Supreme Court of India
Nirmaljit Singh Hoon vs The State Of West Bengal And Anr on 6 September, 1972
Equivalent citations: 1972 AIR 2639, 1973 SCR (2) 66
Author: Shelat
Bench: Shelat, J.M.

PETITIONER:
NIRMALJIT SINGH HOON

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL AND ANR.

DATE OF JUDGMENT06/09/1972

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
DUA, I.D.
KHANNA, HANS RAJ

CITATION:
1972 AIR 2639 1973 SCR (2) 66
1973 SCC (3) 753
CITATOR INFO :
RF 1976 SC1672 (15)
R 1977 SC2018 (5)
RF 1979 SC 437 (8)
D 1981 SC 22 (20,21)
RF 1986 SC2045 (45)

ACT:
Code of Criminal Procedure (Act 5 of 1898), ss. 156(3), 195(1)(c), 202 and 204-Scope of.

HEADNOTE:
H-company (in voluntary liquidation) was the owner of 51% of the ,shares in T-company and 707 shares out of them were in the possession ,of T-company. The 5th respondent owned the balance of 49% shares. In a suit filed by him against the H-company the High Court passed a decree directing H-company to deliver the 51% shares to him on payment of a certain sum and issued an injunction restraining H-company, until delivery of the shares, from exercising its rights as holder of those :shares. Some time later one of the liquidators, V, of H-company, and M went to the office of T-company where V executed a receipt and an indemnity bond. The receipt recorded the fact that the 707 share certificates were

received from the 2nd respondent one of the directors of the T-company. It also contained two endorsements; one in the handwriting of the 2nd respondent stating "shares with me" and another, addressed to the 2nd respondent alleged to. have been written by V, stating, "I do not want to carry these with me, hence leaving meantime with personally for delivery to me later". The indemnity bond purported to indemnify T-company against any claims by the 5th respondent in respect of the 707 shares and contained also certain undertakings.

H-company took out execution against T-company for the delivery of the 707 shares claiming entrustment of the shares to the second respondent by V. Copies of the receipt and the indemnity bond were filed, and the originals were shown to the Counsel for T-company, during the proceedings for satisfying them that the copies were correct copies.

Thereafter, the appellant, another liquidator of the H-company, filed a complaint before the Chief Presidency Magistrate against respondents 2 to 5, the directors and Secretary of the T-company, alleging that V and M went to the office of, T-company for obtaining the 707 shares for delivering them to respondent 5, that the second respondent delivered the shares to V, that since V had a luncheon engagement he did not want to take them with him, that the second respondent made the first endorsement on the receipt and V himself made the second endorsement to clarify why the shares were left with the second respondent, that V took away the indemnity bond with him as the second respondent wanted the signature of the appellant also, that later, on that day, the solicitors of H-company sent their assistant C to the second respondent for the shares, that the :second respondent gave an assurance that he would send them through the solicitors of the T-company but did not do so, that the second respondent was withholding the shares at the instance of the fifth respondent who was, as a result of the injunction, in a position to control the T-company without having to pay for the 51 % shares and was therefore interested in preventing H-company deliverng the shares to him, and that respondents 2 to 5 were guilty of offences under ss. 120B, 406 and 420, I. P. C.

The second respondent filed a counter complaint against the appellant, V and M, under ss. 467, 471, 193, 474 and 109 I.P.C. He alleged that the 707 shares were always lying with the T-company as the T-company

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claimed a lien over them in respect of certain payments for income-tax purposes,, that the second respondent produced them before V for his inspection, that he objected to the word "received" in the receipt and wanted instead the word "inspected", that V declined to alter the receipt and thereupon the second respondent wrote out the first endorsement with a view to clarify that the share certificates were still in his custody and not with the

fifth respondent. He denied his having delivered them to V or that V entrusted them to him or, that he promised to hand them over to the solicitors of H-company. He alleged that the appellant later on made an interpolation, namely the second endorsement in the receipt to give a false twist to the first endorsement and to show ;that the certificates were entrusted to the second, respondent by V.

The Chief Presidency Magistrate directed the police to enquire into the appellant's complaint under s. 156(3), Cr.P.C. The receipt was produced before the police by the appellant, and the police seized the 707 shares from the fourth respondent, the Secretary of T-company. The ,police however reported that the complaint was a false one. The appellant thereupon filed objections and the Chief Presidency Magistrate directed a judicial enquiry into the complaint. The Chief Presidency Magistrate find also directed a judicial enquiry into the counter complaint. The Magistrate who inquired into the matter reported to the Chief Presidency Magistrate that no prima facie case was made out in the complaint, by the appellant, but that a prima facie case was made out against the appellant, V and M.

In the course of the enquiry, the appellant and C and M, were examined as witnesses, but V, who was in U.K., was not examined. His affidavit was sought to be filed, but it was held that the affidavit could not be received in evidence.

The Chief Presidency Magistrate and the High Court in revision agreed that the complaint of the appellant should be dismissed, but held that in the cunter complaint process should issue but only against the appellant. Reference was also made by the High Court to the nonexamination of V during the judicial enquiry.

In appeals to this Court, (1) allowing the appeal regarding the com-plaint by the appellant, (by the Majority) and (2) dismissing the appeal regarding the complaint against the appellant.

HELD (per Shelat and Dua, JJ.): (1) Under s. 202 Cr.P.C., Magistrate, 'on receipt of a complaint, may postpone the issue of process and either inquire into the case himself or direct on inquiry to be made by a Magistrate subordinate to him or by a police officer for ascertaining. its truth or falsehood. The inquiry by the Magistrate envisaged at this stage is for 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. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case. In a revision against such refusal, the High Court also has to apply the same test. [79A-B, F-H]

In the present case, 'both the receipt and the indemnity bond were before the Magistrate and were marked as documents

in the case. They were also before the High Court. The receipt prima facie showed that V at first "received"' the share certificates from the 2nd respondent and 'the endorsement admittedly written by the 2nd respondent, indicates that V had left them with the 2nd respondent. The evidence of M and the appellant was that the 2nd respondent had demanded an indemnity bond which was signed by V and later by the appellant. Such a bond containing
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the indemnity and undertakings would not have been executed unless the share certificates had been delivered to V. According to the evidence of M, C, and the appellant, the two documents were executed on the date when V went to the T-company to obtain delivery of the shares. V, if examined, would have been the principal witness, and his affidavit, in his absence, could not constitute admissible evidence. But examination of V would have meant bringing him to India from England at considerable cost. The mere fact that the appellant did not examine him could not be a ground for throwing out the appellant's complaint when there was other evidence making out a prima facie case. Neither the Magistrate nor the High Court expressed any view that the evidence either of the appellant or of the other witnesses was false or intrinsically unbelievable. It may be that much could be said on both sides, but certainly this was not a case of there being no prima facie, case or the evidence being so self-contradictory or intrinsically untrustworthy that process could properly be refused.[81H; 82A-H]

(Per Khanna, J. dissenting) : An enquiry or investigation is ordered under s. 202, Cr.P.C., by a Magistrate on receipt of a complaint for the purpose of ascertaining the truth or falsehood of the complaint. If the Magistrate, after considering the statement on oath of the complainant and hiswitnesses and the result of the enquiry or investigation under the section,is of the opinion that there is no sufficient cause for proceeding,be may dismiss the complaint. If, on the contrary, he is of opinion that there issufficient cause for proceeding he should issue process against the accusedin accordance with s. 204. The evidence which is required to be adduced by the complainant at this stage need not be sufficient for record-ing a finding of conviction; but that does not absolve the complainant, who wants the Magistrate to issue process against the accused, from leading some credible evidence which shows,, prima facie, that the offence was committed. [95E-H]

In the present case, there seems to be an inconsistency in the receipt between the writing of V and the endorsement by the 2nd respondent. The receipt is thus ambiguous, and in the absence of oral evidence, it is difficult to infer from the receipt that the shares were entrusted by V to the 2nd respondent. The best and most important person to explain the ambiguity and prove the entrustment was V but he was;

not examined as a witness, and his affidavit could not be received in evidence under s. 510A, Cr.P.C., as his evidence was not of a formal character. The other person, who was present at the time of the alleged entrustment was M, but his evidence does not prove the delivery of the shares to V or entrustment by him to the second respondent. The evidence of C, the indemnity bond, the letters of the Solicitors of H-Company and the statement of the second respondent in his compsaint-assuming it could be referred to in the appellant's complaint-do, not reveal any entrustment of the shares to the 2nd respondent. [92C; 93B-C; 94A-B, D, G; 95A-E]

(2)(Per Curiam) : The first part of s. 195(1) (c), Cr.P.C., provides that the offence in respect of which the complaint in question is filed must be one under s. 463, or s. 471, or s. 475 or 4. 476, I.P.C. The second part provides that such an offence must be alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding. A document can be said to have been produced in a court when it is not only produced for the purpose of being tendered in evidence, but also for some other purpose. It is only if the two requirements are satisfied that no court can take cognizance of such an offence except on a complaint filed by such Court or a Court subordinate to it. [85-D-F; 87G-H; 88A-B]

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(a)In the present case, in respect of the counter complaint, the receipt was produced by the appellant before the police, and formed part of the record of the case which went to the Chief Presidency Magistrate along with the police report. It could not however be said that because the investigation was ordered by the Chief Presidency Magistrate under s.156(3), Cr. P.C. the investigation was part of the proceedings in his Court. [86E-G]

(i)Section 156(3) expressly states that an investigation ordered by a Magistrate would be an investigation made by a police officer in his statutory right under sub-sections (1) and (2). That being so, once an investigation by the police is ordered by the Magistrate, he cannot place any limitations on, or direct the officer conducting it as to how to conduct it. It cannot be said that the police officer acting under s.156(3) was a delegate of the Magistrate or that the investigation by him was an investigation by or on behalf of the Magistrate. [86B-F; 87A-B]

In re : Gopal Sidheshwar, (1907) 9 Bom. L.R.737 and King Emperor v. Khawaja Ntzir Ahmad. 71 I.A. 203, referred to.

(ii)Before a Magistrate can be said to have taken congizance of an offenceunder s. 190(1) (a), Cr.P.C. he must have not only applied his mind tothe contents of the complaint presented to him, but must have done sofor the

purpose of proceeding under s. 200 and the following sections. In the present case, the Chief Presidency Magistrate applied his mind only for the purpose of directing police investigation under s. 156(3). Therefore, the Chief Presidencey Magistrate having not even taken cognizance of the offence, no proceeding could be said to have commenced before him of which the inquiry by the police could be said to be part and parcel. [86F-H]
R.R. Chari v. U.P. [1951] S.C.R. 312 and Jamuna Singh v. Bhadai Sah, [1964] 5 S.C.R. 37, referred to.
(b)(i) It is only the copies of the receipt and the indemnity bond, that were annexed to the affidavit in the execution proceeding that could be said to have been produced in proceedings before the High Court and not the originals, which were only shown to the Counsel of T-company. [87B-D]
(ii)Moreover, assuming the receipt was produced before the High Court, the offence charged against the appellant is not its user in the proceedings before the High Court, but its production and user by the appellant during the investigation by the police in the appellant's complaint against the respondents. [87E-F]
(iii) It could not be said that once a document alleged to be forged is used in any proceeding before any court at any time; s.195(1) (C), Cr. P.C. would at once be attracted and would he a bar against a complaint by a party complaining of its fraudulent user in any later proceeding because, if that were so, a party to the proceeding before a court can go on producing such a document ad seriatim in several subsequent proceedings with impunity, if the Court before which it was first produced thinks it inexpedient to file a complaint. That clause only says that in respect of any of the offences enumerated there, no congnizance can be taken of a private complaint when such offence is said to have been committed by a party to a proceeding in a court in respect of a docu-ment produced or tendered in evidence in that proceeding except on a ,complaint by such court. [88C-G]
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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 213 and 214 of 1968.

Appeals by special leave from the judgment and orders dated December 7, 1967 of the Calcutta High Court in Criminal Revisions Nos. 304 and 291 of 1967.

M.C. Chagla, K. K. Jain and H. K. Puri, for the appellant (in both the appeals).

P.K. Chatterjee, S. Joseph and D. N. Gupta, for respondent No. 2 (in Cr. A. No. 213 of 1968 and for respondents Nos. 2 and 3 (in Cr. A. No. 21th of 1968). Debabroto Mookherjee, G. S. Chatterjee, for respondent No. 1 tin Cr. A. No. 213 of 1968).

Debabroto Mookherjee, P. K. Chakravarty, Prodyot Kumar Chakravarty, for respondent No. 1 (in Cr. A. No. 214 of 1968.).

The Judgment of J.M. SHELAT & 1. D. DUA, JJ. was delivered by SHELAT, J., H. R. KHANNA, J., gave a dissenting opinion. SHELAT, J. These two appeals, by special leave, arise out of two complaints, both of which were filed in respect of the same transaction and are therefore disposed of by a common judgment.

Appeal No. 214 of 1968 is against the judgment of the High Court of Calcutta dismissing, the complaint filed by the appellant on January 5, 1966 under secs. 120B, 406 and 420 of the Penal Code against respondents 2 to 5, who are the directors' and the secretary of M/s Turner, Morrison & Co. Ltd. (hereinafter referred to as the company). The case of the appellant in the said complaint may be stated as follows :

At the material time, the appellant, one S. Varma and Frank Goldstein were the liquidators of Hungarian Investment Trust Ltd. (in voluntary liquidation) hereinafter referred to as Hungerford). At all material times Hungerford was the registered owner of 51 % of the shares of the company and as much was ordinarily entitled to have the control and management of that company. These 51 % shares numbered 2295 shares of the face value of Rs. 1.000 each. Out of these, 707 shares were in possession of the company. Respondent 5, Haridas Mundra, owned the balance of 49% shares. In or about 1961, Hungerford agreed to sell and Mundra agreed to purchase the said 51% shares. Mundra filed a suit being Suit No. 600 of 1961 against Hungerford in the High Court of Calcutta for specific performance of the said agreement.

7 1 The High Court decreed the suit directing Hungerford to deliver the said 2295 shares against payment of Rs. 86 lacs and odd and issued until delivery of the said shares was made to Mundra, aninjunction restraining Hungerford from exercising its rights as holder of those 51% shares. The curious result of the said induction was that Mundra could get control and management of the company with the 49% shares held by him without having to pay the price of the said 51% shares, until Hungerford gave delivery of all those 2295 shares, out of which, as aforesaid, 707 shares were in the custody of the company. The problem for Hunger-ford was how to get back those 707 shares from the company so as to be able to deliver all those 2295 shares and obtain payment against such delivery of Rs. 86 lacs and odd from Mundra. The said S. Varma, who was then residing in England, came to India in or about May 1965. According to the complaint,Varma, accompanied by one N. K. Majumdar, went to the office of the company on May 27, 1965, and upon his request for the said 707 share certificates, obtained from respondent 2(D.M.Jaffray) the- said share certificates. Varma thereupon issued areceipt for those share certificates and also executed an indemnity bond in favour of the company against any possible claims which Mundra might make in respect of those 707 share certificates. By the said bond the liquidators of Hungerford indemnified the, company to the extent of Rs. 53 lacs said to have been paid by that company by way of taxes for the Turner family,

undertook to assist that company to recover that sum from the estates of that family and furthermore to produce the said 707 share certificates whenever required for delivery to Mundra in terms of the said decree and to indemnify any claim which might arise as a result of delivery thereof to Varma. It is clear that once those 707 share certificates, were handed over to Verma, Hungerford would, in terms of the said decree, be able to deliver to Mundra all the said 2295 shares and Mundra would have to take delivery of them against payment of Rs. 86 lacs and odd.

The receipt (document 2) which Varma executed at the time recorded the fact of the said 707 share certificates having been received by him from Jaffray, and their particulars and numbers. The prosecution case was that as Varma had, then a luncheon engagement he did not wish to carry those scripts together with the corresponding bank transfer forms endorsed by the company, and therefore, gave them back to Jaffray to hold them on his behalf until called for them later in the day. He thereupon took Jaffray's endorsement, viz., "shares with me" under which Jaffray affixed his signature. There was no dispute that the said endorsement and the signature underneath it were in the handwriting of Jaffray. In order to clarify how the said share certificates remained with Jaffray, Verma also wrote over the said endorsement the following:

> "Dear Mr. Jaffray, I do not want to carry these with me, hence leaving meantime with you personally for delivery to me later."

Were this writing to be genuine, the word 'personally' therein would mean safe custoday of Jaffray in his personal capacity as distinguished from that of the company. Later that day, on the instructions of Varma, M/s Sanderson & Morgan, the Solictors of Hungerford, sent their assistant, one Chaudhry, with their own letter as also a letter addressed by Varma to Jaffray with a request to hand over to Chaudhary those 707 share certificates. Jaffray declined to do so stating that he would send them to M/s Sanderson & Morgan through M/s Orr Dignam & Co., the Company's solicitors. Since the said share certificates were not sent to them, M/s Sanderson & Morgan, by their letter, dated August 31, 1965 to the appellant, recorded the fact of their having sent the said Chaudhary to Jaffray, the refusal of Jaffray to deliver the said share certificates to Chaudhary and his assurance to hand them over through the Company's solicitors, and lastly, of their having not received so far the said share certificates either from Jaffray, or the Company's solicitors. In the meantime Jaffray went to England and the rest of the directors of the company, when demands for the said shares were made, replied that they would wait for Jaffray's instructions on his return to India. This position appears to emerge from Varma's letter dated November 29, 1965 to the appellant. In that letter Varma, repeated that Jaffray had the said shares for safe custody on his behalf, that Jaffrar was withholding delivery thereof at the instance of Mundra and the other directors, that Jaffray thereby committed breach of trust and that the appellant should adopt criminal proceedings against Jaffray and t he other directors.

The appellant's case was that it was at the instance of Mundra that Jaffray withheld delivery of those share certificates with a view to prevent Hungerford from delivering all the said 2295 shares and compelling Mundra to pay Rs. 86 lacs and odd against such delivery. It is clear that so long as the liquidators could not deliver all the 2295 shares, Mundra could not be called upon to pay the said price, and Mundra in the meantime could continue to have the control of the Company, although he

had only the minority holding of 49% shares and thus keep Hungerford at bay pre- venting it by virtue of the said injunction from exercising its rights in respect of its 51 % shares as against 49% held by Mundra. It was in this background that on January 5, 1966 the appellant filed a complaint before the Chief Presidency Magistrate against Jaffray, C.N. Rodewald and Mundra, the directors of the Company and A.J. Hormusji, its secretary. Para 3 of the said complaint set out the delivery of the said 707 share certificates with the corresponding blank transfer deeds therefore by Jaffray to Varma, his having executed the receipt in favour of the Company, Jaffray having made the said endorsement and Varma thereafter having written the said note partly by the side of and partly over the said endorsement. Para 9 of the complaint read as follows:

> "That your petitioner has come to know that accused No. 1 (Jaffray) has parted custody of the said 707 shares illegally and wrongfully to Turner Morrison & Co., Calcutta in conspiracy with the other three accused connected with Turner Morrison & Co. to deprive your petitioner from the physical custody of the said 707 share certificates and the blank transfer deeds with the sole object of defeating your petitioner's right to recover Rs. 86,60,000 from accused No. 4, Haridas Mundhra against physical delivery of 2,295 shares of Turner Morrison & Co., Calcutta."

The Chief Presidency Magistrate directed, under sec. 156(3) of the Code of Criminal Procedure, the police to make an inquiry. In the course of that inquiry the police seized the said 707 share certificates from Hormusji. It would appear that although the appellant requested the investigating officer to examine the said Majumdar and Varma, who, it was said, was prepared to come to India for that purpose, that officer declined to do so. The police thereafter made their report recommending discharge of the accused on the ground that the complaint filed by the appel- lant was false, that the said receipt was a forged document and sought permission of the Magistrate to take action against the appellant. On May 7, 1966, the appellant filed a protest application requesting the Chief Presidency Magistrate to take the matter out of the hands of the police and to order a judicial inquiry. Thereupon the Chief Presidency Magistrate directed the Presidency Magistrate, 3rd Court, Calcutta to hold such an inquiry. The proceedings thereupon went to that magistrate before whom the appellant and his witnesses P. R. Chaudhary and Majumdar gave their depositions. Varma was not examined as he was in England, but an affidavit by him was produced before the Magistrate.

In his deposition before the Magistrate the appellant pro- duced the said receipt (marked document 2) and the said 7 4 indemnity bond (marked document 5) and stated on oath that the receipt was in the handwriting of Varma, that the words "shares with me" marked '2' and the signature thereunder were in the handwriting of Jaffray, and that the indemnity bond was in Varma's handwriting and which he had given to the witness for his signature He also deposed that he had gone to Jaffray on that very day, that is, May 27, 1965, with the receipt, the said bondand a letter from Varma to Jaffray and had demanded from himthe said 707 share certificates and had said at the time that he was agreeable to sign the said bond as the other liquidator of Hungerford, that Jaffray thereupon showed the said sharecertificates to him and assured him that he would hand them overto M/s Sanderson & Morgan, and that on that assurance he affixed his signature on the indemnity bond and told Jaffray that he would send his solicitors to take delivery of the said share certificates His evidence further

was that thereafter, he returned back to his hotel where Mundra was waiting. Mundra inquired of him as to why he wanted those share certificates to which he replied that he wanted them together with the rest of the share certificates to be delivered to him, against payment of Rs. 86 lacs, whereupon Mundra threatened that he would see that the said 707 share certificates were not handed over to him. Faced with this threat, he called on his solicitors and instructed them to call for those share certificates immediately. M/s Sanderson and Morgan sent their assistant with their own letter and the letter written by Varma, with whom he, (the appellant) also went. The assistant handed over those letters to Jaffray and asked for the delivery of the share certificates. Jaffray pleaded that it was late in the day, that the office was closed and its key was not with him, but promised that he would send them to his solicitors M/s Orr, Dignam & Co. The share certificates were, however, not sent and were later seized by the police from the custody, not of Jaffray, but of Hormusji to, whom Jaffray must have handed them over in his capacity as the secretary of the Company.

To the same effect was the deposition of P. R. Chaudhry, the assist-ant of M/s Sanderson & Morgan with 'Whom the appellant had on that day approached Jaffray. Wit. N. M. Majumdar, who was said to have accompanied Varma earlier in the day, deposed that both Jaffray and Rodewald were, present when they went to the office of Turner Morrison & Co., that on Varma asking for the shares, the two directors wanted him to execute the indemnity bond, that Varma signed the bond, that as the two directors wanted the signature of Hoon also, Varma kept the bond with him so as to secure Hoon's signature, that Varma then left, leaving the said certificates with Jaffray to be sent later to M/s Sanderson & Morgan. He 'also deposed to the fact of Varma having written out the receipt in his presence and Jaffray making the said endorsement and then Varma writing on the receipt the reason why he left the said shares with Jaffray.

Varma did not come to India to give his deposition, but sent in affidavit giving his version as to the delivery of the said share certificates to him by Jaffray, his having been accompanied by Majumdar at that time, his having executed the said receipt and 'he indemnity bond, his having then entrusted the said shares to Jaffray, and Jaffray having assured him to keep them in his personal custody and to hand them over later to M/s Sanderson, & Morgan, his having given a note addressed to Jaffray to deliver he said share certificates to the appellant, and lastly, Jaffray having told him on telephone that as the representative of M/s Sanderson & Morgan had arrived late he had not been able to hand over the said. share certificates and once again assuring him that he would deliver them to M/s Sanderson & Morgan.

At that stage of the inquiry, when no process bad yet been issued, Jaffray could not give his version. But his version as to what took place on May 27, 1965 is avail-able from his deposition in the counter-complaint he lodged against Hoon. That complaint is the subject matter of Criminal Appeal No,. 213 of 1968 heard along with this appeal. His case in that deposition, was that the said 707 share certificates were lying with the company as the company claimed a lien over them in respect of a sub of Rs. 53 lacs having been paid by it to the Income Tax authorities in India for and on behalf of Hungerford and for which the company had filed a suit and had a receiver appointed' to 'obtain possession of them. There is, however, no doubt that ,these share certificates were with the company on May 27, 1965, for, even according to affray, when Varma saw him on that day complaining that

the company had parted with those share certificates to Mundra, he produced them before Varma for his inspection. According to him, Varma at that stage brought out a typed receipt "to show that be had inspected the shares". His case was that he objected to the word "received" in that receipt and wanted instead the word "inspected", but. Varma declined to alter the receipt and thereupon be wrote out the words "shares with me" with a view to clarify that the shard certificates were still in his custody and not with Mundra. He denied his having delivered them to Varma, or Varma having entrusted them to him, or his having promised to hand them over to M/s Sanderson & Morgan, and alleged that Hoon later on made an interpolation marked (3) in the said receipt to give a false twist to hi said endorsement and to show that the said certificates were entrusted to 'him by Varma. Since the share certificates remained all along in the possession of the company, the police. seized them, 7 6 Later on from Hormusji. We may note that Jaffray in his deposition did not mention the indemnity bond though it had been ,executed at the same time when the said receipt was executed.

The Presidency Magistrate, 3rd Court, held by his order ,dated January 5, 1967 that the appellant had failed to make out a prima facie case, and he could not, therefore, recommend ,the issue of process. His order records two main reasons why he thought that no prima facie case was made out. The first was that though, according to him, the receipt, if believed, would establish entrustment, it could not be given "even its face value", since Varma, the central figure, had failed to give evidence. Though in England at that time, he could have flown to India for the purpose of giving evidence. He discarded his affidavit' as acceptance of such evidence was not permissible either under sec. 60 or sec. 32 of the Evidence Act. He also discarded the evidence of Majumdar on the ground that sec. 60 required the ,best evidence and such best evidence would have been that of Varma, had he been examined. Besides, Majumdar's evidence, according to him, contained "some points of obvious absurdities", in that Jaffray's insistence that an indemnity bond should be Signed by both Varma and Hoon indicated that he could not have parted with the share certificates before Hoon had signed 'that bond. The case together with the report went back to the- Chief 'Presidency Magistrate. By his order dated February 15, 1967, "the Chief Presidency Magistrate held that "it cannot be said that the share scripts in question were entrusted to accused No. and accordingly therefore the suggested charges Cannot be brought against any of the accused persons". The reasons he gave for his order were: (1) that though entrustment of share certificates, was stated in para 5 of the complaint, it was no where stated that it was done on the strength of the receipt, (2) that the receipt was introduced in the case "in a curious way", in that, it was brought on record by Hoon, who was not present either at the time when Varma wrote out the portion marked (3) in the receipt, or when he entrusted the said share certificates to Jaffray, and that he (Hoon) had "very carefully avoided that issue in his statement", and (4) that though Hoon had the ,,opportunity to examine Varma, he failed to do so. Reason No. I was actually incorrect. Para 3 of the com- plaint, dated January 5, 1966 clearly asserts that Varma en- trusted the said share certificates to Jaffray and to record that entrustment wrote the note [portion marked (3) in the receipt and that Jaffray also for that purpose made his endorsement that 'the said share certificates were with him. Reason No. 2 is understandable. It is difficult to appreciate how the Magistrate could remark that Hoon either introduced the receipt "in a curious way" or that he "avoided the issue carefully Ad mittedly, Hoon was not present at the time of the execution of the receipt or the alleged entrustment of the share certificates to affray. Obviously, he could not depose to those two facts from his personal knowledge. There was accordingly no question of his avoiding the issue. These observations, therefore, could not have been justifiably made. As for

the third reason, Varma was, no doubt not examined. The question is whether at that preliminary stage when the only consideration was whether a prima facie case of entrustment was made out or not, it was necessary for Varma to be called from England to give evidence ? Besides examining himself, the appellant had examined Majumdar, who claimed to be an eye-witness to the delivery of the said share certificates to Varma and Varma's entrustment of them to, Jaffray, the execution of the receipt and the bond by Varma, and finally, Jaffray's assurance to hand them over later when called for. Strangely, the learned Magistrate did not discuss Majumdar's evidence, nor the two documents nor the evidence of Chaudhary, nor the letter written by M/s Sanderson & Morgan on that very day to Hoon of their not having been given the share certificates by Jaffray. The revision application filed by the appellant against the order of dismissal was rejected by the High Court. The High court gave two grounds for dismissing that application : firstly, the failure of the complainant to explain how the said 707 share certificates got into possession of the Company, which failure made the story of Varma about delivery to him and entrustment by him to Jaffray of the said share certificates "open to criticism"; secondly, his failure to explain the reasons for furnishing, the indemnity bond on behalf of Hungerford. The High Court was of the view that these two circumstances were "the most unusual cercuinstances which could be inconsistent with the prosecution story of entrustment and of criminal misappropriation and cheating". It noted the omission to examine Varma and also the refusal by the Magistrate to consider Verma's affidavit. According to the High Court, however, this was "not an important aspect of the case. The really important aspect are (sic) provided by the two most unusual circumstances that I have referred to above. Unless those circumstances could be sufficiently explained to the satisfaction of the court, no process could be issued. And those circumstances were not explained." It is clear from these remarks that unlike the Magistrate, the High Court did not attach much importance to the omission to examine Verma although he was said to be the author of the entrustment. what appears to have mainly weighed with the High Court were the "two most unusual circumstances", namely the omission to explain the, initial possess-ion of the said share ,certificates by the Company and the omission to explain why the indemnity bond had to be executed. With respect to the High Court, the fact that the said 70' ,share certificates were initially with the Company was never in ,issue between the parties. The issue between them was whether on May 27, 1965 Jaffray and Rodewald had delivered them to Varma, and whether Varma, in his turn had handed them over to Jaffray's personal custody to be returned to him later on that day. Therefore, the question as to, bow and in what circum,stances the said share certificates were in possession of the Company was totally irrelevant. Equally irrelevant were the reason why the indemnity bond was executed first by Varma and the by the appellant. In any case, the reasons for executing it were not. Par to seek. The Company claimed a lien on those share ,.Certificates on account of its having satisfied the tax liabilities of Turner family as recited in the bond itself. As further recited in the bond, Mundra also claimed those shares by virtue of the ,said decree in his favour. According to the appellant, Jaffray and Rodewald, therefore, insisted that, the liquidators of Hunger ford should execute the said bond to cover the company against any risk arising from the said claims. Besides, there was no question of the appellant having to explain how the said share, certificates were in possession of. the company, for, on that aspect the. parties were never at variance. So far as the bond was concerned, both the appellant and wit. Majumdar had deposed that it had been executed at the insistence of Jaffray and Rode wald. Therefore, these two circumstances, the failure to explain ,which the High Court characterised as the most unusual circumstances, were on record and since the parties were not at

issue ,on the first and the bond itself recited the reasons for its execution, there was no question of the appellant and his witnesses having failed to explain them.

Under sec. 190 of the Code of Criminal Procedure, a magis- Irate can take cognizance of an offence, either on receiving a ,complaint or on a police report or on information' otherwise received. Where a complaint is presented before 'him, he can under sec. 200 take cognizance of the offence made out therein and has then to examine the complainant and his witnesses. The object of such examination is to ascertain whether there is prima facie case 'against the person accused of the offence in the comptaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided therefore to find ouwhether there is or not sufficient ground for proceeding. Under sec. 202, a magistrate, on receipt of a complaint, may postpone the issue of process and either inquire into the case himself or direct an inquiry lo be made by a magistrate subordinate to him or by a police officer for ascertaining its truth or falsehood. Under sec. 203, he may dismiss the complaint; if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, under sec. 202, there is in his judgment "no sufficient ground for proceeding". The words 'sufficient ground used also in sec. 209 have been construed to mean ,the satisfaction that a prima faice case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. [see R. G. Ruia v. Bombay(1)]. In Vadilal Panchal v. Ghadigaonkar(2) this Court considered the scheme of sees. 200 to 203 and held that ,he inquiry envisaged there is for 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. The section does not say that a regular trial of adjudging the truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Sec. 203 consists of two parts. The first part lays down the materials which the magistrate must consider, and the second part says that if after considering those materials there is in-his judgment no sufficient ground for proceeding, 'he may dismiss the complaint. In Chandra Deo Singh v. Piokash Chandra Bose,(1) where dismissal of a complaint by the Magistrate at the stage of sec. 202 inquiry was set aside, this Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed (p. 653) that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate form at the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is selfcontradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case. In a revision against such a refusal, the High Court also has to apply the same test. The question, therefore, is whether while apply- ing this test the Chief Presidency Magistrate was right in refusing process and the High Court in revision could confirm such a refusal.

(1)[1958] S.C.R. 618.

(3) [1964] 1 S.C.R. 639.

(2) [1961] 1 S.C.R. 1.

8 0 As earlier stated, there were before the Magistrate, besides the evidence of the appellant and wit. Majumdar, who claimed to be an eye-witness, the receipt and the indemnity bond. Over' and above this, there was the evidence of Chaudhary, who had gone to Jaffray to obtain the share certificates armed with Varma's letter and the letter of M/s Sanderson & Morgan which prima facie supported the case of entrustment. The receipt prima facie showed that Varma at first 'received' the share certificates from Jaffray and the endorsement thereunder admittedly written by Jaffray, namely, "shares with me", seemed to indicate that Varma, as the complaint alleged, had left them with Jaffray to be subsequently handed over to M/s Sanderson & Morgan on behalf of Hungerford. The evidence of Majumdar and Hoon was that Jaffray had demanded an indemnity bond, that the bond was signed first by Varma and later at his instance by Hoon. Prima facie, such a bond containing both indemnity and undertakings could not have been executed unless the share certificates had been delivered to Varma as stated in the receipt. Once It was shown through these two documents that the share certificates were delivered, the endorsement of Jaffray below the receipt, namely, "shares with me" was capable of being construed as Varma having, left the share certificates with Jaffray lo be handed over to him or on his behalf when called for.

As against the case of entrustment, Jaffray's case, as set out earlier, was that the word 'receive& in the receipt was wrongly used by Varma and that he had insisted that Varma should use the word 'inspected', for, he had allowed Varma the inspection of the share certificates only and had not delivered them to him and made the said endorsement to make that position clear. That undoubtedly was his defence. But reading the two documents one is bound to ask himself whether Varma and Hoon were likely to execute the bond if Varma had merely inspected and not received the share certificates. It would also prima facie appear that if faffray had only given their inspection, he would not have allowed Varma to prepare the receipt in the words in which it was couched. In any event, with the word 'received' in it, he would not have written out the endorsement which was capable of showing that the shares were with him because after executing the receipt Varma had left them in his personal custody.

In support of the High Court's order counsel for the respon- dents argued that there was no reference of the receipt in the protest application, dated May 7, 1966, that likewise, there was no reference therein of the indemnity bond, that there were contradictions in the versions of Varma and Hoon as to when the appellant signed that bond, that the said share certificates were tinder attachment, and therefore, Jaffray, was not likely to deliver them to Varma, that Majumdar did not mention entrustment in his evidence, that the letter of Varma to Jaffray said to have been carried by Chaudhry when he went to take delivery of the said share certificates was not produced, and lastly, that though Hoon had complained that the police had not given him an opportunity to examine Varma, he failed to produce him before the Magistrate, though he had both time and opportunity to do so. In addition, Mr. Chatterjee, appearing for Jaffray, Rodewald and Horniusji argued that so far as Hormusji was concerned, there was no evidence against him except the bare allegation of conspiracy, that the,indemnity bond intrinsically contradicted the case of delivery of the shares to Varma and their entrustment to Jaffray inasmuch as according to that document delivery was to be made to M/s. Sanderson & Morgan and not to, Varma, and finally, that the evidence at best showed

that it was a case of promise to deliver and its breach and not one of entrustment and breach of trust. We refrain at this stage to express our views on these contentions lest such views might later on affect one party or the other. Nevertheless, we are bound to say that both the receipt and the indemnity bond, whether referred to in the protest application or not, were before the Magistrate and were marked by him as documents 2 and 5. They were also before the High Court. Over and above these two documents, there was the evidence of Majumdar, Hoon and Chaudhary, according to which the two documents- were executed on May 27, 1965 when Varma went to the Company's office to obtain delivery of the said shares. It is true that Varma was not examined though, if examined, he would have been the principal witness. It is also true that his affidavit in his absence could not constitute admissible evidence. Despite that omission, there was evidence, both oral and documentary, supported by contemporaneous letters of M/s Sanderson & Morgan, demanding the said share certificates from Jaffray personally. It may be that much could be said on both the sides. But it was certainly not a case of there being no prima facie case or the evidence being so self-contradictory or intrinsically untrustworthy that process could properly be refused. This follows from the fact that neither the Chief Presidency Magistrate nor the High Court expressed the view that the evidence, either of the appellant or of Majumdar or, of Chaudhary, was false or intrinsically unbelievable. Indeed, both the Chief Presidency Magistrate and the High Court founded their orders of dismissal mainly on the ground of omission to examine Varma without considering whether despite that omission there was other evidence on record which made out a sufficient ground for proceeding with the case. At the stage of sec. 202 7-L348Sup.C.I./73 inquiry what a complainant has to make out is such a sufficient ground. He need not necessarily produce at that stage all the evidence available to him. Merely because the appellant did not examine Varma, (however important he was) because that would have meant bringing him to India from England at considerable cost, could not be a ground for throwing out his complaint,, even though such of the other evidence he led was capable of making out a prima facie case.

There is no gainsaying that although respondent Mundra held only minority shares, he was and continues to be in a position to control the management of Turner Morrison & Co. without having to pay the price of the rest of the shares by reason only of the said 707 share certificates being in possession of that company and therefore unavailable to Hungerford to deliver them to him. He had, therefore, sufficient interest, to say the least, to bring about such a position that Hungerford would not be in a position to deliver the said shares and he could continue to have control if the company without owning the majority shares and without paying for them. It was, therefore, not totally improbable that jaffray had at first thought that the indemnity bond sufficiently safeguarded the interests of the company even against a possible plaint who Mundra might make in respect of the said 707 shares, and therefore, delivered them to Varma. The evidence on record and the circumstances of the case would suggest that he probably changed his mind later on possibly at the instance of Mundra, who, as aforesaid, was interested in withholding the deliver of the said 707 share certificates, and handed them over to Hormusji instead of to Varma. We mention these circumstances as possibilities only which might have to be considered at a later stage and not as our conclusions in these proceedings.

As regards respondent Rodewald, Mr. Chatterjee drew our attention to an order dated April 10, 1967 by which the Court discharged the rule against him. Mr. Chatterjee argued that no separate special

leave petition having been filed against that order, the appeal so far as Rodewal is concerned has to be dismissed. We find, however, that the appeal was against all the four accused, including Rodewald. The special leave granted on September 16, 1968 was also against all of them. The special leave Was against the judgment and order of the High Court dated December 7, 1967 by which the revision filed by the appellant against all the four accused was rejected. That being so, and the special leave petition being against all the four accused, it must include the order dated April 10, 1967. There was, therefore, no necessity of a separate application for special leave against that order.

In our view. there was sufficient evidence before the Chief Presidency Magistrate which made out a prima facie case, and even if much could be said on 'both the sides, it was not a case of refusal of process.

For the reasons aforesaid the order of dismissal passed by the Chief Presidency Magistrate and its confirmation by the High Court cannot be sustained. Consequently, the High Court's judgment and order has to be set aside and the appeal allowed. We direct the Chief Presidency Magistrate to issue the process and proceed with the case. SHELAT, J., This appeal arises out of the counter- complaint, dated June 18, 1966, filedby Jaffray charging offences under secs. 467, 471, 193, 474 and 109, Penal Code against appellant Hoon, Varma and Majumdar. Though the complaint gives the impression as if the whole of the said receipt dated May 27, 1965 was alleged to be a fabricated document, Jaffray's de-position before the Magistrate makes clear that according to him, the body of the receipt and his own endorsement thereon were genuine and that only the portion said to be falsely fabricated was the writing on it marked '3' purporting to be in Varma's handwriting but written out subsequently by Hoon with a view to give a false twist to the said endorsement. Jaffray's case was that on May 27, 1965, when Varma came to the office of Turner Morrison & Co. he brought out 707 shares in question for Varma's inspection, that those shares were never handed over by him or "received" by Varma, that he made the said endorsement only to show that they were in his possession but that with a view to make out a false case of entrustment to him by Varma, Hoon subsequently wrote out the said portion marked '3'. Jaffray prayed in the complaint that the Chief Presidency Magistrate should direct police investigation under S. 156(3) of the Code of Criminal Procedure. However, on January 25, 1966, the Chief Presidency Magistrate directed judicial inquiry by the Presidency Magistrate, 3rd Court, Calcutta. The Magistrate accordingly held an inquiry in which Jaffray gave, as aforesaid, his deposition. On January 5, 1967 the Magistrate reported that a prima facie case was made out and process should issue. The case together with the said report went back to the Chief Presidency Magistrate, who on the record of evidence before him accepted the said report and ordered issue of process but only against Hoon. He also held that s. 195(1) (c) of the Code did not come in the way of Jaffray filing a private complaint as the said receipt alleged to be a false document was produced before the police during their investigation into the other complaint filed by Hoon against Jaffray and others, which investigation was not a proceeding before any Magistrate. Hoon thereupon filed a revision application before the High Court for quashing the said order. The only argument urged in the High Court on behalf of Hoon was that the complaint by Jaffray was barred under s. 195 (1) (c) of the Code, as the alleged forged document, i.e., the receipt, had been produced in a judicial inquiry. The High Court turned down the contention holding that the receipt was produced by Hoon in the course of inquiry by the police ordered in his complaint under s. 156(3) of the Code and was then seized by them. There was thus, according to the Hi& Court no

production of a fabricated document in a judicial proceeding, the document having been long ago produced before and seized by the police before a judicial inquiry was held in that case. The contention urged on behalf of Hoon having thus been rejected. the High Court dismissed the revision. It is this order which has been challenged in this appeal.

Mr. Chagla for the appellant wanted to go into the merits of the case, but we prevented him from doing so, as the argu- ments before the High Court were confined only to the question of the applicability of s. 195(1)(c) of the Code. Mr. Chagla thereupon urged two contentions : (1) that though it was true that Hoon had produced the said receipt (document 2) before the police in the course of investigation by them ordered by the Chief Presidency Magistrate under s. 156(3) of the Code in the matter of Hoon's complaint, those proceedings before the police were part and parcel of the proceedings before the Chief Presi- dency Magistrate and therefore production of the receipt there was production before the Magistrate; (2)) that even before that, the receipt had been produced before the High Court and that having been done, it was the High Court alone who could cause a complaint to be filed under s. 195(1) (c) of the Code and not Jaffray. According to Mr. Chagla, after the decree in Mundra's suit No. 600 of 1961 was passed, Hungerford took out execution proceedings claiming therein that Turner Morrison & Co. should be made to hand over to the liquidators of Hungerford the said 707 share certificates to enable them to satisfy the said decree by delivering all the 2,295 shares (including the 707 shares in dispute) to Mundra against payment of price thereof by Mundra. Those proceedings were opposed by Turner Morrison & Co. on the ground that they did not lie against it as it was not a party to that suit. As 'against that contention, Hoon, as one of the liquidators of Hungerford, filed a counter-affidavit claiming- entrustment of the said shares to Jaffray by Varma and annexed to that affidavit copies of the said receipt and the indemnity bond. It was during the hearing of that matter- that Hoon showed the original of the receipt to counsel for Turner Morrison & Co. to satisfy him that the copy annexed to his affidavit was genuine. Counsel for the company thereupon inspected it and found the copy to be a correct copy. It would thus appear that what was produced 'before the High Court was a copy of the said receipt, the original not having been "produced" before, the Court, but was shown to counsel to prevent any contention that the copy was not a correct or genuine one. The question, therefore is whether on either of the two grounds urged by Mr. ChagJa, Jaffray's complaint can be said to be barred by s. 195 (1) (c) of the Code.

The relevant part of sec. 195(1) provides no court shall shall take cognizance :

> "(c) of any offence described in section 463 or punishableunder section 471, section 475 or section 476 of thesame Code, when such offence is alleged to have, beencommitted by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate."

Cl. (c) falls into two parts. The first part provides that the offence in respect of which the complaint in question is filed must be one under s. 463 or 471 or 475 or 476 of the Penal Code. The second part provides that such an offence must be alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding. If both

those requirements are there, then no court is to take cognizance of such an offence except on a complaint filed by such court or a court subordinate to it.

On the first limb, of Mr. Chagla's argument, the question arises whether Hoon can be said to have "produced" or tendered in evidence the said receipt before, the Chief Presidency Magistrate ? there is no question that the receipt was ever tendered in evidence by Hoon. It was produced by him before the police in the course of the investigation by them ordered by the Magistrate under s. 156(3) of the Code and was then seized by them. The receipt formed part of the record of The case which went to the Chief Presidency Magistrate together with the report of the police recommending discharge of Jaffray and others who were accused in that case of criminal breach of trust and cheating. But the contention of Mr. Chagla was that though the receipt was not tendered in evidence, it was nevertheless 'produced', an expression which has a wide connotation. There Mr. Chagla is right, for, a document can be said to have been produced in a court when it is not only produced, for the purpose of being tendered in evidence, but also for some other purpose. [cf. In re, Gopal Sidheshwar(1)] on the footing, therefore, that Hoon 'produced' the receipt, the question still would be whether he produced it in a proceeding before a court. Mr. Chagla's argument was that it was produced in a proceeding before the Court of the Chief Presidency Magistrate 'because the investigation by the police was one ordered by him under s. 156(3) of the Code and therefore that investigation was part of the proceedings in his Court. Such a proposition does not appear to be correct. Firstly, the police authorities have under ss. 154 and 156 of the, Code a statutory right to investigate into a cognizable offence without requiring any sanction from a judicial authority, [cf. King Emperor v. Khwaja Nazir Ahmad(2)] and even the High Court has no inherent power under s. 561A of the Code to interfere with the exercise of that statutory power. It is true that the Chief Presidency Magistrate had under s. 156(3) ordered in the present case an investigation by the police. But once that was done, the inquiry by the polic e was of the same nature and character as the one which the police had the power to conduct under sub-secs. (1) and (2) of that section. Indeed sub sec. (3) expressly states that an investigation ordered by a Magistrate would be an investigation "as above-mentioned", i.e., an investigation made by a police officer in his statutory right under sub-sections (1) and (2). That being so, once an investigation by the police is_ordered by a magistrate, the magistrate cannot place any limitations on or direct the officer conducting it as to how to conduct it. Secondly, it is well settled that before a Magistrate can be said to have taken cognizance of an offences under s. 190(1) (a) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under s. 200 and the provisions following that section. But where he has applied his mind only for ordering an investigation under s. 156(3) or issuing a warrant for purposes of investigation. he, cannot be said to have taken cognizance of the offence. See R. R. Chari v. U.P.(8); also Jamuna Singh v. Bhadai Sah(4) The Chief Presidency Magistrate having not even taken cognizance of the offence but having applied his mind for the purpose only of directing a police investigation under s. 156(3), no proceeding could be said to have commenced before him, of which the inquiry by the police could be said to be part and parcel. Further, it cannot be said that the police officer- acting under s. 156(3) was a delegate of the Chief Presidency Magistrate or that the (1) [1907] 9 Bom. L.R. 735. (2) 71 I.A. 203. (3) [1951] S.C.R. 312, 320-21 (4) [1964] 5 S.C.R. 37.

investigation by him was an investigation 'by or on behalf of the, Magistrate. Production of the receipt by Hoon in the course of such an investigation was therefore not production in a proceeding before the Chief Presidency Magistrate so as to attract the ban under s. 195 (1) (c). The first limb of Mr. Chagla's argument, therefore cannot be accepted.

In support of the second limb of his argument, Mr. Chagla relied on the affidavit of S. K. Ganguli, the solicitor of Hungerford, dated March 26, 1969, according to which during the course of the said execution proceedings taken out by Hungertord he had produced in the High Court the receipt and the said indemnity bond for inspection by counsel of Mundra and Turner Morrison & Co. in the presence of Rodewald who also, along with counsel, inspected the two documents. Obviously, the originals of the receipt and the bond were produced in the Court to satisfy counsel that copies of these documents annexed to the affidavit of Hungerford tallied with the originals and were correct. Since the copies were used as annexures to the affidavit, they certainly can be said to have been produced in the proceedings before the Court. But it cannot be said that their originals were produced in those proceedings, since they were only shown to counsel for the limited purpose of satisfying them that the copies were correct copies. It was nobody's case that those copies were fabricated documents. Jaffray's case was that it was part of the original receipt which was fabricated rendering the whole of it a false document. Apart from this difficulty, the offence charged against Hoon in Jaffray's complaint was not the user of the receipt in the proceedings before the High Court, but its production and user by Hoon during the investigation of Hoon's complaint by the police. To that Mr. Chagla's argument was that once a document alleged to be forged is used in any proceeding before any court at any time, s. 195 (1) (c) would at once be attracted and would be a bar against a complaint by a party complaining of its fraudulent user in any later proceeding. Such a proposition, in the first place, is not warranted by the language of cl. (c) of s. 195(1). That clause in clear terms says that in respect of any of the offences enumerated there, no cognizance can be taken of a private complaint when such offence is said to have been committed by a party to a proceeding in a court in respect of a document produced or tendered in evidence in that proceeding extent on a complaint by such court. The words "such court" mean the very court before which a party to a proceeding in that court has produced or tendered in evidence a document in respect of which the offence is alleged to have been committed. Cl. (c), in other words, means that it is that court before which there is a proceeding and a party to such a proceeding is said to have committed an offence in respect of a document produced or tendered in evidence by him, on whose complaint the offence can be taken cognizance of. The object and purpose of s. 195(1)(c) is that it is the court before which an offence is alleged to have been committed in respect of a document pro- duced in a proceeding before it 'by., a party to such proceeding, which should file or cause to be filed a complaint and not a private party.

Assuming, however, that Hoon had produced-,the receipt, alleged to be a forged document, in the proceeding before the High Court, a complaint in respect of that offence by or at the instance of the High Court could be taken cognizance, of by the Magistrate. But no one moved the High Court to do so in those proceedings and so such complaint was ever filed. In the second place, if we were to accept Mr., Chagla's proposition, it would have far reaching consequences which the legislature while en:acting clause

(c) could never have contemplated. if the High ,Court alone could have filed or caused to be filed a complaint be-cause the document was at one time produced before, it, then no other court where it is produced subsequently can file a complaint even if the forged document is produced or tendered in evidence in a proceeding before it. If the High Court, in the case stated above, were to consider it inexpedient to file a complaint, a party to a proceeding before the High Court can go on producing ad seriatim that document in several subsequent proceedings in several different courts with complete impunity because the High Court has in respect of the proceeding before it refrained from causing a complaint to be filed against that party. Surely, such a consequence could never have been con- templated when cl. (c) was enacted. The proper construction of that clause, therefore, is that when a party to a proceeding before any court produces or tenders in evidence a document in respect of which an offence, e.g., s. 471 read with s. 467, is alleged to have been committed, it is that court before which the document is produced or tendered in evidence which can file a complaint regarding such an offence and a magistrate cannot take cognizance of such an offence except upon a complaint by such court or a court subordinate to it. On this construction ,the contention urged by Mr. Chagla must fail.

In the result, the appeal fails and is dismissed. KHANNA, J.-I agree so far as criminal appeal No. 213 of 1968 is concerned. 1, however, express my inability to agree with the proposed judgment in criminal appeal No. 214 of 1968. In my. opinion, both the appeals should be dismissed.

Nirmaljit Singh Hoon appellant is a co-liquidator along with S. Varma and Frank Goldstein of Hungerford Investment Trust Limited (in voluntary liquidation). On January 5, 1966 the appellant filed a complaint under sections 120B, 406 and 420 Indian Penal Code in the court of Chief Presidency Magistrate Calcutta against four persons. Out of them the first two accused, D. M. Jaffray and C. H. Rodewald, were the directors of Turner Morrison & Co. Ltd., while A. J. Hormusji was the secretary of that company. The fourth accused was Haridas Mundhra. According to the appellant's allegation Hungerford Investment Trust Limited was the registered holder of 51 per cent of shares of Turner Morrison & Co. Ltd. Haridas Mundhra accused had option to purchase those shares for Rs. 86,60.000. On May 27, 1965 S. Varma, one of the liquidators of Hungerford Investment Trust Limited, was stated to have received 707 ordinary share scrips, the details of which were given, of Turner Morrison & Co. Ltd. from the directors of Turner Morrison & Co. Ltd. According to the, appellant, Varma preferred not to carry those share scrips with him and entrusted them with. blank transfer deeds to Jaffray accused for safe custody. Varma thereafter asked the solicitors of his Company, M/s. Sanderson & Morgan, to take delivery of the share scrips from Jaffray, but JaffTay accused on one pretext or the other declined to give the shares. Jaffray accused was further stated to have in violation of his trust and in conspiracy with the other accused disposed of 707 shares by delivering them illegally to Turner Morrison & Co. Ltd. with the object of dishonestly converting them to the use and benefit of the accused persons and also with a view to defeat the appellant's right to recover Rs. 86,60,000 from Haridas Mundhra accused.

The above complaint was sent by the Chief Presidency Magis- trate to the police for investigation under sub-section (3) of section 156 of the Code of Criminal Procedure. The police registered a case and after investigation submitted a report that it was a false case. The complainant thereafter filed objections against the police report before the Chief Presidency Magistrate on May 7, 1966. The

complaint was thereafter sent on June 18, 1966 to a Presidency Magistrate for judicial enquiry. In the course of that enquiry the appellant examined four witnesses. Sachindra Mohan (PW 1), P. N. Chowdhry (PW 2), Hoon appellant (PW 3) and N. K. Majumdar (PW 4). Affidavit of Varma, who was in the United Kingdom, was also filed. Reliance was also placed upon receipt dated May 27, 1965 which readsas follows :

Document-2 Document 2/1. Recived from Turner Morrison ; Co. Ltd., Calcutta the following Shares Certificates covering 707 Ordinary Shares of Turner Morrison & Co. Ltd.,

1. Share Certificate No. 19 fir 3 ordinary shares Nos. 1452, 1593 & 1594.

2. Share Certificate No. 28 for 695 ordinary shares Nos. 1601-2295.

3 Share Certificate No. 29 for 3 ordinary shares Nos. 1455. 1597 & 1598.

4. Share Certificate No. 75 for 3 ordinary shares Nos. 1453, 1595 & 1596

5. Share Certificate ND. 76 for 3 ordinary share Nos. 1454, 1599 & 1600 Sd/- S. Varma S. VARMA) Liquidator Hungerford Investment Trust Ltd.

Shares with me.

Sd/- D. N. Jaffray."

It may be stated that the above receipt also contains the following words :

> "Dear Mr. Jaffray, I do not want to carry these with me. Hence leaving meantime with you personally for delivering to me later."

These words, according to a complaint filed by Jaffray were inserted subsequently and a criminal case under section 474 Indian Penal Code is pending against Hoon appellant on that account. Criminal appeal No. 213 filed by Hoon in respect of that prosecution has been disposed of separately today. Reliance by Hoon was also placed upon the following indemnity bond " Indemnity & Warranty Bond dated 27-5 65 INDEMNITY & WARRANTY In consideration of handing over the 707 shares of Turner Morrison & Co. Ltd. with blank transfers to Sanderson & Morgan, as per original letter of Hopwood, Hilbery & Co., dated the 9th December 1964 the Liquidators hereby indemnify Turner Morrison & Co. Ltd., Calcutta that they will have no objection to be enjoined with the old Liquidators and the Executors of the deceased Turners for the claim of approximately Rs. 53,00,000/- (Rupees fifty three lakhs), which has been paid by Turner Morrison & Co. Ltd., Calcutta by way of taxes for the Turner family, and furthermore the new Liquidators undertake that they will assist Turner Morrison & Co. Ltd., Calcutta in every way in the recovery of these amounts from the Estates of the Turner family and the old Liquidators of Hungerford Investment Trust Ltd.

The new Liquidators further guarantee that they will cause these shares to be produced whenever required in terms of Suit 600 and without jeopardising the rights of Mr. Haridas Mundhra arising out of that decree.

Lastly, the Liquidators indemnify the Directors of Turner Morrison & Co.

Ltd., Calcutta against any claims of tax authorities or any Government body and others should it arise by virtue of the delivery of these shares by them.

(Sd.) ILLEGIBLE Liquidators.

Hungerford Investment Trust Ltd."

Calcutta, 27th July, 1965 According to the complainant-appellant, the above indemnity bond also contains the following endorsement of Jaffray "Accepted For & On Behalf of Turner Morrison & Co. Ltd. Sd/- D. M. Jaffray Directors 27-5-65 The Presidency Magistrate in his report dated January 5, 1966 observed that no prima facie case of entrustment had been made out, Reference was made to the fact that Varma, who was the central figure, had not made any statement during the course of enquiry. Varma's affidavit was held to be not admissible. The Chief Presidency Magistrate agreed with the Presidency Magistrate and dismissed the complaint. In revision the High Court declined to interfere with the order of the Chief Presidency Magistrate. Reference was made by the High Court also ;to the non-examination of Varma during the judicial enquiry.

Mr. Chagla has contended in this Court on behalf of the appellant, that there is prima faice case to show that 707 ,hare scripts were handed over to Varma on May 27, 1965 and thereafter were entrusted by Varma to Jaffray. The refusal of Jaffray to make over those shares to the liquidators of Hungerford Investment Trust Limited or their Solicitors, according to Mr. Chagla, amounts to criminal breach of trust. The said offence, it is staated, has been committed by Jaffray in conspiracy with the other accused. The above stand has been controverted by Mr. Mukherjee on behalf of the State of West Bengal as well as by Mr. Chatterjee on behalf of Jaffray, Rodewald and Hormasji respondents.

After giving the matter my consideration, I am of the view that no prima facie case for entrustment of the share scripts in question to Jaffray accused has been proved. It is common case of the parties that the 707 share scripts question were before May 27, 1965 in the custody of Turner Morrison & Co. Ltd. The case of the appellant is that on morning of May 27, 1965 Varma accompanied by Majumdar(PW 4) met Jaffray and Rodewald and asked for the delivery of 707 share scrips. Those 707 share scrips were then handed ,over to, Varma by Rodewald accused. Varma thereupon signed typed receipt reproduced above. As Varma had some luncheon appointment he did not want to carry the share scrips with himself. Share scrips were thereupon left with Jaffray. Jaffray then wrote on the receipt the words "Shares with me" and put his signature underneath. It is further the case of the appellant that the, indemnity bond dated May 27, 1965 was also executed by Varma and Hoon petitioner and the same was accepted by Jaffray accused. In order to show the entrustment of shares to Jaffray, Mr. Chagla has relied upon the affidavit of Varma. Varma, as stated earlier, did not

appear in the course of the judicial enquiry which was held by the Presidency Magistrate. He, however, chose to send his affidavit from United Kingdom. The courts below declined to take that affidavit into consideration and. in my opinion, they were justified in doing so. According to section 510A of the Code of Criminal Procedure, the evidence ,of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this ,Code. This section was inserted by the Code of Criminal Procedure Amendment Act (26 of 1955) and its object is to accelerate the disposal of cases. Provision is accordingly made for the filing of an affidavit of a witness whose evidence is of a formal character. If, however, the evidence of a person is not of a formal character, but goes to the very root of the matter as in the present case, no resort can be made to the provisions of the above section. It would appear from the resume of facts given above 'that the case of the petitioner is that the share,, scrips in question were before May 27, 1965 in the custody of Turner Morrison Co. and were on the morning of May 27, 1965 handed over by Rodewald to Varma when Varma met Jaffray and Rodewald in the office of Turner Morrison & Co. It is further stated that Verma because of a luncheon appointment left those shares with Jaffray. Varma, in the circumstances, would have been the most important witness to depose, about the handing over of the share scrips to him by Rodewald and the entrustment of those share scrips immediately thereafter to Jaffray. Verma was not examined during the course of enquiry and this fact resulted in serious infirmity in the evidence adduced by the petitioner. Resort was accordingly had to the filing of the affidavit of Verma. As the evidence of Varma was not of a formal character, his affidavit could plainly be not admitted in evidence.

Reliance has then been placed by Mr. Chagla on the statement of Majumdar PW who is alleged to have accompanied Varma when the latter not Jaffray and Rodewald in the office of Turner-Morrison & Co. on the morning of May 27, 1965. The state- ment of Majumdar reads as under "I know Mr. Hoon and Mr. Varma, and also Mr. Jaffray and also other accused persons.

On 27-5-65 I went to the office of Mr. Turner Morrison with Mr. Varma. Varma wanted and 2. Accused No. 1 agreed to deliver them back if an indemnity bond was signed. He signed a bond. He wanted also Mr. Hoon's signature on that bond. Document No. 5 is the copy of that bond. Varma also signed document 2/ 1. He did not take them. He left them with accused No. I to be sent through Sanderson & Morgan. Accused No. I wrote document 2/2.

Mr. Varma writes document No. 2/3. Mr. Hoon also signed the document No. 5 as we informed him of accused No. 1's request."

The above statement of Majumdar, in my opinion, belies the stand taken by the appellant that the share scrips were delivered to Varma and he thereafter entrusted them to Jaffray. According to the statement of Majumdar, Jaffray agreed to deliver the share scrips to Varma if an indemnity bond was executed. Varma then signed a bond but Jaffray wanted the signature of Hoon also on the bond. As Hoon was, admittedly not present with Verma at that time, the condition imposed by Jaffray for handing over of the share scrips to Varma was obviously not satisfied at that time. Majumdar has accordingly deposed that Varma did not take the share scrips and left them with Jaffray accused. It may be that the evidence of Majumdar may show that Jaffray was guilty of not honouring his

assurance in so far as he declined to send share scrips to Sanderson & Morgan after the indemnity bond had been signed by Hoon, but it is difficult to hold on tile basis of statement of Majumdar that the share scrips in question were first delivered by Jaffray and Rodewald accused to Varma and were thereafter entrusted by Varma to Jaffray.

So far as P. R. Chowdhry (PW 2) is concerned., his statement ,does not reveal entrustment of share scrips. According to this witness, he asked for 707 share scrips from affray but the latter declined to hand over those share scrips to the witness and stated ,that he would send them through the Solicitor. The demand of share scrips by the witness and the promise of Jaffray to send the share scrips to the Solicitor would not show that there had been earlier entrustment of the share scrips to Jaffray. On the con- trary, the demand could have been made even without the alleged entrustment of the share scrips. The same remarks also apply to letter dated May 27, 1965 sent by M/s. Sanderson & Morgan to Jaffray. In that letter a demand was made for 707 share scrips and it was mentioned that indemnity bond had been executed on that account. What is significant, however, is that there was no reference in that letter to, any entrustment of the share scrips. Reference has been made by, Mr. Chagla to civil litigation in respect of the share scrips. The said litigation had admittedly nothing to do with the alleged entrustment of share scrips in ,question with which we are concerned in the present case. No help can consequently be derived from the decision in the civil case.

Our attention was also invited to the statement dated Novem- ber 14, 1966 made by Jaffray in his case against Hoon and others under section 474 Indian Penal Code. It is, however, open to question whether the said statement of Jaffray can be utilised in this case when that statement is not a part of the record of this case. No process has so far been issued to Jaffray and his statement has not been recorded in this case. Assuming, for the sake of argument, that the statement of Jaffray in the other case can be referred to in the present case, the statement can be of no avail to the appellant because there is no indication in the statement of any entrustment of the share scrips.

The next piece of evidence relied upon by Mr. Chagla is receipt dated May 27, 1965 which has been reproduced above. According to this document, Varma issued the receipt about his having received the 707 share scrips in question. The document also bears the writing of Jaffray that the shares were with him. If shares remained with Jaffray, the occasion of Varma issuing a receipt in respect of those shares could not arise. The receipt in question is of an ambiguous character and, in the absence of any oral evidence, it is difficult to infer from the receipt that the shares in question were first received by Varma and thereafter were entrusted by Varma to Jaffray. The best person to explain what seems to be an inconsistency in the receipt between the writing of Varma and the endorsement of Jaffray was Varma himself. Varma, as stated above, was not examined as a witness. The other person who was present at that time was Majumdar and the statement of Majumdar goes against the stand taken by the appellant about the delivery of share scrips to Varma and the entrustment of those share scrips thereafter to Jaffray.

Lastly, reliance has been placed upon indemnity bond dated May 27, 1965 which has been reproduced above. There is nothing in the indemnity bond to show that the share scrips were handed over to Varma. On the contrary, the indemnity bond according to its plain language was

executed because of the. contemplated handing over of the share scrips to Sanderson & Morgan. It seems that it was because of the non-mention of the handing over of the share scrips to Varma in the indemnity bond that there was no reference to the said bond in the complaint filed by the appellant. An enquiry or investigation is ordered under section 202 of the Code of Criminal Procedure by a magistrate on receipt of a complaint for the purpose of ascertaining the truth or falsehood of the complaint. If the magistrate before whom the complaint is made or to whom it has been transferred, after considering the statement on oath of. the complainant and his witnesses and the result of enquiry or investigation under section 202 is of the opinion that there is no sufficient cause for proceeding, he may for reasons to be recorded briefly, dismiss the complaint. If, on the contrary, the magistrate taking cognizance of the offence is of the. opinion that there is sufficient cause for proceeding, he should issue process against the accused in accordance with section 204 of the Code. It may be that the evidence which is required to be adduced by the complainant at that stage may not be sufficient for recording a finding of conviction, but that fact would not absolve the complainant who wants the magistrate to issue a process against the accused person from leading some credible evidence as may prima facie show the commission of the offence.

In the present case the Presidency Magistrate, the Chief Presidency Magistrate and the, High Court took the view that there was no sufficient cause for proceeding on the complaint filed by the appellant. I find no sufficient ground to interfere in this appeal under section 136 of the Constitution with the said concurrent finding. No credible material has, in my opinion, been brought on record by the appellant as may show prima facie that there was entrustment of the share scrips in question to the accused. The appeal consequently fails and is dismissed.

ORDER In view of the majority judgment, the appeal is allowed and the High Court's judgment and order is set aside. We direct the Chief Presidency Magistrate to issue the process and to proceed with the same.

V.P.S.