**P L D 1967 Lahore 176**

**Before Sardar Muhammad Iqbal, J**
**MUHAMMAD NAWAZ KHAN-Petitioner**
**Versus**
**NOOR MUHAMMAD AND OTHERS-Respondents**

Criminal Revision No. 872 of 1965, decided on 12th October 1966.

**(a) Criminal Procedure Code (Y of 1898),** Ss. 190, 173-Cognizable offence-Magistrate can be said to have "taken cognizance of offence" only when he decides to proceed against offender with a view to determine his guilt-Stage for such determination does not arise unless police submits challan under S. 173-Accused, on bail before arrest granted by Sessions Judge, appearing before Magistrate on a date prior to putting up of challan by police-Magistrate taking no proceedings except adjourning case to a future date-Cannot be said to have taken cognizance of offence.

**(b) Criminal Procedure Code (V of 1898)**, Ss. 190(1)(b), (c), 191 & 173---Magistrote not bound by police report under S. 173-Cognizance taken by Magistrate on basis of negative report against person (viz., where person was shown in column 2 of police challan)-Case, nevertheless, falls under clause (b) and not clause (c) of S. 190(1)-Such accused cannot object to being tried by such Magistrate.

A Magistrate is not bound by the police officers' opinion expressed by him in his report under section 173 of the Criminal Procedure Code, 1898. On the contrary, the Magistrate, may by relying on the 'material furnished in the report, take cognizance of a case against the person whom the police officer Sardar believed to be innocent. Where cognizance is taken by a Magistr9te of a case on the basis of a negative report under section 173 of the Code, such cognizance is taken obviously on the police report and not upon his own knowledge or suspicion. Clause (b) of subsection (1) of section 190 of the Code does not say "upon a report in writing of fact against the accused". All that it states is that upon a report in writing of such facts made by any police officer. The basis for taking cognizance under the said section is not the report against the accused but on a report of facts as made by the police officer. The case would, therefore, fall under clause (b) and not clause (c) of subsection (1) of section 190, Cr. P. C. Thus if a person is shown in column No. 2 of the challan and the investigating officer reports that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate for trial, it is competent for the Magistrate to direct that the 'bond given by the accused be discharged. It would mean that the Magistrate on perusal of the report is satisfied that the report of the police was correct and considered that it was in the interest of justice that no further proceedings should be taken against the accused. The Magistrate, however, is under no obligation to act in accordance with the opinion of the police officer and he can on the material which is furnished in the report take cognizance of a case against the person whom the investigating officer believed to be innocent or that there was not sufficient evidence to justify his trial. If he takes such an action before he records any evidence, he will be deemed to be acting on the police report within the meaning of clause (b) of subsection (1) of section 190. He would, under the circumstances, not be taking cognizance under clause (c) of subsection (1) of section 190 and that being so the accused cannot object to his being tried by such Magistrate.

Muhammad Abbas v. State P L D 1964 Lab. 7 and Abdus Sattar Molla v. Crown P L D 1953 F C 145 distinguished.

Muhammad Niwaz v. Crown 48 Cr. L J 774; Emperor v. Dalip Singh 5 Cr. L J 275; Sarwa v. Emperor 14 Cr. L J 290; In re: Alfred Paul A I R 1944 Mad. 166 and Mehrab and another v. The Crown A I R 1924 Sind 71 ref.

Shahzad Jehangir with Muhammad Nazir for Petitioner.

Ch. Hafeez Ahmad for Respondents.

Date of hearing: 15th June 1966.