange and in particular telephone number "City 6091" was not at all considered when the first complaint was dismissed under s. 203 of the Code of Criminal Procedure. This matter is of some importance because if there was no such telephone number on January 16, 1948, the minutes of the proceedings purporting to be of that date must have come into existence on a later date. This would have great relevance and bearing on the allegation of forgery made with regard to the minutes of the proceedings dated January 16, 1948.

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On behalf of Saurindra Mohan Basu it was further contended that there was not even prima facie evidence against him and the learned Chief Presidency Magistrate was wrong in issuing process against him. It is only necessary to point out that the learned Chief Presidency Magistrate found that there was a prima facie case against Saurindra Mohan Basu. He had attested the signature of the late Nalini Ranjan Sarkar and if that signature was forged, then that would be prima facie evidence against Saurindra Mohan Basu also.

My learned brethren have taken the view that the entertaining of the second complaint in the circumstances of this case is a gross abuse of the processes of the Court. I find myself unable to subscribe to that view. My conclusion is just the opposite, namely, that the entertaining of the second complaint fully serves the interests of justice. I am further of the opinion that its dismissal would defeat the ends of justice. In this connection, I have already referred to the two exceptional circumstances which exist: one is that the learned Chief Presidency Magistrate who dealt with the first complaint completely misdirected himself as to the true scope and

effect of ss. 203 and 204 of the Code of Criminal Procedure; the second is that Debabrata Mookerjee, J. wrongly refused to take into consideration the circumstances relating to the installation of the City Exchange and telephone number "City 6091", circumstances which had a decisive bearing on the allegation of forgery made with regard to the minutes of the proceedings dated January 16, 1948. Even a cursory perusal of the order of the Chief President Magistrate (Shri N. C. Chakravarti) dated August 6, 1954 with regard to the first complaint shows that the learned Chief Presidency Magistrate proceeded on the footing as though he was trying a case based entirely on circumstantial evidence; he formulated

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the tests for drawing conclusions from circumstantial evidence and applying those tests, he came to the conclusion that the complaint was not true. He rejected the evidence of the hand-writing expert as though it was his function to try the case. He rejected the enquiry report of Shri A. B. Syam (who held that there was a prima facie case for the issue of process) on very insufficient grounds. He even went to the length of judging for himself the peculiar characteristics of Nalini Ranjan Sarkar's hand-writing depending on the personality of the writer. In my view, in all these matters the learned Chief Presidency Magistrate misdirected himself as to the true scope of the enquiry before him and he forgot that what he had to find was whether prima facie there was believable evidence in support of the allegations made in the complaint. This does not necessarily mean that a Magistrate dealing with a complaint is obliged "to bind himself to a mere mechanical or a wholly uncritical acceptance of the complainant's story". Indeed, it is the duty of the Magistrate to judge the materials on which he has to make up his mind as to the sufficiency or otherwise of the ground for proceeding further with the complaint and in judging the materials he must sift them and submit them to a critical examination. This aspect of the question was argued before Debabrata Mookerjee, J. and he referred to it in his judgment. I say this without meaning any disrespect to the learned Judge, but it appears to me that he missed the distinction which was pointed out by this Court in Ramgopal Ganpatrai Ruia v. The State of Bombay(1) namely that the expression "sufficient grounds" occuring in ss. 209, 210 and 213 of the Code of Criminal Procedure does not mean sufficient grounds for the purpose of conviction, but means such evidence as is sufficient to put the accused person upon trial by the jury. In ss. 203 and 204, Criminal Procedure Code, the expres-

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sion is "sufficient ground for proceeding" which really means sufficient ground for proceeding with the complaint. Sufficient ground for proceeding with the complaint is one matter and sufficient ground for convicting an accused person is quite a different matter. It is this distinction which has to be kept in mind and the failure to keep such a

distinction in mind in the present case has resulted in a manifest error. Debabrata Mookerjee, J. detailed seven circumstances as those on which the complainant relied in support of the allegation of forgery. He then went on to deal those circumstances as though the function of the Court then was to find out whether there was sufficient ground for convicting the accused person. I refer particularly to the view expressed by the learned Chief Presidency Magistrate to the effect that one of the documents in question might have been ante-dated by Nalini Ranjan Sarkar himself. This was a suggestion made on behalf of the accused persons as a possible defence to the charge of forgery and it was not the function of the Chief Presidency Magistrate to consider the defence at that stage. Debabrata Mookerjee, J. himself said:

> "If, on the other hand, the Magistrate has met the facts alleged by the complainant by anticipating possible defences to the charge, thus travelling beyond the facts themselves and the inferences and the probabilities legitimately raised by them, he must be held to have exceeded the allowable limits of an initial test of the complainant's story."

Yet, the possible defence that Nalini Ranjan Sarkar might have himself ante-dated the document was not only considered by the learned Chief Presidency Magistrate but was accepted by Debabrate Mookerjee J.. This, in my opinion, clearly demonstrates the manifest error or injustice which has taken place in this case, though in the concluding part of his
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judgment Debabrata Mookerjee, J. expressed the view that he did not consider that the learned Chief Presidency Magistrate had over-stepped the permissible limits of a preliminary probe into the truth or otherwise of the complainant's story. He further said that in his view the learned Chief Presidency Magistrate in sifting the materials offered did not dispose of them by anticipating a possible defence of the parties; yet the one possible defence to the charge of forgery was that Nalini Ranjan Sarkar might himself have antedated the document in question and that very defence was considered and accepted not only by the learned Chief Presidency Magistrate but by Debabrata Mookarjee, J. also.

The second mistake which led to a manifest injustice was the refusal to take into consideration the circumstances relating to the installation of the City Exchange and the telephone number "City 6091". Debabrata Mookerjee, J. made no orders on the application dated June 7, 1955. In his final order he said:

> "The application speaks for itself. I was not prepared on that date to take any notice of the new matters mentioned in that application and I adhere to my decision."

In my view Debabrata Mookerjee, J. was grievously in error in rejecting the application. As I have said earlier, the circumstances relating to the

installation of the City Exchange and telephone number "City 6091" had a decisive bearing on the truth or otherwise of the allegation of forgery and to reject the application to take those circumstances into consideration really amounted to a denial of justice. Debabrata Mookerjee, J. took the view that it was a new matter which could not be taken into consideration and, pradoxically enough, the argument before us is that not being a new matter, it should not have been taken into consideration

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in connection with the second complaint. This paradox clearly demonstrates the injustice that will result from a failure to take into consideration circumstances which are decisive of the allegations made in the complaint. When the complainant made an application for a certificate for appeal to the Supreme Court against the order passed by Dababrata Mookerjee. J., he forcefully contended that the refusal to take notice of the circumstances relating to the installation of the City Exchange amounted to a denial of justice. This application was dealt with by a Bench of two Judges of the Calcutta High Court (Das Gupta and Bachawat, JJ.). The learned Judges expressed the view that if they were dealing with the matter, they would have thought it right to refer to the appropriate books for ascertaining the date on which the City Exchange came into existence. They, however, felt that the matter was within the discretion of Debarata Mookerjee, J. and they were not prepared to give a certificate in a matter of discretion. Another point which was urged before that Bench was this. The complaint was for offences triable by the Court of sessions and the question which the learned Chief Presidency Magistrate had to put himself was not whether he, for himself, believed the allegations to be true but whether the materials before him were such that thereupon a reasonable body of men might believe the allegations to be true. The learned Judge said:

> "In our judgment there is considerable force in this argument, but at the same time we have to take notice of the fact that this question does not appear to have been decided by the courts."

Since those observations were made, a decision has been given by this Court and that decision supports the contention urged on behalf of the complainant. The matter then came to this Court on an applica-

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tion for special leave, and special leave was granted by this Court on February 13, 1956. An appeal was filed in pursuance of that special leave, but ultimately Promode Ranjan Sarkar withdrew his appeal by filing a petition on February 3, 1959. In that petition he stated that at the intervention of common friends and well wishers of the parties, he had settled his disputes with the respondents therein and did not want to proceed with the appeal a statement which, in the circumstances of this case, amounts almost

to compounding a felony. The appeal was accordingly withdrawn on March 12, 1959. The present complaint, Saroj Ranjan Sarkar, alleged in his petition of complaint that the withdrawal of the appeal filed in this Court in the circumstances stated above was due to undue influence exercised by the accused persons. Whether that allegation is correct or not can only be determined after evidence has been led. There are, however, circumstances which seem to me indicate that the withdrawal of the appeal in this Court was for the purpose of defeating the ends of justice. The accused persons must have realised that if the evidence relating to the installation of the City Exchange and telephone No. "City 6091" was available and considered, then there would be no escape from the position that the minutes of the proceedings of the Board meeting of N.R. Sarkar and Co. Ltd., dated January 16, 1948 must have been forged and this aspect of the matter was very rightly emphasised by the learned Chief Presidency Magistrate (Shri Bijayesh Mukherjee) who dealt with the second complaint as also by the Special Bench of three Judges who dealt with the matter on the revision applications made against the order of the learned Chief Presidency Magistrate on the second complaint. It is also worthy of note that this Court must have granted special leave in respect of the order passed on the first complaint, because it felt that there were arguable points in support of the
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application for special leave, one of such points apparently being the refusal to consider the circumstances relating to the installation of the City Exchange. On the second complaint the learned Chief Presidency Magistrate, as also the High Court, took those circumstances into consideration and rightly held that those circumstances clearly indicated that the allegations made in the complaint were prima facie true. The learned Chief Presidency Magistrate further held that having regard to the antecedent circumstances, there was no undue delay in filing the second complaint. He further held that there was no intention to blackmail, in the sense that one brother having failed on the first complaint, another brother was fraudulently trying to start afresh the criminal law in motion. These findings of the learned Chief Presidency Magistrate were accepted by a Special Bench of three Judges of the Calcutta High Court. I have heard nothing in the course of the arguments addressed before us which would justify me to go behind those findings, particularly in an appeal filed by special leave under Art. 136 of the Constitution. The learned Chief Presidency Magistrate and a Bench of three Judges of the Calcutta High Court held specifically on the second complaint that there was a prima facie case and the dismissal of the first complaint resulted in manifest injustice. I see no reasons to differ from the view thus expressed by the learned Chief Presidency Magistrate and the High Court.

For these reasons I have come to the conclusion that there are no good grounds for

interfering with the judgment and order of the Special Bench dated December 22/33, 1960. I would accordingly dismiss the two appeals.

The Judgment of Kapur and Hidayatullah, JJ., was delivered by

KAPUR, J.-There are two appeals against the judgment and order of the High Court of
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Calcutta which raise the question of competency of a second complaint in regard to the same matter after the first complaint has been dismissed under s. 203 of the Code of Criminal Procedure. The respective appellants in the two appeals are P. N. Taluqdar and Sourindra Mohan Basu an attorney of Calcutta against whom process has been issued by the Chief Presidency Magistrate Calcutta on a complaint filed by the respondent Saroj Ranjan Sarkar.

The facts of these appeals are these: In 1944 a private limited company-N. R. Sarkar & Co., Ltd.-was formed by the late Mr. N. R. Sarkar, who was a well known financier and industrialist and a public man of Bengal. This company was the Managing Agent of several public limited companies such as Hindusthan Development Corporation Ltd., Hindusthan Chemicals Limited, Hindusthan Pilkington Glass Works Limited etc. Mr. N. R Sarkar was the Managing Director of N. R. Sarkar & Co., Ltd. Out of the share capital of this company he held 4649 shares. His younger brother Promode Ranjan Sarkar held 50 shares. Appellant P. N. Taluqdar who was a paid employee of the Hindusthan Cooperative Insurance Co., Ltd. held 300 shares and was a director of the Company and Shanti Ranjan Sarkar, a son of N. R. Sarkar's deceased brother, held one share. As Mr. N. R. Sarkar became the Finance Minister in the West Bengal Government, he obtained leave of absence on January 4, 1948, from the directors of N. R. Sarkar & Co. Ltd. for a period of one year which was subsequently extended for another year. This was by a resolution passed on March 10, 1948. Mr. N. R. Sarkar joined the Government on January 23, 1948 and in August 1948 Dr. N. N. Law became a director of N. R. Sarkar & Co., Ltd.

On July 31, 1951 Mr. N. R. Sarkar executed a deed of trust in respect of 2920 shares out of his
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holding in Hindusthan Cooperative Society Ltd. and 3649 shares out of the shares held by him in N. R. Sarkar & Co. Ltd. By this deed he appointed as trustees his younger brother Promode Ranjan Sarkar, appellant P. N. Taluqdar and Dr. N. N. Law and the beneficiaries under the trust deed were his four younger brothers including the complainant and Shanti Ranjan Sarkar, his nephew. It is alleged that the balance of 1,000 shares was to be kept in trust by the appellant P. N. Taluqdar for the benefit of his brothers and nephew. N. R. Sarkar died on January 25, 1953.

It is alleged that a few days after the death of Mr. N. R. Sarkar, the appellant, Sourindra Mohan Basu in a casual manner informed Promode Ranjan Sarkar that his brother N. R. Sarkar had executed two documents one an unregistered deed of

agreement dated January 19, 1948, appointing the appellant P. N. Taluqdar as the Managing Director of N. R. Sarkar & Co., Ltd. and a deed of transfer dated February 5, 1951, transferring 1,000 shares in N. R. Sarkar & Co. Ltd., in his P. N. Taluqdar's) favour. Promode Ranjan Sarkar and his brothers without giving much credence to this information wanted to see the documents but they were not allowed to do so. On July 31, 1953, appellant P. N. Taluqdar resigned from the Hindusthan Cooperative Insurance Society Ltd., in order to take control of N. R. Sarkar & Co Ltd., as it Managing Director. This led to trouble between Promode Ranjan Sarkar and the appellant P. N. Taluqdar and there was some correspondence between Promode Ranjan Sarkar and the appellant P. N. Taluqdar which it is unnecessary to refer to. At a meeting of the Board of Directors of N. R. Sarkar & Co., held on September 22, 1953, the appointment of appellant P. N. Taluqdar as Managing Director of N. R. Sarkar & Co. Ltd., was renewed for a period of seven years. This in spite of the
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protest of Promode Ranjan Sarkar and in spite of the fact that that item was not on the agenda of the meeting.

On October 1,1953, Promode Ranjan Sarkar took inspection of the agreement. On October 13, 1953, he took inspection of the Minute book and took photostat copies of some of the documents but not of the resolution of January 16, 1948. It is alleged that the appellants and other entered into a criminal conspiracy and fraudulently forged certain documents which in the complaint are described thus:

(a) "An unregistered deed of agreement purporting to have been executed by the late Sri Nalini Ranjan Sarkar as Governing Director of N. R. Sarkar & Company Limited on 19th January 1948, (while he was on leave as stated above) appointing accused No. 1 (P. N. Taluqdar) as the Managing Director of N. R. Sarkar & Company Limited on a remuneration of Rs. 1,500-100-2,000/- per month and the deed bears the signature of accused No. 2 (S. N. Basu) as the sole attesting witness.

(b) A transfer deed in respect of 1000 shares of N. R. Sarkar & Co. Ltd., which has been entrusted to accused No. 1 as stated before, transferring them to accused No. 1 for an alleged consideration of Rs. 1,00,000(Rupees One Lakh) also purporting to have been executed by the late Sri Nalini Ranjan Sarkar on 5th February, 1951, with accused No. 2 as attesting witness both for the transferor and transferee.

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(c) Minutes of the proceedings of the

Board. Meetings of the said N. R. Sarkar & Company Limited including those of a meeting dated 16th January, 1948, purporting to bear the signature of the aforesaid late Sri Nalini Ranjan Sarkar."

These documents, it is alleged, are forged and have been used and by the use of these forged documents a fraud has been perpetrated. On April 3, 1959, respondent filed in the Court of the Chief Presidency Magistrate, Calcutta, a complaint under sections 467, 471 read with s. 109 of the Indian Panel Code against the two appellants, Dr. N. N. Law and A. Chakravarti. Document No. (b) above is not the subject matter of the complaint because a suit in regard to it has been filed and is pending in the Calcutta High Court. On May 7, 1959, process was issued against the appellants by the Chief Presidency Magistrate. Before dealing with the allegations in this complaint it is necessary to give some further facts of the case.

On December 12, 1953 Pramode Rajan Sarkar laid an information with the Commissioner of Police, Calcutta, against the persons against whom the above mentioned complaint was later filed. It appears that the matter was investigated by the police and by a letter dated February 16, 1954, the Police Commissioner expressed the opinion that there was no substance in the allegations which were being made by Pramode Ranjan Sarkar against the appellants and two others. He stated "....I have given this matter very careful consideration gone through various reports and papers and even examined an important witness myself. My examination has led me to conclusion that allegations are false and vexations." On March 17, 1954, Pramode Ranjan Sarkar filed a complaint under ss. 467, 471 and ss.457, 471 read with s. 109. After setting out the facts which have

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been given above and after referring to the three documents which were alleged to have been forged it was stated that the deed of agreement was engrossed on a stamp paper purchased in the name of P.D. Himmatsinghka & Co., a firm of solicitors, instead of in the name of the parties; that the resolution of January 16, 1948, which purported to bear the signature of the deceased was in fact not signed by him; that during the lifetime of Nalini Ranjan Sarkar and after a considerable period after his death the appellant, P. N. Taluqdar, never alleged that he had been appointed the Managing Director of N. R. Sarkar & Co. Ltd., nor did even appear from any resolution of the Board of N. R. Sarkar & Co., that he was appointed the Managing Director until September, 1953. Certain other allegations which need not be set out at this stage were also made in this complaint for the purpose of showing that the appellants had been guilty of forgery and for using forged documents and for conspiracy. The matter was heard by the Chief Presidency Magistrate Mr. N. C. Chakraborty who after examining all the witnesses who were produced before him dismissed the complaint by an order dated August 6, 1954. The

learned Chief Presidency Magistrate examined the handwriting expert and after taking all the facts into consideration he held:

> "that the evidence on handwriting including the opinion of the Handwriting Expert does not support the complainant's version."

Against this order the complainant Pramode Ranjan Sarkar took a revision to the Calcutta High Court which was heard by Debabrata Mookerjee, J. Before him three contentions were raised (1) that the Chief Presidency Magistrate erred in examining the witnesses himself after he had received the result of the enquiry held by Mr. A. B. Shyam,
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another Magistrate, under s. 202, Code of Criminal Procedure; (2) the learned Magistrate misunderstood the scope of ss. 202 and 203 and misdirected himself by insisting upon a standard of proof which the law did not require at the initial stage when the only question was whether the process should issue or not and the third contention related to the power of revision of High Court under s. 439 when dealing with orders of a Chief Presidency Magistrate. The learned Judge held against the complainant, Pramode Ranjan Sarkar on the points that were raised before him. He held that it was open to the Chief Presidency Magistrate to examine witnesses; (2) the learned Magistrate had not misdirected himself in regard to the scope of ss. 202 and 203 and that he could dismiss the complaint if in his judgment there was no sufficient ground for proceeding. He also held that the order of Magistrate was liable to be interfered with if it was made in disregard of the rules of procedure or it was so grossly improper or so palpably incorrect as to require a revision in the interest of justice. The learned judge then examined the evidence which had been produced before the Magistrate and taking the various circumstances into consideration discharged the rule and dismissed the revision, holding that the complainant Pramode Ranjan Sarkar was guilty of undue delay in taking action against the appellants, because he came to know on October 13, 1953, as to the forged nature of the documents and did not take any action till he wrote to the Police Commissioner to which he got reply on February 16, 1954, and he did not file any complaint or take any action till march 17, 1954, and this delay was unexplained. He also held that the complainant Pramode Ranjan Sarkar's belief in regard to forgery was not established by the evidence which had been produced because (1) he came to know about the agreement complained of in February, 1953, but he discredited it and did
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not take any action; (2) that when the agreement came up for renewal on September 22, 1953, for another term of the 7 years he did not oppose it on the ground that it was a forgery but on legal grounds. The learned judge did not believe the evidence of Pramode Ranjan Sarkar that up to February, 1954, he considered it absurd that there could be such a document. He referred to the

correspondence which passed between the complainant and the appellant P. N. Taluqdar. He also considered the evidence relating to the watermark and the circumstances in support of the allegation of the theory of forgery and not being satisfied with the evidence he dismissed the revision petition and thus the order of the Chief Presidency Magistrate Mr. Chakraborti was upheld. It may be pointed out that on behalf of complainant Pramode Ranjan Sarkar an application was made on June 6, 1955, drawing the attention of the Court to the fact that on the sheet of a paper on which the minutes of the meeting held on January 16, 1948, had been typed there was printed Telephone "City 6091" and that Exchange had not come into existence till December, 1948. It was not stated when the complainant came to know of this fact. The learned Judge did not pass any separate order on this application and did not take it into consideration in his judgment.

Against this order an application was made for a certificate under Art. 134(1)(c) which was dismissed but in that order this fact as to the City Exchange coming into existence in December, 1948, has been taken note of. Pramode Ranjan Sarkar then applied to this Court for Special Leave which was granted on February 13, 1956, but the appeal was withdrawn and was therefore dismissed or March 2, 1959.

The present respondent Saroj Ranjan Sarkar then brought a complaint under the same sections 348 on April 3, 1959, making the same allegations as were made by his elder brother Pramode Ranjan Sarkar but there is one further allegation as to the Telephone City Exchange which did not find place in the previous complaint, In this complaint after referring to the facts which have been set out above it was alleged in paragraph 5 as follows :-

> "That in order to assume complete control over N. R. Sarkar & Co., Ltd. and the concerns under its Managing Agency, the accused, entered into a criminal conspiracy with each other and others unknown, to dishonestly and fraudulently forged a Deed of Agreement, a Deed of Transfer and make a false document, to wit, minute book of N. R. Sarkar & Co. Ltd., and in pursuance thereof dishonestly and fraudulently forged and/or caused to be forged and used as genuine the said documents."

The grounds for forgery were that the unregistered deed dated January 19, 1948, was engrossed on a stamp paper purchased in the name of M/s. P. D. Himmatsinghka & Co; that the late N. R. Sarkar was on leave granted by the company and he never attended any meeting of the Board for more than four years as long as he was a Finance Minister; that the signature of Mr. N. R. Sarkar on the resolution dated January 16, 1948, was forged; that during the lifetime of N.R. Sarkar it was never given out by the appellant P. N. Taluqdar that he had been appointed a Managing Director, that in none of the papers and

correspondence and resolutions of the Board until September, 1953, does it appear that the appellant, P. N. Taluqdar, was its Managing Director; that the appellant, P. N. Taluqdar continued to hold his post in the Hindusthan Cooperative Insurance Society Ltd. up to the end of July, 1953; that the signature in the deed of appointment was halting and appeared to be a forgery even to the naked eyes; that the resolution
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for renewal for seven years was passed in spite of the protest of Pramode Ranjan Sarkar who was a director of N. R. Sarkar & Co. Ltd., and inspection of the deed of appointment was not given to Pramode Ranjan Sarkar in spite of his demands. It was further alleged that the resolutions of the Board of Directors were all on loose sheets of paper, that the signature on the resolutions were forged; that there was internal evidence to show that the genuine minutes book had been dishonestly changed; that the minutes of the proceeding of the Board of Directors said to have been held on January 16, 1948, were on a typed sheet; that the Telephone No. "City 6091" was printed thereon and the City Exchange was not in existence in January, 1948, but came into existence in December, 1948. It was prayed that the accused named therein which included the two appellants be proceeded against under ss. 467, 471 read with s. 109 of the Indian Penal Code. It will be noticed therefore that all the allegations made by Saroj Ranjan Sarkar are the same as those made by Pramode Ranjan Sarkar except in regard to the City Exchange Telephone Number.

This complaint was accompanied by an affidavit not of complainant Saroj Ranjan Sarkar but of Shanti Ranjan Sarkar, his nephew. In paragraphs 1 to 7 of this affidavit he stated that the facts in regard to the Calcutta City Exchange were matters of public history as they were duly published in the columns of "statesman" dated December 29, 1948, and he also stated "that I am aware of the facts and circumstances stated above," but he did not say as to when he came to know about the City Exchange matter. It may also be noted that in the application which was made by the complainant Pramode Ranjan Sarkar in the High Court before Debabrata Mookarjee J., it was submitted that judicial notice be taken of the new
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telephone exchange under s. 57 but it was not stated as to when that complainant came to know about the new Telephone Exchange Number. That fact has been stated in the affidavit of Shanti Ranjan Sarkar in almost the same vague manner.

The learned Chief Presidency Magistrate, who took cognizance of the second complaint, Mr. Bijoyesh Mookerjee, after considering the whole material placed before him issued process against the appellants only. He held that there was no delay on the part of the respondent in making the complaint that the previous complaint and the result thereof was no bar to the filing of the second complaint; that the complaint was not

brought with a view to blackmail the accused including the appellants, that what the brother of the respondent did, did not lay the respondent open to the charge of blackmail. On the merits he took into consideration the fact in regard to the City Exchange of which according to the learned Magistrate he could take judicial notice under s. 57 of the Evidence Act. He compared various signatures of the late N. R. Sarkar and after considering the elaborate order of his predecessor he said :-

> "I have read and re-read it and with respect too due to one of his eminence, but it is my misfortune that I have not been persuaded. There are various other considerations which point to the ineluctable prima facie conclusion of forgery. But it is not proper that I burden my order with all that at this stage."

He held that he was satisfied about the truth of the allegations and there was sufficient ground for proceeding against the appellants under s. 204, Criminal Procedure Code and he therefore issued process against them but did not issue any process against Dr. N. N. Law and Amiya Chakravarty who were accused Nos. 3 and 4.

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Against this order a revision was taken by the appellants to the High Court and rule was issued against the Chief Presidency Magistrate to show cause why his order should not be set aside. He showed cause and the matter was heard by a Division Bench consisting of P. B. Mukerjee and H. K. Bose, JJ., and the matter was referred to a larger Bench because of the importance of the questions of law which arose in the case.

Three questions were raised before the Special Bench, (1) whether under the appellate side rules of the High Court it was competent for a Division Bench consisting of two judges to refer any matter to a larger bench for decision in a criminal matter; (2) whether a second complaint could be entertained on the same facts after a previous complaint had been dismissed; and (3) whether the complaint could be taken cognizance of by the Magistrate in the absence of a sanction under s. 196A of the Criminal Procedure Code. On all these three points the finding of the Special Bench was against the appellants. It held that the attention of the Chief Justice having been drawn to the fact that the case involved questions of importance it was open to him in the exercise of his inherent jurisdiction to refer the case to a larger bench and therefore the reference was not illegal. In regard to the filing of a second complaint it held that a fresh complaint could be entertained after the dismissal of previous complaint under s. 203 Criminal Procedure Code when there was manifest error or manifest miscarriage of justice or when fresh evidence was forthcoming. The Bench was of the opinion that the fact in regard to the City Telephone Exchange was a new matter and because Pramode Ranjan Sarkar was not permitted to take a photostat copy of the Minutes Book, it was possible that his attention

was not drawn to the City Telephone Exchange which was not in existence at the relevant time and that there was sufficient reason for Pramode
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Ranjan Sarkar for not mentioning the matter of City Exchange in his complaint. It also held that the previous Chief Presidency Magistrate Mr. Chakraborty had altogether ignored the evidence of a large number of witnesses who were competent to prove the handwriting and signature of N. R. Sarkar and he had no good reasons for not accepting their evidence. It could not be said therefore that there was a judicial enquiry of the matter before the previous Chief Presidency Magistrate; the decision was rather arbitrary and so resulted in manifest miscarriage of justice. The Court was of the opinion therefore that there was no reason to differ from the finding of the Chief Presidency Magistrate Mr. Bijoyesh Mukerjee and that there was a prima facie case against the appellants. The rules were therefore discharged. It is against this judgment and that the appellants have come in appeal to this court by Special Leave.

Four appeals were filed by the two appellants, two against the order of the High Court of Calcutta dismissing the revision petition and two against the order of the High Court refusing a certificate under Art. 134 (1) (c) of the Constitution. As this Court granted special leave against the order of the High Court dismissing the Revision Petition the two appeals against the order refusing a certificate under Art. 134 (1) (c) became infructuous and therefore were not pressed. It is only the appeals against the judgment and order of the High Court refusing to quash the order of the learned Chief Presidency Magistrate, Mr. Bijoyesh Mukerjee, which survive for decision.

The first question to be decided and that is the most vital question in the case is, whether the second complaint filed by Saroj Ranjan Sarkar respondent should have been entertained ? This complaint was brought on April 3, 1959, the appeal in this Court brought by Pramode Ranjan Sarkar
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the complainant in the previous complaint, having been withdrawn on March 2, 1959. The respondent holds no shares in N. R. Sarkar & Co. Ltd. He is a beneficiary under the deed of trust in trust in regard to certain number of shares. In regard to the unregistered deed of agreement appointing P. N. Taluqdar as Managing Director of N.R. Sarkar & Co. Ltd., he can have no interest. As regards the transfer deed of 1,000 shares of N. R. Sarkar & Co. Ltd., which it is claimed were entrusted to P. N. Taluqdar appellant for the benefit of the respondent and his brothers, a separate suit has been brought and is not the subject matter of the criminal complaint. There then remains the resolution of the Board dated January 16, 1948, which stands on the same footing as the appointment to Managing Directorship and is connected with that matter and relates to it.

Under the Code of Criminal Procedure the

subject of "Complaints to Magistrates" is dealt with in Chapter XVI of the Code of Criminal Procedure. The provisions relevant for the purpose of this case are ss.200, 202 and 203. Section 200 deals with examination of complainants and ss. 202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of ss. 202 and 203 were laid down in Vadilal Panchal v. Dattatraya Dulaji Chadigaonker(1). The scope of enquiry under s. 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and s. 203 lays down what materials are to be considered for the purpose. Under s. 103 Criminal Procedure Code the judgment which Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind to materials and from his judgment whether or

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not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under s. 202, Criminal Procedure Code, and has judicially applied him mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under s. 203, Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into Allah Ditta v. Karam Baksh(1), Ram Narain Chaubey v. Panachand Jain(2), Hansabai v. Ananda(3), Doraisami v. Subramania (4). In regard to the adducing of new facts for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court or the Patna High Court in cases above quoted and adopted the opinion of Macleam, C. J. in Queen Empress v. Dolegobinda Das (5) affirmed by a full Bench in Dwarka Nath Mandal v. Benimadhab Banerji (6). It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming.

The Chief Presidency Magistrate in the complaint filed by respondent, held that the second complaint was not unduly delayed; that s. 203 is not a bar to the second complaint and that the

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complaint was not with a view to blackmail the persons accused. On the merits he held that the minutes of the proceedings of January 16, 1948 were typed on a sheet of paper with Telephone No. "City 6091" and the City Exchange case into existence later in the year and that on his comparing the signatures of N. R. Sarkar it appeared that the signature was a forgery. He said:

> "And governing myself by this test, I held that forgery is there prima facie and only prima facie."

These then were to facts on which the learned Presidency Magistrate Mr. B. Mukherjee came to a conclusion different from that of his predecessor Mr. Chakravorti, who had inquired into the complaint of Pramode Ranjan Sarkar, as to the forged nature of the signatures of Mr. N. R. Sarkar.

Taking first the question of fresh evidence, the view of some of the High Courts that it should be such that it could not with reasonable diligence have been adduced is, in our opinion, a correct view of the law. It cannot be the law that the complainant may first place before the Magistrate some of the facts and evidence in his possession and if he fails he can then adduce some more evidence and so on. That in our opinion, is not a correct view of the law.

The next point to be considered is, was the mention of the telephone number "City 6091" on the note paper on which the resolution was typed a matter of which the previous complainant Pramode Ranjan Sarkar was unaware and was it a fact which with reasonable diligence he could not place before the Magistrate. In the complaint filed by Pramode Ranjan Sarkar no reference was made to the City Exchange. It is true that the question was sought to be raised as a fresh piece of evidence before Debabrata Mookerjee, J. and it was not

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considered by him but it was not stated before him when the then complainant came to know of this fact. According to a copy of the Day Book entry by Mr. Bimal Chandra Chakravarty, Solicitor for the previous complainant Pramode Ranjan Sarkar, dated October 13, 1953, photostat copies were taken of the share transfer deed and portions of the agreement dated January 19, 1948 and inspection of the Minutes Book was also taken but the request of the complainant to take photostat copies of certain resolutions was refused, by the appellant S. M. Basu. It is significant that according to this entry, Santi Ranjan Sarkar was acting as the agent of Pramode Ranjan Sarkar and was present at the time of the inspection. After this inspection was taken, Pramode Ranjan Sarkar discussed with his Legal Advisers the peculiarities noted in the impugned documents. This is what he (Pramode Ranjan Sarkar) stated as a witness before the Chief Presidency Magistrate. His evidence also shows that he inspected the Minutes Book though after much "recriminations." Witness Shibakali Bagchi stated that Minutes Book of N. R. Sarkar & Co. Ltd., was examined by him and that it appeared

to him that the book was not genuine and Pramode Ranjan Sarkar complained that some of the signatures were forged. It appears from the statement of Pramode Ranjan Sarkar that the appellant S. N. Basu, did not let them take photographs of some of the pages of the Minutes Book. It is not stated by either Bagchi or Pramode Ranjan Sarkar of what documents they wanted to take photographs which were refused. In the statement of Bimal Chandra Chakrabarty, the Solicitor, the same statement is made i. e, they wanted to take photographs of some documents which were not allowed to be taken. The correspondence produced by Pramode Ranjan Sarkar in his complaint proceedings shows that the Minutes Book was produced for his inspection and was inspected. Debabrata Mookarjee, J., in dealing with the
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resolution of January 16, 1948, said that it was not possible on the materials available considered prima facie that the Magistrate's finding suffered from such a grave impropriety as to require interference by the Court. He was of the opinion that the complainant could not have been unaware of the resolution of January 16, 1948. This he concluded from the following; that on his own case Pramode Ranjan managed the affairs of the Company along with the appellant P. N. Taluqdar; that although the proceedings of the Board dated September 22, 1953, referred to the resolution of January 16, 1948 yet the only protest made against it by Pramode Ranjan Sarkar was the alleged legal difficulties consequent on renewal of the appointment but its genuineness was not then questioned and it was questioned for the first time on March 17, 1954, when the complaint was lodged.

Against the judgment and order of Debabrata Mookerjee J., Special Leave to appeal to this Court was obtained and one of the points taken in the application was that the resolution was typed on a sheet of paper bearing Telephone No. City 6091 although this Telephone Exchange did not come into existence till December 28, 1948. It is significant that Pramode Ranjan Sarkar did not mention when he came to know about the existence of this new fact. It was not, therefore, made clear to the learned Judge at least upto that stage as to when, before or after the filing of the first complaint Pramode Ranjan Sarkar came to know about the existence of this piece of evidence to which so much importance is attached. Debabrata Mookerjee, J., also said in his judgment that the affairs of the Company were managed by Pramode Ranjan Sarkar and the appellant P. N. Taluqdar and that it was difficult to believe that he (Pramode Ranjan) had no access to the Minutes Book which showed that he himself
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had presided over several meetings and also that there was nothing extraordinary about the proceedings being typed on separate sheets of paper and the sheets of paper being pasted in that Minutes Book because on some of them there were his own signatures and it was, difficult to

believe that tampering with the records went on "systematically" for several months without Pramode Ranjan Sarkar having seen the book or detected the tampering. It was, therefore, impossible to blame the previous Chief Presidency Magistrate if he held in those circumstances that there was no forgery in the Minutes Book or tampering with it. The following passage from the learned Judge's judgment is significant:-

> "Photographs of the impugned documents were taken on the 13th October when the Minutes Book was inspected. On the last mentioned date the complainant was certain about the entire book having been tampered with; but nothing appears to have been said about it, no challenge made, no protest entered until full five months passed when at last the silence was broken and the complaint was lodged on the 17th March, 1954. It is of course not known what was said about it in the information to the police. These circumstances are explicit in the complainant's case. That case has only to be presented for these features to be seen, and the Magistrate could not possible have overlooked them. His clear finding is that the Minute Book is genuine. I am not in a position to say it is improper on a prima facie consideration of the evidence offered."

Dealing with the question whether the signatures of N. R. Sarkar were forged, the learned Judge agreed after considering the whole evidence that the signatures were not forged.

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The complaint of the present complaint Saroj Rajan Sarkar specifically mention the City Exchange and that it came into existence later. He also alleges that this fact was not known to the previous complaint, Pramode Ranjan Sarkar, and in support there is the affidavit of Santi Ranjan Sarkar. Significantly enough in that affidavit also it is not stated as to when the deponent came to know about this alleged new fact of the Telephone City Exchange. All that the affidavit says is that it is a matter of history and was published in the Statesman of December 29, 1948. There is no evidence on the record to show as to when the matter of "City Exchange" came to be known to the persons who were then and two those who are now prosecuting the criminal complaints. The document which we have referred to above i.e., the letter written by the Solicitor dated October 13, 1953 shows that Santi Ranjan Sarkar was present as agent of Pramode Ranjan Sarkar at the time of the inspection. The complaint filed by Saroj Ranjan Sarkar states:-

> "That with great difficulty the documents in question were inspected, certified true copies of the alleged resolutions of the Board meetings were obtained and photostatic copies of material portions including alleged signatures of late Sri Sarkar on the said Deed of Agreement and on the Deed of Transfer could be obtained, as will appear from correspondence in this

respect."

In the complaint filed by Pramode Ranjan Sarkar exactly the same language was used in paragraph 10 of the previous complaint. If certified copies were obtained by the complainant Pramode Ranjan Sarkar and inspection was taken by Santi Ranjan Sarkar for Pramode Ranjan Sarkar and by his Solicitor and the facts are as they are
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stated above, it is difficult to hold that the fact in regard to the City Exchange was not know to the complainant in the first complaint and was a new fact which could not, with reasonable diligence, be adduced by him.

The next question which arises is whether the order of the previous Chief Presidency Magistrate who decided Pramode Ranjan's complaint, was manifestly absurd or unjust and resulted in a manifestly unjust order. The Special Bench of the High Court has held that it was so because (1) the Magistrate ignored the evidence of a large number of witnesses who were competent to prove the handwriting and signature of the late Mr. N. R. Sarkar; (2) he "set aside" the report of the enquiring Magistrate, Mr. A.B. Syam for reasons which cannot be held to be proper and judicial reasons; (3) He said in his order that Mr. N. R. Sarkar might himself have ante-dated the documents thus accepting a possible defence for which there was no basis before him; and (4) he relied upon his own comparison of the disputed signatures of Mr. N. R. Sarkar. On these grounds the Special Bench was of the opinion that the decision of the first Magistrate was rather arbitrary and so resulted in manifest miscarriage of justice. The question is whether Mr. N. C. Chakrabarti, the previous Presidency Magistrate had applied his mind to the evidence which was produced before him and keeping in view his functions as a Magistrate, he gave his decision. It is not necessary to refer to the various findings given by him. Thy are set out and considered in the judgment of Debabrata Mookerjee, J. and he (that learned Judge) has commented upon all the infirmities in that order which were brought to his notice.

The previous Chief Presidency Magistrate found that the Deed of Agreement dated January 19, 1948 was not a forged document. He referred
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to the evidence without analyzing it. He said that the complainant examined persons who know the signature of the late Nalini Ranjan Sarkar and they deposed as to the manner in which Nalini Ranjan Sarkar used to sign. After making a reference to the gist of the evidence submitted before him and to the report of Mr. A. B. Syam, Presidency Magistrate, he (the learned Chief Presidency Magistrate) came to the conclusion:

> "For the reasons above, I find that the evidence on handwriting including the opinion of the Handwriting Expert does not support the complainant's version."

Again in a later part of his order he found that the resolution of the Board of Directors dated January 16, 1948 also was not forged and

that the endorsement of the appellant S. M. Basu, was nothing more or less then the authentication of the common seal of the Co., and he, therefore, agreed with the finding of Mr. A.B. Syam that there was no case against S. M. Basu, appellant but disagreed with him in regard to the other appellant, P. N. Talukdar. When the matter went to the High Court, Debabrata Mookerjee, J., first considered as to when the revisional power of Court to interfere should be exercised. Then he discussed the seven circumstances which were relied upon by the then complainant Promode Ranjan Sarkar in support of the allegations of forgery. After dealing with these various points raised he held:-

> "It may be that one or two items of evidence were not specifically referred to in the Order but that does not necessarily imply that those items of evidence were not present to the mind of the Magistrate. After all a Magistrate is only required to record briefly his reasons for dismissing
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> a complaint. The Magistrate's order, I think, is fairly well."

The learned Judge then discussed the question of delay and held that Pramode Ranjan Sarkar had considerably delayed the bringing of the complaint. He also held that the Deed of Agreement which was alleged to be a forgery had not been so proved and he gave various reasons, one of them being that at the meeting of the Board of Directors dated September 22, 1953, the then complainant did not oppose the renewal on the ground that the Agreement was forged or did not exist, but on legal grounds. Then the learned Judge referred to the correspondence which had passed between the then complainant Pramode Ranjan Sarkar and the appellant P.N. Talukdar and said:

> "It is therefore clear that the evidence which the complainant offered in support of his case contained prima facie on the first aspect sufficient materials for distrusting the truth of the story and I cannot see how the Magistrate's order can be challenged in revision on the ground of impropriety as respects the Deed of Agreement.

The learned Judge then referred to other aspects of the case i.e., the evidence of the Deputy Controller of Stationery, P.W. 15. He also referred to finding of the previous Chief Presidency Magistrate that it was difficult to believe that the complainant should have been unaware of the resolution of January 16, 1948 and after referring to all these various questions raised, he dismissed the petition.

Can it be said in these circumstances that there has been a manifest error resulting in the passing of an unjust order ? That in our opinion, has not been made out. The order of Debabrata Mookerjee J., who reviewed the findings of the previous Chief Presidency Magistrate, shows that the criticism that that the learned Magistrate did not
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consider the whole evidence is not justified. Taking the evidence into consideration he came to the conclusion that there was no ground to proceed and, therefore, refused to issue process. In his opinion the evidence was not worthy of credit and he was not satisfied with the correctness of the complaint and dismissed it as he was entitled to do on those findings. See Gulab Khan v. Gulam Mohammad Khan (1) which was approved in Vadilal Panchal v Dattatraya Dulaji Chadigaonker(2). In the circumstances the order made by the previous Chief Presidency Magistrate was not any manner manifestly absurd unjust or foolish, nor can it be said that the Magistrate ignored in any principles which were necessary to apply under ss. 202 and 203 of the Criminal Procedure Code nor is the order contrary to what was said in Ramgopal Ganpatrai Ruia v. State of Bombay (3). That was a case in which the rule in regard to the commitment proceedings and the power of the Committing Magistrate to commit was discused and the expression "sufficient grounds" in ss. 209, 210 and 213 of the Code of Criminal Procedure was interpreted. That was not a case dealing with the powers of the Magistrate under ss. 202 and 203 which was specifically raised and decided in Vadilal Panchal's case (3). In Ramgopal Ganpatrai Ruia's case (3) the following observations of Sinha J., (as he then was) in regard to the expression "sufficient grounds" are pertinent:

> "The controversy has centred round interpretation of the words "sufficient ground", occurring in the relevant sections of the Code, set out above. In the earliest case of Lachman v. Juala (1882) I.L.R 5 All. 161, decided by Mr. Justice Mahmood in the Allahabad High Court, governed by s. 195 of the Criminal Procedure Code of

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> 1872 (Act No. X of 1872), the eminent judge took the view that the expression "sufficient grounds" has to be understood in a wide sense including the power of the magistrate to weigh evidence. In that view of the matter, he ruled that if in the opinion of the magistrate, the evidence against the accused "cannot possibly justify a conviction" there was nothing in the Code to prevent the Magistrate from discharging the accused even though the evidence consisted of statements of witnesses. who claimed to be eye-witnesses, but whom the magistrate entirely discredited. He also held that the High Court could interfere only if it came to the conclusion that the Magistrate had committed a material error in discharging the accused or had illegally or improperly underrated the value of the evidence. Thus, he overruled the contention raised on behalf of the prosecution that the powers of the committing Magistrate did

not extent to weighing the evidence and that the expression "sufficient ground" did not include the power of discrediting eye-witnesses. Though the Code of Criminal Procedure was several times substantially amended after the date of that decision, the basic words "sufficient grounds" have continued throughout. That decision was approved by a Division Bench of the Bombay High Court In re Bai Parvati (1910) I.L.R 35 Bom. 163 and the observations aforesaid in the Allahabad decision were held to be an accurate statement of the law as contained in s. 201 of the Code, as it now stands. The High Court of Bombay held in that case where the evidence tendered for the prosecution is

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totally unworthy of credit, it is the duty of the Magistrate to discharge the accused. It also added that where the magistrate entertains any doubt as to the weight or quality of the evidence, he should commit the case to the Court of Session which is the proper authority to resolve that doubt and to assess the value of that evidence."

Debabrata Mookerjee J., in the revision against the order of the previous Chief Presidency Magistrate accepted the finding of that Magistrate in regard to the delay. The present complaint out of which this appeal has arisen was filed after the appeal in this Court arising out of this complaint was withdrawn by Pramode Ranjan Sarkar. Can it be said that this is not an abuse of the process of tho Court-one brother who was a director of the Company and who would be interested in the Managing Directorship of the Company and the resolutions passed in regard to that office, brought a complaint in 1954 which was dismissed both by the Magistrate and the High court. Appeal against the order of dismissal brought in this court was withdrawn on March 12, 1959. It was alleged in his complaint by Pramode Ranjan Sarkar that the present respondent was celluding with appellant, P. N. Talukdar, who had offered his some kind of monetary inducement and that fact was deposed to by the present respondent himself as a witness in the previous complaint. He waited all this time although he knew about the forged signatures of his late brother on various documents and after at least the lapse of five years he brought a fresh complaint on the same facts. Neither he has disclosed as to when he came to know about the City Exchange nor have Santi Ranjan Sarkar and Pramode Ranjan Sarkar, which cannot therefore be said to be a fact which could not with reasonable diligence be adduced at the time of the previous complaint.

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The argument that this Court gave Special Leave in the case of Pramode Ranjan Sarkar and therefore there were points of importance is, in the circumstances of this case, a neutral circumstance

and that fact cannot be used as a point in favour of the respondent.

In these circumstances, we are of the opinion that the bringing of the fresh complaint is a gross abuse of the process of the Court and is not with the object of furthering the interests of justice.

In regard to the power of reference to a larger Bench, we are in agreement with S. K. Das, J, and in the circumstances it is unnecessary to express an opinion as to the applicability of s. 196A Criminal Procedure code to the facts of this case.

For these reasons we allow the appeals, set aside the order of the High Court and of the learned Chief Presidency Magistrate and dismiss the complaint.

BY COURT: In accordance with the judgment of the majority, the appeal is allowed.

Appeal allowed.