CHAPTER—XI

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER

144. Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.—(1) In cases where in the opinion of a District Magistrate, Sub-divisional Magistrate or of any other Magistrate (not being a Magistrate of the third class) specially empowered by the Government or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable.

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity or a riot or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed, ex-parte.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by Advocate and showing cause against the order; and, if the Magistrate rejects the application

wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Government, by notification in the official Gazette, otherwise directs.

(7) The provisions of this section shall not apply to a Metropolitan Area.

Scope and application—Thana Nirbahi officer will exercise powers under section 144 Cr. P.C. He will not try any case. The Thana Magistrate will be a whole-time Magistrate. He will not exercise powers under section 144 Cr. P. C except when he is required to act in absence of Thana Nirbahi Officer. In the Metropolitan area of Dhaka, Chittagong, Khulna and Rajshahi no Magistrate has got any power to issue any order under section 144 Cr. P.C. The similar power as provided under section 144 Cr. P. C has been invested with the Metropolitan Police Commissioner. This section is intended for temporary orders only in cases of grave emergency. It is directed against those who attempt to prevent the exercise of legal rights by others (38 CWN 388). The Magistrate should resort to this 'extra ordinary' power only when he is satisfied that other powers with which he is entrusted are insufficient to meet the situation (34 Cr. LJ 334). The emergency must be sudden and the consequences are sufficiently grave. But it should be borne in mind that as to its bearing on civil proceeding, this section cannot be invoked when a civil suit is the proper remedy (13 CWN 188 and 28 CWN 732). The Magistrate cannot pass an order which in effect would interfere with the order of a civil court. An anticipatory order in emergency is made under this section in the discharge of duty to maintain law and order. At the same time care should be taken to see that use of this section is not invoked by one party in dispute in order to obtain material advantage over the other (41 Cr. LJ 952). An order under section 144 may be issued under the following circumstances : (a) in cases of grave emergency : (b) when the Magistrate is satisfied that the use of other power he has

would not be effective (45 CWN 1090). Even in an emergency the order should be directed rather against the wrongdoers than the wronged (23 Cr. LJ 689). As an order under section 144 interferes with the exercise of private rights, such interference ought to be reduced to a minimum and regulated by a full observance of the limitations imposed by the section (34 Cr. LJ 334). An order under this section can be passed either by (i) Thana Nirbahi officer (T.N.O.) or (ii) a first or second class Magistrate specially empowered by Government or by the District Magistrate. A first Class Magistrate not so empowered cannot pass any order under this section except when he is required to act in absence of T.N.O. Order under this section is judicial and not administrative. The nature and contents of the orders are; (i) it must be in writing; (ii) it must be an order which is absolute and definite in term; (iii) it must contain a statement of the material facts which the Magistrate considers to be the facts of the case and upon the footing of which he bases his order; (iv) it must be specific and definite in its terms; (v) it must be confined to the particular act for which the danger is apprehended; (vi) the duration of it must be co-extensive with the emergency; (vii) except where it is addressed to the public generally under sub-section (1), the persons against whom the order is directed must be specified; (viii) the terms of the notice must follow the terms of the order in persuance of which the notice is issued. The order must be served in the manner provided by section 134. This permits only a restrictive order and does not authorise a Magistrate to make a mandatory order directing person to do a particular act (AIR 1933 Cal. 724). Section 144 applies only where the possession of a party is not in dispute but where a dispute exists concerning possession of land, the question of actual possession should be decided by taking evidence in a proceeding under section 145.

40 DLR 94—Nazibul Islam Vs. Dr. Amanullah—The instant case is not one of conversion from section 144 to section 145 Cr. P.C. By the impugned order the application under section 144 Cr. P.C was disposed of and a proceeding was drawn under section 145 Cr.P.C being satisfied as to the

apprehension of serious breach of peace. Status quo is not contemplated in a proceeding under section 144 Cr. P.C. A Magistrate has no jurisdiction under section 144 Cr. P.C to issue notice upon the parties to file written statement before him showing cause by a certain date (Ref : 6 DLR 427).

30 DLR 164—Maram Ali Vs. The State—Dispute is over possession of land. Proceeding to be drawn up should be under section 145 Cr. P.C and not under section 144 Cr. P.C.

26 DLR 376—Oli Ahad Vs. Government—Successive or repetition of the same orders, held illegal. Orders to operate beyond two months are without jurisdiction. Second order which is merely as extention of the period is in excess of jurisdiction. In case of necessity to meet further apprehension of breach of peace resort to provisions in other parts of part IV could be made. Restrictions contemplated in section 144 must conform to the standard of reasonableness in Article 37 of the Constitution of which the guide line is in the interest of public order.

26 DLR 145—Enat Ali Akhand Vs. Mosar Ali Sheikh—Order under section 144 restraining the second party from going upon the disputed land was made on 11.12.67. Subsequently the Magistrate converted the proceeding started under section 144 to those under section 145 on 10. 2. 68 i.e. within two month's time counted from 11.12.67. The conversion having taken place within two month's from 11.12.67 is valid in law (Ref : 6 DLR 567, 22 DLR 87).

21 DLR 225—Farid Ahmed Vs. Province of E. Pak—Curfew can lawfully be imposed under section 144 Cr. P.C when apprehension of breach of peace, loss of human life etc, apprehended. Civil authority lawfully can call in aid exercise of its police powers. Armed forces for maintenance of peace and saving of citizen's life etc. Shooting of violators of curfew orders cannot be held unjustifiable when circumstances demand [Ref : 19 DLR 15 (WP)].

12 DLR 166—M. Siddique Vs. M.A. Razzak—Order under section 144 can be passed in respect of movable property. Orders directing keeping of movable property in the custody of

criminal courts are invalid. A prohibitory order under section 144 is not a sentence of punishment. A criminal court has no power to adjudicate on civil disputes.

10 DLR 366– Ishaque Meah Vs. Abdul Malek– Complainant restrained by an order under section 144 Cr. P.C from entering on the disputed land. Accused taking away paddy from the land while the order was in force- No offence under section 379. An order vacating an earlier order under section 144 must be served personally on the persons to be affected by it. Subordinate Courts are bound by the decisions of the High Court (Ref : 4 DLR 490).

Public Speech– Under a democratic constitution freedom of speech is a cherished privilege of every citizen but, it must not be overlooked that freedom is meant to be enjoyed in a manner consistent with the maintenance of peace and order which are the primary conditions of the every life of the body politic. It is therefore incumbent on every speaker, however ardent in the propagation of his political or other views to bear in mind the obligation which he owes to himself as a citizen. Freedom unrestrained by discipline spells its own ruin (AIR 1940 Nag 134).

Liberty of the Press– Prima facie, in a country which enjoys liberty of the press, a person is entitled in his newspaper to publish any news, and make any comments, which he chooses as, provided that he does not infringe any provision of law. A Magistrate acting under this section may no doubt restrict that liberty. Section 144 has the vital phrase 'to abstain from a certain act' and if the order directed the editor to abstain from an untold number of acts of a very vague and uncertain nature, called 'excessive publication' this vital clause is violated (1952 Cr. LJ 61 Mad).

Demonstration and Processions– A demonstration always means expression of resentment by a number of persons grouped together. The question whether the conduct of the accused amounts to a demonstration will have to be gathered from the circumstances of each case. Where the reason for promulgating the order under section 144 Cr. P. C

was that there was likely to be some demonstration against the Minister on his visit to the city, the mere fact that the accused appeared on the road wearing a black badge will not amount to disobedience of the order. The right to go along the road in procession whether religious or otherwise with appropriate observances inheres in every member of the public. The citizens have a right to hold religious meetings (PLD 1955 FC 190).

Dispute relating to immovable Property—Disputes regarding land can also he dealt with under section 144 Cr. P.C. Provided that in the opinion of an authorised Magistrate 'there is sufficient ground for proceeding under this section and immediate apprehension or speedy remedy is desirable.' Section 144 is a larger and more general section than section 145. Section 144 is discretionary and section 145 is mandatory. Section 144 is of general application and contains nothing which oust the Magistrate's jurisdiction in case of a bonafide dispute as to possession of land.

Question of title—In view of the peculiar jurisdiction under this section an order under it should not be treated in subsequent proceedings as evidence of possession, (31 CWN 310). It has not the force of an order under section 145 and is of no use in determining the question of actual possession (26 Cr. LJ 1229). A Magistrate acting under this section has no business to adjudicate upon rights and has no jurisdiction to decide upon any question of title or possession. The only question before him is whether a breach of the peace is imminent and to make an order with the object of preventing breach of the peace (Ref : 15 DLR 702).

11 DLR 470—S. N. Gupta Vs. Sadananda Ghose—Order under section 144 Cr. P. C regarding possession cannot be treated as substantive evidence of possession. Criminal courts finding regarding possession is not conclusive.

Ex-parte order—An ex-parte order can be made only in cases of emergency. Except 'orders of rescission or alteration' no other intermediate order can be made while an order under section 144 Cr. P.C is still in force. Magistrate has got no

power to revive if the cases is once filed. Magistrate has got no power to extend the operation of this section beyond the time limit of 60 days by passing successive order. Only the Government may extend the duration of order in case of danger to human life for any length of time (Ref : 26 DLR 376).

Duration of order—The period of 60 days begins to run from the date of the order (PLD 1980 Kar. 333). An order under this section is temporary and is to remain in force for only two months.

5 DLR 162—Rebati Mohan Dey Vs. Ansar Ali Mondal—Life of the proceedings under section 144 Cr. P.C having terminated, no fresh proceeding under section 145 Cr. P. C valid.

Rescission or alteration of order—Section 144 (4) is not a bar to a direct revision to the Sessions Judge or to the High Court Division (37 CWN 962). Rescission or alteration can be done by the same Magistrate or by a superior Magistrate not only on the ground that circumstances have since altered, but because it should never have been made. A District Magistrate by canceling or altering an order may remove the grievance or reduce its extent, but he cannot make a new order (38 Cr. LJ 864). A District Magistrate may rescind or alter, but cannot direct the subordinate Magistrate to initiate proceeding under section 145 (33 CWN 723). Although the Sessions Judge can interfere against the exparte order of the Magistrate but he should not encourage direct applications for revision when there is some Magistrate who can alter or rescind the order (33 Cr. LJ 826). Order changing the party is without jurisdiction (52 Cr. LJ 809 Pat). This section permits any authority which has the power to rescind or alter an order to do so after hearing only the party who applies for it and this hearing can be completed without delay, and there is no particular reason why there should be a stay or suspension before such hearing (38 Cr. LJ 125). The jurisdiction conferred by S. 144 (4) is neither appellate nor revisional and that jurisdiction is a special one that can be exercised only if the actual terms of the section are strictly satisfied (33 Cr. LJ 826). A plain reading of sub-section (4) of S. 144 Cr. P. C would indicate that the

District Magistrate can either rescind or alter the order made by Thana Magistrate and that he has no authority to substitute that order by one of his own.

6 DLR 427—Sripati Biswas Vs. Rajendra Nath Majhi—Under sub-section 4 of section 144 the power of rescinding an order under section 144 is given only to the Magistrate mentioned in sub-section (4).

Disobedience to the order—Disobedience to an order under section 144 Cr. P.C is punishable under section 188 P.C. The Magistrate issuing the order under this section cannot himself punish a man for disobeying his order (20 CWN 981). Where the offence complained of is disobedience of his own order, the Thana Magistrate has no power to take cognizance of a case under section 188 Penal Code. He must make complaint under section 195 or section 476 of the Code (AIR 1939 Mad 496). When an order under section 144 Cr. P.C is found to be without jurisdiction obiously the subsequent order under section 188 for its disobedience, is also without jurisdiction (39 CWN 1053). It is the duty of the prosecution in a case under section 188 Penal Code to prove by positive evidence that the accused had knowledge of the order, the disobedience of which he is charged (22 Cr. LJ 725). Under section 188 P.C a person can be punished only when the order under this section is a valid order. The order was promulgated by a public servant lawfully empowered to promulgate it.

12 DLR 838—Azahar Khan Vs. The State—A second prohibitory order promulgated just after the expiry of the first prohibitory order though not proper, is not always a nullity, and therefore, disregard of the second prohibitory order is punishable under section 188 Penal Code.

5 DLR 76—Joynal Biswas Vs. Kazi Abdul Mazid—Section 144 Cr. P.C cannot remain in force indefinitely and when the order has spent its force the proceedings under section 188 P.C for disobedience of the order can be quashed.

Revision—In revision under section 435 and 439A Cr. P C orders are revisable by the Sessions Judge. Failure to apply under section 144 (4) for rescission or alteration of positive or

negative order under section 144 is no bar to the filing of a revision petition under section 435 and 439A Cr. P. C against it. The Sessions Judge has to consider not merely the legality of the orders but also their property as well (34 Cr. LJ 334) and in examining the propriety of the order the Sessions Judge will undoubtedly give due weight to the opinion of the District Magistrate of public peace (AIR 1942 Lah 171 FB). Where an order is passed against a person under this section, the proper procedure is to apply under section 144 (4) to the District Magistrate who has power to set aside other order. The petitioner is justified in coming direct to the Sessions Judge when his application under the said sub-section is adjourned for hearing for over two weeks (37 CWN 962). The Sessions Judge has power to stay of execution of an order, positive or negative, passed under section 144 (AIR 1932 Mad 720).

15 DLR 702—Sultan Ahmed Gazi Vs. Ahmed Ali Gazi—Order passed under section 144 Cr. P.C may be set aside even though it has spent its force. If it is found that although the impugned order has spent its force, the parties will suffer from consequence of effect of that illegal order. Justice undoubtedly requires that it should be set aside.

5 BCR 234—Mohd. Ali Khan Vs. Serajul Islam Khan—Under Section 439 (4) Cr. P. C the High Court Division has no jurisdiction to entertain an application under section 439 Cr. P. C in respect of an order passed by the Session Judge under section 439A of the Code of Criminal Procedure, against order passed under section 144 Cr. P. C. Plainly there cannot be any revision against revision which is completely barred (Ref : 37 DLR 223).

19 BLD (HC) 517—Md Ali Asgar Vs. Md Esrail & others—The exercise of power under section 144 of the Code is discretionary while under section 145 it is mandatory as the words "Magistrate may" and "he shall" have been used respectively in sections 144 and 145. Thereafter, whether action has previously been taken under section 144 or not,

the Magistrate must act under section 145 if condition as to its application exists and must take action either in suppression or in continuation or in the absence of any order passed under section 144 of the Code.

1 MLR (HC) 201—PC. Jotish Chandra Bhattacharya Vs. Babul Chandra Chattarjee—A Magistrate has to see whether there is any apprehension of the breach of peace over possession of any immovable property and he is not required to decide ownership and possession of either party in the disputed property. The existence of apprehension of breach of peace is the essential ingredient which vests the jurisdiction in the Magistrate under sections 144 and 145.

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CHAPTER—XII

DISPUTES AS TO IMMOVABLE PROPERTY.

145. Procedure where dispute concerning land, etc. is likely to cause breach of peace.—(1) Whenever a Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by advocates, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression 'land or water' includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) **Inquiry as to possession.** The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject :

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date :

Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order or the Magistrate under sub-section (1) shall be final.

(6) **Party in possession to retain possession until legally evicted.** If the Magistrate decides that one of the parties was or should under the first proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted there from in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section on the application of either

party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Scope and application—Subject matter of dispute 'Land and water'—In pursuance of Sub-section (1) of section 12 Cr. P. C. the Government has appointed the Thana Nirbahi Officers to be Magistrate of the first class within their respective Thana by Notification No. JAIV/204/83-640 dated 8.8.83 and as such under the law he has jurisdiction to draw proceedings under section 145 Cr. P. C (37 DLR 204). Powers under section 145 Cr. P. C will normally be exercised by the Thana Magistrate. Section 145 is intended only to provide a speedy remedy for the prevention of breaches of peace arising out of bondfide disputes relating to immovable properties by maintaining one or other of the parties in possession. The object of this section is to enable a Magistrate to intervene and pass a temporary order in regard to the possession of property in dispute, having effect until the actual right of one of the parties has been determined by a competent civil court. Thus this section contemplates the elements necessary for foundation of the jurisdiction under this section are (i) a dispute (ii) relating to possession of land, (iii) likely to cause breach of the peace and the Magistrate gets jurisdiction to intervene whenever he is 'satisfied' that these elements are in existence (13 DLR 138 SC). The jurisdiction of the criminal court is a very limited one and is carefully restricted to a prevention of the apprehended breach of the peace. The proceedings under section 145 is quasi-judicial, quasi administrative in nature. Section 145 is sometime misapplied. Magistrates should be carefull to see that the criminal courts are not used by the parties for the settlement of civil disputes (27 Cr. LJ 734). 'Dispute' means actual disagreement existing between the parties on the question of possession at the time of the proceeding under section 145 (32 CWN 1173). The Magistrate's duty is only to declare and maintain the possession of the party who is found on inquiry to be in

'actual physical possession' (39 Cr. LJ 922). The question of 'actual possession' is to be determined 'without reference to the merits or the claims to a right to possess'. The doctrine that 'possession follows title' has no application here (26 CWN 1000). As the only object of the section is to prevent a breach of the peace and a speedy remedy is provided by a summary proceeding. It is of the utmost importance that a decision on the question of possession should be given in the shortest possible time (30 Cr. LJ 344). Before taking action the Magistrate should in the context of the particular facts before him consider which will be the most appropriate section for meeting the case. To bring a case under this section, the property which is the subject matter of dispute must be capable of being accurately defined. A Magistrate's order in proceeding under this section should set out the grounds on which he is satisfied that a dispute likely to cause a breach of peace exists. 'Land or Water' includes building, temple, markets, fisheries, alluvial lands. The word 'land' include crops or other produce of land. A dispute as regards mines and minerals and the right to work in mines falls under this section. It must reasonably be regarded as falling within the definition of the term 'land.' A dispute as to collection of rents falls under this section. Land is used as synonymous with immovable property which includes things attached to the earth. A mill, therefore, falls within it. There can be no dispute about the possession of Mosque. Such dispute is not covered by section 145 Cr. P. C (1968 Pak Cr. LJ 659). There can however be a dispute about its management and Control.

56 DLR 59 (AD)—Shamsuddin alias Shamsuddin Vs. Mvi. Amjad Ali and Ors.—The revisional jurisdiction at the instance of the second party respondents under section 561A of the Cr.P.c does not lie as it is a device of envoking a second revision under the garb of an application under section 561A of the Cr.P.C which is not maintainable [Ref: 9 MLR 32 (AD)].

53 DLR 64—As the order of the Civil Court is bound to obey the same even though he was not a party to that when it affects the result of the earlier order.

46 DLR 416—Abdul Jabbar Vs. Azizul Haque—Court's concern in a proceeding under this section. The basic condition for a proceeding under section 145 of the Code of Criminal Procedure is the existence of a dispute regarding any land, etc., between the rival claimants. The concern of the Court in such a proceeding will therefore be the factum of possession of either claimant at the relevant time and also whether there is any apprehension of breach of peace regarding the possession of the parties and not title or other incidental rights. Sections 145 and 146 of the Code of Criminal Procedure should be read together as they provide a composite provision to meet a situation as aforesaid. The scheme is that once a proceeding has begun with preliminary order it must be followed by attachment of the property, appointment of a receiver and final determination of right and title by the civil court (Ref : 41 DLR 120).

46 DLR 298—Soleman Md. Vs. Ahbarek Khalifa & others—The Sessions Judge having passed an order under section 439A Cr. P. C setting aside finding of the Magistrate under section 145 Cr. P. C and all remedies for the first party being exhausted the party is competent to invoke section 561A. The High Court Division should not interfere with the finding of possession passed by the Magistrate on proper evidence unless finding is perverse.

45 DLR 31 (AD)—Jobeda Khatun Vs. Momtaz Begum & Others—A proceeding under section 145 Cr. P. C is not a criminal matter. The jurisdiction of the Magistrate under section 145 Cr. P. C. Is ousted when the Civil Court is seized with the subject matter of dispute.

38 DLR 246 (AD)—Md. Shahjahan Sheikh Vs. Sessions Judge—Phirojpur-sections 145 and 146 Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is likelihood of breach of peace over immovable property. Section 146 cannot be separated from section 145. It can only be read in the context of 146. The scheme shows once a proceeding has begun with preliminary order it must be followed up by an enquiry and end with final

order. There is no question of stopping in the middle unless the Magistrate is satisfied that the breach of peace does not exist where upon the Magistrate cancels his preliminary order. In other words, once a preliminary order is passed it must run its full course. A revisional court can stop course only in exceptional cases [Ref : 6 BLD-261 (AD), 6 BCR 81 (AD)].

Section 145 indicates that there should be a continuing danger of a breach of peace and use of the word 'exists' in the present tense in sub-section (5) cannotes that the dispute must continue to exist even at the time when the objection is raised. The legislative intent in conferring power under section 439A does not mean conferment of power under section 561A as well (Ref : 41 DLR 120, 6 BLD 261 AD, 6 BCR 81 AD).

37 DLR 290—Mahmudul Huq Vs. Golam Moula—The learned Sessions Judge acted without jurisdiction in quashing the proceeding pending before the Sub-divisional Magistrate in exercise of his power under section 435 and 439A Cr. P. C (Ref: 6 BLD-1, 37 DLR 204, 5 BLD 316).

36 DLR 18—A. B. M. Hassan Kabir Vs. Umesh Chandra Day—Party out of possession cannot invoke the provisions of section 145 Cr. P. C. A person cannot be allowed to take advantage of his own wrong.

35 DLR 286—Harunor Rashid Halder Vs. Entaz Sheikh—The expression 'land and water' in sub-section (2) of Section 145 of the Code includes buildings, markets, fisheries, corps or other produce of land and rents or profits of any such property. Order under section 145 (4) has to be made in case of an emergency (Ref : 35 DLR 229).

33 DLR 93—Nesaruddin Vs. Khalilur Rahman and others—Omission to record ground of satisfaction is not a mere irregularity but an illegality—Magistrate takes action on an application under section 145 by proceeding on the information received. This does not mean he was satisfied that a breach of peace is likely. Omission to comply with condition of jurisdiction is not a mere irregularity but it is illegal (Ref : 13 DLR 138 SC).

30 DLR 164—Maram Ali Vs. The State—Dispute over possession of land—Proceedings to be drawn up should be under section 145 Cr. P.C.

29 DLR 412—Moshraf Ali Vs. Zahir Ahmed—On the basis of petitions filed by a party the Magistrate if satisfied, can draw proceedings can attach the property in dispute if there is emergency. Sessions Court has no power of staying any proceeding of the inferior Court (Ref : 28 DLR 430, 21 DLR 410 and 212 WP).

22 DLR 307 (WP)—Dr. Akhtar Ali Vs. The State—Principal object of section 145 Cr. P. C is two-fold; (1) to prevent the breach of peace over land or water, (2) to restore the possession of the same to the party found to have been forcibly and wrongfully dispossessed within two months next before making the preliminary order under section 145 (1) Cr. P. C., irrespective of its right to possess, the question of title having been left to the Civil Courts for determination.

7 DLR 97—Haji Nur Md. Vs. Harisuddin—Magistrate on his satisfaction can draw up proceedings and then transfer to another Magistrate for disposal. Alternatively he can transfer the petition itself to another Magistrate for disposal according to law (Ref : 7 DLR 47).

5 DLR 162 (AD)—Rebati Mohan Dey Sarker Vs. Ansar Ali Mondal—Life of the proceedings under section 144 having terminated no fresh proceeding under section 145 is valid.

9 BLD 184—Gura Meah Vs. Fazar Ali—Dispute over possession of land-Magistrate's jurisdiction to give directions regarding such dispute—The power concerning such dispute is an extra-ordinary power which can only be exercised in a case of emergency and not a matter of routine—In this case the Magistrate having found that there was no apprehension of breach of peace and some of the parties were in joint possession in the proceeding lands, his orders restraining such parties from entering the land and attaching the same should not remain in force until a decision is given by a competent Court of law as directed by him.

4 BLD 29—Harunar Rashid Halder Vs. Entaj Sheikh—Whether fresh proceeding under section 145 Cr. P. C between the same parties over the same land maintainable—An order in such a proceeding is binding on the parties and an unsuccessful party cannot be allowed to start a fresh proceeding.

7 BCR 236—Kazi Farhad Hossain Vs. S.A. Khayer—Magistrate was not satisfied about apprehension of breach of peach and refused to draw up proceedings under section 145 of the Code. Revision authority cannot substitute its own satisfaction of the Magistrate as provided in law and as such cannot direct the Magistrate to draw up proceedings under section 145 Cr. P. C (Ref : 7 BLD 399).

1 BSCD 103—Adam Ali Sardar Vs. The State—The existence of the apprehension of breach of peace is sine qua non for making preliminary order under section 145 (1) Cr. P.C and it must continue to exist till the passing of final order (Ref: 14 DLR 289).

Source of Information, 'Breach of the Peace' and Statement of Grounds in the Preliminary Orders—A Magistrate's order in instituting proceeding under this section should set out grounds on which he is satisfied that a dispute likely to cause a breach of peace exists (39 Cr. LJ 708) and he should inform the parties concerned of the grounds on which he is proceeding. The mere ommission of the recording of decision in such regard would almost be an irregularity which would not vitiate the proceeding under section 145 Cr. P. C (PLD 1965 Dhaka 410). It is only the Magistrate mentioned in the section who can initiate proceedings in his discretion. Therefore, neither the High Court Division nor the Sessions Judge has power to order a Magistrate to take proceeding under this section (34 CWN 82). The only case in which a Magistrate can refuse to take action under section 145 Cr. P. C when he is not satisfied that there is a danger of a breach of peace. The Magistrate can act on any information and without any formal complaint being made before him. It is essential for a proceeding under this section that the Magistrate should be

satisfied either from a police report or from other information that there is a likelihood of a breach of the peace. The mere fact that there is a dispute concerning land is not sufficient by itself to give him jurisdiction. A police-report is a safe general rule for a Magistrate to draw proceeding under this section. The Magistrate may act on any information and without any formal complaint being made before him. The word 'information' does not refer to any particular way in which a Magistrate's attention should be drawn. It is wide enough to cover the knowledge of the Magistrate derived by reading the petition filed by the parties from which he is satisfied himself that a breach of the peace was imminent (21 Cr. LJ 625). 'Dispute' means a bonafide dispute, a dispute between parties who have some semblance of a right or suppose right. In the preliminary order, it is not sufficient to refer to police report as giving information that a dispute likely to cause a breach of the peace exists without stating the Magistrate's satisfaction that the report is correct. The provisions of section 145 (1) are clear and must be observed and the making of a preliminary order should not be allowed to lapse into mere routine work as if were the filling up of a printed form (AIR 1935 Nag 78). It is 'this likelihood with the consequent necessity for immediate action', which is the foundation of jurisdiction. Proceedings under this section cannot be instituted with respect to movable properties (25 Cr. LJ 440).

The term 'Ground' includes the particulars of the information which have satisfied the Magistrate that action is necessary and does not merely mean the source of the Magistrate's information. When no reasons are recorded by the Magistrate and he seems to have proceeded without applying his mind to the case and without trying to understand the contention of the parties the very starting of the proceedings and the order passed thereon cannot be sustained.

36 DLR 31—Jamila Mannan Vs. Aminur Rasul—If other elements are present, mere omission to state the grounds of his being satisfied as to breach of peace, is curable under law. Magistrate need not pass the order of restraint once the

property is attached and a receiver appointed. If possession is found with one party sub-section (4) of section 145 will apply. If no decision can be arrived at as to possession, section 146 will apply.

29 DLR 72—Sultanuddin Ahmed Vs. Murshed Ali—Satisfaction of the Magistrate from whatever source it be about the existence of breach of peace is enough for him to draw up proceedings under section 145. Object of section 145, is prevention of likelihood of breach of peace over a land regarding its actual possession or the right to possess or own such land, etc. (Ref : 25 DLR 322, 8 DLR 397).

28 DLR 430—Kalu Hawlader Vs. Aminuddin Talukder—Preliminary order under section 145 (1) can only be passed when there is apprehension of breach of the peace. Existence of the apprehension of the breach of the peace is sine qua non for the making of the preliminary order under sub-section (1) of section 145 and it must continue to exist all through till the time of passing of the final order. When no such apprehension of breach of the peace exists an order passed under sub-section (6) of Section 145 would be illegal (Ref : 20 DLR 200).

27 DLR 260—Abul Farah Mollah Vs. A. K. M. Mozammel Huq Sikder—Exercise of power under section 145- Magistrate should be very careful. Satisfaction referred to in sub-section (4) of Section 145 is the satisfaction of the Magistrate. Report of local police regarding breach of the peace over the disputed land is not infallible (Ref : 8 DLR 408).

21 DLR 175—Shahabuddin Vs. Yunus—Section 145 Cr. P. C deals only with possession. Parties in possession or persons claiming to be in possession are only the necessary parties in the dispute. Section 145 Cr. P. C deals only with the question of possession and not with right, title or interest. The words 'parties concerned in such disputes' mentioned in section 145 (1) Cr. P. C refer only to person claiming to be in possession or persons who are concerned as claiming to be in possession.

21 DLR 410—Ali Hossain Vs. Syedur Rahman—The expression 'apprehension of breach of peace' recorded in the Magistrate's preliminary order—Non-recording of such finding in the final order is an irregularity curable under section 537 Cr. P. C and not an illegality (Ref : 21 DLR 212 WP; 13 DLR 138 SC).

1 BSCD 107—Ijjat Ali Vs. The State—The Magistrate drew up proceedings under section 145 Cr. P. C., attached the property and appointed a receiver upon due consideration of the police report. The mere failure to record, in the order, the fact that there existed an emergency calling for the order does not affect the jurisdiction of the Magistrate to pass that order.

Attachment, appointment of receiver with inquiry as to the fact of actual possession and Bid Money.—Once a Magistrate who has jurisdiction within the meaning of Section 145 (1) Cr. P. C has made an order in writing and in an emergency may attach the land in order to prevent a breach of the peace. Attachment before starting proceeding under section 145 is without jurisdiction. Once an attachment is made by a Magistrate he has no jurisdiction to set it aside unless he cancels the preliminary order or decides the entire proceeding finally. The object of attachment under the section is to keep effective control of the subject in dispute so as to prevent the contesting parties from committing a breach of the peace in their attempt to obtain physical possession. Attachment brings property in the Courts control and somebody can be put in possession of it for custody and management as receiver. Possession of such receiver is possession on behalf of the party who will eventually succeed (30 CWN 541). In a proceeding under section 145 the main question to be decided by the Magistrate is as to which of the parties is in actual possession of the property in dispute on the date of the preliminary order or two months preceeding it. He must record a clear finding on the point. The possession contemplated by the section is one that is continuous (24 Cr. LJ 175). It is the possession of the person who has his feet on the land, is ploughing sowing etc. entirely irrespective of any right or title to possess it. The proceeding land can be attached

and receiver can be appointed under section 145 (4) Cr. P. C before the commencement of the inquiry. The word 'attach' merely means to bring under the control of the court and the Magistrate is entitled to effect that object in any way which is within his power. A copy of the order stating the grounds of the Magistrate's satisfaction must be served on the parties. Non service of notice itself sufficient to vitiate all proceedings of the Magistrate. The Magistrate has got no jurisdiction to decide the case on mere absence of the party without recording any evidence at all upon the question of possession. Once a Magistrate has found that there is an apprehension of breach of peace, it is his duty to inquiry into the possession of the parties and to pass orders accordingly either under section 145 or under section 146 Cr. P. C. The Magistrate is bound to examine the parties and receive evidence. An order under this section without taking evidence is invalid and must be set aside (PLD 1967 Pesh 23). 'Hear the parties' means hear the evidence of parties and arguments of advocates appearing on behalf of the parties or arguments addressed by themselves and if the Magistrate refuses to hear arguments he is not complying with the provisons of law which are imperative (21 Cr. LJ 572). Sub-section (4) of section 145 lays down that if a party has been dispossessed within two months before the date of passing the preliminary order, that party should be maintained in possession. The period of two months is to be counted backwards from the date of the preliminary order, it cannot be extended. Where the parties file a compromise it means that the dispute no longer exists and the order should be cancelled under sub-section (5). When the parties file a compromise Magistrate cannot make final order in favour of any party as there was nothing to show likelihood of breach of the peace between the parties (25 CWN 214). Arbitration is not contemplated in the section as Magistrate is required to decide for himself who was in possession (18 Cr. LJ 145). However award may be taken as evidence for passing final order. The procedure to be followed in an inquiry under this section is the procedure prescribed for trial of cases. A person found to be dispossessed within two months of this proceeding has to be put into possession.

44 DLR 56 (AD)—Aminul Islam Vs. Mujidur Rahman—A Magistrate making an inquiry under section 145 Cr. P. C is to decide the fact of actual possession without reference to the merits or the claims of any of the parties of a right to possess the subject of dispute. A party who has been unsuccessful in revision under section 439A Cr. P. C is not totally debarred from invoking the jurisdiction of the High Court Division under section 561A. The opening words of this latter section, 'Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court Division' repeals any contention of such debarment (Ref : 12 BLD 54 AD).

44 DLR 401—Amir Hossain Farhad Vs. Dr. A. Mannan—Bid money—When it cannot be forfeited. Receiver appointed by the Magistrate being an agent of the court can attach any condition to the auction held for leasing out the attached property. But in the absence of any such condition attached by him or the Magistrate the part of the bid money deposited cannot be forfeited on the bidder's failure to deposit the balance money, though the bid can be cancelled and fresh auction held.

43 DLR 175 (AD)—Samirun Nessa Vs. Kamaluddin & others. Propriety of exercising jurisdiction under section 561A Cr. P. C to quash Magistrate's order drawing up proceeding under section 145 Cr. P. C. As the High Court Division's revisional jurisdiction is concurrent with that of the Sessions Judge and although the High Court Division could decline to interfere for not moving the Sessions Judge, the interference that has been made cannot be said to be without jurisdiction. Jurisdiction under section 561A Cr. P. C is not ousted in the presence of the revisional jurisdiction of the Sessions Judge under section 439A of the Code. The only question will be has any case been made out either under section 439 or 561A of the Code. The answer will vary from case to case. Dispute as to possession of land. Attachment to continue until Civil Court's decision on title. The parties are litigating their title, as also possession in the title suit. It is for them to raise all the questions therein. All comments observations and findings of the Magistrate in the proceedings under section 145 Cr. P. C

and of the High Court Division while disposing of the application under section 561A Cr. P. C with regard to the title and possession of the disputed property (the subject-matter of the proceeding under section 145 Cr. P. C) will be ignored by the Civil Court while deciding the title suit. It will be fit and proper, in the facts and circumstances of the case, to keep the Magistrate's order directing the receiver to hand over possession of the case land to the first party of section 145 proceeding in abeyance for the present and it is so ordered. It is further ordered that pending disposal of the title suit the disputed land will remain under attachment and the first party is to hand over possession thereof to the receiver. On receipt of judgment in the title suit, the Magistrate shall dispose of the proceeding before him in conformity with the decision of the Civil Court.

42 DLR 70—Gura Meah and others Vs. Fazar Ali & others. Power in sub-section (4) of section 145 Cr. P. C is an extraordinary power to be exercised in a case of emergency and should not be resorted to as a matter of routine. No apprehension of breach of peace and parties being in joint possession, the order is to be vacated.

40 DLR 196 (AD)—Haji Golam Hossain Vs. Abdur Rahman Munshi—The purpose of the proceeding under section 145 Cr. P. C is to find the possession of the property. The purport of the proceeding under section 145 Cr. P. C is to find the possession of the property and section 146 (1) clearly lays down that in case he decides that non of the party was then in such possession or is unable to satisfy as to which of them was in possession, he may attach the land 'until a competent court has determined the rights of the parties thereof or the person entitled to possession thereof and in sub-section (2) if the civil court appoints any receiver possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereby be discharged'. The law has brought in sharp focus the civil court to determine the rights of the parties or even possession. Since it is a question of fact that has to be adjudicated on evidence and the writ jurisdiction is not appropriate for seeking relief. Under section 145 the court

deals with limited scope of finding possession. A litigant has no inherent right in procedural remedy, but appeal or revision must be given expressly by law and there is no scope for second revision, the matter ends there (Ref : 38 DLR 246 AD, 6 BLD 185).

36 DLR 141—Abu Sadek Vs. Md. Nurul Alam—If the Magistrate considers the case as one of emergency, he may attach the land in dispute pending his decision under this section. Likelihood of breach of peace over possession of land gives the Magistrate power to draw up proceeding under section 145, but if attachment of the land is to be ordered, the Magistrate must state that he considers the case as one of emergency (Ref : 31 DLR 169, 4 BLD 324, 1 BSCD 103, 20 DLR 92).

33 DLR 399—Abdul Hamid Vs. The State—After attachment of the proceeding lands under the second proviso to section 145 (4) Cr. P. C the sub-divisional Magistrate had to take steps for proper custody and maintenance of the proceeding lands. The effect of an attachment under the second proviso to section 145 (4) is to bring the property under the control of the Magistrate.

32 DLR 53—Osman Gani Vs. Bashiruddin Ahmed—Party's possession is to be determined after compliance with the provisions of sub-section (4) of section 145. Decision of the question of possession without hearing the second party is illegal. Under sub-section (4) of section 145 Cr. P. C the Magistrate is to enquire as to possession of the parties receiving all such evidence as may be produced by them and if necessary on taking such further evidence as the Magistrate thinks proper. It is after complying with all the mandatory provisions of sub-section (4) of section 145 Cr. P. C that Magistrate is to decide which of the parties was in possession of the disputed property at the date of the order of drawing up the proceedings.

30 DLR 191—Md. Yasin Ali Vs. Abdur Razzaque—Actual possession means exclusive possession. Object of Section 145 is to maintain and preserve public peace. Law will protect the

party who is in possession. Possession taken in defiance of law will not be allowed (Ref : 31 DLR 150 SC; 30 DLR 212; 29 DLR 72).

29 DLR 377—Md. Israil Ali Vs. Md. Nurul Islam—Magistrate under section 145 (4) is called upon to decide which of the parties was in possession of the disputed land on the date of passing the preliminary order, under sub-section (4). In the present case there was no material before the learned Magistrate for his finding that the 1st party was in possession. An order on the issue of possession passed, as required by sub-section (4) of section 145, nor in the presence of both the parties and after hearing them is not lawful order.

27 DLR 37 (SC)—Adam Ali Sardar Vs. The State—Question as to the attachment of disputed property either under section 145 (4) or under section 146 (1) is one for the Magistrate to decide.

26 DLR 437—Jafar Ahmed Khondakar Vs. Badiul Sikdar—'Hear the party' means hear the arguments of the party.

1 BSCD 102—Md. Abdur Rahman Vs. Harun Pramanik—The Magistrate to decide which party was in possession on the date of preliminary order. According to the first proviso of sub-section (4) of section 145 a person who has been dispossessed within two months next before the date of such order, he should be deemed to be in possession of the disputed land on that date.

Two months—Sub-section (4) of Section 145 lays down that if a party has been dispossessed within two months before the date of passing the preliminary order, that party should be maintained in possession.

'Written Statement of the respective claim' and addition of parties—Written statement should be taken from all parties (25 Cr. LJ 906). It is of itself on evidence unless facts stated are proved. Magistrate has discretion to refuse or grant time to file written statement. It is upon the basis of the information that the Magistrate is in the first instance to select the persons whom he will require to attend. Sub-section (3) is intended to empower the addition of other persons who

may appear to be proper parties, upto the time of inquiry and no fresh proceeding is necessary. If necessary parties are not impleaded they will not be bound by the order (58 CWN 11). The words 'parties concerned' therefore mean (i) all persons claiming to be in possession at the time of the order and (ii) may extend to persons other than the actual disputants (for a party may not be a party to a dispute likely to cause a breach of the peace) who may nevertheless claim to be in possession. The statement made by a party in a written statement filed under this section ought to be proved like any other statement and therefore a Magistrate is not competent to pass an order in favour of a party merely on the strength of his written statement. An order based on the written statement of one of the parties and upon the failure of the other party to file his statement without some evidence on the part of the party filing the written statement in support of it, is without jurisdiction (8 CWN 642). Sub-section (3) has been enacted not simply for purpose of regulating the issue and service of notice but it is also intended to empower the Magistrate after he has issued the order provided for by sub-section (1) to the persons claiming to be in possession, to bring in any other persons who from subsequent information it may seem to him proper to have before him (A.I. R. 1946 Pat 330). It is intended to maintain the jurisdiction of the Magistrate when the danger to peace exists notwithstanding the death of a party. Magistrate has no choice except to implead a person claiming to be legal representative of the deceased party. Dropping of proceeding on the death of a party is ultravires (38 CWN 742).

21 DLR 175—Shahab Uddin Vs. Yunus—Section 145 deals only with possession. Parties in possession or persons claiming to be in possession are only the necessary parties in the dispute.

19 DLR 48—Khirode Chandra Shaha Vs. Mofazzal Hossain—Service of the preliminary order on both parties mandatory, failure of which renders the proceeding null and void. The manner in which the service of the order is to be effected has been laid down in sub-section (3) of section 145 Cr. P. C. A reading of section 145 shows that the Magistrate's

competence to proceed further after the passing of the preliminary order depends upon the service of the preliminary order on the parties.

10 BLD 70—Hazi Abdul Ali Vs. Md. Mesbauddin—Dispute concerning land—Whether an heir would be a necessary party to a proceeding relating to such dispute. Such proceeding not only fixes a criminal liability which arises for causing breach of the peace and is personal in nature but the Court is giving finding of possession in such matters also finds title. The finding would survive one's death and hence till the proceeding attains finality the heirs or successors-in-interest would be necessary party in the proceeding. Dispute concerning land—Power to allow parties to be added at revisional stage. Inherent power to do justice by bringing on record all the parties that are required to be present for an effective disposal of the case is a power existing in all the Courts and not only in the High Court. Power of the Magistrate to add legal representative on the death of any of the parties during the enquiry stage would extend to a Criminal Revision pending before the Higher Courts. Dispute concerning land—Whether proceeding relating to such dispute abates—The proceeding would not abate or become infructuous merely on the death of a particular party at the enquiry stage or Revisional stage.

Agent, Care-taker, Manager, Servant and Minor—The agents, Care-takers, Managers or servants who possess on behalf of their principal or master are not necessary parties within the meaning of section 145 Cr. P. C. The Full Bench decision reported in 31 Cal. 48 (FB) held that a Magistrate has jurisdiction to make an order under section 145 in favour of one who claimed to be in possession of the disputed land as agent or manager for the owners when they are not residents within the jurisdiction of the Court. A minor who is interested in the dispute is a proper party but he is not a necessary party as he is not a party likely to cause breach of the peace. An order in favour of manager or guardian finding possession with him on behalf of the owner is not without jurisdiction.

30 DLR 191—Md. Yashin Ali Vs. Abdur Razzaq—Agent, care-taker or a servant can possess the property in dispute on behalf of the principal or master, vis-a-vis a third party. In such circumstance mere physical possession cannot be treated as an actual possession as against the master. When servant possesses the property in the temporary absence of the master, he cannot say he is in actual possession as contemplated under section 145. 'Actual possession' means actual physical possession. The object of section 145 is to maintain and preserve public peace. Law will protect the party who is in possession. Possession taken in defiance of law will not be allowed.

22 DLR 857—Ali Ahmed Vs. Maniruzzaman—Proceeding under section 145 Cr. P. C intiated at the instance of the servant on behelf of his master is not illegal. Master may join later of his own motion or Magistrate can take initiative in the matter after passing the initial order. Expression 'Parties concerned' appearing in section 145 (1) Cr. P. C means all persons claiming to be in possession at the time of the initial order.

10 DLR 248—Aposh Ali Vs. Amzad Ali Bhuiyan—Proceeding by servant of the owner of the land would not lie, Servant is not in the same position as Manager. An order under section 145 declaring possession of a person not a party is illegal. All interested persons should be made parties.

VIS-A-VIS Civil suits : Joint Possession—That the decrees or orders of Civil Courts relating to possession ought ordinarily to be respected and given effect to by the Magistrate unless and until there is something shown which might induce him to hold that subsequent to delivery of possession something has happened which had the effect of dispossessing the party to whom the possession was delivered (22 Cr. LJ 238). It is the duty of the Magistrate under section 145 Cr. P. C is to maintain possession and not to maintain decree. In order that the decree of the Civil Court may be binding on the Magistrate three things are necessary, first the decree must be recent, secondly the decree must have been passed between

the same parties, thirdly the decree or order of the court must give possession. Where a case under section 145 was compromised by the parties, the Magistrate should pass an order in terms of the compromise. When a Civil suit is pending for determination of the rights of the parties, it is not proper to start proceedings under section 145. But it is no where laid down that a Magistrate has no jurisdiction to proceed under section 145 with regard to properties that may be the subject of Civil proceeding. If the contesting parties are in joint possession, then it is clear that no order can be made under section 145 (22 Cr. LJ 625). Where two parties are in joint possession (or entitled to joint possession) of the property in dispute and one of them tries to evict the other so as to endanger the public peace, this section does not apply and an order allowing one of the parties to be in possession till evicted by law is bad. The pendency of the civil suit between the parties cannot stand in the way of drawing proceeding. In a proceeding under section 145 the Magistrate have always upheld the previous possession given by the civil court. But possession given by previous orders of the criminal court cannot be treated in the same manner.

36 DLR 44 (AD)—Md. Shahabul Huda Vs. Md. Shafi—Civil Court when already in seisin of the subject-matter in dispute, and has passed order regulating its possession, etc. criminal court's jurisdiction under section 145 Cr. P. C to interefere with such matter regarding possession etc. ousted and as such an order of attachment under section 145 is illegal. A case in which a Civil Court is already seized with the subject matter of dispute and has passed an order regulating possession thereof or a case in which a decree for possession has been granted or a permanent injunction granted restraining the opposite party from interfering with the possession of the decree-holder, falls outside the jurisdiction of a Magistrate under section 145 Cr. P. C. Action can of course be taken always under section 107 and 151 of the Code of Criminal Procedure to prevent breach of peace in case of this nature, but no order by a criminal court for attachment of the property under section 145 Cr. P. C can validly be made.

36 DLR 345—Md. Abu Daud Gazi Vs. Anil Kumar Sarkar—Mere pendency of a civil suit would not be a bar for drawing up proceeding under section 145 Cr. P. C. A proceeding under section 145 Cr. P. C would be the only way to avoid bloodshed and having found so as to the existence and apprehension of a breach of the peace the Sub-Divisional Magistrate exercises the power as conferred upon him by law by drawing up a proceeding under section 145 Cr. P. C restraining both the parties from entering into disputed land and the disputed land was attached and the Nazir of S.D.O.'s Court was appointed receiver who was directed to put the disputed land in lease for one crop year and sell those crops to the highest bidder at reasonable price and deposit the sale receipt under proper heads of account (Ref : 35 DLR 180).

34 DLR 98 (SC)—Banabir Purakayastha Vs. Alekjan Bibi—It is to be remembered that the prayer for injunction regarding possession of the land was not granted, though there is no specific refusal either. In such circumstances, if there is a serious aprehension of breach of peace which is apparent from the record, the exercise of the Magistrate's jurisdiction is called for. Ends of justice would be met if the Magistrate is directed not to pass any final order regarding possession till the disposal of the suit by the trial court (Ref : 6 BSCR 1).

27 DLR 260—Abdul Farah Molla Vs. A.K.M. Mozammel Huq Sikder—Magistrate's jurisdiction ousted where the dispute concerning the land is finally decided by a civil court. 'Dispute' means actual disagreement existing between the parties at the time of the proceedings (Ref : 4 BLR 187).

25 DLR 317—Syed Zaman Khondakar Vs. Zobeda Khatun—Section 145 does not contemplate dispute between a party claiming joint possession and another contesting it. Police report about possession is not admissible in evidence (Ref : 22 DLR 705).

23 DLR 14 (SC)—Shah Mohammad Vs. Huq Newaz—Criminal court has no jurisdiction to attach any property while the same property is a subject matter of a civil dispute and in respect of which the civil court has passed an order of

injunction to maintain statusquo or passed a decree. Where a civil court is in seisin of a disputed property in respect of which the court has appointed a receiver or has passed a decree, the criminal court is incompetent to proceed against the same property or appoint a receiver in respect of it [Ref : 2 BCR 321 (SC), 29 DLR 386, 4 BLD 165 (AD)].

7 BCR 319—Mofzalur Rahman Vs. The State—Both parties in joint possession as evident from police report—No proceeding under section 145 Cr. P. C is appropriate-Order being based on materials on record no interference under section 561A called for (36 DLR 141).

Cancellation of preliminary order and dropping of proceedings—A Magistrate can cancel his preliminary order only on facts being brought to his notice which are sufficient to satisfy him that no dispute likely to cause breach of peace exists, and therefore, the cancellation of proceedings merely on the ground that one party admits that the other party was in actual possession of the land in dispute, is without jurisdiction and should be set aside (13 CWN 125). The Magistrate can cancel a preliminary order only when the parties are in a position to give positive evidence that there is no likelihood of a breach of the peace. The Magistrate's power to drop the proceedings is not limited to the circumstances mentioned in clause (5). He is entitled to drop the proceedings on his own initiative whenever he is satisfied that there is no further likelihood of a breach of the peace, without giving an opportunity to the parties to show by evidence that there is a likelihood of a breach of the peace. He can drop the proceeding if it appears to him from a police report that the likelihood of a breach of the peace of no longer exists (33 CWN 399). When the Magistrate has cancelled his preliminary order and drop the proceedings he becomes functus officio and has no jurisdiction to direct the delivery of the property or of its sale proceeds to one of the contending parties or to allow one of the parties to reap the crops to the exclusion of other. Parties or other persons interested may, under section 145 (5), can show that there is no danger of a breach of the peace and the original order can then be cancelled under this sub-section. If

any party or other person interested denies the existence of a dispute, the onus lies on him to show that it did not exist (33 Cr. LJ 48, AIR 1943 Cal 559). A preliminary order is a temporary order, a tentative order and is subject to the pre-emptory force of sub-section (5). But the mere assertion by a party in his written statement that there does not exist or never existed a dispute likely to cause a breach of the peace will not be suffice to accept the plea and cancel the preliminary order. Proceedings under this section cannot be revived after the dispute has been settled and an order has been made that the case be struck off, and new proceedings would not be justified on the materials on which the previous proceeding was based. Sub-section (4) and (5) of section 145 are not exhaustive and are not intended to prevent a Magistrate from terminating proceedings under section 145, when he is satisfied that the very cause and reason of proceedings under section 145 has ceased to exist. Where the diary shows that the parties attended the court from time to time, talked about a compromise and then finally stayed away and did nothing for months, that might be said to constitute information which would justify a Magistrate in his opinion that no dispute likely to cause a breach of the peace existed any longer and justify his order terminating proceedings (AIR 1940 Sind 51). The proper course under these circumstances is to retain the property or its sale proceeds in court until one of the parties obtains an order of a civil court (51 Cr. LJ 1340 Cal).

51 DLR 259—Abdul Karim Vs. Gousddin and others—When the receiver is a police officer he could not be dispossessed from the disputed property since he has authority to arrest anyone and send him to jail and also prosecute him for committing a cognizable offence or for violating law and order.

51 DLR (AD) 14—Abul Bashar and another Vs. Hasan-uddin Ahmed and others—When the Civil Court is already seized with the question of regulating possession of the land between the same parties, the Magistrate acted without

jurisdiction in initiating the impugned proceeding under section 145 Cr.P.C.

49 DLR-485—Mozaffar Ahmed Vs. The State—Though two civil suits, instituted before the drawing up of the proceeding under section 145 Cr. P. C. are pending, the Civil Court has not passed any order regulating possession of the case land, nor a decree for possession or permanent injunction has been granted. In this view of the matter, the jurisdiction of the Magistrate to act under section 145 Cr.P.C. is not ousted.

35 DLR 229—Mohammad Hossain Khalifa Vs. Kalachand—Magistrate concerned may drop the proceedings started under section 145 if in his opinion there is no dispute or no likelihood of breach of peace without further enquiry but where threat to peace exists he should find out who is in actual possession and put that party in possession by his order.

32 DLR 96—Nurul Hasan Meah Vs. Khirode Sarker—Without materials to show that apprehension of breach of peace ceased order abating proceeding under section 145 improper.

31 DLR 13—Moulana Syed Ahmed Vs. Nurul Islam—Without any finding that there is no apprehension of breach of peace concerning the land in question the Magistrate cannot drop the proceeding.

30 DLR 4—Bhowal Raj Court of Wards State Vs. Md. Chand Meah—Two ways of dealing with a property attached under 145 proceedings. Where a proceeding under section 145 of the Code has been dropped two courses are possible. One is to order release of the property from the attachment without directing delivery to either party and the other is to order that attachment shall continue untill the question of title has been decided by the Civil Court (Ref : 1 BSCD 102).

16 DLR 246 (SC)—Malik Manzoor Elahi Vs. Lala Bishamber Das—Preliminary order passed under sub-section (1) has to be cancelled when it is found that no dispute exist. There can be no justification for restricting the power of cancellation of a preliminary order under section 145 (1) Cr. P. C to only cases

where the parties have compromised their dispute or the person initiating the proceedings has given up his claim to possession. The sub-section imposes no such restriction. Where any party to the dispute or any other person interested has appeared and denied that any such dispute existed or ever existed, then he is entitled to lead evidence to establish his contention, and if upon such evidence the Magistrate comes to the conclusion that he has succeeded in showing that no such dispute exists or existed, then the Magistrate is not only entitled but is also bound to cancel the preliminary order. Provisions of section 145 indicate that there should he a continuing danger of a breach of peace till the time final order is made (Ref : 22 DLR 367).

11 DLR 463—Sheikh Shahmat Ali Vs. Sahar Ali—A Magistrate after directing the parties to file written statements can drop the proceedings.

Final order—After having made a preliminary order under section 145 (1) of the Code, the Magistrate is bound to make a final order as required under section 145 (5) unless he was satisfied that the preliminary order was to be cancelled for some reason (PLD 1967 Dhaka 541). The Magistrate should give a definite finding as to which of the parties was in possession of the subject matter of the dispute on the date of the preliminary order. A final order under sub-section (6) of section 145 is intended to be effective only up to the time a competent court takes seisin of the matter and passes such orders as may be necessary for the protection of the property. An order under this section is final and conclusive until the party in whose favour the order passed evicted in due course of law. The Magistrate must pass an order directing payment of sale proceeds in favour of the party who have been declared to be in possession. The Magistrate in his final order must give reasons for his decision sufficient to enable the superior court to determine whether he has complied with the terms of sub-section (4) and directed his mind to the consideration of the evidence adduced before him and whether he has acted with jurisdiction in making his final order. The final order should declare which party is in possession and should state that he

will continue in possession until evicted therefrom in due course of law and should forbid all disturbances of such possession. Form No. XXII schedule may be used in passing the final order. The remedy for the unsuccessful party is to file civil suit.

37 DLR 290—Mahmudul Haq Vs. Golam Moula—Sessions Judge not competent to quash proceeding before a subordinate court acting under sections 435 and 439A (Ref : 6 BLD 1).

35 DLR 286—Harunor Rashid Halder Vs. Entaz Sheikh—An order under section 145 (6) is final in between the parties and their successors. Only remedy thereafter is for the unsuccessful party to sue in civil court whose decision shall be binding and the Magistrate would put the seccessful party in possession of the disputed property in accordance with the decision of civil court. After the Magistrate finds a party as entitled to possession of the disputed land that decision remains binding on the parties which can be never re-opened by starting fresh proceeding till the question of title and possession is finally decided by the civil court (Ref : 4 BLD 29, 5 BLR 41).

15 DLR 340—Dwijendra Nath Mitra Vs. Abdul Kashem Biswas—In a proceeding under section 145 Cr. P. C. Magistrate trying the case could not refuse awarding costs when he comes to the conclusion that the first party is entitled to such costs and upon consideration of materials before him he can award a lump sum as cost to the first party.

13 DLR 119—Haji Haider Ali Matbar Vs. Md. Haji Sekandar—Judgment-duty of the court regarding assessment of evidence.

7 DLR 81—Malik Nikari Vs. Munshi Kaikobad Biswas—In the absence of any discussion of evidence, it is impossible to uphold order.

4 DLR 86—Dhirendra Lal Das Vs. Tilak Roy—There is no provision in section 145 Cr. P. C which would warrant the dismissal of a case started under section 145 Cr. P. C merely because the complainant was not ready with his case. Any such an order of dismissal is ultravires.

1 BSCD 107—Abdul Khair Mazumder Vs. Haji Abul Kashem—Claim of the first party respondent regarding the possession of proceeding land convincing—Although the evidence of the witnesses of the petitioners were not dealt with properly, it nevertheless, appeard that the Magistrate took note of the fact that there were witnesses to support the case of possession of the proceeding land by the second party but upon consideration of 'all aspects of the matter including the facts, circumstances and the evidences on record' he was satisfied that the claim of the first party respondent regarding the possession was a convincing one—No interfernce with finding of the Magistrate.

1 BLD 213 (SC)—Md. Mafzallur Rahman Vs. Abdus Salam—When the order of SDM calling for record and fixing date of hearing was communicated, only because further proceeding in the 145 proceeding was not stayed by the SDM, the Magistrate cannot be said to be competent to dispose of the case finally, that is, by dropping the proceeding under section 145 (5) of Cr. P. C before transfer application is heard.

Distinction between Section 144, 145, 147 and 107—Section 107 is discretionary while section 145 is mandatory in the sense that it requires action in case the conditions for its application are satisfied. Where there is a dispute over landed property, the Magistrate is to proceed under section 145 but not under section 107. The basic difference between section 107 and section 145 lies in the fact that under section 107 the commission of a breach of the peace is alleged to arise from the person against whom an application is made, whereas under section 145 the breach of the peace may be occasioned by any of the disputant parties. The order in a proceeding under section 145 is in the nature of a declaration, while the order under section 147 is one of prohibitory interference with the exercise of the right claimed. Section 144 is a larger and more general section than section 145. An order under section 144 can be made under various circumstances including a danger of a breach of the peace arising from dispute as regards possession. Section 145 is of limited scope and applies only where there is a danger of a breach of the peace due to such

dispute. A proceeding under section 107 cannot be converted into one under section 145 Cr. P. C. A proceeding started under section 144 may be converted into one under section 145 during the period for which order under section 144 was passed.

5 DLR 162—Rebati Mohan Dey Sarkar Vs. Ansar Ali Mondal—Life of the proceedings under section 144 having terminated, no fresh proceeding under section 145 is valid.

Procedure—The procedure to be adopted in an inquiry under this section is prescribed by the section itself (25 Cr. LJ 595). It is incumbent under this section to follow the procedure of trial of cases under Chapter XX.

Disobedience to the order—When a Magistrate makes an order under section 145 and declares a certain party to be entitled to possession, violation of that order would be punishable under section 188 of the Penal Code.

Revision—Revision lies before the Sessions Judge and High Court Division against the preliminary order as well as final order. Proceedings under this Chapter are of special nature and as such the Magistrate may be allowed greater liberty in carrying out those provisions than they are allowed in trying ordinary crime, because upon the Magistrate and the police is thrown the burden of maintaining of public peace. In this view, it is undersirable that such orders should be interfered with revision, unless they made without jurisdiction and are obviously unreasonable and unjust. Where the decision of the Magistrate is grossly erroneous the superior court would have no option but to interfere in revision. Unless the Magistrate has acted with gross irregularity the superior court would never-interfere in a matter of this kind (39 Cr. LJ 379). Revisional power is discretionary. When the party comes after a long time, the superior court will not interfere. A time limits should have been prescribed for completion of the proceedings within two months from the date of appearance of the parties. Under the Code, the Sessions Judge has the same full revisional powers as the High Court Division has under section 439. The superior court has the power to interfere

where no order in writing such as is required by sub-section (1) was recorded by the Magistrate but not where the preliminary order under section 145 (1) is not complete (20 Cr. LJ 124), where in a proceeding under this section necessary parties were left out or wrong person were made parties of where the Magistrate refused to receive the evidence tendered to him (14 Cr. LJ 227) or where the Magistrate's finding of facts regarding possession was perverse (25 Cr. LJ 106), or where the Magistrate passed an order in respect of a property which was not in dispute. The superior court in revision can alter the order under section 145 into one under section 146 or in suitable case into under section 147 (20 CWN 1014). The superior court has inherent power to give directions as to the disposal of property which was attached and has been dealt with by a Magistrate in the course of proceedings instituted without jurisdiction (22 Cr. LJ 213 FB). During pendency of revision the superior court has full power to pass an order staying the operation of the Magistrate Order regarding delivery of possession and sale proceeds. The superior court cannot appoint receiver pending disposal of revision case (Ref : 12 BLD 54 AD).

54 DLR (HC) 298—Alam (Md) & anather Vs. State (Criminal)—Sections 145 & 164—A statement of witness is not legally acceptable evidence to prove or disprove any accusation, particularly when the witness herself is available in the court to depose about the occurrence.

52 DLR (HC) 176— Shebait Mohanta Sree Kedar Nath Achari Vs. Sree Khitish Chandra Bhattacharya and another— In a proceedings under section 145 of the Code the Magistrate is required to decide which of the contending parties was in possession of the disputed property on the date of drawing up of the proceedings or whether two months next before such date on the basis of evidence of possession and not to decide which of the parties has lawful claim of possession therein on the basis of document of title.

52 DLR (HC) 616—Abdul Alim Vs. The State and Ors—As the order of the civil court was passed earlier regarding possession of the property, there cannot be any proceeding

under section 145 of the Code of Criminal Proceedure in respect of the same property. (Ref. 8 BLT (HCD) 269).

33 DLR 93—Nesaruddin Vs. Khalilur Rahman—Statement of grounds of satisfaction initially is to keep the parties informed and to put in their defence. If grounds exist for passing order of attachment, non-recording of them does not vitiate the order. Omission to comply with condition of jurisdiction is not a mere irregularity but it is illegal. Omission of the Magistrate to record his satisfaction is not a mere irregularity, but an illegality which renders subsequent orders illegal. If a Magistrate takes action on an application under section 145 Cr. P. C by proceeding on the information received such action by the Magistrate cannot be treated as an indication of his satisfaction that a breach of the peace was likely (Ref : 21 DLR 119 WP).

21 DLR 410—Ali Hossain Vs. Syedur Rahman—The expression 'apprehension of breach of peace' recorded in the Magistrate's preliminary order—Non-recording of such finding in the final order is an irregularity curable under section 537 Cr. P. C and not an illegality.

13 DLR 138 (SC)—Md. Ishaque Chowdhury Vs. Nur Mahal Begum—Orders under the section if passed with jurisdiction will not vitiate the trial for committing irregularities such a defect in the form of the order or failure to state the grounds of his satisfaction.

7 BCR 296—Manuhar Ali Vs. Arab Ali—The impugned order having passed without complying with the law required under section 135, 145 (4) of Cr. P. C has been found to be contrary to the established principles of law laid down by the Superior Court and as such it is not maintainable. Invocation of section 561A Cr. P. C cannot be taken resort to when there is an alternative remedy open for the petitioner to get the relief in the Civil Court.

3 BCR 111 (SC)—Sahadat Ali Vs. The State—After admitting the application for revision, the superior court is competent to stay the operation of the order impugned before it.

2 BCR 46—Shafiqur Rahman Vs. Nurul Islam Chowdhury—The Sub-Divisional Magistrate on the basis of the police-report, taking the view that apprehension regarding breach of peace had ceased passed an order dropping the proceedings. The second party of the case filed criminal motion in the court of Sessions Judge under section 435 and 439A Cr. P. C against the order passed by the sub-divisional Magistrate dropping the proceedings. The Sessions Judge admitted the motion and transferred the case to the court of the Additional Sessions Judge for disposal. At the time of transfer of the case, the Sessions Judge also passed an order which runs thus : In case receiver has not already made over possession of the case land, it may be stayed until further order of the transferee court. Mr. Mahbubur Rahman, the Additional Sessions Judge passed an order directing for putting the disputed land in auction and he also asked the receiver to function as usual. Held : The Sessions Judge 'when trying a case under section 439A cannot be taken as an inferior court as contemplated under section 435 and 439 Cr. P. C. As the Sessions Judge passed the impugned order under section 439A, the present application filed by the petitioner under section 439 in this court is not maintainable.'

19 BLD (HC) 53—Abdul Majid Mondal Vs. The State and another—When the Civil Court is already seized with the question of regulating possession of the land between the same parties the criminal court has no jurisdiction to draw any proceeding under section 145 Cr. P. C. and the Magistrates jurisdiction is completely ousted. (Ref : 51 DLR 287).

18 BLD (HC) 177—Md. Taizuddin Mia and ors. Vs. Md. Abdul Kader and another—Satisfaction of the Magistrate regarding the apprehension of the breach of the peace over the possession of a disputed property the jurisdiction of the Criminal Court to deal with it is ousted. (Ref. 2 MLR (HC) P-372).

17 BLD (HC) 364—Mozaffar Ahmed Vs. The State and others—When a Civil Court has passed an order regulating the possession of the subject-matter of the dispute or when a decree for possession has been passed or a decree for

permanent injunction has been granted, the jurisdiction of the Magistrate to act under section 145 Cr. P. C. is ousted.

3 BLD 148—Bashiruddin Sarkar Vs. Siraj Ali—A proceeding under section 145 Cr. P. C does not come within the mischief of the provision of 203 or 204 Cr. P. C.

AIR 1948 Mad 234—Zamindar of Devarakota Vs. Ramswamy—An order by the Sub-divisional Magistrate setting aside sale of cultivation rights by tahsildar under his direction under section 145 (4) Cr. P. C being only administrative, is not revisable by the High Court.

9 MLR 32-40— Shamsuddin @ Shamsuddoha and another Vs. Mvi Amjad Ali and others—Application does not lie against judgment passed in revision—The High Court Division in exercise of power under section 561A Cr.P.C cannot interfere with the findings of possession in the disputed land arrived at by the Magistrate on proper appreciation of evidence which has been affirmed by the Additional Session Judge in revision.

8 MLR 110 (AD)—Saber Ahmed and Anr. Vs. Goura Mia—Long lapse of time is not a ground to presume. That the apprehension of breach of peace disappreared. As regards proof of possession in disputed property oral evidence takes precedence over documentary evidence.

6 MLR 90 (HC)—Abdul Kashem Vs. The State and others—Proceedings for declaring possession of immovable property in dispute-Magistrate is competent under section 145(4) Cr.P.C to declare possession of a party to a dispute even if he is found to have been forcibly and wrongfully dispossessed from the proceeding land within two months of the drawing up of the proceedings under section 145(1) Cr.P.C Proceedings drawn up after two months of dispossession is incompetent and no relief can be given to the aggrieved party in such proceedings.

4 MLR (HC) 191—Abdul Majid Mondol Vs. The State and another—Magistrate has no jurisdiction to draw proceeding under section 145 of the Code of Criminal Procedure when the Civil Court is in seisin of the matter in dispute and already had pay order regulating possession thereof. Such proceedings drawn by magistrate are liable quashed.

3 MLR (HC) 99—Mozaffar Ahmed Vs. The State and others—So long decree is not passed or injunction regulating possession of the suit land is not granted the jurisdiction of the Magistrate under section 145 Cr. P. C in the face of apprehension of breach of peace is not ousted merely by reason that a civil suit is filed.

3 MLR (AD) 162—Abul Basher (Haji) Vs. Hasanuddin Ahmed and others—Proceedings When not tenable—Where the subject-matter is under proceedings of the Civil Court with the order regulating the possession thereof from long before, the proceedings under section 145 of the Cr.P.C in relation to such property is not competent and being abuse of the process of law is liable to be quashed.

1 MLR 410 (AD) —Ajman Ali Mia Vs. Md. Alauddin Chy—Finding possession in the disputed property within the statutory period by the Magistrate on proper appreciation of evidence can not be interfered with. Application under section 561A does not lie in the self same matter after disposal of revisional application.

1 MLR 162 (HC)—Abdus Salam Sawddagar & Others Vs. Hazi Ashrafuzzaman and others—Thana Magistrate is subordinate to the District Magistrate and is bound to obey the order of the Superior Court. An order passed by Thana Magistrate in disregard of the order of the District Magistrate is illegal.

12 BLT 92 (AD) —Haripada Dev Vs. Chitta Ranjan Dev and Ors.—Magistrate exercising jurisdiction under section 145 Cr.P.C drawing up a proceeding could in an emergent situation attach the case land in order to prevent imminent preach of the peace. The 2nd proviso to section 145 Cr.P.C authorises the Magiatrate to attach the subject matter of dispute at any time when he considered the case on of emergency and as such the Magistrate is required to record an emergent situation exist pr existed for passing an order under the aforesaid provision.

11 BLT 135 (AD)—Saber Ahmed Nar. Vs. Gura Aliah—Section 145 read with section 561A. In the instant case it

isseen from the materials on record that the Ist party by the evidence of the witnesses who are neighbour to the land has proved his possession in the land in the proceeding and as against that the 2nd party has not adduced any evidence to dislodge the evidence of the said witnesses. Since the order relating to possession of the land that has been made by the learned Magistrate is based of the possession of the land to the Ist party is, in our view legally sustainable.

8 BLT 323 (HC) —Afsar Ali Khan & Ors Vs. Md Lutfar Rahman & Ors—Whether a proceeding is said to be drawn up under Section-145(1) when the learned Magistrate inadvertently did not make any formal order but issued show cause notice upon the petitioners.

8 BLT 323 (HC) —Afsar Ali Khan & Ors. Vs. Md. Lutfar Rahman & Ors.—There are civil suits in respect of the case land between the same parties, wherein an order of injunction has been passed by Civil Court. Although pendency of a suit is not a bar in drawing up a proceeding, if the learned Magistrate finds that there is serious apprehension of breach of peace over the case land, but if the Civil Court passes an order of injunction and has regulated the possession of the subject matter of the proceeding, the learned Magistrate does not retain any jurisdiction over the same subject matter.

7 BLT 21 (AD) —Shebail Mohanta Sree Kader Nath Achari Vs. Khestesh Chandra Bhattacharjee & Ors—The Civil Court having already passed an order regulating the possession in respect of the disputed property, the Criminal Court lost its authority under Section 145 Cr. P. C to deal with the same subject matter of the Civil Suit as contended by the learned Advocate for the Petitioner. Held: The learned Judges on consideration of the facts and circumstances of the case appear to have taken the correct view that the order of attachment of the disputed property and the appointment of receiver dated 22.4.91 had been passed by the Magistrate under Section 145 Cr. P. C. which were upheld by the High Court Division on 22.1.96 in Criminal Revision No. 783 of 1991 and that the learned District Judge passed and order for maintaining status quo long after the order had been passed

by the Magistrate on 22.4.91. The concerned Magistrate, therefore, did not commit any illegality in rejecting the petitoner's prayer for vacating the direction given on 6.8.97 for handing over the charge of the property in question to the receivers. It does not appear that the impugned judgment of the High Court Division suffers from any illegality.

7 BLT 98 (AD) —Abul Kalam Azad & Ors. Vs. Osman Ali—Attachment—Appointment of receiver—It appears that the revisional Court belonged found that there was an apprehension of breach of peace and neither party could adduce cogent and reliable evidence to proved their respective possession in the disputed plot of lands and consequently the court below passed an order for attachment the disposal of the civil suit. It is on record that the second party filed Title Suit No. 25 of 1993 in the Court of Subordinate Judge against the first party in respect of the disputed land. Hence the order passed by the revisional court below was rightly affirmed by the High Court Division.

4 BLT 113 (AD) —Bonomali Paul Vs. Nazrul Islam & others—If a man is risntfully in possession of his land his possession should be protected and these who wants to commit breach of the peace should be prevented and dealt with by the law enforcing agency.

4 BLT 125 (AD) —Shahidur Rahman & Ors. Vs. Md Ali—The impugned proceeding under section 145 Cr. P. C. was the result of a machination of the second party-respondents that they were falsely shown as first party to the proceeding in the police report, that they are in possession of the disputed land from the time of their ancestors having got their dwelling houses thereon, that there is civil litigation between them which is pending and that the receiver was appointed by the learned Magistrate without making an order of attachment of the disputed land as contended by the Advocate-on-Record for the petitioners—Held: The initial order drawing up the proceeding under section 145 Cr. P. C and appointing a receiver for the disputed land was passed by the learned Magistrate on 15, 10 1985 i. e. more than 10 years before—The petitioners will get an opportunity to submit before the learned

Magistrate what ever they have got to say with regard to their alleged possession in the disputed land and the alleged fraud said to have been committed by the second party in bringing about the proceeding in question.

3 BLT 184 (HC) – Hazi Abdul Ali & Ors Vs. Md. Mesbauddin—A proceeding under Section 145 of the the Code of Criminal Procedure being of a quasi civil nature, the legislature had been careful. incorporate sub-section (7) there to providing for impleading of the legal representatives of the deceased party, whether complainant opposite party, to the proceeding and thereafter continue with the inquiry. It is a provided because in a proceeding under section 145 of the Code of Criminal Procedure, a Criminal Court enquires now only as to the possibility of a breach of the peace but also incidentally the title in order to find and possession which finding of civil nature and such finding survives ever after the death of a party.

6 BLC 77 (AD) –Esrail Md & others Vs. Md Ali Ashgar and ors.– Sections 144 and 145– In the instant case, the Magistrate acted on the basis of a police report although it was called for in connection with the application filed under section 144, Code of Criminal Procedure. There was thus material before the Magistrate to act upon, may be beyond 60 days, after the first order was passed on the application under section 144 of the Code of Criminal Procedure.

6 BLC 117 (AD) – Naser Bhuiyan and another Vs. Safayetullah Bhuiyan and another (Md)– Sections 145 and 561A– The High Court Division having found that the Additional Sessions Judge being the last Court of fact found the first party was in possession of the suit land at the relevant time on the basis of evidence before it, there is no illegality in the impugned judgment and order.

5 BLC 403– Haripada Dev Vs. Chitta Ranjan Dev and 6 ors– As the learned Magistrate while passing the order of attachment and appointment of a receiver did not state that there was apprehension of imminent danger to life and also existence of serious breach of peach which is a condition

precedent to pass such orders and hence the learned Sessions Judge committed no illegality in passing the impugned order.

5 BLC 483—Abdul Kashem Vs. State and others—Section 145 and 439- The fact of dispossession of the first party having admittedly taken place between 6-1-96 and 11-1-96 and the proceeding under section 145(1) Cr.P.C having been drawn upon 28-10-96, the learned Metropoliton Magistrate acted illegally and without jurisdiction in not dropping the proceeding and hence all actions subsequent thereto are illegal and without jurisdiction.

5 BLC 577—Amal Krishna Mondal Vs. Kumaresh Chandra Mondal.—Sections 145 and 561A- When a Civil Court passed an order regulating possession, Criminal Court had no jurisdiction to draw up any proceeding in respect of the self-same property nor was there any scope of appointing receiver regarding the same property after attaching the same and hence the proceeding was illegal and liable to be quashed.

146. Power to attach subject of dispute.—(1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof :

Provided that the Metropolitan Magistrate or the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure, 1908 :

Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil

Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

Scope and application—Section 146 is a corollary to section 145. The Magistrate is empowered under section 146 (1) to attach the subject of dispute in three cases, namely (a) if it is a case of emergency : or (b) if none of the parties was in possession; or (c) if no decision is possible as to the possession. The order of attachment remains in force until a competent court decides the rights of the parties or until the Magistrate, on being satisfied that there is no longer any likelihood of a breach of the peace, withdraws it. If there was no dispute concerning any land, there would be no jurisdiction of a Magistrate to proceed under section 145 and 146 and (19 Cr. LJ 105 Pat). Section 146 is a continuation of section 145 and therefore the initiation of proceedings under section 145 is preliminary to an order under section 146. An order of attachment under sub-section (1) is within jurisdiction if neither side has been proved to be in exclusive possession on the date of the preliminary order and neither side has been dispossessed within two months before the order (50 Cr. LJ 659 Mad). Section 146 requires that the Magistrate should be unable to satisfy himself as to which of the parties was in 'such possession' i. e. actual possession of the subject of dispute. A Magistrate is entitled to appoint a receiver only after the termination of inquiry under section 145 (4). The appointment of receiver before completion of inquiry is without jurisdiction. An order under this section cannot be made in the absence of parties or ex-parte. The proper course is to pass the order in presence of both parties.

46 DLR 416—Abdul Jabbar Vs. Azizul Haque—Sections 145 and 146 of the Code of Criminal Procedure should be read together as they provide a composite provision to meet a situation. The scheme is that once a proceeding has begun with preliminary order it must be followed by attachment of the property, appointment of a receiver and final determination of right and title by the civil court.

40 DLR 196 (AD)—Haji Golam Hossain Vs. Abdur Rahman Munshi—Section 146 (1) clearly lays down that in case he decides that none of the party was then in such possession or is unable to satisfy as to which of them was in possession, he may attach the land until a competent court has determined the rights of the parties thereof or the person entitled to possession thereof and in sub-section (2) if the civil court appoints any receiver possession shall be made over to him by the receiver appointed by the Magistrate, who shall be thereby discharged' (Ref : 43 DLR 175 AD).

36 DLR 93—Nazir Ahmed Vs. Yonus Meah—As to whether there is any apprehension of breach of peace it is for the trying Magistrate to decide on his satisfaction about that. The proviso to section 146 (1) of the Cr. P. C. confers powers upon the Magistrate to withdraw attachment if he is satisfied that there was no longer any likelihood of breach of peace in regard to the subject of dispute and if the discretion has been exercised properly there is no case for any interference by a revisional court.

36 DLR 31—Jamila Mannan Vs. Aminur Rasul—If possession is found with one party sub-section (4) of section 145 will apply—If no decision can be arrived at as to possession, section 146 will apply. Magistrate need not pass the order of restraint once the property is attached and a receiver is appointed.

27 DLR 37 (SC)—Adam Ali Sardar Vs. The State—Question as to attachment of disputed property either under section 145 (4) or 146 (1) is one for the Magistrate to decide. Apprehension of breach of the peace must be present for passing a preliminary order under section 145 (1) and must continue till passing an order under section 146 (1). Section 146 (1) empowers attachment of the property when it is not possible which party is in possession of it—Withdrawal of attachment order when apprehension ceases (Ref : 21 DLR 327).

1 BSCD 104—Sultanuddin Ahmed Vs. Nurshed Ali—Appointment of new receiver on resignation of the former one, whether speaks of continuation of the proceeding. Held : The

High Court's view that the appointment of receiver by the Magistrate on the resignation of the former one was not, in any manner, a continuation of the proceeding (Ref : 37 DLR 290).

Revision—Revision lies both to the Sessions Judge as well as to the High Court Division having concurrent full powers of revision. Where evidence as to possession of both sides was evenly balanced, order of attachment under this section is justified and the Sessions Judge or the High Court Division will not interfere in revision (52 Cr. LJ 695 Ass).

147. Disputes concerning rights of use of immovable property. etc.—(1) Whenever, any Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged, right of user of any land or water as explained in section 145, sub-section (2) (whether such rights be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by advocate within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145 and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right :

Provided that no such order shall be made where that right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.

Scope and application—This section has the same object as section 145. The existence of a dispute likely to cause a breach of the peace is the basis of Magistrate's jurisdiction in both. This section requires that the Magistrate must record, as under section 145, a preliminary proceeding stating the ground of his being satisfied as to the likelihood of a breach of the peace. A case under this section is to be decided by the same procedure as a case under section 145 (38 Cal 390). An order under section 147 passed on proceedings taken under section 133, without any action in accordance with section 145 is without jurisdiction (15 CWN 667). Where proceedings are started under section 145 on the basis of police report, but during the trial the Magistrate finds that it is a matter falling under section 147, he can convert the proceeding into one under that section (26 Cr. LJ 558 Cal). A proceeding under this section is a quasi civil proceeding. There must not only be a dispute regarding an alleged right of user of any land or water but, under sub-section (2) of section 147, it must appear to the Magistrate that such right exists and that there is an imminent danger of a breach of the peace resulting from a dispute between the parties concerned. No order can be passed under section 147, when notice was not issued under that section as required by section itself but a notice was issued under section 145 (34 Cr. LJ 616). Magistrate can drop the proceeding on the ground that a civil suit has been instituted and that there is no likelihood of a breach of the peace after the institution of the civil suit. The Magistrate has no power to revive such proceedings subsequently (52 Cr. LJ 651 Pat).

46 DLR 127—Farhad Hossain Vs. Mainuddin Hossain Chowdhury—Removal of obstruction-If the Magistrate, after recording evidence, finds merit in the case, he will pass orders prohibiting interference with the right of using the disputed land as the 1st Party's pathway. In passing such order the

Magistrate has sufficient jurisdiction to pass ancillary orders so as to make his order of prohibition effective and, if necessary, to pass orders for removal of any obstruction in the pathway.

9 DLR 257—Mahabbat Ali Sarkar Vs. Jahur Ali—Direction to a party to remove obstruction without first requesting them to put in written statement of their respective claims is illegal.

16 BLD (HC) 170—Raquib Ali Vs. The State and others—Disputes concerning rights of use of immoveable property—Section 147(1) Cr. P. C. empowers a First Class Magistrate to draw up a proceeding directing the contending parties to file written statements of their respective claims as to the right of user of any land or water when he is satisfied from a police report or otherwise that there is likelihook of breach of the peace over the dispute in question. But it does not empower him to pass any interim order in respect of user of any such right before holding an enquiry as required by sub-sections (2) (3) of Section 147 Cr. P. C.

Revision—Revision lies under section 435 and 439A Cr. P. C before the Sessions Judge against the order of the Magistrate.

AIR 1941 Lahore 210—Ghamanda Singh Vs. Emperor—The Sessions Judge in revision can make an order under section 147, which ought to have been made by the Magistrate.

148. Local Inquiry.—(1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) **Order as to cost.** When any costs have been incurred by any party to a proceeding under this Chapter the Magistrate passing a decision under section 145, section 146 or section

147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. Such costs may include any expenses incurred in respect of witnesses, and of advocate fees, which the Court may consider reasonable.

Scope and application—This section provides for a local inquiry in proceeding under section 145, section 146 or section 147. The scope of local inquiry is extremely limited. The object of local inspection is to understand and appreciate the topography of the land in dispute in order to aid the Magistrate in appreciating the evidence offered by the parties in court but no decision can be based on it (25 Cr. LJ 412). The trying Magistrate can himself make the local inquiry. This section empowers the presiding Magistrate to depute a subordinate Magistrate to make the inquiry. Only the Magistrate passing the final order can award costs. High Court Division can allow costs incurred in the Magistrate's Court but not the cost in revision (26 Cr. LJ 707 FB). This section should have been amended by inserting the Chief Metropolitan Magistrate after the word District Magistrate in Section 148 (1) and subdivisional Magistrate ought to have been omitted.

Revision— Orders under this section are open to revision under section 435 and 439A Cr. P.C. before the Sessions Judge.

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CHAPTER—XIII

PREVENTIVE ACTION OF THE POLICE

149. Police to prevent cognizable offences.—Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Scope and application—This section applies for prevention of cognizable offence only. Interpose connotes active intervention and not merely a prohibition by word of mouth (25 CWN 63).

150. Information of design to commit such offences.—Every police officer receiving information of a design to commit any congnizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. Arrest to prevent such offences.—A police officer knowing of a design to commit any cognizable offence, may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Scope and application—The object of this section is to prevent the commission of an offence by arresting before hand the person who desings or intends to commit cognizable offence. Two pre-requisites are necessary : (a) the police officer knew that offender had a desing to commit a cognizable offence and (b) that the commission could not be otherwise prevented. This section merely authorises arrest and there can be no detention under it. An arrest made without the emergency contemplated by this section is illegal (PLD 1954 Lah.119). Procedure laid down in Chapter VIII must be followed to deal with the situation which by implication denies the power of immediate release to the police officer even on offering sureties. This section does not authorise jail authorities to detain a person in their custody, (AIR 1957 All 189). A person under preventive arrest by the police cannot be

kept in custody for more than 24 hours within which time he must be produced before a Magistrate unless his further detention is required or authorised by any other law.

22 BLD (AD) 83—Khurshida Begum and another Vs. Golam Mustafa and others—The provisions in section 151 C.P.C and section 561A Cr.P.C do not empower or authorise the court to make an order affecting the other party in the proceeding without hearing him in disregard of the time old maxim audi alterem partem.

152. Prevention of injury to public property.—A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

153. Inspection of weights and measures.—(1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

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PART V

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

CHAPTER XIV

154. Information in cognizable cases.—Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction and be writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.

Scope and application—The word 'information' in this section means something in the nature of a complaint or accusation, or at least information of a crime, given with the object of putting the police in order to investigate, as distinguished from information obtained by the police when already investigating a crime. The word "first information" is not mentioned in the Code. It is that information which is given to the police first in point of time on the basis of which the investigation commences and not that which the police may select or record as first information. The first information is the basis of the case, and whether it be true or false, at any rate usually represent what was intended by the informant to be the case set up by him at the time. The first information of an offence is reduced to writing in accordance with this section. The object of a first information being to show what was the manner in which the occurrence was related when the case was first started. It should always be carefully and accurately recorded (11 CWN 554). The first information report is the earliest information of an offence and it has got importance because it records the circumstances before there is time for them to be forgotten or embellished. The report can be put in evidence when the informant is examined. It can be used for the purpose of testing the truth of the prosecution story.

FIR is not a substantive piece of evidence. That means, no conviction can be based solely on the basis of FIR. Use of a FIR as substantive evidence is illegal.FIR can also be relied upon by the defence under section 145 of the Evidence Act to impeach the informant's credit. It cannot be used for the purpose of corroborating or contradicting other witnesses. FIR need not contain minute details, nor is it the last word in the prosecution case. The terms of FIR which are perhaps given under circumstances of haste, should not be viewed too narrowly. In that context the court cannot view with suspicion the contents of the FIR on the basis of minor omission therein. FIR must be distinguished from information received after the commencement of the investingation which is covered by sections 161 and 162 Cr. P.C. It is well settled that a vague or indefinite information which does not make it incumbent on the police to start investigation is not an information within the meaning of section 154 Cr. P.C and as such the subsequent regular FIR cannot be held to be inadmissible under section 162 Cr. P.C. In the exercise of inherent powers, the High Court Division cannot quash a FIR (AIR 1977 SC 2229).

55 DLR 125 (AD)—Abul Hossain (Md) Vs. State—There is nothing in the law to prevent a police officer from making a complaint when some facts come to his knowledge even if he cannot investigate them.

45 DLR 63—Bashir Ali Vs. State—An information even by way of confession made in police custody which relates to the fact discovered is admissible in evidence against the accused [Ref : 9 DLR 11 (SC)].

45 DLR 142—Nazrul Islam Vs. State—Where F.I.R does not contain an important statement deposed to by the witnesses, it is clear that there has been subsequent embellishment of the prosecution case which makes it untrustworthy.

44 DLR 10 (AD)—Babar Ali Mollah Vs. State—Evidence by eye witness— Vital omissions in FIR and statement to the investigating officer make their substantive evidence unreliable (Ref : 40 DLR 97).

44 DLR 492—Abdul Latif @ Budu Vs. The State—FIR delay —The Court has always viewed First Information Report with grave suspicion when there had been unexplained delay in lodging it. It can be presumed that the delay was used for manipulation of the prosecution story (Ref : 14 BLD 94).

44 DLR 83—Akthar Hossain @ Babul Akthar Vs. State— The document exhibited as FIR in the case could not be treated as an FIR for the reason that an information as to the murder was lodged earlier and there was GD entry thereon but the same have not been produced.

44.DLR 431—Fulu Mohammad Vs. State—The First information report in this case was lodged by PW-1 Dhulu Barman. According to him he was an eye-witness of the entire occurrence. He was a party to the land dispute. He took his injured party men to the hospital. Thereafter he lodged the ejahar stating that accused Fulu Mohammad gave only one barsha stroke on Nirendra's head and stating in general term that thereafter the accused injured PWs 2 to 7 and Amiruddin by attacking them at random with lathi, dagger, ballam etc. Such omission to state in particular the accuseds' attack upon the injured PWs in the FIR under the circumstances has made the prosecution case doubtful so as to sustain the conviction and sentences (Ref : 6 BLR 382).

43 DLR 44 (AD)—State Vs. Abdus Sattar—FIR can be used only to corroborate or contradict the maker thereof. There is neither any law nor any principle on the basis of which the testimony of another witness can be ignored or rejected. because the informant had made an omission to mention about the fact which the witness stated in his deposition.

43 DLR 87—Ataur Rahman Vs. State—FIR does not contain detailed facts of the prosecution case. Its main purpose is to give information of a cognizable offence to the police and set the law in action.

42 DLR 31 (AD)—Shah Alam Vs. The State—A FIR may be lodged by any person for, it is meant just to set the machinery of law in action.

42 DLR 446—Gopal Rajgor Vs. The State—FIR effect of departure from FIR story—where the prosecution has a definite case, it must prove the whole of it; partial departure from the prosecution case affects credibility of the witnesses and complete departure makes there testimony to be entirely discarded.

40 DLR 69 (AD)—Md. Shamsuddin Vs. The State—Mere delay in lodging a complaint not a ground for quashing a proceeding. There may be circumstances in which lodging of F.I. R as to commission of an offence may be delayed. Explanation for dalay in lodging F.I. R was given. i. e. fear of life from very influential persons. Delay raises doubt about the truth of allegation. A timely G. D entry of course strengthens the allegation made in the complaint and its absence may create doubt about it, but doubt in the allegation is a matter to be considered at the trial only. Reason of delay in lodging F.I. R is unconvincing. A mere glance in the information will reveal the motive of the informant which means the harassment of the accused appellant (Ref : 8 BCR 1 AD; 7 BCR 359).

39 DLR 437—Majibur Rahman Vs. The State—Accused named in promptly lodged F.I.R supported by medical evidence, it would not be necessary to look for corroboration. Failure to explain reason for absconding after occurence favours prosecution.

38 DLR 311 (AD)—Muslimuddin Vs. The State—In the early moring "somebody" was sent to the Police Station to give an information about this gruesome murder. In point of time that information carried to the police "by somebody" is First Information Report within the meaning of section 154 of the Cr. P.C and all subsequent information fall within the purview of section 161 of the Cr. P.C. Court obliged to carefully examine the prosecution case as well as the defence version [Ref : 2 PCR 17, 7 BLD 1 (AD), 6 BCR 255 (AD), 4 BCR 23].

38 DLR 289—Touhid Alam Vs. The State—Which one of several information about same occurence to be regarded as the F.I.R depends upon the facts and circumstances of each

case. In the facts of the case the police after getting the post mortem report and in view of the vague and indefinite information was fully justified in lodging this suo motu F.I.R.

38 DLR 152—Alhaj Mamtaj Meah Vs. The State—The time limit for conclusion of investigation within 180 days from the date of receipt of the F.I. R is merely directory. Investigation not affected if carried on beyond this time limit. Magistrate dismissed the earlier G.R.Case started on the basis of FIR dated 2. 3. 82 under section 203 Cr. P. C on the ground that investigation was not concluded even upto 4. 3. 84—Dismissal under section 203 being illegal a fresh FIR can validly be lodged.

38 DLR 111—Noor Mohammed Vs. The State—An accused cannot be convicted on the basis of FIR. Justice goes by default in the absence of legal evidence for securing conviction. Murder of married woman in husband's house— Extreme paucity of incriminating evidence because of the reluctance of the available witnesses to state real facts with the result that culprits go unpunished. Careless investingation by investigating Officer has been held as the real cause for failure to detect the culprits.

37 DLR 237—Nayan Vs. State—First Information Report is not a substantive piece of evidence—But where there is clear conflict between the version given in the FIR and the story made out in the course of trial. It then becomes imperative to note the conflict between them. We are conscious that a FIR cannot be treated as a substantive piece of evidence, but we cannot help observing that this is a fit and proper case where departure should be made. It has been held in the case of State Vs. Bashirullah (16 DLR 189) that the court is entitled to note the conflict between the first recorded version of the prosecution case and the story that was made out in course of the trial. A Comparison between two such versions of the case is not only permissible but imperative in the context of the circumstances set out in the said reported case. In the case Mafu Vs. The State (31 DLR 16) it has been held that the FIR being the earliest record of a case, has got much importance enabling the court to see what the prosecution case was when

it was started and to check up any subsequent embellishment or any departure from the case as it proceeds through different stages (Ref : 5 BLD 255, 31 DLR 16, 16 DLR 189, 8 BCR 174, 35 DLR 243).

31 DLR 102 (SC)—Aijuddin Matbar Vs. The State—FIR can not contradict other prosecution witnesses tendered in court (Ref : 31 DLR 16).

31 DLR 69 (SC)—Bangladesh Vs. Tan Kheng Hock—Police carries on a statutory duty under sections 154 and 156 in respect of a cognizable offence. Extra-ordinary power under section 561A is to be exercised sparingly and with utmost caution. Interference at the investigation stage is not legal.

28 DLR 192—S. M. Faroque Vs. The State—First information report is not a substantive evidence. It can be used to corroborate or contradict the maker thereof. The evidence of a hostile witness is not necessarily untrue not a witness should be treated as hostile simply because he does not support the prosecution case in all respects. The court may allow such cross-examination of witness by the prosecution. It may be permitted by the court under section 154 of the Evidence Act. Failure of the defence to prove a particular plea does not react in favour of the prosecution case which must stand on its own legs [Ref : 5 DLR 99; 13 DLR 5 (WP); 28 DLR 59].

22 DLR 158 (WP)—Murad Ali Vs. The State—FIR was made within half an hour of the occurrence but it was sketchy and made no mention of motive. Held, the FIR gives an impression on of being genuine and reliable (Ref : 23 DLR 34 WP; 1981 Pak. Cr. LJ 321).

16 DLR 94 (SC)—Siraj Din Vs. Kala—The FIR cannot be used as a substantive evidence but can be used only for the purpose of contradiction. The absence of a witness name from the FIR may lead a court to look askance at his testimony and to entertain the suspicion that he was procured later by the prosecution (Ref : 1980 Pak. Cr. LJ 403).

15 DLR 107 (SC)—Ali Zaman Vs. The State—FIR lodged by the complainant party was followed by one filed by the accused party after one and a half an hour. The latter

information to be treated as not made in the course of investigation, but it is not a substantive evidence.

9 DLR 1 (WP)—Shahbaz Vs. The State—The presence of the witness named in the FIR is only a test for determining whether they were present at the time of occurrence or not (Ref: 4 DLR 435).

8 DLR 69 (FC)—Adalat Vs. The Crown—The prosecutor has the right (with the permission of the court) of contradicting the maker thereof. Such contradiction cannot be used as substantive evidence but can be taken into consideration.

5 DLR 369—Jamshed Ali Vs. The Crown—The conditions as to writing in section 154 Cr. P.C are merely procedural. If there is an "information relating to the commission of the cognizable offence" it falls under section 154 and becomes admissible in evidence as such, even though the police officer may have neglected to record it in accordance with law.

4 DLR 69 (FC)—Rahim Baksh Vs. The Crown—An FIR is not the nature of a formal charge.

14 BLD 33— Haji Md. Jamaluddin Vs. The State—Embellishment of FIR case and consequence—Due to the inconsistencies and embellishment in the FIR case, the prosecution case becomes shaky and doubtful.

12 BLD 196—Khokan Kazi Vs. State—The First Information Report, whether binds the other persons as it only contradicts and corroborates the maker—Whether there is any absolute rule of law or even rule of prudence which may test the dying declaration.

11 BLD 1—Lalu @ Lal Miah Vs. The State—Section 154—First Information Report—Its importance Evidentiary value—Basis of procecution case.

8 BLD 389—Nurjahan Begum Vs. The State—G.D.Entry and Frist Infromation Report— Requirements to quality, an information to be a First Information Report— It has to be an information relating to a cognizable offence, it is to be reduced to writing as nearly as possible in the language of the man without any dictation from outside. it must be signed by the

informant or his thumb impression be put and the Report is required to be entered in the Register—A.G.D. Entry without fulfilling these requirements cannot be said to be a Frist Information Report. There are two G.D. Entries being G.D. Entry Nos. 45 and 46 dated 2. 12. 83 and a Dying Declaration dated 3. 12. 83. These two G.D.Entries admittedly are prior in point of time, the Dying Declaration cannot be used and treated as a First Information Report in place of the G.D. Entries [Ref : 1979 Pak. Cr. LJ 521; 7 BLD 193; 1984 PLD 22 (SC)].

8 BLD 418—Zilu Meah Vs. The State—First Information Report—Question of its admissibility and worth—If there is any information relating to commission of cognizable offence, it becomes admissible in evidence as such even though the police officer may have neglected to record it in accordance with law—Even when an information is given orally but the police officer does not reduce it to writing the police officer is doing what he ought not to do. Any other information by any other person subsequently recorded is not admissible in evidence (Ref : 5 DLR 369).

8 BCR 141 (AD)—Dipok Kumar Sarkar Vs. The State—FIR is not a substantive piece of evidence. It is used as a means for corroborating or contradicting the statement of the informant [Ref : 8 BLD 109 (AD)].

7 BCR 141—Alhaj Mamtaj Meah Vs. The State—There is no provision in the Code of Criminal Procedure empowering a Magistrate to dismiss an F.I.R. So the order of dismissal of the F.I.R. under section 203 Cr. P. C on 4. 3. 84 by the learned Magistrate is illegal and without jurisdiction (Ref : 38 DLR 152).

2 BCR 230—Makram Ali Vs. The State—The prosecution obviouly was anxious to suppress the FIR from the court. It seems probable that the prosecution has made a substantial departure from the FIR story and has introduced a fresh set of witnesses who were not named in the FIR. Case disbelieved.

1 BCR 244—Jhantu Vs. The State—Ingredients of G.D. Entry and FIR-Difference between—(a) A G.D. Entry if earliest

in point of time will be regarded as the FIR but it cannot be regarded as a substantive piece of evidence. A G.D. Entry recorded on the report of a person, neither an inmate of the place of occurrence house nor a witness, cannot be used to contradict the statement of the prosecution witnesses as they would not be bound by it; (b) A FIR is an accusation, an information relating to the commission of cognizable offence reported to the police by any person with the object of putting the police in motion in order to investigate.

4 BLR 426—Sis Mohammad Vs. The State—There is no dispute with the proposition that if the FIR has been prepared at the spot after the police officer had made some preliminary inquiry, then care and caution on the part of courts are called for before the prosecution story is accepted. This however, does not mean that in all cases where the FIR is lodged at a place other than the police station, its genuineness should be doubted. Each case is to be judged on its own merits and circumstances. There is also no dispute about the proposition that if the FIR was recorded after examination of some prosecution witnesses, and the police have taken up investigation and as such it would be inadmissible in evidence [Ref : 18 DLR 112 (WP)].

1 BSCD 105—Shamsher Mondal Vs. The State—Point of non-mention of name of witnesses in the FIR is no importance in the facts and circumstances of the case.

2 PCR 210—The Crown Vs. Faiz Mohammad—Unsigned telegrams and telephone messages are not FIR and if, after the receipt of a telegram or a telephone message, the police proceeded to the spot and take down the information and get it signed, the statement would be the FIR (Ref : 1979 P. Cr. LJ 99).

9 MLR 82-95—The State Vs. Nasiruddin— Discrepancies and contradictions in evidence are distinguished—Minor discrepancies which are natural of human behaviour are not fatal and do not diminish the evidentiary value as in the case of contradictions. Where the court considers it essential for proper decision it may summon and examine any witness at

any stage of the proceedings before pronouncement of judgment. There is nothing wrong in it where the accused is not prejudiced. Evidence of witness who is close relation of the informant and the deceased can be relied upon unless ffound biased with animus of enmity. When the wife is killed in the custody of the hunband, the husband owes liability to explain how his wife died.

4 MLR 287 (HC) —The State Vs. Hasen Ali—F.I.R. not substantive evidence—Departure from F.I.R. case during trial—Extra-judicial confession—F.I.R. though not a substantive piece of evidence it is very important as to understand the prosecution case at the earliest point of time and can be used for contradiction or corroboration with the maker and helps to check subsequent embelishment of the prosecution case.

1 MLR 6 (HC) —Ashraf Ali Munshi Vs. The State—When UD case was started on the initial information and thereafter formal F.I.R. was judged on 2-3-90 upon receipt of post-mortem report on 24-2-90, there was no inordinate delay in lodging F.I.R.

12 BLT 481 (HC) —The State Vs. Ershad Ali Sikder and Ors.—Section 154 and 162—In criminal cases to start with, FIR takes a prominent place. FIR is the first step in almost all cases of Investigation. FIR is only an initiative to move the machinery and to investigate into a cognizable offence on receipt of a particular information. It is only at the investigation stage that all details of fact which is dependent upon the facts and circumstances of a case. There is not law that since one Information is earlier in point of time the latter Report or Information is not a FIR and should be excluded as being hit by section 162 of the Code.

Delay in lodging FIR—Where there was delay in giving information to the police, the evidence for the prosecution has to be carefully scrutinised. After all, delay in making a report to the police is only suspicious circumstance which puts the court on its guard and cannot by itself be held to be a reason for rejecting evidence which is otherwise fully entitled to credit. The first information is the basis of the case, and whether it be

true or false, it at any rate usually represents what was intended by the informant to be the case set up by him at the time. In view of the notorious tendency in this country to improve upon the original statement of facts to strengthen the case as it proceeds and sometimes to add to the persons originally named as the offenders, it is of great importance to know what was said first. The omission of the names of some of the accuseds from the first information report raises an element of doubt, however slight, about their identity and when such accused have been acquitted by the Sessions Judge, the High Court Division should not interfere with the order of acquittal (47 Cr. LJ 225). When there is no mention of a certain incident in the first information report given by a person but such incident is given by him in evidence in court, his story in court should be disbelieved (AIR 1942 Pesh 51).

54 DLR (HC) 88—Mohammod Hossain, Advocate Vs. Quamrul Islam Siddique, Secretary, Ministry of Housing and Public Works, Bangladesh Secretariat, Dhaka and others (Spl. Original)—Publication of a report in a newspaper about commission of a cognizable offence against a particular person is not 'information' within the meaning of section 154.

54 DLR (HC) 88—Mohammod Hossain, Advocate Vs. Quamrul Islam Siddique, Secretary, Ministry of Housing and Public Works, Bangladesh Secretariat, Dhaka and others (Spl. Original)—Sections 154 & 157—'Information'—Newspaper Report—The use of the word 'information' in section 157 normally means the information received under section 154 of the Code. In section 157, besides using the word 'information,' the expression 'or otherwise' has also been used. This cannot empower a police officer to start investigation on the basis of a report published in a newspaper.

54 DLR (HC) 242—Nure Alam and others Vs. State (Cri.)—Sections 154- 161 & 162—First Information Report is an accusation, an information relating to the commission of cognisable offence reported to the Police by any person with the object of putting the Police in motion in order to investigate.

54 DLR (HC) 333—State Vs. Rashid Ahmed & others (Criminal)—The first information report is a matter of special importance when its maker died shortly after he made it. The FIR is clearly admissible in evidence. This may also be treated as a dying declaration in view of the fact that victim himself dictated the ejahar at a time when his condition was really critical

54 DLR (HC) 258—Kalandiar Kabir Vs. Bangladesh and others (Spl. Original)—The provisions of this section shall also apply when a police officer receives any credible information that a person may be concerned in any cognizable offence or has a reasonable suspicion that a man might have committed an act in any place out of Bangladesh which if committed in Bangladesh would have been punishable as an offence.

54 DLR 269 (HC) —Yasmin Sultana Vs. Bangladesh through Secretary, Ministry of Home Affairs and others (Spl. Original)—Sections 154, 156 & 157— An officer-in-charge of a police station is legally bound to reduce an information of cognizable offence into a first information report and to start investigation into the case.

53 DLR (AD) 102—Abdul Khaleque Vs. State (Criminal)—The filing of the first information report by the victim's father that she died after taking poison was no bar to file a second first information report if subsequently it transpires that the death was homicidal in nature.

53 DLR (AD) 115—Ansar (Md) Chan Mia Vs. State (Cri.)—Sections 154 & 161—The written information that was handed over by PW 1 to the SI (PW 12) of the Sonargaon PS and Investigating Officer at 19-45 hours of 4th March, 1987 and on receipt whereof PW 12 started Sonargaon PS Case No. 2 dated 4th March, 1987, is in the eye of law not a FIR but a statement in writing by PW 1, who heard from PW 2 about the incident, to the investigating officer, subsequent to commencement of the investigation and, as such, the same is a statement under section 16 of the Cr.P.C (8 DLR (AD) 311).

51 DLR 317—Khorshed (Md) alias Khorshed Vs. The State—When the first information report is lodged within

minimum possible time, such first information report story should not be disbelieved only because of any somersault on the part of the informant.

We have already found that for saving his full brother, the informant suppressed the truth at the time of deposing in the court and, as such, we are of the view that in this case before us conviction may be given on the basis of the statement made in the first information report and on the basis of the evidence of the witnesses who corroborated the first information report story.

49 DLR 192—Seraj Miah Vs. The State—The first information report is not a substantive piece of evidence and can be used only for the purpose of corroborating or contradicting the matter thereof, but its value lies in being the earliest version of the prosecution story. (Ref : 17 BLD (HCD) 395).

48 DLR 305—The State Vs. Tajul Islam—The first information report is not a substantive piece of evidence but it can be used to corroborate the informant or to contradict him. It cannot be used to contradict the evidence of any witness other than the informant. The court is, of course, entitled to note the conflict between the first recorded version of the prosecution case and the case made out in the course of the trial.

39 DLR 166 (AD)—The State Vs. Fazal & Others—Delay in lodging of F.I.R. The delay is to be understood in the light of the plausibility of the explanation must depend for consideration on all the facts and circumstances of a given case-here it is the fear of the accused assassins.

17 DLR 420 (SC)—Muhammad Saleh Vs. State—Delay in lodging FIR in a murder case by the culprit himself confessing the crime—understandable.

21 BLD 103 (AD) —Minhaz & anr. Vs. The State—Delay lodging the FIR-When not fatal—

The FIR was lodged on 17.9.1993 though the occurrence took place on 12.9.1993. After the occurrence a G.D. entry was made with the Police Station on 9.9.1993 and on the order of the Deputy Commissioner, the deadbody of the deceased was

exhumed on 12.9.1993. The postmortem examination report indicated that the deceased died due to injuries., which were antemortem and homicidal in nature, following which the FIR was lodged. In such a situation, no exception can be taken to the delay in question in lodging the FIR.

19 BLD 307 (HC) —Al Amin Vs. The State—First Information Report—It is neither the beginning nor the ending of every case. It is only a complaint to get the law or order in motion. It is only an initiative to move the machinery and to investigate into a cognizable offence. It is only at the investigation stage that all the details can be gathered and filled up. The first information report cannot be treated as the first and the last word of a prosecution case. (Ref. 51 DLR 154).

16 BLD 395 (HC) —Munsurul Hossain Vs. The State—A belated F.I.R. without any satisfactory explanation makes the prosecution case shaky and doubtful.

14 BLD 308—Khandakar Md. Moniruzzman Vs. The State—An FIR may not contain the details of the occurrence in all cases. Omission to mention some material facts in the FIR does not render it false.

7 BLD 93 (AD)—Md. Siddiqur Rahman Vs. The State—Delay in filing the case raises serious doubt about the place, time and manner of the incident much more so about the recognition of the miscreants [Ref : 7 BLD 1 (AD), 38 DLR 311 (AD), 6 BCR 255 (AD), 7 BCR 259].

1980 Pak Cr. LJ 345—Md. Hanif Vs. The State—FIR—Delay not explained satisfactorily. Held, always fatal to prosecution.

9 BLC 570—State Vs. Md Eraj Miah—Secs. 154 and 162—There is not law that since one information, that is GD Entry, is earlier in point of time the latter report or information cannot be at all used to be a F.I.R and should be excluded as being hit by section 162, Cr.P.C when no investigations commenced on the basis of that GD Entry.

8 BLC 513 (HC)— Abdur Rashid Vs. State— A distance 44 of kilometers most of which is kachcha road and with out mentioning the name of the means of communiction used by the investigating officer as well as the informant, who covered

a distance of 44 kilometers of kachcha road recording the F.I.R sitting at the police station has created doubt in the prosecution case.

7 BLC 666 (HC) –Ronjan Costa Vs. State (Criminal)– Sections 154, 161 and 162–Mere disclosure, in an information, of detaining a man with arms do not constitute any cognizable offence unless it contains allegation of carrying and/or possessing arms without document issued under the Arms Act. Sub-Inspector of Kaligonj Police Station had no such information of the commission of cognizable offence when he proceeded to Ulukhola Bazar with a duty to investigate into a cognizable offence. In the circumstances of the case, it is not possible to say that the PW 1 lodged the First Information Report in course of the investigation into the offence and was inadmissible in evidence.

6 BLC 310 (HC) –Anaddi alias Ayenuddin and ors Vs. State (Criminal)–The alleged occurence took place on the night following 4-3-96 but the FIR was lodged on 9-3-96, that is, more than six days after the alleged occurrence without any explanation for such inordinate delay and hence the delay of six days in lodging the first information report without giving sufficient cause renders the prosecution case doubtful.

6 BLC 632 (HC)–Biplob Vs. State (Criminal)–The laying of first information report after a period of 3 month and 7 days and failure on the part of prosecutrix, PW 1, to name the person who wrote first information report creates a doubt as to truthfulness of prosecution version as projected in first information report.

5 BLC 197–Babul Mia and 2 others Vs. State–Although PW 8 claims to be an eye-witness of the occurrence and corroborated PWs 1, 2 and 4 but she was not FIR named witness. Had she been at all present at the time of occurrence and sustained injuries, she would have been named in the FIR by the informant which made her unreliable witness and her evidence is discarded.

5 BLC 451– State Vs. Sarowaruddin–It is contended on behalf of the condemned prisoners that the presence of the

accused in Mirpur Police Station on 10-2-94 at 9-05 in the morning when the PW I went there for lodging the first information report sufficiently indicates that the police already rounded up the appellants at the instance of some vested quarter and implicated the appellants in the case falsely and the first information report is nothing but a connected one. It is held that the first information report is no first information report at all in the eye of law but a concocted one implicating the appellants falsely.

5 BLC 210—State Vs. Jashimuddin @ Jaju Mia—As the informant was sick at the relevant time and there was no other male member in his family and the informant made search for the deceased persons at the house of condemned prisoner and since the elder brother, the condemned prisoner called away his younger sister and nephew, the deceased persons, the informant had no reason to be worried and in such circumstances the delay of 12 days in lodging the First Information Report is quit reasonable and satisfactorily explained which cannot be a ground for disbelieving the prosecution story.

5 BLC 514—Aslam Jahangir Vs. State—As the place of occurrence is three kilometres off from the police station and that the informant and his party went to the place of occurrence in a jeep, the delay of 16 hours in lodging the first information report after the alleged recovery of incriminating articles is no doubt inordinate and in the absence of any explanation for such inordinate delay the first information report cannot be accepted as genuine.

5 BLC 33—State Vs. Romana Begum @ Nomi—Section 154 and 161-It is contended on behalf of the condemned prisoner that the First Information Report cannot be termed as FIR as it was not the earliest version of the prosecution case as the police started investigation before lodging First Information Report. If such contention is accepted then the First Information Report will be treated as statement under section 161. Cr.P.C when there is no contradiction or omission or embellishment in the deposition of PW 1, there is no reason to disbelieve the Ext, 1, the First Information Report.

5 BLC 1—State Vs. Firoj Miah and another—Section 154 and 161–When the First Information Report says that accused Ramzan Nessa brought a dao from the dwelling hut and gave it to the condemned prisoner Firoj but the informant as PW 1 says in Court that the dao was brought by the condemned prisoner Firoj himself and the PWs 3 7 and 9 although deposed in Court that Ramzan Nessa supplied the dao to Firoj but they did not state the same to Investigation Officer while they were examined under section 161. Cr.P.C and in such circumstances their evidence on this point was discarded.

4 BLC 296—State Vs. Md Amir Hossain and others—The informant first gave her story to the officer in charge of Mirpur Police Station on the next morning following the occurrence when he came to the place of occurrence on 10-4-91 at 7-05 AM and it was signed by her. Then she made a complaint to the Magistrate on 14-04-91 yet again she made another application to the Superintendent of Police. The first ejahar to the officer in charge of the police station must be treated as First Information Report. The prosecution case accordingly is to be understood from this FIR which was made to the police at the earliest opportunity.

4 BLC 545—State Vs. Syed Habibur Rahman @ Rocket—When the vital piece of information regarding the condemned prisoner was seen standing and then carrying the victim girl on his shoulder on the bank of the river was not mentioned in the First Information Report lodged by PW 1 13 days after incident which belies the evidence of PW 3 regarding happening of such incident and hence the evidence of PWs 1, 3, 4, 5, 8, 9 and 15 cannot be relied on and hence the prosecution has failed to prove the charge against the condemned prisoner beyond reasonable doubt and as such he is entitled to get benefit of doubt and is acquitted.

4 BLC 582—State Vs. Hasen Ali—Before lodging the First Information Report the informant talked to PW 8 who also accompanied the informant to the police station but the condemned prisoner having not been named in the First Information Report the deposition of PW 8 in Court stating the

condemned prisoner as assailant of Kashem when in the First Information Report he was only suspected which is a departure from the First Information Report story and as it is embellishment cannot be accepted in this case for awarding death sentence when the evidence on record both oral and documentary create doubt about the prosecution case and hence the condemned prisoner is entitled to get benefit of doubt and accordingly he was acquitted.

6 MLR (AD) 170-172—Abdul Khaleque Vs. The State Code of Criminal Procedure, 1898—Second FIR not barred—

Witness—Partisan need not be discarded always unless there is any animus- There is no warrant in law that the partisan witness should always be discarded. Unless there is any animus tending to false implication, the evidence of partisan witness if found consistent and reliable can well form the basis of conviction.

When during investigation the truth of the prosecution case transpired otherwise than initially informed, there is no bar in law to lodge a fresh or second FIR.

6 MLR (AD) 240-241—Golam Azam (Md.) Vs. The State—Section 154 and 161—Delay is loding F.I.R. and delay in examining witness by the I.O.-legal consequence-

In a murder case when satisfactorily explained the delay in lodging the F.I.R. is not fatal. Similarly when the eye witnesses consistently supported the prosecution case, delay in examination of some witnesses by the Investigating officer does not render any ground to discard their evidence.

6 MLR (AD) 279-284—Ansar Md. Chan Miah Vs. The State—Section 154 and 161—FIR and statement before police—The G.D. Entry pursuant to which Police took up investigation of the case shall be deemed to be the F.I.R within the meaning of section 154 Cr.P.C Subsequent F.I.R. lodged after the commencement of the investigation is statement before police recorded under section 161 Cr.P.C. In view of absence of premeditation for committing the murder, the sentence of death is altered into one for imprisonment for life.

155. Information in non-cognizable cases.—(1) When information is given to an officer-in-charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

(2) **Investigation into non-cognizable cases.** No Police-officer shall investingate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or send the same for trial.

(3) Any police- officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer-in-charge of a police station may exercise in a cognizable case.

Scope and application—This section applies where the information relates solely to a non-cognizable offence. Under this section a police-officer cannot investigate a non-cognizable case and cannot submit a report with reference to it, without the order of a competent Magistrate. The Magistrate ordering investigation under this section must be one who has both territorial jurisdiction and a power to try the case.

53 DLR 402—Abul Hossain (Md) and others Vs. State (Criminal)—Section 155(2), 241A—The matter should be sent back to the Magistrate for hearing specifically on the point whether the investigation can be proceeded and police report can be submitted under section 509 Penal Code without the permission of the Magistrate.

48 DLR 216—Nasiruddin Kazi Vs. Aleya Khatoon alias Fulu—There is no legal bar on the Part of the police officer receiving an information about a non-cognizable offence in recording the same in the G. D. and Obtaining permission from a competent Magistrate to investigate into the case.

46 DLR 140—Golam Moula Master Vs. The State—Noncognizable offence—Mere irregularity like investigation by an officer not authorised to investigate a non-cognizable offence does not affect the legality of a proceeding of a court below. This provision of law will also apply to the mandatory

provisions of the Criminal Procedure Code including section 155 (Ref : 25 DLR 456; 37 DLR 223).

41 DLR 306—Aroj Ali Sardar Vs. The State—A police officer is not to investigate into a non-cognizable case under section155 Cr. P.C without the order of a Magistrate of the First or Second class. Under the law when the police received report of non-cognizable offence he is bound to refer the informant to the Magistrate for initiating the process of investigation.

35 DLR 200—Abul Hossain Sikder Advocate Vs. The State—Police investigation in non-cognizable cases without orders from competent Magistrate held illegal. Against the provision of law the police in the case of a non- cognizable offence took up investigation and finally submitted a charge-sheet against the accused. Magistrate unaware of the provision of law took cognizance of the case and issued summons against the accused —Whole procedure was illegal and quashed and accused discharged (Ref : 35 DLR 76, 15 DLR 33 WP, 16 DLR 528).

29 DLR 259 (SC)—Abdur Rahman Vs. The State—Section 155 of the Code provides that no police officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial (Ref : 15 DLR 33 WP).

21 DLR 99—The State Vs. Sirajul Islam—Investigation of an offence by police under section 120 of the Railways Act without Magistrate's prior order and trial on the basis of police report is illegal under section 155 (1).

20 BLD (HC) 26—The State Vs. Syed Habibur Rahman @ Rocket—The very purpose of recording a first information report is to indicate what was the manner in which the occurrence was related when the case was first started and also to show what were the facts given out immediately after the occurrence and reported to the police at the earliest available opportunity. The Court is entitled to note the conflict between the first recorded version of the prosecution case and the story that is made out in course of the trial. A comparison

between two such versions of the case is not only permissible, but imperative in the context of the circumstances. [Ref. 8 BLT (HCD) 119].

20 BLD (HC) 26—The State Vs. Syed Habibur Rahman @ Rocket—The vital facts have not been mentioned in the first information report although the FIR was lodged after a lapse of 13 days without any explanation which belies the evidence of the PWs and hence the condemned prisoner is entitled to get benefit of doubt.

20 BLD (HC) 426—Aslam Jahangir Vs. The State—From the FIR itself as well as from the deposition of the information that the FIR was lodged long after 16 hours from the time of alleged recovery of the incriminating articles, though it has been proved that the place of occurrence is three kilometres off from the police station and that the informant and his party went to the place of occurrence in a jeep, so, the delay of 15 hours in lodging the FIR is no, doubt, inordinate and in absence of any explanation for such inordinate delay, it is very difficult to accept the genuineness of the FIR in question.

17 BLD (HC) 265—Moanotosh Dewan Vs. The State—For non-compliance of the mandatory provision of section 155(2) of the Code the petitioner succeeds in making out a case for quashing the proceeding under section 561A of the Code.

5 BLD 278 (AD)—Kalipada Shaha Vs. The State—Offence under the Drug Ordinance—Forum for investigation and trial-The proceeding before the Magistrate was without jurisdiction in as much as special procedure has been provided for investigation of the offence by designated class of officer and a special court has been set up for the purpose—The case can only be tried by a Drug Court situated at Dhaka and not by the Thana Magistrate—The case is accordingly transferred to the Drug Court at Dhaka for trial.

5 MLR (HC) 282—Aslam Jahangir Vs. The State—Delay in lodging F.I.R.—Adverse presumption—The inordinate delay in lodging F.I.R. when not explained, local seizure list witnesses not supporting the prosecution case create doubt about the prosecution case and as such the conviction and sentence are setaside.

5 MLR (HC) 66—The State Vs. Firoj Mia and another—Legal value of section 374—Confirmation of death sentence— The well settled principle of law is that FIR is not a substantive peice of evidence and cannot by itself form the basis of any conviction. It can be used for the purpose of corroboration and contradiction of the maker and also for checking subsequent embellishment of the prosecution case. When there is material contradiction between the recitals of the FIR and evidence of eye witnesses as to the participation of an accused, that creates doubt on the benefit of which such an accused facing quadruple murder charge is entitled to acquittal.

5 MLR (AD) 334—Mohmudul Islam alias Ratan Vs. The State—Delay of 7 hours in lodging F.I.R. in a double murder case not fatal—Belated disclosure of the names of assailants when satisfactorily explained—Disposal of Criminal appeal in half hearted manner-deprecated—

The purpose of seizure of alamats is for determination of the place of occurrence and the manner of occurrence. Non-seizure of blood stained cloth of a witness is not fatal.

When the circumstances are satisfactorily explained 7 hours delay in lodging F.I.R. in a double murder case is held not fatal.

When question of security is involved, belated disclosure of the names of the assailants in a double murder case is held to be valid disclosure.

The appellate court must not dispose of criminal appeal in perfunctory manner which is highly deprecated because such a practice will cast adverse reflection on the administration of criminal justice by the subordinate judiciary.

1 MLR (HC) 94—Nasir Uddin Kazi Vs. Aleya Khatoon—Investigation into non-cognizable offence must be made by police only after obtaining permission from competent Magistrate. Law does not put any bar that permission for investigation must invariably be sought by the complainant only. There is no bar on the part of the police to seek permission from the Magistrate concerned to investigate into non-cognizable offence upon receipt of information.

5 BLT (HC) 101—The purpose of examining the accused is to enable him to explain any circumstances appearing in the evidence against him. Confessional statement of an accused is an evidence against that accused, accused's attention having not drawn to the confessional statement. So, it must be out of consideration.

156. Investigation into cognizable case.—(1) Any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

Scope and application—Under this section the police have a statutory right to investigate an alleged cognizable offence without requiring any authority from judicial officers, and neither the Magistrate nor even the High Court Division can interfere with those statutory rights by an exercise of the inherent jurisdiction of the court (AIR 1945 PC 18). When a complaint is filed before a Magistrate he may either proceed under Chapter XVI or he may simply direct an investigation by the police under sub-section (3) of this section (PLD 1960 Dhaka 631). Sub section (3) enables a Magistrate to order investigation of an offence of which he may have taken cognizance under section 190. He may do so even before the examination of the complainant and send the complaint to the police for registering a case.

31 DLR 69 (SC)—Bangladesh Vs. Tan Kheng Hock—Police carries on a statutory duty under sections 154 and 156 in respect of a cognizable offence. Police in the matter of investigation enjoys wide powers to complete the same and the

High Court cannot interfere at the investigation stage. Submission of charge-sheet cannot be treated as a finality of investigation, until cognizance of the case is taken. Interference at the investigation stage under section 156 is not legal [Ref : 23 DLR 34 (WP); 1 PLD 87; 1 BSCD 122].

29 DLR 259 (SC)—Abdur Rahman Vs. The State—Section 156 (1) Cr. P.C empowers a police-officer to investigative without the order of a Magistrate any cognizable case although sub section (3) provides that any Magistrate empowered under section 190 of the Code may order such an investigation.

27 DLR 342—The State Vs. Abul Kashem—Under section 156 (3) Magistrate may without taking cognizance of an offence send the case for investigation to police.

27 DLR 111—Khorshed Alam Vs. The State—The Magistrate may direct further investigation on specified points under the powers conferred upon him under section 156 (3) of the Code.

12 DLR 489—Azizur Rahman Vs. The State—A Magistrate is not bound to take cognizance of every complaint made and if he desires police investigation, he must straight way refer the case to police under section 156 (3).

8 PLD 87 (Lah)—Irregularity in an investigation does not affect the jurisdiction of the trial court. Proceeding of Magistrate during raid in respect of taking illegal gratification is not investigation (Ref : 7 PLD 667).

1979 Pak. Cr. LJ (Note 155)— Faiz Mohammad Vs. The State— Receipt and recording of FIR is not a condition precedent to criminal investigation. Police officer can investigate case when he has reason to believe a cognizable offence having been committed [Ref : AIR 1970 (SC) 786].

3 BLT (HC) 143—Sukhuil Kumar Sarker Vs. Kazwazed Ali Sabed & Ors—The informent-petitioner filed and ejahar on 27.3. 85----Police after Completing investigation Submitted Charge sheet on 25. 7. 85 against the three accused opposite parties and there on 6.11.85 the accused-opposite parties filed an application before the learned Magistrate for releasing them

from charge and for holding a further investigation alleging that one Ahsan Ali made the Extra judicial statement on 3.11.85 but that the learned Magistrate did not consider that application and sent the case to the Court of Sessions Judge for trial--- the accused opposite Parties did not move their previous Petition for further investigation nor did they file any fresh petition for further investigation on 24.6.86 they filed an application before the learned Sessions Judge Praying for holding further investigation and on that application the learned Sessions Judge directing the Police for holding further investigation of the Case---application for further investigation is a misconceived one not falling within the perview of Section 156(3) Cr. P. C No. provision of law for Cancelling the charge sheet once filed against some accused persons and accepted by the Magistrate--- learned Sessions Judge has acted illegally and without jurisdiction in directing for holding further investigation.

5 BLC 672—State Vs. Md. Joynal Abedin and others—Section 156(3), 173(3B) and 436–The magistrate or the concerned Judge may direct for further investigation on the application of the informant or the complainant as envisaged under section 156 (3) or under section 436 of the Code after considering police report to avoid inflicting of unnecessary harassment on the innocent persons and also to help the prosecution to book the real culprits and uphold the cause of justice otherwise it is very often seen that after a prolonged trial, the offenders are acquitted because of insufficiency of evidence or on the ground of benefit of doubt.

157. Procedure where cognizable offence suspected.— If, from information received or otherwise an officer-in-charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Government may, by general or special order, prescribe in this behalf to proceed to the spot, to investigate

the facts and circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offender :

Provided as follows :—

(a) **Where local investigation dispensed with.** When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer-in-charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot :

(b) **Where police-officer-in-charge sees no sufficient ground for investigation.** If it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shàll not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer-in-charge of the police station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b), such officer shall also forth with notify to the informant, if any, in such manner as may be prescribed by the Government, the fact that he will not investigate the case or cause it to be investigated.

Scope and application—This section is mandatory and the sending of the occurrence report is an essential preliminary to an investigations. Though ordinary investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation. Under this section an officer-in-charge of a police station can start investigation either on information or otherwise (PLD 1979 Kar. 513). The police has a statutory duty to investigate a cognizable case under section 156 and a compentent police officer is entitled to carry the investigation to its conclusion in accordance with the provisions of the Code. The word 'Report' has been defined in the Code.

42 DLR 186 (AD)— Babul @ Abdul Majid Khan Vs. The State—First Information Report—FIR cannot be substituted for

evidence given on oath and when there is no other evidence the facts mentioned in the information could not be relied upon as proof of the offence alleged.

29 DLR 256 (SC)—Abdur Rahman Vs. The State—Section 157 of the Code lays down the procedure to be adopted in matter of investigation.

5 BLD 341—Sabitri Rani Dey Vs. The State—The investigating officer made an irregular petition before the Sessions Judge who also irregularly extended the period of investigation. No quashing for expiry of time of investigation.

158. Reports under section 157 how submitted.—(1) Every report sent to a Magistrate under section 157 shall, if the Government so directs, be submitted through such superior officer of police as the Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer-in-charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Power to hold investigation of preliminary inquiry.—Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case manner provided in this Code.

Scope and application—The inquiry which a Magistrate is compentent to hold under this section is a preliminary inquiry. Therefore where a report of the commission of an offence has been made by the police after full inquiry into the truth of the information given to them as the commission of the offence, the Magistrate has no jurisdiction to make nay further inquiry into the same offence.

8 PLD 448 (Lah)—Inquiry by Magistrate simultaneously with police investigation is not unwarranted.

160. Police-officer's power to require attendance of witnesses.—Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance

before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Scope and application—An officer-in-charge of a police-station may require the attendance of persons whose evidence is necessary, and the persons summoned are bound to obey the order but in no case can the police compel a witness by force to attend before him, if a person fails to attend before a police officer making an investigation under this Chapter, he is liable to punishment under section 174 of the Penal Code.

49 DLR 112—Mohsin Hossain (Md) Vs. Bangladesh.—Since there is no reference as to any investigation or enquiry in the notice issued by the police officer asking the petitioner to produce documents the same has been issued in an unauthorised manner.

161. Examination of witnesses by police.—(1) Any police-officer making an investigation under this Chapter or any police officer not below such rank as the Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police-officer may reduce into writing any statement made to him in the course of an examination under this section and if he does so he shall make a separate record of the statement, of each such persons whose statement he records.

Scope and application—The object of this section is to obtain evidence to be produced at the trial, and the statement under section 161 is restricted to an investigation under this Chapter, The marginal note to the section shows that it refers to " examination of witnesses by the police." The words "any

person" occurring in seciton 161, which must be read in conjunction with section 162, include any person who may subsequently be accused of crime. Depositions of witnesses or confessions taken at a police investigation are not any more the property of the police than the property of the accused. The accused persons have got indefeasible right to get the statements of witnesses recorded under this section as soon as the cognizance is taken by the court. Statement of witnesses taken in the course of police investigation must not be signed. It is not illegal for a police officer to obtain the signature of the witnesses to the statement though he cannot compel them to sign. The statement is not the privileged document of the police. An advocate for the accused can use the statement so take down for the benefit of his client at the time of cross-examination. When an investigating police officer summons anybody for this purpose he must record his evidence and allow him to return to his house. The 1/O has no authority in law to detain such person (PLD 1959 Lah 665).

53 DLR (AD) 1—Judges are competent to take judicial notice of the fact about the present condition of law and order situation in the country and, as such, it is not unlikely that a witness will hesitate to call the Nuth for fear of his life.

52 DLR (HC) 406—The State Vs. Babul Hossain—Because of belated examination of witness by the investigating officer for no plausible reason, possibility of embellishing the prosecution case by the witness can not be ruled out.

52 DLR (HC) 276—Nurul Islam Manzoor Vs. The State—Statement recorded under section 164 of the Code comes within the purview of the word 'document' used in section 173 and section 205C and such statements should be transmitted to the Court of Session along with the case record under section 205C.

52 DLR (HC) 366—Shaheb Ali and others Vs. The State—Consideration of the statements made under section 161 of the Cr.P.C while framing of charge or otherwise is a necessary part of the Courts duty.

50 DLR 508—The State Vs. Hosen Sheikh @ Hochen and others—Due to lapse of time in recording of their statements, witnesses indulge in concoction of the prosecution case, more so when they are inimically disposed to the accused. Moreover, one tainted evidence cannot corroborate another tainted evidence.

In a case where enmity is admitted the evidence of such witnesses are liable to be closely scrutinised and unless there are corroboration by cogent, independent and disinterested witnesses the evidences of such witnesses who are inimically disposed are not accepted as the basis for conviction, particularly in a murder case.

49 DLR 480—Abu Bakker and others Vs. The State—The trial Court illegally referred to and considered the statements of witnesses recorded under section 161 Criminal Procedure Code, which could only be used to contradict or corroborate the witness.

46 DLR 387—Abdus Sobhan Vs. State—Statement made under section 161 Cr. P. C are not substantive evidence. Such statements can only be utilised under section 162 Cr. P.C to contradict the witness in the manner provided by section 145 of the Evidence Act.

45 DLR 163 (AD)—State vs Zahir—The right of cross-examination on the basis of witnesses' previous statements under section 161 Cr. P.C having not been available, prejudice to the defence could not be ruled out. The right given to the accused of getting copies of the statements under section 161 Cr. P.C is a valuable right. Ends of justice requires setting aside the conviction.

44 DLR 217—Shadat Ali Vs. The State—The investigating officer having not been cross-examined on the question of dalay in recording the statement under section 161 Cr. P.C there is no substance in the contention that the delay should have been taken as a factor to question the veracity of the witnesses concerned (Ref : 22 DLR 621).

41 DLR 26—Siddik Ali Vs. The State—Non-seizure of blood stained clothes, pillow, quilt and earth renders the

prosecution story implicating the appellant doubtful. In the absence of examination of the blood stained articles by the chemical examiner, the prosecution has utterly failed to connect the blood in the articles with the human blood to connect it with the murder of the victim. The possibility of the victim's death by some of his enemies elsewhere as suggested by the defence cannot be ruled out.

40 DLR 106 (AD)—The State Vs. Abdur Rashid Piada—The evidence was rejected as 'doubtful' by the appellate court as they did not disclose this story to anybody including the investigating officer until after 20 days of the incident (Ref :8 BLD 100).

40 DLR 443—Moin Ullah Vs. The State—The examination of prosecution witnesses under section 161 Cr. P. C after a considerable lapse of time casts serious doubt on the prosecution story. 1. O allowed the witnesses a considerable long time giving a long rope to the prosecution for concoction and embellishment of the prosecution story. The sheer negligence on the part of the investigating Officer who should have recorded the statements of witnesses earlier, is strongly disapproved by us. Non-seizure of alamats from the place of occurrence and other circumstances not having been established, the prosecution story fails. Unreliable testimony of witnesses P. Ws. 8, 3, 5, 6, 7 casts doubt on the prosecution story (Ref : 14 BLD 33).

35 DLR 303—Ansar Ali Vs. The State—Statements of witnesses to the police under section 161 Cr. P.C are not at all admissible in law. Statement made under section 161 Cr. P.C are not substantive evidence at all. It is illegal for a Magistrate to use as evidence against the accused the statements made by the prosecution witnesses before the police by comparing them with their deposition, and, as a result of that comparison to convict him (Ref : 22 DLR 582).

28 DLR 192—S. M. Farooque Vs. The State—A statement made to the police by a prosecution witness cannot be used to contradict him if he is declared hostile (Ref : 9 DLR 52 WP).

23 DLR 91—Abdul Aziz Vs. The State—When the defence fails to use the previous statement of a witness for

contradicting him under section 161 Cr. P. C the Judge can himself put questions under section 165 of the Evidenc Act in order to bring the discrepancy on record. Failure to bring such previous statement on record for the purpose of contradicting a witness results in the failure to consider materials which from the defence point of view were vital and in consequence, there was miscarriage of justice.

22 DLR 195—Abdul Kuddus Akhanda Vs. The State—It is improper on the part of the prosecution to remove the original statement of the defence witness recorded under section 161 of the Code and replace it with one which is said to be a copy of the original one.

21 DLR 104 (SC)—Md. Ramzan Vs. Nasir Hossain—Omissions in statements before the police or before the court amount to contradictions when they are on vital points.

17 DLR 40 (SC)—Nazir Hossain Vs. Md. Shafi—When a witness is contradicted by a statement recorded by police in the course of investigation the only effect that it can have is to reduce the evidentiary value of his testimony in court and makes the witness unreliable on the point on which he is so contradicted.

12 DLR 42 (SC)—Faiz Ahmed Vs. The State—Failure to supply approver's statement—Accused prejudiced.

11 DLR 17—Sona Meah Vs. The State—Statement to the police recorded under section 161 Cr. P.C cannot be used by the prosecution to coroborate or explain the evidence of the witness in court but the defence can use it for testing his veracity.

9 DLR 92—Mohammad Israfil Molla Vs. The State—Recording of witnesses' statement in boiled form irregular, but unless it causes prejudice to the accused, the trial stands. (Ref: 9 DLR 18 WP; 4 DLR 201).

5 DLR 313—Abdul Gani Musalli Vs. The Crown—Statement of witnesses recorded under section 161 of the Cr. P.C. cannot be withheld from the defence on the plea that they were recorded in a "boiled form" (Ref : 5 DLR 169).

20 BLD (HC) 467—The State Vs. Azizur Rahman alias Habib—Omission of vital fact by the witnesses recorded by the investigating officer that he saw the condemned prisoner and his wife in the night of occurrence of going inside the hut and that they slept inside the hut in the night following the morning of which condemned prisoner's wife was found dead is unreliable.

The witnesses having not stated at the earliest point of time, the said evidence cannot be relied upon in Court.

14 BLD 280—Zafar Vs. The State—Inordinate delay in recording the statement of witnesses by the I.O under section 161 Cr. P.C. renders their evidence shaky (Ref : 6 BLD 34).

13 BLD 372—Kuti Meah Vs. The State—Omission to mention about dying declaration by any witness, whether is serious and glaring one.

7 BLD 73 (AD)—The State Vs. Md. Abdur Rashid—Police diary—Whether it is evidence—Use of the police diary—The Court may use the police diary not as evidence of any date, fact or statement referred to it, but as containing indication of sources and lines of enquiring—It is intended to be used only for the purpose of assisting the court in the appreciation of the evidence and to clear up any doubtful point.

5 BLD 75 (AD)—Azhar Ali khan Vs. The State—Quashing of criminal proceeding—Whether delay in holding the trial for about 7 years would amount to abuse of the process of the court and whether the High Court Division was justified in directing the trial court to conclude the trial in the absence of the charge sheet and statements under section 161 Cr. P. C. In the facts and circumstances of the case, the High Court Division committed no illegality in refusing to quash the proceeding and directing the trial court to conclude the trial on available records within 3 months. The appeal is disposed of on terms that the trial court will conclude the trial within 3 months failing which the proceeding will stand quashed.

5 BLD 202—Siddique Ahmed Vs. The State—The Investigating Officer is not required to record the statement of witnesses in minute-details. It is not expected that the

witnesses will be asked by the I. O to give minor details. Therefore such minor omissions do not materially affect the merit of the prosecution case.

1 BLD 296 (SC)—Govt. Vs. Zahir—Right given to accused of getting copies of statements under section 161 Cr. P.C is a valuable right. Failure to supply such copies causing prejudice to accused vitiates the trial. High Court Division can declare conviction to be without lawful authority when trial is vitiated by irregularities in procedure causing prejudice to the accused [Ref : 1 BCR 117 (SC)].

9 BLC 696—Sultan Barua and ors Vs. State—Since the provisions of section 29(3) of the Nari-O-Shishu (Bishesh Bidhan) Ain, 1995 is a subordinate ligislation to the Constitution, the present case is triable by the Special Tribunal Judge treating the offence under the repealed law, that is, Cruelty to Women (Deterrent Punishment) Ordiance, 1983 with reference to the date of occurrence as contemplated under Article 35(1) of the Constitution.

6 BLC (HC) 310—Anaddi alias Ayenuddin and ors Vs. State (Criminal) —PW 3 has claimed that he was coming after doing his irrigation work in the land and tried to get his presence in the place of occurrence hut just after occurrence but such vital fact was not stated to the investigating-officer under section 161, Cr.P.C and hence he tried to embellish its case for obvious reason.

6 BLC 143—Abdul Aziz Talukder and another Vs. State (Criminal)—The two eye-witnesses one is PW 2 who was examined under section 161, Cr.P.C by the police nearly more than four months after the occurrence and the PW 3 eye-witness though examined by the police one day after the occurrence but there was material omission in his statement made before the police under section 161, Cr.P.C creating doubt as to its acceptability.

6 BLC (HC) 402—State Vs. Monu Meah and others (Criminal)—In the instant case all the prosecution witnesses were examined by the police under section 161 of the Code of Criminal Procedure after 2-4 months of the occurrence and hence their evidence is doubtful.

4 BLC 296—State Vs. Md Amir Hossain and others—The occurrence took place on 9-4-91. When the PW 4 said that he had made statement to Criminal Investigation Department and nobody else but the Criminal Investigation Department, Investigating officer PW18 said that he had examined PW 4 Eklas on 10-6-91 when he told the names of the accused to him but he (PW4) did not state to the first Investigating Officer the names of the accused on 12-5-91 and hence the statement given to the first Investigating Officer cannot be disbelieved. PW 13 said in cross-examination that he had made no statement to daroga. He deposed on the Court for the first time long after 6 years and as such he is a chance witness and his evidence cannot be believed.

4 BLC 43—State Vs. Ali Hossain and others—In the absence of ascertaining the date as to when the investigating officer recorded the statement of the solitary ocular child witness it should, therefore, be construed that such statement was not recorded immediately after the occurrence and as such there was possibility of coaching him by his relations in whose care and custody he was left. Moreso, the trial Court did not make any endeavour to test this child witness as to his intelligence and capacity to understand questions and give rational answers thereto by recording a short proceeding by putting some ordinary and simple questions. Since there was enough scope of this child witness of being tutored by his cousins and other relations, who deposed against his mother, it is unsafe to rely on and act upon his evidence.

4 BLC 559—Babu Mollah and ors Vs. State—PW I has deposed in Court that the accused persons after entering the house demanded money from his bhabi who gave Take 7,000.00 to them and after his brother was taken away by the accused persons she raised hue and cry and on hearing the same the witnesses came, and that the PW 2 has deposed in Court that on the night of occurrence he saw that 8 to 10 persons were coming and on his query and focussing the torch light he had been threatened by those persons, and that the PW 5 has said in court as an eye-witness that her husband was taken away in her presence and the accused persons after

entering the house demanded money from her and on her denial she was told that they had money from the sale proceeds of cattle and on her showing the money the accused persons had taken away the same, and that the PW 3 has stated in court that on hearing hue and cry he went to the house accompanied by others and searched the victim who was found in the paddy field and when he was coming back from the field he met with the informant and all these vital facts were not stated to the Investigating Officer and in view of such omissions the evidence of the above witnesses cannot be accepted as all these omissions amount to contradiction.

4 BLC 559—Babu Mollah and ors Vs. State—The occurrence took place on 14-6-94 but the PW 2 was examined by the Investigating Officer on 23-7-94 where there was a delay of 39 days in examining him by the Investigating Officer, his evidence creates suspicion as to its acceptability.

5 BCR 195 (AD)—The State Vs. Md. Haroon—Leave was granted that the finding of facts has been reversed by the High Court Division without cogent reason and on unsubstantial grounds and this reversal is not in accordance with the well settled principles regarding appreciation of evidence and the benefit of doubt that was given by the High Court was not warranted in as much as no plea was put by the defence specifically which would raise a doubt in-hering the evidence for giving benefit to the accused. Whether the non-recording of the statements of prosecution witnesses by the Investigating Officer vitiated the trial. Whether the reversal is in accordance with the well settled principles regarding appreciation of evidence. Whether the benefit of doubt given by the High Court to the accused was warranted in as much as no plea was put by the defence specifically with would raise a doubt inhering the evidence for giving the benefit of doubt to the accused, On consideration of evidence the acquittal was set aside and the accused was sentenced to transportation for life.

5 BCR 279—Nazir Ahmed Vs. The State—Case diary has not been found inspite of best efforts made by the prosecution. Statements of the witnesses recorded under section 161 Cr. P. C are also not available. The Investigating Officer having been

not examined, no useful purpose will be served by getting the I.O examined by the Court in exercise of its power under section 428 Cr. P.C. Failure of jusice has been occasioned by withholding the present set of eye-witnesses which were cited in the F.I.R by the Informant P.W.I. The prosecution examined P.W. Nos. 2. 8, 5 & 6 as eye-witnesses though they were not at all named as witnesses in F.I.R by the informant P.W.I. The withholding of the material witnesses from the trial coupled with the deprivation of the accused's right of cross-examining the eye- witnesses as required under section 162 Cr. P.C has prejudiced the accused appellants who are as a result, entitled to acquittal of the Charge under section 304/34 of the Penal Code (Ref : 7 BLD 426).

1 MLR (HC) 203—Abdul Mannan @ Kalu Vs. The State—The proof of murder charge under section 302 of the Penal Code must be made beyond all reasonable doubt. The material contradictions or omissions between the statement the witness given in the witness box and that recorded by the investigating Officer during investigation of the case render the prosecution case doubtful resulting in the acquittal of the accused.

5 BLT (HC) 133—Abu Bakker & Ors. Vs. The State—The statements recorded under section 161 Cr.P.C. is not evidence. It can only be used to contradict, corroborate the witnesses and the same cannot be considered for conviction.

162. Statement to police not to be signed; use of such statements in evidence.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the

request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination :

Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to be subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Evidence Act, 1872 or to affect the provisions of section 27 of that Act.

Scope and application—The object of this section is to protect the accused both against over-jealous police-officers and untruthful witnesses. Section 162 was amended so as to arm an accused person with a right to call of the statements, if reduced into writing, whether in extenso or in a compressed form, in direct or indirect narration, so as to enable him to use them under section 145. Evidence Act for cross-examination of the witnesses concerned (AIR 1945 Nag 1). No oral statement made by any person to a police-officer in the course of any investigation under this Chapter and no record of any such oral statement can be used for the purpose of contradicting a defence witness (30 CWN 124). A witness summoned by the court at the suggestion of the defence cannot be contradicted with his statement before the police; in as much as the proviso to this section is applicable to such a case (28 Cr. LJ 828). Statements of witnesses taken in the course of police investigation must not be signed; even if they are signed contrary to the provisions of this section, they do not thereby become statements taken under section 154 and do not

become admissible as first information. A statement recorded by the police under this section can be used for one purpose only and that for contradicting the witness. Section 162 is confined to statement made to a police officer in course of an investigation. By the combined operation of this section and section 27 of the Evidence Act, the admissibility in evidence against a person in a criminal proceeding of a statement made to a police officer leading to the discovery of a fact depends for its determination on the question whether he was in custody at the time of making the statements. It is provable if he was in custody at the time when he made it, otherwise it is not (AIR 1960 SC 1125). It is common knowledge that police-officer do not take down the statements to dictation and this results in a record of what the police-officer wishes the witness to say and not actually of what the witness did state. A telephone conversation between two private persons is not a statement to the police-officer. But a tape-recorded conversation is admissible subject to three conditions : (a) it is relevant to the matter in issue; (b) the voice is identified; and (c) the accuracy is proved by the elimination of the possibility of ensuring of the tape record (AIR 1973 SC 157). A test of stolen articles which is supplied to the investigating police during the course of investigation is a statement in writing made to police-officer within the meaning of this section and is inadmissible in evidence. The statement, express or implied, which a person must have made by way of identifying the accused and the stolen property in the presence of police officer at the thana is hit by this section (AIR 1935 Cal. 311, 48 CWN 356).

Inquest report—It is not evident that the inquest report comes under section 161, but, the defence is entitled to cross-examine the prosecution witness on the basis of the same (37 CWN 732). Statement made in inquest report are inadmissible, as they are hit by section 162 (AIR 1977 SC 1066).

44 DLR 83—Akhtar Hossin Alias Babul Vs. The State—The document exhibited as FIR in the case could not be treated as an FIR for the reason that an information as to the murder was lodged earlier and there was a GD Entry thereon but the same had not been produced.

40 DLR 122—Nurul Islam Vs. The State—Statements made to the police in course of investigation of an offence started on the basis of FIR are not admissible in evidence. Ext. I not being statements made in course of investigation to the police comes within the above provision of law. (Ref : 46 DLR 387).

39 DLR 117 (AD)—State Vs. Lalu Meah—It should be noted that no confession, judicial or extra-judicial, was put in as evidence against the accused in this case but the question that arose there was whether a statement made by the accused before his arrest under section 162 Cr. P. C to a police officer could be used against him in evidence. There was no satisfactory evidence that the deceased was seen last in the company of the accused and that learned trial judge's examination of the injury in Lalu's right hand is not permissible in law. In this case the answer to the question who killed Ashraf Ali is lost, like a needle in a haystock, beyond recovery in a mess of evidence of very suspicious nature. The remedy lies in the improvement of the quality of investigation (Ref : 7 BCR 274 AD).

21 DLR 217 (WP)—Mir Mohammad Vs. The State—Making one part of a continuous statement before and the other part during investigation by police-officer—Former not covered by section 162 and the latter hit by section 162 Cr. P. C.

13 DLR 911—The State Vs. Ain Khan—Lawyer permitted to defend an accused is entitled to have access to the record and be supplied with copies as provided under section 162 (1) Cr.P.C.

13 DLR 646—The State Vs. Nawab Ali—Even though the evidence consisted merely of statements in cross-examination, the defence is entitled to use the statement of the witness taken under section 161 in order to contradict the evidence of the said witness elicited in cross-examination. The requirement of section 162 is that the witness must be called for the prosecution (Ref 1954 PLD 210 Lah).

12 DLR 537—Shahidullah Khan Vs. The State—A dying declaration though made in the course of investigation by police to which cl. (1) section 32 of Evidence Act applies, would not be hit by section 162 Cr. P. C.

10 DLR 459—Anis Mondal Vs. The State—Investigating Officer as a defence witness cannot be cross-examined by the prosecution. No statement made by any person to the police officer in the course of a case can be admitted in evidence except for the limited purpose mentioned in section 162 and that, too, at the instance of the accused. Defence only has the right to cross-examine the investigating officer. Statements to the investigating officer cannot be used to corroborate prosecution witnesses.

10 DLR 193 (SC)—Ali Haider Vs. The State—Investigating officer cannot be asked as to what a witness said to him.

10 DLR 22 (SC)—Md. Bashir Alam Vs. The State—An act of identification by a witness in a test identification parade is merely 'an act of the mind' and not a statement of the kind contemplated by section 162 Cr. P. C and the implied statement in the act of identification and the accompanying words 'that is the man' being merely explanatory of the act. Express or implied statements made by the identifying witnesses at a test identification parade could be admissible only under section 157 of the evidence act and that in that case it would not be substantive evidence but only corroborative of the evidence given by the witnesses at the trial (Ref : 1 DLR 21 SC, 5 PLD 279 Sind).

9 DLR (WP) 52 Lah—Ghulam Haider Vs. The State—Omission, while making a statement, recorded under section 161, cannot be used in favour of the prosecution.

8 DLR 190—The Crown Vs. Darog Ali—Diary not available at the time of cross-examination involves a breach of statutory provision. Question of prejudice has to be decided on the facts of the case. Where the omission causes prejudice, the proper course is to direct re-trial.

8 DLR 124 (SC)—Shahamad Vs. The State—Section 162 is to be interpreted in the narrowest possible sense. The word 'investigation' refers to the specific allegation of the crime already reported and cover statements which are steps in furtherance of the pending investigation and not all statements.

8 DLR 38 (FC)—Md. Ayub Vs. The Crown—Prosecution witnesses' statement in court cannot be corroborated by his statement before police (Ref : 7 DLR 36 WP).

7 DLR 539—Tara Meah Vs. The Crown—The practice of proving omissions of statements (in the police diary) are generally to be discouraged and without it being known as to whether the investigating officer is speaking from his memory or speaking by reference to his diary, it is difficult to say that it is a contradiction of a previous statement and much more so in the case of a statement not recorded in diary.

7 DLR 123 (FC)—Ibrahim Bhak Vs. The Crown—Admission of evidence of pointing out by approver of places visited by accused before commissions of crime—section not contravened.

6 DLR 518—Mir Amir Hossain Vs. The Crown—Identification of article before investigating police officer hit by section 162. Evidence of such identification is of no value.

6 DLR 420—Altaf Mollah Vs. The Crown—The mode of contradicting a previous statement as provided in section 145 and 153 (3) of the Evidence Act has nothing to do with the mode prescribed in section 162 Cr. P. C. The credit of a witness may be impeached by proving his former statement inconsistent with any part of his evidence which is liable to be contradicted.

6 DLR 56 (FC)—Md. Siddiq Vs. The Crown—It is a question of fact in every case whether a statement recorded by a police officer was recorded in the course of an investigation, or formed the basis for the commencement of the investigation. In the latter case even though the police-officer's attention may have been attracted to the matters as one which might fall within his duties, before the statement was recorded, it will not be excluded under the provisions of section 162 Cr. P. C.

5 DLR 369—Jamshed Ali Vs. The Crown—A police-officer while he is investigating the truth or otherwise of an information received, he is certainly carrying on an investigation under Chapter XIV of the Cr. P. C and any statement made by persons examined by him will be hit by section 162 of Cr. P. C (2 DLR 244, 2 PLD 364 Lah).

1 DLR 71—The State Vs. Golam Mostafa—Previous statements recorded under section 161 Cr. P. C cannot be proved by the investigating officer before the witnesses had actually taken their stand in witness box.

7 BLD 93 (AD)—Mohammad Siddiqur Rahman Vs. The State—Admissibility of evidence—How much of the statement made to police is admissible in evidence—Any statement made to a police officer is inadmissible in evidence under section 162 Cr. P. C and any confession made to a police officer is inadmissible under section 25 and 26 of the Evidence Act.

6 BLC (HC) 511—Moslaha Kamal Dayna and another Vs. State (Criminal)—A violation of section 162 of the Code of Criminal Procedure will not invalidate a proceeding for a failure to observe the provisions of this section is only an error curable under section 537 of the Code.

6 BCR 179—Farid Jamader Vs. The State—If a statement has not been made in course of investigation of the offence in respect of which a trial is held section 162 Cr. P. C. has no manner of application. We are unable to persuade ourselves to accept the contention that if any statement made in cross-examination contradicts the statement made in the chief the entire evidence of the witness should be left out of consideration. This broad proposition of law for taking such view has no sanction of law. On a reference to the judgment of the learned Sessions Judge it is found that he took into consideration the Ext. X which is a news item published in the Daily Sangbad relating to the alleged commission of murder by the accused appellants. The court held that the learned Sessions Judge was absolutely wrong in taking Ext. X into consideration.

3 BCR 250—Ansar Ali Vs. State—Statements recorded by police under section 161 Cr. P. C only be utilised under section 162 Cr. P. C to contradict such witnesses in the manner provided by section 145 of the Evidence Act.

2 BCR 292—The State Vs. Paran Chandra Baroi—P.W. 13 Investigating Officer has not given any reason for the long delay in examining P. Ws. 6, 7, 8, 10, 11. In the facts and

circumstances of the evidence of these witnesses does not inspire confidence and I find it difficult to rely on their testimony. In this connection the power given to the Police Officer under section 175 (1) of the Code of Criminal Procedure cannot be overlooked. No reason has been given by the prosecution for the delayed examination of these two witnesses. They were examined by the I. O. after 4 days of the occurrence. The delay in examining them has not been explained. The delay in examining P. Ws. 4 and 5 in the circumstances of the case appears to be unjustified. In the facts and circumstances of the case I am of the opinion that it would not be safe to rely on the testimony of P. Ws. 4 & 5. Considering cases it seems to me that statement in the inquest report of the present case is admissible in evidence and the Court is free to consider it (Ref : AIR 1975 SC 1962).

2 PCR 60—Ayub Vs. The Crown—Customs officers are not police officers and statements made to them are not covered by section 162.

163. No inducement to be offered.—(1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Evidence Act, 1872, section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

Scope and application—The onus of proving the existence of inducement, threat or promise is on the accused and he must prove his allegations. In the absence of such evidence, illegal pressure will not be presumed.

164. Power to record statements and confessions.—(1) Any Metropolitan Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Government may, if he is not a police-officer record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may, be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

'I have explained to (name) that he is not bound to make a confession and that if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B

Magistrate.

Explanation—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Scope and application—The substantive law in respect of confession is contained in sections 24 to 30 of the Evidence Act. Section 164 may be read together with these sections and such reading yield the following results : (a) a confession shall not be made to a police officer ; (b) it must be made in the presence of a Magistrate; (c) a Magistrate shall not record it unless he is, upon inquiry from the person making it, satisfied that it is voluntary; (d) he shall record it in the manner laid down in this section; and (e) only when so recorded becomes

relevant and admissible in evidence. But a Magistrate has his discretion to record or not to record a confession. In case he does it, he is to comply with the following things, namely, (i) it must be recorded and signed in the manner laid down in section 364 Cr. P. C and then forwarded it to the trying Magistrate : (ii) he must give a statutory warning and caution that the accused is not bound to make a confession ; (iii) he should first be satisfied on questioning the accused that it is being made voluntarily : and (iv) he must add a memorandum at the foot of the confession relating to his action. A confession must either admit in terms of the offence, or at any rate substantially all the facts which constitute the offence. A confession must relate to the particular crime with which the accused is charged. A confessional statement not recorded in accordance with the procedure laid down in the section is inadmissible in evidence and cannot be proved orally by the Magistrate or by the production of the memorandum made by him. A statement or confession must be recorded in the course of an investigation and must be before the commencement of the inquiry or trial. Confession should be recorded in open court in day time and necessary warning as given in the Government rules should be given to the accused and after production sufficient time for reflection should be given to him before he is asked to make statement and should assure him that he is absolutely out of police influence. Court can accept inculpatory and reject exculpatory part of such statement of accused recorded under section 164 Cr. P. C. The proposition of law is well founded that the statement of an accused person which is not a confession but contains an admission of certain relevant facts, is admissible under sections 18 to 21 of the Evidence Act, provided it is voluntary. The rigour relating to the recording of confessions would not be applicable to such admissions. A line has always been drawn between confessional statements and admissions made by an accused person. Confession not recorded in manner prescribed by section 164 (3) is, held, inadmissible in evidence and liable to be ruled out. If there be any delay in producing accused before Magistrate for recording confessional statement under section

164, that confession will not be vitiated if the same is proved to have been voluntarily made.

56 DLR 383—Hobi Sheikh and another Vs. State—Statement recorded behind the back of the accused the same cannot be treated as substantive evidence against him. Such statement can be used to corroborate or to contradict a statement made in the court in the manner provided in sections 145 and 157 of the Evidence Act.

55 DLR 273 (HC)—Alam Kabiraj & Ors Vs. State—Due to prayer for police remand with petition for recording statements under section 164 Cr.P.C and non asking of any question to the accused that if they confessed or not they would not be sent to the custody of police there will be no reasonable scope to presume that there will be apprehension and lingering fear in the minds of accused of what might happen to them in the event of their going back to police custody.

46 DLR 77—Abul Hossain Vs. State—The provisions under sections 164 and 364 Cr. P. C are mandatory and required to be strictly followed to make the confession voluntary and true and fit for reliance for convicting the accused on his confession.

45 DLR 142—Nurul Islam Vs. The State—When an accused is under threat of being sent back to the police remand he is likely to make confession out of fear. His statement in such a position should not be considered as voluntary.

45 DLR 260—Bakul Chandra Sarker Vs. The State—If a statement recorded under this section is true and voluntary, the same alone is sufficient for convicting the confessing accused. Retraction of confession is immaterial once it is found to be voluntary and true.

45 DLR 306—State Vs. Nurul Hoque—Retracted confession—A confession can be taken into evidence, though retracted, if found to be true and voluntary. A belated retraction at the end of the trial would be of no value (Ref : 7 BLD 351, 8 BLD 396, 1 BCR 104).

45 DLR 489—Sanwar Hossain Vs. State—The shivering condition in which the accused made confession indicated that he was subjected to threat and torture before he was produced for recording the confession. His conviction though could be based on the retracted confession, even if it was uncorroborated, is illegal when it appears to be neither voluntary nor true.

44 DLR 83—Akhter Hossain Vs. The State—Confession—Its nature and credibility—The recording Magistrate having not made any genuine effect to satisfy himself to find out the real character of the confession, it casts a serious doubt on the voluntariness of the confession which is the basic requirement of law (Ref : 12 BLD 105, 20 DLR 780).

43 DLR 203 (AD)—State Vs. Shafique—Confessional statement—There being no corroboration on any material particular of the confessional statement, it is unsafe to maintain conviction of the respondents under sections 302/34 P. C thereon, though respondent Abid Ali implicated himself in the statement to be an offender.

43 DLR 249—State Vs. Kalu Bepari—The Magistrate while recording the confession did not record any questions and answers. But then he made real endeavour for coming to the conclusion that the statement was voluntary. The omission to record questions and answers cannot be considered as fatal defects when confession was made duly though not recorded duly for want of prescribed form. Facts stated in the confessional statement appear to be consistent with the evidence of PWs. In that view, the confessional statement is true as well.

43 DLR 291—Abdul Hakim Vs. The State—Confession—Non-compliance with provisions for recording confession, effect of—In a case of non-compliance with the provisions of section 164 Cr. P. C on material points, no question of any substantial compliance would arise. Certificate given by the Magistrate as to what has happened, how he warned, gave time for reflection yet how the accused insisted on making the confessional statement ought to be treated as conclusive

evidence of facts therein unless shown to be otherwise (Ref : 43 DLR 389, 10 BLD 430, 3 DLR 505 (WP)).

43 DLR 420—Abul Kashem @ Kashem Vs. The State—Statement made by the victim of an offence when it can have evidentiary value—In the absence of examination of the alleged victim, her statements allegedly made to the police or to the Magistrate cannot be treated as evidence against the accused. As neither the victim girl nor the Magistrate was examined, the statements recorded by the latter is not even a secondary evidence and in that view it is no legal evidence to prove the prosecution case.

43 DLR 512—The State Vs. Md. Ali Kibria—Confessional statement—The Magistrate having admitted that after recording the confessional statement, the condemned prisoner was sent back to the police custody, his confessional statement is to be treated as not voluntarily made.

41 DLR 11—State Vs. Badshah Mollah—Extra judicial confession—if at all made appears to be wholly untrue—no reliable evidence of corroboration of the alleged extra judicial confession and it is not at all safe to rely and act upon such extra-judicial confession. Circumstantial evidence and extra-judicial confession not corroborated by any reliable evidence. No question relating to blood-stained cloth or injury in the hand was put to the condemned prisoner. This circumstance has no basis to base conviction. Mere absconding cannot always be a circumstance to lead to an inference of guilt of the accused. Abscondance was not with any guilty mind. Existence of enmity is not disputed. Accused has been falsely implicated in this case out of grudge and enmity. The appeal is allowed.

41 DLR 62—Md. Azad Shaikh Vs. The State—The recording Magistrate did not make any genuine effort to find out the real character of the confession. Omissions in the paragraphs cast serious doubt upon the voluntary character of confessional statement. Section 164 (3) is a mandatory provision of law. The requirement of adherence to the provisions of section 164 (3) Cr. P. C is not a more matter of form, but of substance that

has to be complied with. In a joint trial of several persons the Court may take into consideration confessional statement of an accused against himself and other accuseds (Ref : 39 DLR 117 (AD), 35 DLR 227, 2 PLD I Bal, 2 PLD 5 BJ)

40 DLR 106 (AD)—The State Vs. Abdur Rashid Piada—Confession—Statement not recorded in the language of the maker but in the language of the Magistrate—Accused admitted nothing. The statement of the accused Joynal to the chairrman is of the same nature and as such is not a confessional statement.

40 DLR 58—The State Vs. Mizanul Islam—All the formalities in recording the confessional statement were observed. The Magistrate recording the confessional statement was satisfied that the confession was voluntary and free from taint. Facts revealed in confession substantially corroborate the prosecution story. The dagger re-covered by the I. O. from the house of the appellant Dablu on his own showing was stained with blood which was found to be of human origin by the chemical examiner. In evaluating the judicial confession made by the appellant Dablu it appears that it is true and voluntary and stands confirmed by other pieces of evidence produced by the prosecution. Recognition of the accused in electric light by the victim Sajeda has been corroborated by the prosecution witnesses recovery, medical evidence & confession.

Motive is though a piece of evidence and may not be a sine qua non for bringing offence home to accused yet it is relevant and important on the question of intention. The existence of motive has a great significance in a criminal trial (Ref : 20 DLR 666, 17 DLR 489 (SC)).

40 DLR 186—Ratan Kha Vs. The State—Any irregularity in recording the confession is curable under section 533 Cr. P. C. No hard and fast rule as to the time to be given to the accused for reflection before confession (Ref : 21 DLR 122, 11 DLR 28 W.P. and 22, 8 BCR 3).

39 DLR 194 (AD)—Nausher Ali Sarder Vs. The State—Prerequisites of a judicial confession—Surrounding circumstances are ordinarily the only material from which the

inference of a confession may be drawn. Confession when proved against confessing accused can be taken into consideration against co-accused in the same offence.

39 DLR 117 (AD)—State Vs. Lalu Meah—Confession—What it means. A confession must either admit in terms of the offence, or at any rate substantially all the facts which constitute the offence. Evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. For guidance in recording a confession or statement under section 164 of the Code of Criminal Procedure that prayer for remand to police custody should not be granted when a prisoner has failed to make any confession (Ref : 7 BCR 274 (AD), 8 BLD 505, PLD 1957 (SC) 555).

38 DLR 188—Abdur Rouf Vs. The State—Condemned prisoner Abdur Rouf was arrested on 12.2.77 and he made confession on 28.2.77 before a Magistrate who made a disclosure of as to how the murders were engineered and how it took place. Accused Abdur Rouf was arrested on 12.2.77. at about 11 P. M. and was taken to Bhahubal Police Station on 13.2.77 at about 4 P. M. It is evident from the report that the learned Magistrate allowed him time till 2-30 P. M of the day on 28.2.77 for reflection. Nothing evident either from that report or from the evidence of P. W. 19 that the accused was tutored or that near about there was any police officer. Moreover from the questions and answers, recorded by the learned Magistrate, specially when the accused answered to the question of P. W. 19 that he on being afraid of Almighty Allah would confess his guilt. It is apparent that the accused confessed his guilt of his own accord.

37 DLR 1—Emran Ali alias Md. Emran Vs. State—The confession or statement under section 164 Cr. P. C as the case may be, will be admitted into evidence without examining the Magistrate in the court. It is only when the Court finds that any of the provisions of section 164 or 364 Cr. P. C have not been complied with by the Magistrate concerned that it shall take evidence of the concerned Magistrate. Statement of a co-accused is not evidence because it is not made on oath and

also not subjected to cross-examination. Confessional statement of co-accused can not be basis of conviction of another accused (Ref : 27 DLR 29 (SC), 10 DLR 155, 13 DLR 333).

21 DLR 182 (SC)—Md. Sarwar Vs. The State—Statement by an accused person in a trap case under Anti-corruption Act to a Magistrate or a police-officer is admissible in evidence and not being one in the course of investigation is not as such hit by section 164 or section 364 Cr. P. C (Ref : 20 DLR 48 (WP)).

20 DLR 526—The State Vs. Jatindra Kumar Sutradhar—Warning has to be given to the accused before recording confession. Time should have to be given to the accused for reflection before confession. The matter as to give times is entirely in the discretion of the Magistrate who must determine what reasonable time in the facts and circumstances of each case he finds it desirable to give for such reflection (Ref : 19 DLR 573).

19 DLR 113 (SC)—Sardar Ali Vs. The State—Voluntary statement before police, in the course of investigation, confessing offence—precaution that should take by police.

13 DLR 58 (WP)—Haji Yar Mohammad Vs. Rahim Dino—If the accused during the period between his arrest and his confession remaining in police custody for a fortnight, that confession is inadmissible.

13 DLR 5—Wazir Vs. The State—After the recording of confession the accused person should be sent to the judicial custody and not to the police custody.

12 DLR 110—Abul Hossain Vs. The State—Confession by an accused if made before the commencement of investigation is admissible in evidence though such confession does not fall within the provisions of section 154 and though the prescribed formalities are not observed.

24 BLD 325 (HC)—Azahar Ali & Ors. Vs. The State—The photostate copies of the alleged confessional statements said to have been made by the accused appellants cannot be treated as a legal piece of evidence as those were neither made by the accused appellants nor certified copies of those

statements were produced before the trial Court nor the recording Magistrate was examined in the trial Court.

23 BLD 255 (HC)—Md Reaul Karim Alias Rezaul Alam Rikshawa Vs. State—Confessional statement of one co accused cannot be used for corroborating the confession of another co-accused, as both are tainted evidence, much more so when they are retracted. The learned Additional Sessional Judge solely relied upon the alleged confessional statements of the co-accused in convicting the accused appellant under section 302/34 of the Penal Code & thereby committed illegality.

23 BLD 621 (HC)—Md Wsim Mia and another Vs. State—Section 164 of the Code makes provision for recording statement of a witness on of an accused. "Confession" clearly retens to the statement of an accused person.

8 BLD 109 (AD)—Dipak Kumar Sarkar Vs. State—Confession—value of—Whether the objection that the Magistrate before recording the confession did not inform the appellant that he would not be remanded to police custody even if he did not make any confession detract from its value—there is no requirement under the law to inform the accused as above of course, if Magistrate has any reason to believe that the accused is apprehensive of the police, he may assure him as above, but that is not to say that if it were not said, the voluntariness of confession would be in doubt.

Extra-judicial confession—When not considered—The High Court Division rightly left out of consideration the extra-judicial confession which was made before the Dafadar as there was some evidence of beating by him.

Information by accused—Admissibility of—The information given by the appellant (accused) that he had concealed his wife in the latrine well while being in custody of the police is admissible as the information was followed by recovery of the deadbody therefrom (Ref : 8 BCR 141 (AD)).

8 BLD 344—Abdul Wahab Vs. State—Criminal Trial—Hostile witness—Credibility of his evidence—It is a settled principle that the evidence of a witness declared hostile can be

taken into consideration and court can act on it provided his testimony is found to be consistent with the fact and received corroboration from other independent source—If contradictory statements made by such witnesses are not explained in a plausible manner, they run the risk of getting their statements completely discredited.

Recording of confession—Magistrate's duty while recording confession—Magistrate can not be casual and act mechanically in the enquiry made from the accused before recording his confession—He should endeavour to place him at case, dispel all or any of lurking fear, inducement and hope from accused's mind to enable him to make of his own volition an absolutely free and voluntary statement according to the best dictates of his own inner conscience (Ref : 39 DLR 117 (AD)).

6 BLD (AD) 1—Md. Khalil Uddin Vs. The State—Whether defence suggestion can be taken as the basis for conviction. In the existing scheme of criminal trials an accused can be convicted either on his pleading guilty to the charge or on his confession under section 164 Cr. P. C or extra-judicial confession if strongly corroborated. Suggestion by lawyer connot be construed as admission of guilt. The accused is not required to prove his innocence. The prosecution must prove his guilt failing which the accused should be acquitted.

5 BLD 9—Zaheda Bewa Vs. The State—Recording of confessional statement-Form of recording the same—Confessional statement of the accused recorded by Magistrate on a plain piece of paper and signed by the Magistrate at the bottom. Usual form for recording confessional statement not used—such confessional statement not admissible in evidence—Defect incurable even by subsequent examination of the recording Magistrate (Ref : 37 DLR 66).

7 BCR 367—Khan Shah Jahan Vs. The State—The Statement under section 164 Cr. P. C made by the appellant (Suruj Meah) being at any admission of his guilt, there is no evidence direct, indirect or circumstantial to connect him with the crime and as a result the conviction of the appellants is without any basis.

5 PLD 495 Lah—'In course of the investigation' means investigation which is in progress and a statement under this section may be recorded not only at the instance of the police but also at the instance of the accused or the aggrieved person or at the request of the witness himself. A statement recorded by an incompetent Magistrate is admissible.

Retracted confession and extra-judicial confession—Confessions are made only to be retracted in the vast majority of cases. As regards admissibility there is no difference between retracted and unretracted confession. Both are equally admissible in law (32 CWN 1004). As regards the matter a retracted confession may be the basis of a legal conviction if believed to be true and voluntary but as a rule of practice and prudence it is not safe to act upon it without independent corroboration (26 CWN 1016). Extra-judicial confession is a week piece of evidence (AIR 1975 (SC) 258). If it is tacking in probability, there is no difficulty in rejecting it. Attempt of the investigating agency to introduce a false story about the removal of ornaments of the deceased and their recovery from the accused would also affect the credibility of the evidence regarding extra-judicial confession (AIR 1974 (SC) 1545). Before the court acts on such a confession, the court will consider (i) the circumstances in which the confession is made; (ii) the manner in which it is made; (iii) the person to whom it is made along with rules of caution—first whether the evidence of confession is reliable and secondly whether it finds corroboration (1972 Cr. LJ 566 (SC)). After recording of confession the accused should be sent to judicial custody and not to police custody (Ref : 13 DLR 5).

42 DLR 117—Hazrat Ali & Abdur Rahman Vs. The State—Confession—Rule of law as opposed to rule of prudence—Whether conviction can be based on confession if voluntary and true—Court to examine the nature of confession. Conviction can be based solely on confession, if found true and voluntary, though retracted subsequently. All the legal formalities have been observed in the case by the Magistrate in recording confession (Ref : 8 BLD 210, 6 BCR 278).

42 DLR 397—Hafizuddin Vs. The State—Confessional Statement—such statement whether retracted or not, if found to be true and voluntary, can form the basis of conviction of the maker. Confessional statements, credibility of—The UNO stated that he recorded the statements marely in his own language. There is nothing to show that he gave the accused warnings before recording— the same, there is nothing to show the time given for reflection, it was not mentioned whether police were present at the time of reording-the Magistrate also did not inform the accused that they would not be sent to police custody after the making of the statements and the Magistrate's statement as to the presence of PW-5 at the time of recording of the statement is contradictory to that of the latter—the confessional statements, in such facts and circumstances, are neither voluntary nor true (Ref : 35 DLR 195, 19 DLR 373).

42 DLR 465—Shahjahan Manik Vs. State—Confession—Question of credibility when part of the occurrence is omitted or suppressed—It cannot be found nor it could be suggested by either the prosecution or the defence why throttling part of the occurrence was omitted or suppressed. Even if it be taken that accused Rina had deliberately suppressed the throttling part of the occurrence in her judicial confession that cannot mean that the confession was not true.

41 DLR 435—State Vs. Manik Bala—Statement recorded under section 164 Cr. P. C cannot be used as a substantive evidence against the accused person except for contradicting or corroborating its maker. Confessional statement subsequently retracted—To base a conviction for murder upon a retracted confession alone is not safe when the proof of factum of murder is dependent upon that confession. A retracted confession cannot be used to base a conviction for murder unless corroborated by credible independent evidence (Ref : 31 DLR 312).

14 BLD 187—Abdul Awal Vs. The State—The unretracted confession and the plea of guilt of the accused at the time of his examination under section 342 Cr. P. C can legally form the sole basis of the conviction.

14 BLD 332—Mosammat Amena Khatun Vs. The State—When a confessional statement has been recorded by a Magistrate after complying with the provisions of section 164 and 364 Cr. P. C. the said confessional statement can be admitted into evidence by the trial Court under section 80 of the Evidence Act even without examining the recording Magistrate. Responsibility of the public prosecutor and the trial Court in a Session Case. The confessional statement of an accused recorded under section 164 Cr. P. C being a matter of serious consideration at the trial of a case involving a murder charge, the learned Public Prosecutor acted in an irresponsible and negligent manner in not utilising the same. The learned Judge was also evidently wrong in hastily rejecting the prosecution's prayer for examining the recording Magistrate. A copy of the judgment was sent to the Bar Council and the Ministry of law for taking appropriate action against those responsible for bunglings in the case (Ref : 1 BCR 385).

13 BLD 236 (AD)—Dr. Ishaq Ali Vs. The State—Confessional statement of one accused even if found to be true and voluntary, whether can be used against a co-accused Held-Even if the confessional statement of one accused is found to be true and voluntary still his confession cannot be used against those who are co-accused in the case as the basis for convicting them when there is no other evidence against them.

13 BLD 311 (AD)—Abul Hossain Vs. The State—Sub-section (3) of section 164 Cr. P. C whether speaks of the manner of recording confession of an accused.

11 BLD 2 (AD)—Abu Taher Chowdhury Vs. State—Section 164—power to record statement and confession—purpose of recording—The statement of a witness is meant for binding him down to the statement and in the case of any glaring inconsistency amounting to perjury, the witness may be prosecuted for giving false evidence. The defence may use it to contradict the witness whereas the prosecution may use it to corroborate him when he gives evidence.

10 BCR 73 (AD)—Nur Jahan Begum Vs. The State—A dying declaration may be recorded by any person who is available and it may be written or it may be verbal; it may also be indicated by signs and gestures, in answer to questions, if the person making it is not in a position to speak. There is no requirement of law that a dying declaration should be recorded by a Magistrate as in the case of the confessional statement of an accused under Section 164 (3) Cr. P. C.

10 BCR 224 (AD)—Mizazul Islam @ Dablu Vs. The State—The entire focus of the judgment was on accused Dablu and the same focus was continued all through on the appellant, confession of the appellant runs counter to the prosecution case. The prosecution story is not consistent with the confessional statements—P.W. 4's statement differs from the confession of the appellant and P. W. 2 changed the version of the case in Court which differs from the FIR story about the number of participants.

7 BCR (AD) 376—Nausher Ali Sardar Vs. The State—Confession not recorded exactly in the prisoner's own words is inadmissible.

1986 PLD 690 (SC)—Sayed Ahmed Hamdani Vs. Mohammad Irfan—Extra-judicial Confession Witnesses themselves were not sure as to why accused confessed guilt before them—Witnesses also admitted that their house was at a distance of one and a quarter miles away from the place where occurrence had taken place. Witnesses could not give explanation as to the discrepancy in time of accused coming to home. Prosecution did not make any attempt to explain discrepancy in timings and no suggestion was made that it was a clerical mistake—Statement under section 164 Cr. P. C could not be used for corroboration but only for contradicting witnesses, Confession made in a crowded bazar where many people were present and even police party in uniform was closely, at short a distance as ten feet, or a few paces—Such extra-judicial confession in immediate presence of Police, held, could not be accepted as voluntary and correct.

20 DLR 526—The State Vs. Jatindra Kumar Sutradhar—Having regard to the nature of the extra-judicial confession,

the mere inability of a witness to give the exact words of the confession does not make it inadmissible in evidence or valueless.

10 DLR 155—The State Vs. Mukhtar Ali—The confession of one co-accused cannot be used for corroborating the confession of another co-accused, as both are tainted evidence, much more so when they are retracted for then the maker himself repudiates the correctness of his earlier statement (Ref : 6 DLR 246).

Approver—Once the approver has accepted a tender of pardon he stands on the same footing as any other witness with the exception that he is liable to forfeit his tender of pardon if he does not comply with the conditions on which the tender was made. He may be examined like other witnesses. Confession made by the approvers are not substantive evidence but may be used only for the purpose of contradicting or corroborating their depositions in court (38 Cr. LJ 852).

33 DLR 320—Ismail Sarker Vs. State—Section 80 of the Evidence Act dispenses with the necessity of formal proof of statement recorded by a competent Magistrate under section 164 Cr. P. C as there is a presumption that such statement was genuinely recorded by the Magistrate. Such statement can only be used for contradicting him under section 145 and 155 of the Evidence Act or for the purpose of corroborating him under section 157 Cr. P.C. An approver's evidence however should be corroborated by other materials and cannot be corroborated by his previous confessional statement recorded under section 164 Cr. P. C. Where a witness does not substantially support his statement made under section 164 Cr. P. C; his evidence must be entirely ignored.

7 DLR 123 (FC)—Ibrahim Bhak Vs. The Crown—Section 24 of the Evidence Act has nothing to do with the confession of an approver recorded under section 164 Cr. P. C before a pardon is tendered to him. The confession is not the statement of a person who is being tried as an accused when the confession is tendered in evidence.

7 DLR 45 (WP)—Juma Vs. The Crown—Statement of approver must satisfy two essentials : (i) that he took part in the crime and (ii) that he is corroborated in materials particulars as regards the participation of each of the accused.

Statement of a witness—The word 'statement' in sub-section (1) has been used in a wider sense and may include statements either of a witness or even of a deceased person. If the statements are recorded behind the back of the accused they could not be used as substantive evidence against him (28 Cr. LJ 274, AIR 1944 Sind 38). These could be used by the accused for the purpose of cross-examining the witnesses and discrediting their evidence at the trial (53 Cr. LJ 79). A statement made under section 164 is admissible in evidence and may be used to corroborate or contradict a statement made in the court in the manner provided by section 145 and 157 of the Evidence Act (AIR 1942 Cal 36). It does not establish that what a witness stated in statement out of court under section 164 Cr. P. C. is true (AIR 1946 PC 38). The only object in recording such statement is to obtain a hold over the witness (32 Cr. LJ 48). A statement of a witness obtained under this section always raises a suspicion that it has not been voluntarily made. The very fact that such statements are recorded under section 164 leads to a presumption on the showing of the prosecution itself that the witnesses are weak. The statement under section 164 is itself not evidence at all against the accused and its only purpose could have been to negative the evidence of the witnesses as given in the court (AIR 1941 Cal 406). It is not necessary to call the Magistrate to prove that the witnesses to be cross-examined are the persons who made statements which were recorded under section 164. The records of such statements are presumed to be genuine under section 80 of the Evidence Act (39 Cr. LJ 864).

9 BLD 187—Asaddar Ali Vs. The State—Statement by witness—Use of-Such statement can in no way be used as substantive piece of evidence of the truth of the fact stated therein—It can only be used in cross-examination of the witness in order to show that the evidence given in court was false, but not to use it to show that the statement recorded

was true—The statement cannot be used for filling up the lacunae or for strengthening the prosecution evidence which is otherwise weak (Ref : 1 BLD 433).

5 BLD 318—Anis Ali Master Vs. The State—Statement made by a witness under section 164 Cr. P. C is not a substantive piece of evidence—Such statement can be used to corroborate the statement of the witness or to contradict him—No conviction can be based on such statement (Ref : 35 DLR 439 and 119, 4 BLD 44).

3 DLR 389 (FC)—Allah Box Vs. Crown—The provisions of section 164 do not in any way affect the inadmissibility of a statement made by a person, if it falls within section 32 of the Evidence Act. The word 'statement' in section 164 (1) includes statements of witnesses or deceased persons and must conform to the provisions of Ch. XXV of the Cr. P. C, if it is intended to be used as statements made during investigation under Ch. XIV of the Code (Ref : 6 DLR 213 (WP)).

Presumption of voluntariness—In case of a confession duly recorded under section 164, the presumption is that the confession was freely made. No court can blindly accept the readymade opinions of the recording Magistrate (32 Cr. LJ 97). Whether a confessional statement was voluntarily made or not is essentially a question of fact. In ascertaining the voluntary nature of the statement, different tests will have to be applied to different sets of facts. The tests are evolved by constant process of judicial thinking. But in the very nature of things, there can be no rigidity about them. What test is best applicable to a given set of facts is for the Judge to decide.

24 DLR 217—The State Vs. Lutfar Fakir—Accused did not complain of any torture, threat or inducement while making the confession. Evidence on record also corroborate the statement. On a reading of the statement one finds a ring of truth in the same. The confession, held, is voluntary and true.

18 DLR 283 (SC)—Faqira Vs. The State—Confessional statement, oral as well as in writing, made by the accused before a Magistrate to whom the accused came voluntarily and who was then put under arrest. Magistrate's evidence to prove accused's confession is not inadmissible under section 164.

12 DLR 110—Abul Hossain Vs. The State—Confession by an accused if made before the commencement of investigation is admissible in evidence though such confession does not fall within the provisions of section 164 and though the prescribed formalities are not observed.

48 DLR 139—Syed Nazakat Hossain alias Ujjal Vs. The State—Statements recorded under section 164 of the Code cannot be treated as substantive evidence of the facts stated therein.

48 DLR 305—The State Vs. Tajul Islam—Retraction of confession—Once a confession is found to be true and voluntary, a belated retraction will be of no help to the confessing accused. The necessity even of some sort of corroboration in such cases is not a requirement of law but it is usually desired as a rule of prudence.

48 DLR 149—The State Vs. Lokman Miah—It is settled principle that one part of the confession cannot be accepted and other part be rejected. It is an error to split up the confessional statement and use that part only which is favourable to prosecution.

48 DLR 517—The State Vs. Raisuddin and others—The defect of non-compliance of section 164 Cr.P.C by the Magistrate while recording a statement cannot be cured by his examination in Court.

48 DLR 588—Moslemuddin and another Vs. The State—Before a confessional statement is relied upon it must be found that it was not only voluntary but also true. Voluntariness and truth together make it worthy of acceptance.

49 DLR 66—Alaluddin alias Alauddin and others Vs. The State—Confessional statement recorded on a plain paper without the narration of questions and answers and without complying with the provisions of section 164 Cr.P.C becomes inadmissible. The accused was kept in police custody for 3 days preceding his confession and the forwarding report mentions injuries on his person. Confession is involuntary.

49 DLR 192—Seraj Miah Vs. The State—Statement of a person recorded under section 164 Cr.P.C is not a substantive piece of evidence of the fact stated therein. Such statements recorded by a Magistrate under section 164 Cr.P.C can only be used for contradicting the maker of it under sections 145 and 155 of the evidence Act or for the purpose of corroborating him under section 157 of the Act.

49 DLR 66—Alaluddin alias Alauddin and others Vs. The State—The Rule of prudence requires that a retracted confession needs corroboration inasmuch as it is open to suspicion. It is unsafe to rely on such confession without corroboration from other sources.

49 DLR 573—Abul Kashem and others Vs. The State—As against the maker himself his confession, whether judicial or extra judicial, whether retracted or not retracted, can validly form the sole basis of his conviction, if the court believes that it was true and voluntary and was not obtained by torture or coercion.

50 DLR 17—The State Vs, abul Hashen—When the accused were kept in police custody for two days, it was the duty of the Magistrate, who recorded their confession, to put questions as to how they were treated in the police station, why they were making confession and that if they made a confession or not they would not be remanded to police custody.

Further, it is found in the record that the Magistrate did not inform the accused persons that he was not a police officer but a Magistrate. On scrutiny we find in the record that magistrate sent the accused persons to the police custody after recording their confessional statements. Therefore, we find the Magistrate had no idea or acumen that it was his legal duty to remove the other, inducement and influence of the police completely from the mind of the accused before recording their confession. So, therefore, we hold that the confessions made by the accused cannot be considered either against the maker or against their co-accused. (Ref. 4 MLR (HC) 369).

51 DLR 57—Abu Jamal and others Vs. The State—Exculpatory statement uncorroborated by any other evidence cannot be the basis of conviction.

51 DLR 244—The State Vs. Tota Mia—There is no hard and fast rule that a retracted confession must be discarded. Retracted confession can form the basis of conviction if it is found true and voluntary.

51 DLR 488—Rafiqul Islam Vs. The State—There is no requirement under the law for the Magistrate to inform the confessing accused that whether he confessed his guilt or not he will not be handed over to the police.

The submission of the learned Advocate that the absence of observing the formalities by the Magistrate regarding recording the confessional statements by saying that whether they confess of not they will not be handed over to the police and in view of not reporting of the fact by the confessing accused themselves that they confessed their guilt due to physical torture the submission of the learned Advocate for the appellants appears to have no bearing in this case.

50 DLR 337—Forhad Hossain and others Vs. The State—To frame a charge or to consider an application of the accused person that the charge brought against him is groundless trial Court is not obliged to consider the statements of any witness recorded under section 164 Cr.P.C.

50 DLR 121—The State Vs. Afazuddin Sikder—Part of the confessional statement found true may be accepted by the court to convict the accused rejecting the other part which is not true. There is no merit in the contention that when one part of the confessional statement is rejected, other part, even if true, cannot be accepted.

Learned Sessions Judge could reject a part of the confessional statement if he found the same contrary to other evidence on record. But he could not reject the same on mere surmise and conjecture. A part of the confessional statement favourable to the accused should be given due weight to it unless Court finds the same not true being contrary to other evidence on record.

51 DLR 57—Abu Jamal & others Vs. The State—Since the attention of the accused was not drawn to his confessional statement when he was examined under section 342, he is oviously prejudiced. Such defect is not curable under section 537 of the Code.

51 DLR 466—Bimal Chandra Das alias Vit and 3 others Vs. The State—It was injudicious to rely upon confession without calling the Magistrate as a witness. The Court is required to see not only that the forms under sections 164 and 264 Cr.P.C were complied with but the substance underneath the law equally adhered to.

51 DLR 43—Syed Ahmed Vs. Abdul Khaleque and others—The recording of the statement on a foolscap paper and mere omission of endorsement cannot be considered as fatal defect. The breach of the provision of law, if any, is a technical one and by that the evidentiary value of the confessional statement cannot be blown away. The defect is very much curable under section 533 of the Code of Criminal Procedure.

49 DLR 336—The State Vs. Raja Abdul Majed and others—It does not appear sufficient questions were put and made understandable to the accused in their own language and proper time for reflection was not given—hence their confessions cannot be deemed to be voluntary or true.

51 DLR 544—Abul Kalam Mollah Vs. The State—Mere absence of LTI on a particular sheet (though the LTI is available on every sheet except one) and on the face of mentioning of relevant questions before recording the confessional statement informing about the consequence of such confessional statement to the confessing accused the confessional statement Exhibit-4 is quite admissible in evidence. (Ref. 4 MLR (HC) 225).

16 BLD (HC) 120—Abul Kashem and others Vs. The State—When the statements of the confessing accused are recorded under Section 164 Cr.P.C. after 3 days of their arrest by the police and the learned Magistrate fails to ascertain as to where the accused persons had been kept during this period and the prosecution offers no explanation for the same, the confessions become doubtful.

16 BLD (HC) 350—Alaluddin alias Alauddin and others Vs. The State—Confession—In view of the fact that the accused was kept in police custody for 3 days preceding the recording of his confession by the Magistrate on a plain piece of paper without properly complying with the provisions of Section 164 Cr.P.C. and the forwarding report by the police mentioned injuries on the person of the accused, such a confession becomes inadmissible in evidence.

16 BLD (HC) 552—Abdul Jabbar Vs. The State—Confession—When a confessing accused was kept in police custody for 2 days immediately preceding his production before the Magistrate for recording his confessional statement such a confession must be taken with utmost caution. (Ref. 1 MLR (HC) 164).

16 BLD (HC) 3—Moslemuddin and another Vs. The State—Confessional statement—Before a confession is accepted and relied upon it must be found not only to be voluntary but also to be true.

17 BLD (HC) 15—Faruk Mahajan and ors. Vs. The State—Prolonged detention in police custody before confession—Prolonged police custody immediately preceding the recording of confession if not otherwise properly explained is sufficient to brand it as involuntary.

17 BLD (HC) 352—Mrs. Jobaida Rashid Vs. The State—Columns 3, 4 and 8 of the prescribed form for recording confessions have not been filled up by the Magistrate. Therefore this piece of paper (confessional statement of the petitioner) is highly suspicious and is therefore unworthy of consideration by any Court.

17 BLD (HC) 613—Nil Ratan Biswas and others Vs. The State—Confession—Before recording the confessional statement the recording Magistrate did not assure the confessing accused that he would not be sent to police custody after recording his confession and, in fact, the accused was sent to police custody instead of judicial custody after recording his confession. The procedure adopted by the learned Magistrate is unacceptable to judicial scrutiny. Such a

confession leaves enough scope for lurking fear in the mind of the confessing accused and as such it cannot be relied upon.

17 BLD (HC) 15—Faruk Mahajan and ors. Vs. The State—Confession of a co-accused is practically nil against other accused persons in the absence of any independent corroborative evidence.

18 BLD (HC) 309—Mahbubur Rahman and others Vs. The State—Statement of witness recorded under section 164 Cr. P. C. is never a substantive evidence and it cannot be used against the accused. The prosecution is, however, entitled to impeach the credit of its own witness as it is permissible under section 155(3) of the Evidence Act. (Ref. 3 MLR (HC) 215).

18 BLD (HC) 655—The State Vs. Ali Hossain—Confessional statement—Assurance or caution are necessary in case of long detention of the accused in the police custody before the confessional statement is recorded. In the absence of such assurance or caution rendered the confessional statement untrue and involuntary and as such it cannot be used against the accused-appellant nor against his co-accused.

19 BLD (HC) 268—Md. Akbar Ali Vs. The State—Formalities as provided under Sections 164 and 364 of the Code have not been complied with in recording the confessional statement of the accused. It appears that the confessing accused made the confessional statement after coming from the police remand which in no way remove the doubt that the said confessional statement is the product of threat, coercion and physical torture, moreover, there is no independent evidence to corroborate the same. The confessional statement appears to be exculpatory having no active part in the occurrence by the confessing accused and as such the same cannot be used against its maker and as such the conviction cannot be sustained on the basis of said confessional statement.

19 BLD (HC) 74—Alauddin Khan Pathan and ors Vs. The State—Confession—The judicial consensus is that the provisions of section 164(3) of the Code must be strictly complied with before a confession is admitted into evidence and it is used against the accused. The recording Magistrate is

under an obligation to make a real and substantial inquiry to ascertain the voluntariness of the confession.

3 BLT (HC) 159—Mehidi Hassan Vs. The State—Confession—statement of a person that he was with the dacoit is not a confession of commiting dacoity.

9 MLR 175-176—A. Kader Vs. The State—Confessional Statement of Coaccused when does not contain incriminating materials can not be ground for refusal of bail of the accused Petitioner—In the absence of any positive evidence corroborating the confessional statement of a coaccused containing no incriminating material against the accused petitioner his prayer for bail cannot be refused.

1 MLR (HC) 62—The State Vs. Yahia alias Thandu—Exculpatory statement unconnected with commission of offence is not a confessional statement and cannot be used againt the maker or against the co-accused tried jointly as such statement is not an evidence within the meaning of section 30 of the Evidence Act.

1 MLR (HC) 81—Haroon Sarker and others Vs. The State—Criminal proceedings includes not only proceedings before the court but also proceedings in which police upon receipt of F.I.R. gets the statements of a witness recorded by Magistrate under section 164.

3 MLR (HC) 57—The State Vs. Afazuddin Sikder—Confessional statement—Confessional statement partly true can be accepted and the other part which is not true can be rejected. The accused may also be convicted on the basis of the true part of the confessional statement if found justified warranting such conviction. The court is required to give due weight to both parts of the confessional statement.

3 MLR (HC) 292—Abu Jamal and two others Vs. The State—Confessional Statement—Unless true, voluntary and inculpatory in nature confessional statement without independent corroboration cannot form the basis of conviction. Exculpatory confessional statement when not put to the accused drawing his attention during his examination under section 342 Cr.P.C causes prejudice vitiating the trial which is not curable under section 537 Cr.P.C.

2 MLR (HC) 60—The State Vs. Md. Shahjahan—A Magistrate while recording confessional statement of an accused under section 164 must comply with the requirements of section 364 of the Code of Criminal Procedure. Non-compliance with such requirements renders the confessional statement inadmissible in evidence. Similarly omission on the part of investigating officer to bring all the material witnesses to the scenario of the trial casts doubt on the prosecution case leading to acquittal of accused in heinous crime of murder.

2 MLR (HC) 373—The State Vs. Haris and others—Confessional statement which is not voluntary and recorded on oath or putting question by the Magistrate being vitiated by illegality can not form the basis of conviction.

3 MLR (AD) 27—The State Vs. Tota Mia and others—Confessional Statement—There is no hard and fast rule that a retracted confessional statement should always be rejected. Confessional statement though retracted if found true and voluntary and is recorded on compliance with the requirements of section 364 Cr. P. C. and is so restified by the recording Magistrate can well be relied upon and safely form the basis of conviction.

3 MLR (AD) 30—The State Vs. Abul Hashem—Circumstances explained—When the Magistrate fails to remove the fear of torture by police while recording confessional statement of the accused produced from police custody and the accused is again sent back to the police custody after recording confessional statement, such confessional statement can neither be used against the maker nor against the co-accused so as to form the basis of conviction because of legal infirmity.

52 DLR (HC) 566—Shah Alam and others Vs. The State—Giving of remand of the confessing accused after recording his confessional statements is against the principle of law and as such the prosecution cannot get any benefit out of the confessional statements.

20 BLD (HC) 422—Md. Mobarak Hossain @ Jewel Vs. The State—Sections 74 and 76—An accused is not entitled to get

copies of the statement under section 164 of the Code before filing Police Report under section 173 of the Code.

To allow an accused an access to documents like the statements under section 164 of the Code, before filing charge-sheet, may prejudice the investigation.

20 BLD (HC) 45—The State Vs. Billal Hossain—Failure to comply with requirement of the form 6, 8 and 9 and giving a certificate in his own hand do not vitiate the confessional statements because at best it will mean violation or non-compliance of some circulars.

On perusal of column 6 it is found that necessary questions were put to the condemned prisoner and he answered them all in the affirmative. As to column 9 it appears that this column is not applicable since the Magistrate found that the statement made by condemned prisoner was voluntary.

20 BLD (HC) 45—The State Vs. Billal Hossain—A confessional statement even if it is partly true or partly false or in other words does not disclose the full picture can be used against the maker and there is no legal bar in upholding the conviction on the basis of the confession.

12 BLT (HC) 306—The State Vs. Entaj Ali Sheikh—Whether a confession Partly exculpatory and partly inculpatory was at all a confession or admission of a Crime. Held: The point was ultimately set at rest by a Full Bench of the Allahabad High Court in the case of Emperor Vs. Balmakund. AIR 1931 Allahabad 1 (F.B.) The Full Bench approved the majority views taken by different Benches observing that those authorities actually established no more then "(a) where there is other evidence a portion of the confession may in the light of that evidence be rejected while acting upon remainder with the other evidence, and (b) where there is no other evidence and the exculpatory element is not inherently incredible, the court can not accept the inculpatory element and reject the exculpatory element." The Full Bench then answered the reference as follows: "where there is no other evidence to show affirmatively that any portion of the exculpatory element in

the confession is false; the court must accept or reject the confession as a whole and can not accept only the inculpatory element while rejecting exculpatory element as inherently incredible." The Supreme Court of India in the case of Nishi Kant Jha Vs. The State of Bihar, AIR 1969 (SC) 422 approved the views of the Allahabad High Court. Our Appellate Division in the case of State Vs. Lalu Mia and another 39 DLR (AD) 117 did not depart from the views taken by the Full Bench in the case of Balmakund and the Supreme Court of India in the case of Nishi Kanata Jha (supra). These principles are being followed over a century and we find no reason to take contrary view. [Para-12].

8 BLT (AD) 23—Md. Nurul Alam Vs. Ali Jan & Ors.—The statement recorded under section-164 of the Code is not substantive evidence but such statement can only be used for contradicting the maker of it under Sections-145 and 155 of the Evidence Act or for the purpose of corroborating him under Section-157 of the Evidence Act.

3 BLT (HC) 159—Mehedi Hasan Vs. The State—Confession---statement of a person that he was with the dacoit is not a confession of committing dacoity.

8 BLT (AD) 87—The State Vs. Md. Farid karim—The High Court Division from consideration of the confessional statement Exhibit-8 found that this accused was produced before the recording officer on 28.10.1986 and the accused reported that he was arrested at 11.00 a. m. on 26.10.1986 and was produced before the recording officer from Court Hazot on 28.10.1986 and from this the High Court Division came to the finding that this condemned prisoner was kept in police custody for two days without any explanation. It appears from the judgment of the High Court Division that they have considered the pros and cons of the case and on consideration of the evidence of the recording officer as well as the confessional statement and also considering several decisions of the Superior Courts of the Sub-continent came to the finding that the confessional statement is not true and voluntary. Learned Deputy Attorney General though strenuously argued that this is a case of murder but the fact

remains that he failed to point out any illegality in the judgment of the High Court Division which may call for our interference at this stage.

8 BLT (HC) 7—The State Vs. Md. Abdul Ali & Ors—From the evidence of P.W. 29 Md. Mosharaf Hossain Magistrate 1st Class who recorded dying declaration accused Abdul Ali at 9-35 at night on the written requisition of Dr. M. A. Mannan at Sarail Upazilla Health Complex Exhibit-24. From a reading of the deposition of P.W. 29 who recorded dying declaration it appears that the injuries of accused Abdul Ali were serious for which he gave a dying declaration on the day before the confessional statement by another Magistrate cum T. N.O. was recorded. It is mysterious that although he was in the Thana Health Complex at 9-35 P.M. at night for recording dying declaration that is no discharge certificate from the hospital and there is nothing on record that he was taken to police station and then to the court on next day and under what condition. This depicts a picture that reflects highhandedness of the investigating agency in this case. In such view of the matter exhibit-10 in our opinion, has been procured from its make accused Abul Ali condemned prisoner, by physical torture, threat and intimidation.

5 MLR (HC) P 133—Jobed Ali (Md) alias Jobed Ali and others Vs. The State—Confessional statement of accused—Conviction-in a case of no evidence—not sustainable—Unless a confessional statement of an accused is inculpatory admitting his guilt in relation to the commission of the offence, such exculpatory confession alone can not form the basis of conviction. In a case involving charge of capital punishment, conviction must be based on cogent, consistent and reliable evidence on record. As in the instant case which is one of no evidence conviction is not sustainable.

5 MLR (HC) 113—Aminur Rahman (Md.) and others Vs. The State—Statement of witness u/s 164 Cr. P.C. is not substantive evidence— Statement of witness recorded under section 164 of the Code of Criminal Procedure, 1898 is never a substantive evidence. Such statement cannot be used for the purpose of corroboration by the prosecution. The defence can

use such statement for the purpose of contradiction by drawing attention to section 145 of the Evidence Act, 1872. Law does not recognise moral conviction. Conviction must be legal based on legal evidence.

8 BLT (HC) 150—Md. Shahidul Islam Vs. The State—Whether the confessional statement is true and voluntary.

On perusal of the confessional statement we find that after recording the confessional statement, the learned Magistrate issued a certificate stating that "I believe that this confession was voluntarily made. It was taken in my presence and was read over to the person making it and admitted by him to be correct.....We have minutely perused the confessional statement, vis-a-vis the retracted confession of the appellant and the evidence of P. W. 12 Md. Abul Hasem, the learned Magistrate. P. W. 12 stated that there is a note in the confessional statement that accused shahidul Islam was arrested by the police on 8. 1. 1992 at 3.00 P. m. and he was produced before him on 9.1.1992 at 2.00 p. m. upon perusal of the record we fine that the accused Shahidul Islam filed an application from jail on 18.3.1992 addressing the Chief Metropolitan Magistrate to the effect that his confessional statement was procured on torture and that he wanted to retract the confessional statement. The learned Magistrate upon receipt of the said application recorded an order stating that the records of the case has already transmitted to the learned Sessions Judge for trial. From the above facts it appear to us that the application for retracting confession was made at a belated stage after more than two months of making confession. If the confession was obtained on oppression, there was no reason on the part of the accused to take such a long time for retraction. The injuries as noticed by P. W. 1 Mulla Nurul Islam on the persons of the appellant were admittedly simple injuries which might be caused by friendly hands. In the premises, we are of the opinion that the confessional statement is true and voluntary.

5 MLR (HC) 309—Hiron Mia and others Vs. The State—Statement and confessional Statement—Evidentiary value—Statement of a witness recorded u/s 164 Cr.P.C. is not

substantive evidence and as such cannot form basis of any conviction. Confessional Statement of one accused cannot be used against the other co-accused. Confessional statement recorded in plain paper after complying with the requirements of law is admissible and can form the basis of conviction.

7 BLT (AD) 24—Khalil Miah Vs. The State—The confession was specifically brought the notice of the condemned prisoner with examining him under section-342 of the Code of Criminal Procedure, But he did not complain anything regarding the nature his confession—Confession to be true are voluntary.

7 BLT (HC) 317—Md. Akbor Ali & Ors Vs. The State—Confession—Doubted—The Magistrate P. W. 13 who recorded the confessional statement of the confessing accuse Akhor Ali has failed to satisfy us as to its truth and voluntariness since he failed to ask the confessing accused as to whether he was tortured during custody or that he gave any understanding to the confessing accused that whether he confess or not, will not be handed over to police custody—Moreover, it appears that the confessing accused made the confessional statement after coming from remand which in no way remove to doubt that it is (Confessional Statement Ext. 7) the product of threat, coercion and physical torture.

9 DLR 511—Asgar Vs. The State—The Judge to decide the question of confession's admissibility in law and consider the question of its voluntariness merely for that purpose (Ref : 7 DLR 45 (WP)).

9 DLR 46—The Crown Vs. Labu Magh—In order to ensure the voluntariness of a confession, the questioning of the accused before he makes the confession forms an essential factor. The Magistrate must question the accused with a view to discovering whether the prisoner confesses voluntarily, and this questioning must be in pursuance of a real endavour to find out the object of it, the requirement not being satisfied by putting a few formal questions.

7 DLR 633—Mohar Ali Vs. The Crown—A confession, which may be true but not voluntary, is not admissible in evidence at all.

9 MLR 123-133—Rahima Khatun and another Vs. The State—First Information Report (FIR)-Its evidentary value when not supported by its maker—First Information Report though not a substantive evidence is important to understand the prosecution story at the earliest point of time. It looses its importance when the maker does not support the FIR story. Prosecution has to prove the charge against the accused by legal and consistent evidence. Evidences which are inconsistent and do not inspire confidence cannot form the basis of conviction.

6 MLR (HC) 205-213—Shahjahan (Md.) Vs. The State—Confessional statement of accused-Effect of retraction- In order to be admissible in evidence forming the bais of conviction, a confessional statement of an accused must be voluntary and true as to the commission of offence. When confessional statement recorded by a Magistrate in accordance with law is found to be voluntary and true, this can be basis of conviction of the confessing accused inspite of the subsequent retraction therefrom. Where a confessional statement is partly inculpatory and partly exculpatory, this need not be discarded alltogether. When the inculpatory part of confession stands supported by other evidence and strong circumstantial evidence, this can well form the basis of conviction against the maker.

6 MLR (HC) 358-371—Abdul Qaium Vs. The State—Evidentiary value of confession when retracted-Confessional statement when found true and voluntary may well form the basis of conviction. Confessional statement partly inculpatory and partly exculpatory may be considered together with other corroborative evidence. Un-explained Police Custody indicates police torture and coercion. Suspicion is no evidence. When there is direct evidence motive of murder is immaterial. In case of retracted confession corroborative evidence will be necessary to sustain conviction.

6 BLC (HC) 402—State Vs. Monu Meah and others (Criminal)—Confessional statements made by condemned prisoner Monu Meah and another accused Anowara appear to

be exculpatory in nature and the trial Court has committed gross error of law causing miscarriage of justice in relying on such exculpatory confessional statements.

6 BLC (HC) 415—Abdul Qaiyum Vs. State (Criminal)—Confessional statement cannot be admitted as a substantive evidence against accused persons. It is unsafe to base a conviction for murder on the retracted confession unless corroborated by credible independent evidence. In the instant case, there is no corroboration of the retracted confessional statement and no circumstantial evidence leading to prove the guilt of the convict-appellant, who was kept 2 days in police custody preceding his production before the Magistrate for recording confessional statement and such a confession must be taken with a grain of salt.

6 BLC (HC) 225—Abdur Rashid and another Vs. State (Criminal)—There is no consistency between the confessional statements or with the evidence of any of the witnesses and hence the confessional statements were neither true nor voluntary and as such, the impugned judgment of conviction and sentence solely relying on such uncorroborated retracted confessional statements is not sustainable in law.

6 BLC (HC) 501—Rezaul Hoque @ Reza and others Vs. State (Criminal)—Confessional statements removed from record-Conviction and sentence upheld-In spite of removal of the confessional statements from the record the trial Court, after considering the evidence on record, rightly found that the accused appellants had done mischievous act in unholy alliance with interested party and the accused-appellants were directly involved in the commission of crime along with other accused persons.

6 BLC (HC) 152—State Vs. Md Abdul Ali and others (Criminal)—Sections 164 and 342—In the statement under section 342 Cr.P.C the condemned prisoner Abdul Ali stated that he was severely beaten and he was in dying condition which finds support from the evidence of PW 29, the First Class Magistrate who recorded dying declaration of Abdul Ali at 9-35 hours at night stating that the injuries of accused

Abdul Ali were serious for which he gave a dying declaration on the day before the confessional statement by another Magistrate-cum-TNO was recorded. It is mysterious that although he was in the Thana Health Complex at 9-35 PM at night for recording dying declaration but there was no discharge certificate from the hospital and there was nothing on record that he was taken to police station and then to the Court on the next day and under what condition. This depicts a picture that reflect high handedness of the investigating agency this case. In such view of the matter confessional statement has been proceeding from the condemned prisoner by torture, threat and intimidation which an exculpatory one.

6 BLC (HC) 119—Mobarak Hossain alia Jewel Vs. State (Criminal)—Section 164, 173 and 548—An accused is not entitled to get a copy of the statement recorded under section 164 of the Code before filing police report under section 173 of the Code to avoid prejudicing the investigation.

7 BLC (HC) 62—Jhumur Ali and others Vs. State (Criminal)—It is well established that confessional statement if found inculpatory in nature and also true and voluntary it can be used against its maker and conviction can solely be based on it without any further corroborative evidence. In the instant case,, the confessional statement made by Amina Khatun was not only inculpatory in nature but also true and voluntary and, as such, learned trial Court very rightly based solely on the confessional statement and correctly convicted and sentenced Amina Khatun by the impugned Judgment and order having duly found her guilty for the offence committed under sections 302/34 of the Penal Code.

7 BLC (HC) 180—Sayed Ali Vs. State (Criminal)—Sections 164 and 364—Thus there appears no evidence on record that who made the confessional statement and in the absence of legal evidence of the Magistrate as well as by any other witnesses and in view of the circumstances that the confessional statement was not admitted into evidence and marked as exhibit, the plea of the prosecution cannot be accepted that the confessional statement can be the sole basis of conviction of the appellant.

7 BLC (HC) 503—State Vs. Shahjahan (Criminal)—Sections 164 and 167—The condemned prisoner had been in police custody for 4 days till he was produced and his inculpatory confessional statement was recorded by the Magistrate on 7-8-1987 violating section 167, Cr.P.C without any order of remand by the Court and as such police custody turned to be an illegai detention. The confessional statement of the condemned prisoner was extracted under coercion and as such the same was not voluntary and such an involuntary confession cannot be relied on in convicting an accused when the same was the only incriminaing material against him.

7 BLC (HC) 616—Asraf Ali @ Sheru Vs. State (Criminal)—An exculpatory confession is no confession in the eye of law, as in such confession the accused does not admit his guilt in terms of the offence complained. In a confession of this nature, the confessing accused conveniently keeps himself away from the crime and poses to be an idle spectator, ostensibly under duress. Learned Sessions Judge was, therefore, manifestly wrong in convicting the accused appellants for murdering Ibrahim, essentially on the basis of totally exculpatory confessions, while acquitting accused Abu Bakkar, who is found to be the real killer of Ibrahim.

7 BLC (HC) 666—Ronjan Costa Vs. State (Criminal)—Where there is an endorsement in terms of clause (3) of section 164 of the Code it may fairly be presumed that the recording Magistrate did his best to satisfy himself that the statement was made voluntary and if he has felt any suspicion obviously he would have brought it on record. A confession may either admit in terms of the offence or at any rate substantially all the narrated facts which constitute the offence. Carrying and possessing the unauthorised arms obviously constitute an offence under the Arms Act. The appellant in his confessional statement clearly stated the fact of carrying and possessing an unauthorised pipe-gun. In view of such facts the confessional statement was not only inculpatory in nature but also voluntary and true.

54 DLR (HC) 80—Belal alias Belal and 2 others Vs. State (Criminal)—The Magistrate having not followed the

requirement of law while recording the alleged confession of the accused and the columns were not properly filled in by him and as such, the genuineness of the confessional statement was rightly challenged.

54 DLR (HC) 80—Belal alias Bellal and 2 others Vs. State (Criminal)—In the attending facts and circumstances of the case when the veracity of the confessional statement is questionable, the same enjoys no presumption of correctness under section 80 of the Evidence Act.

54 DLR (HC) 135—Mobarak Hossain alias Jewel Vs. State (Criminal)—Copies of section 164 Cr.P.C statements cannot be granted to the accused before the filing of the charge sheet.

54 DLR (HC) 135—Mobarak Hossain alias Jewel Vs. State (Criminal)—To allow an accused an access to documents like the statements under section 164 of the Code before filing charge-sheet may prejudice the investigation-Before submission of the police report an accused is not entitled to get copies of the statements recorded under section 164 of the Code.

21 BLD (HC) 449—Abu Sayed Vs. The State—Section 164 and 342—The primary duty of the Court is first to consider and decide whether the confession is proved to be true and voluntary on the evidence on record and in the facts and circumstances of the case. The question of retraction is also to be considered at the same time and in the same way.

21 BLD (HC) 421—The State Vs. Shahidul Alam Chowdhury and two others—Contempt of Court—Since they have tendered unconditional apology throwing themselves at the mercy of the Court inspite of their being guilty of contempt of Court, the court is not inclined to impose punishment on them but warned them not to indulge in such activities in the future.

22 BLD (HC) 300—Md. Kamruzzaman @ Mohd. Kamruzzaman and others V. The State—Sections 164 and 342—Where an accused made a retraction of his statement under section 164 of the Code, the absence of a specific question to him about the statement during his examination

under section 342 of the Code cannot be saide to prejudice his defence.

5 BLC 290—State Vs. Bellal Hosain—Failure to comply with the requirement of the column Nos. 6, 8 and 9 of the form of confessional statement and giving a certificate by the recording Magistrate do not vitiate a confessional statement recorded under section 164 Cr.P.C because at best this will mean a violation or non-compliance of some circulars when necessary questions were put to the confessing accused and he answered in the affirmative and when the Magistrate found the statement made by the condemned prisoner was voluntary.

5 BLC 332—State Vs. Romana Begum @ Nomi—The confessional statement is self inculpatory in nature as the condemned prisoner confessed that by a bati-dao she had given several blows on the persons of Nilufar and Shoma causing severe bleeding injuries as a result of which they succumbed to their injuries and she narrated in details her actions before and after the commission of murder and such confessional statement was not retracted in spite of drawing her attention while examining under section 342, Cr.P.C. It appears from the confessional statement that she got 2 hours time for reflection when there is no requirement of law to give specific time for reflection or to write name of the accused below her LTI when such LTI was proved by the Magistrate, the confessional statement made by the condemned prisoner is voluntary and true and conviction can safely be based on such confessional statement.

4 BLC 386—Bilkis Ara Begum Vs. State—As there are grave discrepancy and inconsistency between the confessional statement and the evidence of PWs 4 and 5 resulting thereby the statement record under section 164, Cr.P.C that does not contain correct statement and such confessional statement cannot be said to be true.

4 BLC 386—Bilkis Ara Begum Vs. State—Retracted confession— When confessional statement was recorded taking the condemned prisoner into prolonged police custody

such confessional statement was neither voluntary nor true and the belated retraction of such confession will not presume her guilt as no legal assistance was available to the condemned prisoner till the appointment of an Advocate by the State.

4 BLC 470—Abdul Kalam Mollah Vs. State—Absence of printed form -Confession is admissible -Mere absence of printed form in recording the confessional statement made by the accused cannot make it inadmissible in evidence when in recording such confessiomal statement on a plain piece of paper the Magistrate observed all the formalities as required under section 164 (3) of the Code of Criminal Procedure.

4 BLC (AD) 223—Khalil Mia Vs. State—Section 164 & 342—After the confession the condemned-prisoner was sent to Munshiganj Sub-jail. The confession was specifically brought to the notice of the condemned prisoner while examining him under section 342 of the Code of Criminal Procedure, but he did not complain anything regarding the nature of his confession. Both the trial Court and the High Court Division therefore rightly believed the confession to be true and voluntary.

24 BCR 193 (HC)—The State Vs. Entaj Ali Sheikh—Where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting exculpatory element as inherently incredible.

165. Search by Police-Officer.—(1) Whenever an officer-in-charge of a police station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police-station of which he is in charge or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing,

so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

Provided that no such officer shall search or cause search to be made, for anything which is in the custody of a bank or banker as defined in the Banker's Books Evidence Act, 1891 (XVIII of 1891), and relates, or might disclose any information which relates, to the bank account of any person except :—

(a) for the purpose of investigating an offence under sections 403, 406, 408 and 409 and sections 421 to 424 both inclusive and sections 465 to 477A (both inclusive) of the Penal Code with the prior permission in writing of a Sessions Judge; and

(b) in other cases, with the prior permission in writing of the High Court Division.

(2) A police-officer proceeding under sub-section (1) shall if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying the place to the searched and, so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 102 and section 103 shall, so far as may be apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate.

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Scope and application—A police-officer is bound to call upon two or more respectable witnesses as provided in section 103 to attend and witness the search (AIR 1926 All 147). It is not the practice of the court of allow inspection of a banker's books under the Banker's Books Evidence Act unless a prima faice case in made out for thinking that there is some matter on which the books of the bank are bound to be relevant (AIR 1938 Bom 33). A Magistrate cannot make a search under this section but can only act under section 105 (13 Cr. LJ 693). Where safeguards provided by section 165 Cr. P. C are not followed search is without jurisdiction and bad in law. But an illegality in the search will not vitiate the conviction of the accused if there is otherwise ample evidence to support it and no prejudice is caused by the illegal search to the accused. There is no provision in Chapter XIV of the Code whereunder the police in this country can put on a lock on a room which is searched (74 CWN 701). Provisions of section 165 (1) are directory and not mandatory.

1 BSCD 122—Mirza Azizur Rahman Vs. The State—Sections 156 and 165 of the Cr. P. C are neither in conflict nor inconsistent with the provisions of section 25 of the Arms Act.

9 DLR 16 (WP)—The Crown Vs. Md. Siddique—illegality of search cannot vitiate the proceedings if the accused is found guilty.

22 BLD (HC) 404—Mrs. Zeenat Mosharraf Vs. Md. Sirajul Huq, District Anti-Corruption officer and others—For the purpose of investigation by a police officer or by an officer of the Bureau of Anti-Corruption there must be an information to the police relating to the commission of a cognizable offence. Investigations in cases against the petitioner having been completed and charge sheets submitted and the cases now being tried or pending, there is no justification for conducting search of the petitioner lockers.

166. When officer-in-charge of police-station may require another to issue search warrant.—(1) An officer-in-charge of a police-station or a police-officer not being below the rank of sub-inspector making an investigaion may require

an officer-in-charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer-in-charge of another police-stations to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer-in-charge of the police-station within the limits of which such place is situated, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in section 165, sub-section (1) and (3).

(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4) :

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

167. Procedure when investigation cannot be completed in twenty-four hours.—(1) whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for

believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation if he is not below the rank of sub inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction;

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorise detention in the custody of the police.

(3) A Magistrate authorishing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate, District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

(5) If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation.

(a) the Magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate ; and

(b) the Court of Session may, if the offence to which the investigation relates is punishable with death imprisonment for life or imprisonment exceedings ten years, release the accused on bail to the satisfaction of such Court;

Provided that if an accused is not released on bail under this sub-section, the Magistrate or, as the case may be, the Court of Session shall record the reasons for it;

Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the accused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-section.

Explanation—The time taken for obtaining sanction shall commence from the day the case, with all necessary documents, is submitted for consideration of the appropriate authority and be deemed to end on the day of the receipt of the sanction order of the authority.

(6), (7) and (7A) omitted.

(8) The provisions of sub-section (5) shall not apply to the investigation of an offence under section 400 or section 401 of the Penal Code, 1860 (Act XLV of 1860).

Scope and application—It is clear by a reading of Section 167 of the Cr. P. C that it does not empower the Magistrate to pass an order dropping the proceedings. It only authorises him to make an order with regard to detention of the accused in such custody as he thinks fit and that too for a term not exceeding fifteen days on the whole. Unless the accused is brought before the Court, no remand order can be passed. It also enjoins that if the said Magistrate has no jurisdiction to try the case, or to send it for trial and if he considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. But, nowhere it authorises the Magistrate to drop the proceedings, when the accused is produced before him for remand. Under sub-section (3) of section 167 of the Code, a Magistrate has wide and unrestricted power to remand an accused to the

custody of the police at any stage before the inquiry or trial. The power of court are not restricted or limited by any provision of law in making orders of remand. The maximum period of detention which a Magistrate can authorise under section 167 is 15 days in all. When the Magistrate considers that further detention is necessary for investigation, he is required to apply his judicial mind to determine whether the circumstances justify detention of the accused in police custody. Police custody being an infringement of liberty should not be ordered as a matter of course. If detention in police custody is ordered, the Magistrate must record his reasons. An accused is entitled to have interviews with legal advisers while in police custody and also to have food and clothing supplied by relatives (32 Cr. LJ 1022). Unless the accused has been arrested, section 167 has no application. Detention under section 167 Cr.P.C is different from the custody under section 344 Cr.P.C. which contains an analogous power of remand about under trial prisoners, when further evidence is likely to be obtained.

Sub-sections (6), (7) and (7A) have been omitted by Act XLII of 1992 dated 1.11.92 and in place of those sub-sections, present sub-section (5) in its entirely has been inserted. The provision is mandatory. The procedural law is of little help if police prosecution is not launched with care and investigation are not conducted promptly and efficiently. It is well known that a potent cause of delay is the indolent methods of the police and inefficient investigation of crimes for which repeated remand orders or adjournments are sought and readily granted. If the accused persons remain in custody for unlimited period their worries and miseries are no know bounds. Undue delay in holding the trial, due to the prosecution's procrastination is a valid ground of granting bail and question of granting bail in such a case when there is long delay as contemplated under section 167 (5) (a) and (b) need be considered with care. Over and above, the Court has the constitutional responsibility to ensure that the fundamental rights of a citizen are protected whether he is within or outside the jail (14 BLD 266). The keeping the

accused in custody means that the sword would remain hanging over the head of a person treated as an accused till the time he goes to his grave.

55 DLR 363 (HC)—Bangladesh Legal Ain and Services Trust (BLAST) and others Vs. Bangladesh and others—While producing a person arrested without warrant before the magisteate, the police officer must state the reasons why the investigation could not be completed within 24 hours and what are the grounds for believing that the information received against him is well founded.[Ref: 23 BLD (HC) 115].

53 DLR (HC) 169—Since some incrimination articles were recovered within 24 hours of the arrest the High Court did not find any warmful effect of the illegal delintion in violation of section 61 & 167 of the code on the confession made by the accused.

46 DLR 238—Saheb Ali Meah Vs. State—In view of the proviso to this section the period spent awaiting sanction of the Government for prosecution of the accused should be added to the statutory period for submission of charge sheet.

45 DLR 593—Aftabur Rahman Vs. State—Order of remand—Its validity—The word forward used in section 167 Cr.P.C means 'act of sending'. Unless the accused is sent to the Magistrate and the Magistrate passing the order of remand without the accused being forwarded to him, the legal requirement is not complied with for the Magistrate to assume jurisdiction to pass the order of remand. The accused must be brought before the Magistrate prior to passing of an order of remand, no matter whether the accused is in police lock-up or judicial custody. Once the remand prayer having been cancelled no fresh order for remand can be passed. The Code enjoins on the police and the Magistrate strict compliance with the provision of section 167 of the Code as aforesaid (Ref : 42 DLR 136. 42 DLR 375, 42 DLR 410, 42 DLR 524).

38 DLR 152—Alhaj Mamtaj Meah Vs. The State—The time limit for conclusion of Investigation within 180 days from the date of receipt of the FIR is merely directory—Investigation not affected if carried on beyond this time limit. Magistrate

dismissed the earlier G.R. Case started on the basis of FIR dated 2.3.82 under section 203 Cr. P. C on the ground that investigation was not concluded even upto 4.3.84. Dismissal under section 203 being illegal a fresh FIR can validly be lodged. In view of the fact that earliest G. R. Case No. 127 of 1982 started on the basis of FIR dated 2.3.82 in respect of this offence was undisputedly illegaly dismissed under section 203 Cr. P.C on 4.3.84 the present G. R. Case No. 14 of 1984 which was started on the basis of a fresh FIR dated 13.4.84 cannot be treated as a revival of the old G. R. Case.

Procedural matters have retrospective effect. Provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible or unless there is some reason or other, why they should not be so have retrospective effect attributed to them.

1 BSCD 155—Solicitor. Government of Bangladesh Vs. A. T. Mridha—The term'Remand' has not been defined in section 167 (2) of the Criminal Procedure Code though it has been used in some other places.

29 DLR 256 (SC)—Abdur Rhman Vs. The State—Production of accused before a Magistrate under section 61 on the courts order therein does not mean taking cognizance. Police submitting final report before completing investigation, an order of discharge thereon is not a judicial order.

20 DLR 264 (WP) —The State Vs. Wazir Kahn—Magistrate, before granting remands, must study Police diaries to ensure as to accusations against accused and evidence secured to justify remand.

16 DLR 558—The State Vs. Ali Ahmed—Detention of accused by the Police beyond twenty-four hours without authority amounts to illegal detention, Court however is to see the effect of such detention on any confession made by the accused and recorded.

48 DLR 148—Niamatullah @ Chand (Md) Vs. The State and others—Law did not provide for automatic stopping of further investigation and release of the accused after expiry of the time limit nor for stopping proceedings by the Sessions Judge or Special Tribunal on such ground.

49 DLR 115 (AD) –AKM Azizul Islam and another Vs. The State–The provisions of section 167 Cr.P.C being a procedural law, there being no express provisions for its prospective operation, shall operate retrospectively.

49 DLR 47–Faruque Mahajan & 4 others Vs. The State–An accused cannot be detained in custody of the police for a longer period than under all the circumstances of the case is reasonable and such period must not, without an order of remand by a Magistrate, exceed 24 hours, exclusive of the time necessary for the journey from the place of arrest to the court of the Magistrate.

In the instant case before us, no incriminating articles, e.g. currency notes, soiled notes or stamps were recovered within the first 24 hours of arrest pursuant to any information given by accused Farook Mahajan, and so it cannot be said with an equal degree of certainty that the unlawful detention of the prisoner without any order of remand beyond 24 hours had no effect on the confession made by him.

49 DLR 204–Amalendu Majumdur Vs. The State–The effect of the amendment is that the accused may be released on bail by the Magistrate or by the Sessions Judge in case of failure of the investgation officer to complete investigation within the specified period.

51 DLR 368–Nazrul Islam and others Vs. State–After the amendment of the provisions of sub-section (5) of section 167 of the Code in 1992 there is no scope of stopping the investigation on the ground of expiry of time limit specified for investigation.

48 DLR (Cri) 148–Niamatullah @ Chand (Md) Vs. The State and others–Prosecution had no alternative but to appoach the District Magistrate for revival of the case under the now repealed provision of sub-section (7A) of section 167 of the Code as no other higher authority was mentioned in the said provisions.

48 DLR 276–Anwar Hossain (Md) Vs. The State–The fixation of the period of investigation is meant for speedy trial of the case and to save the accused from unnecessary

harassment in jail custody. But this provision is directory and not mandatory- on the expiry of the period for investigation the accused cannot claim bail as a matter of right.

24 BLD 205 (HC)—Md Nurul Islam Babu Vs. The State—The order for remand in police custody is passed by a Magistrate in exercise of the power given to him under sub-section 2 of section 167. If the requirements of sub-section (1) are not fulfilled the Magistrate cannot pass an order under sub-section (2) for detaining a person even in jail not to speak of remand in police custody.

19 BLD 282 (HC) —Sree Bimal Chandra Adikhari Vs The State—By substituting the provisions of section 167 (5) of the Code stopping further investigation for non-completion of investigation within the prescribed period and releasing of the accused therefor as was in the previous provision of section 167 (5) of the Code was deleted. So at a time when the report to prosecute the petitioner was submitted by the Assistant Inspector, Bureau of Anti Corruption there was no provision in section 167 (5) of the Code for stopping investigation of a case and releasing the accused because of non- completion of investigation within the statutory period and as such the question of stopping of the investigation of the case in respect of the petitioner and relasing him does not arise at all. (Ref. 51 DLR 382, 3 BLT (AD) 172).

20 BLD (HC) 659—Tarique Syed Mamun Vs. The State—This Court has been noticing repeatedly that the police does not investigate the case having regard to provision of section 167 of the Code which provides, if the police report is not submitted within certain stipulated period, the accused is entitled to bail and the Court cannot wait for police report for uncertain period but to act within the frame work of law and court is bound to release the accused on bail as mandated by law and Constitution. The monitoring authority should be vigilent over investigating agency so that, the investigation is completed within the stipulated period. The judiciary one of the principal organs of the State have the responsibility to the citizen and cannot allow the police for harping upon

investigation for unlimited period and keep the accused behind the bar.

3 BLT (AD) 172—Govt. of Bangladesh Vs. Shah Alam—In the instant case further extension of time for further investigation was not obtained from the Sessions Judge after 6. 7. 1992---- under the repealed sub-section (6) of Section 167 Cr. P.C, was the Sessions Judge who had directed further investigation into the offences after the expiry of the period mentioned in sub-section (5) --- But with the amendment of Section 167 Cr.P.C by Act 42 of 1992, the time limit for conclusion of investigation was done away with and the amendment being in respect of a Procedural Law.

54 DLR (HC) 473—State Vs. Harish son of Hasan Ali (Criminal)—Sections 167 & 364—The statement of the condemned prisoner having been recorded on the same day after giving him only one hour for reflection of mind and with no assurance that he would not be sent back to police custody, all create a serious doubt as to the true nature of the confessional statement.

8 BLC 6 (AD)—Towled Hossain (Md) and Ors. Vs. Stte—The Magistrate, in a case being triable under Special Powers Act, had no legal jurisdiction to release the accused person and he is required simply to transmit the record of the case to the Senior Special Judge, namely the Session Judge, for necessary order.

5 BLC 451—State Vs. sarowaruddin—The police having violated the provision of section 167 Cr.P.C in not producing the appellants before any competent Magistrate within 24 hours of their arrest and kept them in police custody for about 2 (two) days without any legal authority, that is without a necessary permission from the Magistrate under section 167, Cr.P.C and such custody of the appellants is illegal resulting thereby the confessional statement are not voluntary and true.

5 BLC 572—Tarique Syed @Mamun Vs. State—Section 167(5) and 498–It appears that the petitioner is the accused of the present case and prima facie it is found that he has

involvement with the alleged murder of two persons when the Metropoliton Sessions Judge considering the section 167(5), Cr.P.C has given sufficient reasons in rejecting the prayer for bail warranting no interference.

5 BLC 662—Group Captain (Retd) Shamim Hossain Vs. State and another—On a reading of the amended sub-section 5 of section 167 as effected by the Code of Criminal Procedure (Second Amendment) Act,1992 it manifest that the time limit of conclusion of the investigation had been totally deleted and in place of that provision of releasing the accused person on bail either by the Magistrate or the Court of Session to the satisfaction of that Court has been provided.

168. Report of investigation by subordinate police officer.—When any subordinate Police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer-in-charge of the Police-Station.

29 DLR 167—Mizanur Rahman Gazi Vs. The State—A report could always be called from the Investigation Agency because Part V of the Chapter XIV of the Cr.P.C deals with the investigation and section 168 of the Cr. P.C contemplates report of the police officer who investigated the case and report the result to the officer-in-charge of the police-station.

169. Release of accused when evidence deficient.—If, upon an investigation under this Chapter, it appears to the officer-in-charge of the police-station or to the police-officer making the investigation that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or send him for trial.

Scope and application—This section is applicable while the case is still under investigation of police. This section should be read along with section 170 and 173. This section

deals with the case of deficient evidence. Section 170 deals with accused who is sent up for trial and section 173 provides for general instructions for both sections 169 and 170. The expression "final report" is not used in the Code but the report submitted by the police-officer under this section is called the final report. If the police submit report under section 169 that no case is made out, Magistrate has no power to call upon police to submit charge-sheet.

42 DLR 49—Shah Alam Chowdhury Vs. State—Interpretation of Stature—Whether order of discharge of the accused by the Magistrate on receipt of Final Report (True) is in a way like releasing the accused by the Investigation Officer under section 169 Cr. P. C on the ground of deficiency of evidence.

29 DLR 427—Abdul Huq Vs. The State—If investigating police finds that no case has been made out against the accused he may proceed under section 169. If police submits final report in a particular case, court of tribunal can inspite of the final report try the accused or commit for trial.

29 DLR 256 (SC)—Abdur Rahman Vs. The State—Section 169 provides that if upon an investigation, it appears to the officer-in charge of the police-station or to the officer making the investigation that there is no sufficient evidence or reasonable grounds of suspicion to justify the forwarding of the accused to a Magistrate such officer shall release him on his executing a bond with or without sureties to appear if and when so required before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit for trial.

27 DLR 11—Khorshed Alam Vs. The State—The Code of the Criminal Procedure and the Police Regulations deal with two categories of accused persons, namely one relating to persons in respect of whom there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of them to a Magistrate and the other relating to person against whom there is sufficient evidence or reasonable ground of suspicion to justify such forwarding. The case of the former are

covered by section 169 of the Code and rule 275 of the Police Regulations enjoins that final report should be submitted in such cases. The cases of the latter are covered by section 170 of the Code and rule 272 of the Police Regulations provides for submission of charge-sheet against them (Ref : 27 DLR 93).

51 DLR (AD) 22—A. Rouf & Others Vs. Jalaluddin & another—Section 169 of the Code of has not given the police officer any power to judge the credibility of the witnesses and to decide the defence plea of alibi. (Ref. 4 MLR (AD) 27).

170. Case to be sent to Magistrate when evidence is sufficient.—(1) If, upon an investigation under this Chapter, it appears to the officer-in-charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or send him for trial or if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer-in-charge of a police-station forwards an accused person to Magistrate or take security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall requie the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary. to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the Chief Metropolitan Magistrate, District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial provided reasonable notice of such reference is given to such complainant or persons.

(4) Omitted

(5) The officer in whose persence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Scope and application—This section shall read along with section 171 and 173 as they contemplate a simultaneous action. Putting all these sections together, the accused should be forwarded after the officer-in-charge of a police-station comes to the conclusion that there is sufficient evidence and should also forward a report under section 173. The purpose of forwarding the accused is for the Magistrate to take cognizance of the offence. Property connected with the offence should be sent to the court and it is undesirable to leave them with the court inspector. The expression "charge-sheet" is not used in the Code but the report submitted under this section is called a "charge-sheet."

29 DLR 256 (SC)—Abdur Rahman Vs. The State—Rule 272 of the police Regulations. 1943 contains the words "charge-sheet" in respect of accused sent up under section 170 of the Code (Ref : 27 DLR 111).

5 DLR 280 FC—Md. Sarfaraz Khan Vs. The Crown—Duty of police-officers to proceed against an accused person or not laid down in sections 169 and 170. Unfettered liberty of investigating police-officers in investigation cannot be the subject-matter of investigation by the court during trial.

171. Complainants and witnesses not to be required to accompany police-officer.—(1) No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer,

Complainants and witnesses not to be subjected to restraint. or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond.

Recusant complainant or witness may be forwarded in custody. Provided that, if any complainant or witness refuses

to attend or to execute a bond as directed in section 170 the officer-in-charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the police-officer to ensure that the complainant or the witness appears before the court at the time of hearing of the case.

Scope and application—This section should be read along with section 170 and 173. The court can ask the investingating officer by means of an order to arrange for the production of witnesses in the court. But a direction to the effect that the investigating officer should himself produce the witnesses in court is not strictly in accordance with the provisions of the section. Witness should not be subjected to unnecessary restrain. The evidence of such witnesses cannot be accepted as voluntary (4 CWN 49).

53 DLR (HC) 155—The Police officer who has investigated the case shall be responsible for the attendence of witness at the trial.

6 MLR (HC) 135-144—Responsible of Police officer to produce witness during trial.

6 MLR (HC) 135-144—Daily Star and Protham Alo Vs. The State—Responsibility of Polic officer to produce witness during trial- Section 492-Appointment of Public Prosecutor-Change of-Responsibility of Investigating Police Officer does not end with the submission of charge-sheet under section 173 Cr.P.C on completion of investigation but continues till the conclusion of trial during which it is his duty to produce the prosecution witness. When there are persistent allegations against the Public Prosecutor about his lack of interest and honesty in conducting the prosecution, the change of the Public Prosecutor becomes imperative in the interest of fair trial.

172. Diary of proceedings in investigation.—(1) Every police-officer making an investigation under this Chapter shall

day by day enter his proceedings in the investigation in a diary setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of the Evidence Act, 1872, section 161 or section 145, as the case may be shall apply.

Scope and application—The object of this section is to enable the Magistrate to know what was the information obtained from day to day by the police-officer who was investigating the case and what were the lines of his investigation (35 Cr. LJ 904). The police-officer are required to enter the proceedings in a diary from day to day and the diary referred in this section called case diary. Where there is a delay in making the entry, the circumstances throws suspicion on the diary. This section applies to all police-officer making an investigation (AIR 1935 Lah 230). The police-officer is charged with the duty of maintaining a diary in investigation of cognizable cases. Police diaries are inadmissible in evidence. They may be perused only for the moral satisfaction of the court but no reference should be made to them in the judgment. They cannot be used either as substantive or a corrborative evidence in the case (AIR 1933 PC.124). Is is a mistake to exclude supervision notes from the police diaries sent to the courts. The notes cannot be used as evidence any more than can the diaries of the investigating officer himself. A police diary could be referred to by the prosecution, not to substantiate the offence against the accused, but to see whether a witness has turned hostile (19 Cr. LJ 512). The case

diary is a very important document which has to be maintained in a faithfully regular manner. Where prosecution and defence are both inadequate, it will enable the court to rise up to the occasion and discover for itself the material facts and circumstances from the case diary, which can be brought to light through the witnesses examined in the case to arrive at the truth in the interest of justice (1970 Cr. LJ 1599).

31 DLR 69 (AD)—Bangladesh Vs. Tan Kheng Hock—Police in the matter of investigation enjoys wide powers to complete the same and the High Court cannot interfere at the investingation stage. Submission of charge sheet cannot be treated as a finality of investigation until cognizance of the case is taken.

4 DLR 201—Sarafat Vs. The Crown—Section 172 does not authorise the court to look into the statements in the police diaries for the purpose of finding out whether they are contradictory to the statements made in the court or not before granting the application for copies of statements recorded under section 161 (3) Cr. P.C. (Ref : 8 PLD 262 Sind).

48 DLR 228—Abdus Sukur Miah Vs. The State—A case diary maintained by the police cannot be treated as substantive evidence but it may be used for the purpose of ascertaining the truth or otherwise of the evidence appearing in the case. [Ref : 16 BLD (HC) 337].

173. Report of police-officer.—(1) Every investigation under the Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in-charge of the police-station shall—

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report, a report, in the form prescribed by the Government, setting forth the names of the parties the nature of the information and the names of the persons who apear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under section 158, the report shall in any cases in which the Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate direct the officer-in-charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(3A) When such report is in respect of a case to which section 170 applies, the police-officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extract thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation :

(b) the statements recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(3B) Noting in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (1) has been forwarded to the Magistrate and, whereupon such investigation, the officer in-charge of the police-station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (1) to (3A) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (1).

(4) A copy of any report forwarded under this section shall on 'application, be furnished to the accused before the commencement of the inquiry or trial :

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Scope and application—There are three section in the Code relating to final reports viz. 169, 170 and 173. Section 169 relates to cases in which no person is sent up for trial, section 170 to cases in which some person is sent up, and section 173 contains general directions relating to both. These three sections must be read together. Section 173 does not use the terms 'charge sheet" and "final report." The section deal with a final report after completion of the investigation and showing the results of such investigation. When a report with regard to commission of a cognizable offence is lodged in a police-station the same does not ipso facto ripen into a case which has to be investigated and may or may of result in the submission of a final challan in court under section 173. Section 173 applies to a referred charge-sheet. This charge-sheet leads to trial if the Magistrate approves of it and takes action. When no charge-sheet or challan is warranted, the police has to report that there is no case against the accused, or that though the case is true there is no sufficient or reliable evidence in support, or that the case is false. It is open to the Magistrate to accept the police recommendation or not. Before making an order the Magistrate, if he so desires, may hear the complainant, but he cannot call upon him to produce any evidence or to record evidence that may be produced before him, either by the complainant or by the alleged offender (1952 Cr.LJ 482). The Magistrate's order that the offence be cancelled or his refusal to accept the police recommendation cannot prejudice either party for the simple reason that the order is not judicial and the aggrieved party can always agitate the matter further. If he is the complainant, he can put in a complaint in court and the Magistrate, after having taken cognizance of it, can record preliminary evidence under section 202, but section 202 has no application in the case of a police report. There is no legal limit to the number of investigations which can be held into a crime, and one has been completed by the submission of a report under this section, another may

begin on further information received. The report must set forth the nature of information. A report which omits to set forth the information is defective, and a Magistrate taking cognizance of a case on such report acts illegaly. Section 173 (4) may be read with section 205A and 205B of the Code. The report of the police-officer under this section is not legal evidence on the facts stated therein.

55 DLR 202 (HC)—Abdur Rouf @ Rab Howlader Vs. State—There is no scope of filing a final report meaning not sending up any accused for trial and then a separate report for sending up some other accused for trial as one report is sufficient to serve both the purpose.

46 DLR 67 (AD)—Sher Ali Vs. State—So far as the direction by the Sessions Judge to hold further investigation into the case is concerned it is quite lawful; But his direction to submit charge sheet is clearly without jurisdiction.

42 DLR 10 (AD)—Shah Alam Chowdhury Vs. State—Charge sheet submitted not upon the revival of the case under section 167 but following the further investigation under section 173 Cr. P.C. The power to make further investigation is available to the Police if there has been no order under section 167 Cr. P.C.

40 DLR 474—Abdul Gafur Vs. State—Non-examination of the investigating Officer who apprehended the dacoits with ornaments casts serious doubt on the prosecution story in view of the evidence on record and attending circumstances (Ref : 33 DLR 5, 9 DLR 594, 5 DLR 141).

40 DLR 385—Mr. Matiur Rahman Vs. The State—Taking cognizance of an offence means the court deciding to proceed against the offended with a view to determine his guilt. The stage of such determination does not arise unless the police submits challan under section 173 of the Code of Criminal Procedure which means after police submits charge-sheet. The embargo as to prosecution of a public servant as under Sub-section 5 of section 6 of Criminal Law Amendment Act appears to be restrictive then under 197 of Cr. P.C. The framing of the charge by the court is an importance stage in a Criminal Proceeding.

40 DLR 326—Makbul Hossain Vs. The State—Proceeding before a Court starts when the Competent Court takes cognizance of an offence on police report or on a complaint or upon his own knowledge. No proceeding can be said to be pending before the Magistrate in this case as the Police after recording the FIR has not submitted any charge-sheet.

7 BLD 351—Bhagaban Chandra Chakma Vs. The State—Non-examination of Investigating Officer in a criminal trial—Whether adverse inference should be made against the prosecution—The defence having not drawn attention of any of the witnesses as to any contradiction between this deposition in court and statement before the police, the non-examination caused no prejudice to the defence.

6 BCR 174 (AD)—Abdul Awal Vs. Abdul Mannan—Charge-sheet means a Police report—A police report in which no accused is recommended to be prosecuted is ordinarily known as final report. But in fact there is no term like 'final report' in the Code of Criminal Procedure. But this term is used in the Police Regulations to denote a report in which police after investigation do not propose to prosecute any accused person even if he had been implicated in the First Information Report. But if the Magistrate is satisfied that a particular person has been improperly excluded from the charge-sheet, he may take cognizance against him on the basis of the same police report even if it is a final report, and such cognizance falls within clause (b) of sub-section (1) of section 190 Cr. P.C (Ref : 19 DLR 426 (SC)).

37 DLR 185—Sultan Ahmed Matbar Vs. The State—After submission of charge-sheet the police can not ask to cancel the same and re-investigate the same case nor the Court can direct the police to re-open the investigation. We are not aware of any principle of law under which an investigation which has resulted in submission of charge-sheet against an accused can be re-opened. There is no provision of law under which a charge-sheet once submitted can be cancelled. If the charge-sheet has been submitted by mistake, such as against a wrong person, the proper remedy lies in withdrawal from the prosecution against him under section 494 of the Penal Code.

The police after submitting charge-sheet against a person cannot re-investigate the case against that person treating the charge-sheet as cancelled. "Once the police has submitted charge-sheet in respect of certain accused person the police cannot re-open investigation in respect of the same accused and submit final report in their favour nor the Magistrate can direct the police to re-open the investigation in respect of the same accused against whom a charge-sheet has already been submitted by the police."

36 DLR 58 (AD)—Abdus Salam Master Vs. The State—Words 'final report' or charge-sheet are not in section 173. Under this section police can submit a police report either for prosecution or release of the accused persons. The police, after investigating the case which was registered on the FIR, submitted a report calling it a final report under section 173 of the Criminal Procedure Code recommending that the accused persons shown therein should be 'discharged' or released from custody or from their bail bonds, as the case may be. But in fact, there is no term like 'final report" or for that matter, "charge-sheet" in section 173 of Cr. P.C. Under this section, the investigating officer is required to submit, on conclusion of an investigation report which has been termed as a "police report". In that report the investigating Officer shall either recommend that the accused persons should be prosecuted or that the accused should be "released."

In the Police Regulations of Bengal a distinction has been made between these two kinds of recommendations for the sake of convenience and, according to this distinction, the police report containing recommendation for presecution is called "charge-sheet" and the police report containing recommendation for discharging the accused is called final report. Both the charge-sheet and the final report constitute the "police-report" under section 173 (Ref : 29 DLR 427 and 28 DLR 1).

5 BLD 24—Munshi Lal Meah Vs. Khan Abdul Jalil—Final report—Whether after submission of final report by the police. Magistrate can take cognizance against the accused against whom no charge-sheet has been submitted—The submission

of final report does not create any vested right in favour of the accused so as to disentitle the prosecution to prosecute if evidence discloses the commission of an offence. After submission of final report the Magistrate may direct enquiry and after examination of the complainant if satisfied may take cognizance of the case.

1 BSCD 154—Hasan Ali Vs. The State—However unsatisfactory the state of things may be, the mere fact of delay at any stage cannot be urged as a ground for setting at naught the process of bringing the offender to book; for that would amount to importing in criminal jurisprudence the law of limitation for which there is no authority. The question whether an offender should be prosecuted before a court is a question on which the decision rests with the State and not with the courts.

3 BLD 156—Syed Abdul Hannan Vs. The State—It is none of the invetigating officer's business to decide the case for himself when two sides come up with contradictory versions of the same occurrence. The quality of evidence is the same in each case and there were injuries caused to either side. In a case like this both the versions should be placed before a court of law so that truth can be found out upon receiving evidence from both sides and justice done.

35 DLR 425—Abdus Salik Vs. The State—Police submitted charge-sheet in respect of the accused and final report in respect of several others. Magistrate accepting the police report passed an order of discharge in respect of those dealt in the final report. On naraji petition filed by the complainant Magistrate directed the police to submit a supplementary charge-sheet for a grave offence for all including those discharged earlier. Held : Magistrate's direction is illegal and has to be quashed (Ref : 35 DLR 213).

34 DLR 73—Solicitor, Govt. of Bangladesh Vs. Yasin Ali—If the police-officer who submitted the charge-sheet does not attend the court on summons warrant of arrest might be issued to enforce attendance (Ref : 33 DLR 79).

33 DLR 104—Bishnu Das Gope Vs. The State—When from the charge-sheet it appears that the persons shown therein are treated as accused—they should be treated accused.

31 DLR 69 (SC)—Bangladesh Vs. Than Khong Hoch—The Code of Criminal Procedure does not give any power to the Magistrate to declare the police report submitted under section 173 of the Code as illegal. All that the Code provides for is that on perusal of the police report, if the Magistrate is not satisfied, he may direct further investigation but cannot direct submission of supplementary charge-sheet. Before taking cognizance there is no scope to say that charge-sheet will lead to abuse of the process of the court because the court has ample power to refuse taking cognizance of the offence on the facts disclosed in the police-report. Charge-sheet submitted—Competent court not yet taken cognizance—Interference at the stage by way of quashing is not permissible.

30 DLR 58 (SC)—Abdul Ali Vs. The State—Police report does not show the accused committed any offence under MLR 11 of MLR of 1975. Proceeding against such accused must be quashed. Taking cognizance of an offence by a court is a judicial act. There must be placed before the court fact such as will constitute offence. Court cannot act on the mere opinion of the police saying some offence has been committed.

27 DLR 112—Khurshed Alam Vs. The State—The word "charge-sheet" and "final report" are not in section 173 or elsewhere in the Code. Charge-sheet is to be submitted when an accused is sent up under section 170 of the Code and a final report to be submitted when police finds no case against an accused. Police enjoys the unfettered right on an investigation, to submit either a charge-sheet or a final report in a particular case without any interference from the court. The Magistrate may direct further enquiry under section 156 (3) or he may take Cognizance (Ref : 28 DLR 1).

19 DLR 439 (SC)—Gulam Mohammad Vs. Mozammel Khan—There is no bar to the police submitting a challan in respect of offene other than mentioned in the FIR, if the same comes to its notice during investigation.

14 DLR 511—Abu Vs. The state—Police has power to submit charge-sheet after filing final report (Ref : 15 DLR 511).

14 DLR 21 (WP) (FB)—Wazir Vs. The State—In case of an incomplete challan, a Magistrate may cancel case on a second police report recommending cancellation.

Further investigation, Re-investigation and supplementary Charge Sheet—In the cases where police submits defective report as contemplated under section 173 Cr. P.C they have got unfettered power and right to further investigate the case to bring the offenders to book who are involved in the committing of the offence and in suitable cases police can obtain order from competent Magistrate or authority to further investigate case for the purpose of collecting evidence. Re-investigation also can be taken up by police where the cases ended in final report but no re-investigation can be allowed to be conducted for the purpose of submitting final report where once police has submitted charge-sheet. If a Police-officer after he lays a charge, gets information, he can still investigate and lay further charge-sheet and so there is no finality either to the investigation or to the laying of charge-sheets.

46 DLR 535—Mubashwir Ali vs State—There cannot be any re-investigation into a case after charge-sheet is submitted. Malafied vitiates everything—Even a malafide investigation cannot be sustained. Quashing of a proceeding can be made even at the initial stage of a case, and when facts and circumstances demand, even at the stage when cognizance is taken by the Magistrate in a case under the Penal Code.

46 DLR 455—Abdul Malek Vs. Payer Ahmed Chowdhury—The provision does not have any scope for the Sessions Judge to direct further investigation by the police. The order of the Sessions Judge directing further investigation on an application by the informant is without jurisdiction and is liable to be set aside.

12 BLD 366—Mahbubur Rahman Vs. State—The Court, whether has jurisdiction to direct further investigation against any person who appears to be involved in the case concerned to the Court-Held—The Court has jurisdiction to direct further investigation against any person who appears to be involved in the case concerned to the Court. The Court may take cognizance even when police submits final report instead of a supplementary charge-sheet.

11 BLD 11—Gazaiur Rahman Vs. The State—Interested witness—A Police Officer who is admittedly the informant as well as the Investigation Officer in the case, he is naturally an interested witness.

6 BCR 417, 432 (AD)—The State Vs. Md. Abdur Rashid—The trial court considered that the prosecution case rest on three facts, namely, the confessional statement of accused Abdur Rashid the statement of PW-6 and scar marks on the right and left thumb of accused Abdur Rashid. The Court may use the police diary not as evidence of any date, fact or statement referred to it, but as containing indication of sources and lines of enquiring. Viewing it from this context there is no hesitation in saying that PW-9 deliberately introduced those informations in order to divert the course of investigation to a wrong channel. But it has acted as boomearing to the prosecution case because it has made it sufficiently doubtful case as to the involvement of the accused in the offence.

38 DLR 111—Noor Mohammad Vs. The State—An accused cannot be convicted on the basis of FIR. Justice goes by default in the absence of legal evidence for securing conviction. Murder of married woman in husband's house—Extreme paucity of incriminating evidence because of the reluctance of the available witnesses to state real facts with the result that culprits go unpunished. Careless investigation by the Investigating Officer has been held as the real cause for failure to detect the culprits. Police indifference in the matter of investigation—Courts obliged just to hold an useless trial which is meaningless and court's helplessness in such state of affairs. Concrete suggestions offered to improve the position during the stage of investigation as may help better administration of law. Real authorities have to exert themselves to find out real solution as to the matter of investigation by introduction of correct methods.

38 DLR 124—Md. Rafiqullah Vs. The State—A charge-sheet which is not in accordance with law, that is no charge-sheet in the eye of law. The police can submit any number of supplementary charge-sheets.

29 DLR 256 (SC)—Abdur Rahman Vs. The State—Police submitted final report as no evidence was forthcoming. When later on evidence was available, police applied to re-investigation which the Magistrate granted. This is in accordance with law. Police submitting final report before completing investigation, an order of discharge thereon is not a judicial order (Ref : 26 DLR 211, 17 DLR 147 (WP), 1 BSCD—100).

36 DLR 63—Abul Kashem Sowdagor Vs. Abdur Razzaque—Police after submitting a charge-sheet cannot re-investigate the same occurrence and then file a final report (4 BLD 112).

27 DLR 342—The State Vs. Abul Kashem —If investigation ended in a charge sheet, that cannot be re-opened. If a final report is filed by the police, Magistrate may direct further investigation by police. Further investigation is not the same thing as re-investigation. Re-investigation will result in cancellation of the charge-sheet already submitted but such a course is not permitted by law. Charge-sheet against a wrong person can be remedied by withdrawal of the case under section 494 (27 DLR 13).

4 BLD 206 (AD)—Shamsun Nahar Vs. The State—Further investigation—Whether Magistrate was competent to direct police for further investigation after taking cognizance on acceptance of charge sheet submitted by the police—Once a Magistrate has taken cognizance on a police report the Magistrate is not entitled to send the case to police for further investigation. If he is not satisfied with the final report he is competent to take cognizance against the accused in favour of whom final report was submitted. If he does not take cognizance at that stage, but subsequently evidence transpires against a person cognizance may be taken against him. Magistrate may direct further investigation if he is not satisfied with police report before cognizance is taken. Police may submit supplementary charge sheet on further investigation against an accused who was earlier discharged on final report (37 DLR 185).

3 DLR 155—Abdul Latif Biswas Vs. The State—There is no provision for re-investigation after scraping earlier investi-

gation report. But further investigation may be made on obtaining further evidence.

48 DLR 143—Sultan Ahmed alias Sentu Vs. The State—The Police can file supplementary charge-sheet even after acceptance of the previous charge-sheet. There is no limitation in this regard to taboo in the law. [Ref. 3 BLT (HC) 162].

48 DLR 529—Dilu alias Delwar Hossain Vs. State represented by the D.C—There is nothing either in section 173 or in section 190 of the Code providing for ejection or acceptance of a police report. There is also nothing to show that such police report is binding upon a Magistrate.

50 DLR 143—Abdus Samad Khan and 3 others Vs. State—The CID committed no error of law in holding further investigation as per provision of section 173(3B) of the Cr.P.C. Had further investigation been done after the case record was transmitted to the Senior Special Judge after taking cognizance of the offence or passing any order whatsoever then permission of the Special Judge would have been necessary. The police had the power to hold further investigation as per provision of section 173 (3B) of the Code as the provision of this section is in no way derogatory to the provision of sub-section 5(6) of the Criminal Law Amendment Act.

4 MLR (AD) 343—Syed Azharul Kabir Vs. Syed Ehsan Kabir—Final Report—Naraji—Naraji petition filed against the Final Report submitted under section 173 Cr.P.C. by an Investigation officer cannot be rejected merely upon report from the Superintendent of Police beyond the nuance of the relevant law. Since naraji petition is considered as a complaint the Magistrate if upon examination of the complainant or other witness if any, is satisfied may issue process upon the accused or he may direct inquiry into it by any other Magistrate. In such failing situation direction for further inquiry given by the High Court Division is perfect justified. [Ref ; 5 BLC (AD) 20]

23 BLD 62 (HC)—Omarali @ Shafiq @ Kutub & ors Vs. State—The most striking feature of this case is that the investigating officer submitted sepplementary charge-sheet

against accused appellant as per direction of the trial court which is illegal. The name of the accused appellant till the PWs 1 to 13 were examined and cross examined but he has been brought on record just after submission of supplementary charge-sheet as desired by the trial court.

16 BLD (AD) 88—Rahamatullah Vs. The State and another—It authorises the police officer to carry on further investigation into a case even after submission of charge-sheet under Section 173 (1) Cr.P.C. if further evidence is available.

16 BLD (AD) 222—Abu Talukder Vs. Bangladesh and others—Further Investigation on the seeking of an accused—An accused has no right to apply for further investigation of a case by the C.I.D. after submission of charge-sheet against him. Moreover, this being purely an executive action the Government is free to decide which particular case will be investigated by the C.I.D. [Ref. 49 DLR (AD) 56].

16 BLD (HC) 283—Abu Bakar and others Vs. The State—The Magistrate is not bound to accept a police report submitted under Section 173 Cr. P.C. recommending discharge of the accused persons. If the Magistrate finds that there are prima facie materials on record to proceed against the accussed he may reject the recommendation of the police and take cognizance against accused persons under Section 190 (b) Cr. P.C.

16 BLD (HC) 615—Abu Talukder Vs. The Secretary, Ministry of Home Affairs and others—Re-investigation under the garb of further investigation is not contemplated in law. Since the police after usual investigation of the case submitted charge-sheet against the accused persons the order of the Government, at the instance of the accused, for further investigation of the case by the C.I.D. designed to set at naught the already submitted charge-sheet under the garb of further investigation is not contemplated in law.

17 BLD (AD) 297—Bilkish Miah Vs. The State—When a Tribunal takes cognizance of a case on hearing the parties and on perusal of the case record and the case diary and after rejecting the police report (FRT), the Tribunal acts within its

competence. A police report is never binding upon the Court. [Ref ; 5 BLC (AD) 182]

17 BLD (HC) 436—Md. Abdus Samad Khan and others Vs. The State and another—Section 173(3B) of the Code empowers the police officer to hold further investigation in a case where a report has already been submitted and the subsequent report will be treated as a police report within the meaning of section 173(1) of the Code.

18 BLD (HC) 102—The State Vs. Monwara Begum—Although evidence was forthcoming regarding the complicity of some accused person in the alleged murder but the investigation officer (I.O) wrongly excluded them from the charge sheet, the High Court Division Directed the police to hold further investigation into their case.

3 BLT (AD) 74—Afia Khaton Vs. Mobasswir Ali & others case when second charge-sheet appears to be a result not of further investigation it is re-investigation. There can not be any re-investigation into a case after change-sheet has been submitted.

52 DLR (HC) 184—Idris alias Jamai Idris Vs. State—When it is not provided in the law itself as to under whose order a Police officer may hold further investigation, no illegality was committed by the Police officer concerned in holding further investigation on the order of his superior officer.

20 BLD (AD) 286—Major (Retd) Bazlul Huda Vs. The State—The prosecution is required under the provisions of section 173 (3A) of the Code to send the court the report together with the statement recorded under sections 161 and 164 Cr. P.C. and the accused shall be entitled to get the copies thereof the hearing under section 265B of the Code. Non-compliance with this requirement of law causes prejudice to the defence. The prosecution must not play hide and seek. However when the copies of statements under sections 161 and 164 of the Code are supplied to the accused before hearing under section 265B Cr. P.C. the defect is cured.

5 MLR (AD) 27—Bazlul Huda (Major Retd.) and another Vs. The State—Police report is to accompany the statements of the

witnesses to the Court to get copy of which the accused are entitled. Non-compliance with this provision of law prejudices the accused. However if the same is complied before hearing under section 265B of the Code of Criminal Procedure, the defect is cured.

4 BLT (HC) 144—Delwar Hossain Vs. The State—We are of the opinion that there is nothing either in section 173 or in section 190 of the Code of Criminal Procedure providing for rejection or acceptance of a police report there is also nothing to show that such police report is binding upon a magistrate.

3 BLT (AD) 74—Afia Khatoon Vs. Mobasswir Ali & Ors.—When second charge-sheet appears to be a result not of a further investigation, it is re-investigation. There can not be any re-investigation into a case after charge-sheet have been submitted.

3 BLT (HC) 162—Sultan Ahmed Vs. The State—Supplementary charge-sheet-----Police can always file supplementary charge-sheet even after acceptance of the previous charge-sheet. There is no limitation in this regard or taboo in the law.

8 BLC 729 (HC)—Sheikh Ali Asgar & ors. Vs. State— When the matter is within the domain of the investigation agency it will be improper for the court to express its view on the point inasmuch as court process will commence after submission of police report under section 173 of the Code. Section 561A of the Code will not apply when the matter is under investigation. Pending investigation by CID police the prayer for quashment of the matter under section 561A of the Code is impermissible.

6 BLC (HC) 604—Sahera Khatun Vs. State and others (Criminal)—Sections 173, 190 and 202(b)—A Magistrate taking cognizance of an offence under section 190, Cr.P.C is not bound to accept the police report submitted under section 173, Cr.P.C. Even in a case where police submits final report, recommending for discharging the accused persons, the Magistrate is not bound to accept the same and if upon perusal of the case diary and on examination of the witnesses recorded under section 161 Cr.P.C, he finds a prima facie case,

he may take cognizance against the accused under section 190(I)(b), Cr.P.C. If the Magistrate does not agree with the police report, he may send for further investigation after examining the complainant. He may also send for judicial enquiry under section 202 Cr.P.C. If, however, the Magistrate accepts the police report and discharges the accused against whom final report has been submitted, the said order becomes a judicial order as per provisions of section 202(2B), Cr.P.C and the said order attained into finality so far as it relates to him. He cannot make any further order relating to the said matter unless the said order is set aside by the High Court Division or the Court of Session under section 436, Cr.P.C. Magistrate can reopen the matter only when a naraji petition is filed or a fresh complaint is filed. In this case, prosecution did not challenge the order of the learned Magistrate discharging the accused who were, in fact, witnesses in the case.

The order of further investigation can be made by Magistrate before the acceptance of the police report submitted under section 173(1). After the acceptance of the police report submitted under section 173(1), Cr.P.C, Magistrate has no power to direct for further investigation into a case under section 173(3B), Cr.P.C. After submission of report under section 173(1), if the investigating officer finds any further evidence in respect of any accused against whom he submitted report or in respect of any other accused who was left out in his report, by way of such further investigation, he shall forward a further report regarding such evidence which is normally called a supplementary charge-sheet.

6 BLC (HC) 498—Mozammel Hoque and 2 others Vs. State (Criminal)—Sections 173(1)(a) and 439—The Deputy Inspector General, Criminal Investigation Department may assume control of an enquiry or investigation at any stage and, as such, as a result of assumption of the control of the investigation by an officer of the Criminal Investigation Department in pursuance of a memo dated 2-5-1995 issued by Headquarters, Criminal Investigation Department in the midst of the investigation, there has not been any illegality nor violation of section 173(1)(a) of the Code.

6 BLC (HC) 17—Maksuda Begum Vs. Abu Taleb Molla and others (Criminal)—Sections 173(1), 200, 2002, 205D and 540—Although the learned Magistrate noticed the fact of pendency of police investigation in his order dated 30-8-1998 but without staying the proceedings in the complaint case as per provisions of sub-section (1) of section 205D of the Code and calling for a report on the matter from police officer conducting the investigation, sent the complaint to the police for inquiry and report. Therefore, there is total violation of sub-section (1) of section 205D. Learned Magistrate cannot send the complaint for enquiry before the submission of police report under section 173(1) in the police case.

7 BLC (HC) 359—Abdus Sabur Chowdhury (Md) Vs. State (Criminal)—Sections 173 and 517—After the discharge of the accused appellant on acceptance of police report under section 173 of the Code by the Special Tribunal, the seized diesel oil recovered from the shop of the accused appellant cannot be treated as a property regarding which an offence has been committed or which has been used in the commission of an offence.

53 DLR 533—Ibrahim (Md) Vs. State (Criminal)—Section 173 & 205C—The expression "Police Report" in this section means the report under section 173 of the Code. It is obvious from section 205C that when a Magistrate receives charge-sheet and an accused appears or is brought before him, the Magistrate shall send the case to the Court of Session if it appears to him that the case is exclusively triable by the Court of Session. The Magistrate has no option to decide whether charge sheet was properly submitted.

6 MLR (AD) 298-300—Alamgir Siddique Buiyan Vs. The State and another—Scope of further investigation at the instance of accused—Further investigation may be made on the direction of Magistrate or Sessions Judge or superior Police Officer. But no further investigation can be made at the instance of an accused in order to exclude him from the charge sheet already submitted.

5 BLC 636—Bakul Hossain (Md) Vs. Md Mannaf Ali and anr—The police has submitted its report under section 173(1)

of the Code and before accepting the same the learned Sessions Judge was pleased to direct for holding further investigation, thus no illegality was committed by directing such further investigation.

4 BLC 74—Nurul Hoque and others Vs. State and another—Section 173,190(1) and 561A –It is now well settled that a report submitted by the police under section 173 of the Code has no binding force upon the learned Magistrate who is at liberty either to accept the same or to reject it. The learned chief Metropoliton Magistrate before rejecting the report submitted by the police held a judicial enquire through another Metropoliton Magistrate and on the basis of the police report as well as the offene which is covered by section 190(1) of the Code and as such the proceeding cannot be quashed.

4 BLC 524—Hazi Isakur Rahman Vs. State—Section 173 and 561A –Sessions Judge has no authority to direct the Magistrate to take cognizance of the offence and such order of taking cognizance by the Magistrate is set aside but the proceeding against the petitioner cannot be quashed and hence the case is sent back to the learned Magistrate for taking steps for holding further investigation.

174. Police to inquire and report on suicide, etc.—(1) The officer-in-charge of a police-station or some other police-officer specially empowered by the Government in that behalf, on receiving information that a person—

(a) has committed suicide; or

(b) has been killed by another, or by an animal, or by machinery or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence.

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and unless otherwise directed by any rule prescribed by the Government, or by any general or special order the Chief Metropolitan Magistrate, the district Magistrate or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and

there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

Provided that, unless the Government otherwise directs, it shall not be necessary under this sub-section, in any case where the death of any person has been caused by enemy action to make any investigation or to draw up any report or to send any intimation to a Magistrate empowered, to hold inquests.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the Chief Metropolitan Magistrate, the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) Omitted.

(5) The following Magistrates are empowered to hold inquest, namely, the Chief Metropolitan Magistate, any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, and any Magistrate specially empowered in this behalf by the Government, the Chief Metropolitan Magistrate or the District Magistrate.

Scope and application—When the body cannot be found or has been buried there can be no investigation under section

174. The procedure under this section is for the purpose of discovering the cause of death and the evidence taken is very short (AIR 1940 Lah 210). the object of proceedings under section 174 is to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. Result of observation, external or internal, should be fully recorded.

9 DLR 54 (WP)—Khuda Boksh Vs. Province of West Pakistan Provincial Government has no power to order an inquiry into the cause of death of a person after an inquiry had already been held by a Magistrate. Proceedings of the Magistrate holding the inquiry is only open to revision by the High Court.

24 BLD 1 (HC)—Babul Sikder and ors Vs. The State—The object of the proceding under section 174 of the Cr.P.C is merely to ascertain whether a person died under suspicious circumstances or an unnatural death and if so what is the apparent cause of death.

24 BCR 257 (HC)—Babul Sikder and ors Vs. The State—Inquest Report is admissible in evidence and the statements therein can be looked into. Where there are eye witnesses to the occurrence and other evidences in respect of recognition & disclosure of the accused person after commission of offence then it cannot be suggested at all that by the inquest report prosecution case has been falsified and destroyed.

Revision—Revision lies under section 435 and 439A Cr. P. C before the Sessions Judge against the proceedings of the Magistrate.

175. Power to summon persons.—(1) A Police-officer proceeding under section 174 may, by order in writing summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

176. Inquiry by Magistrate into cause of death.—(1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquest shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) **Power to disinter corpses.** Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterried and examined.

Scope and application—This section proceeds on the basis that inquiry into a suspicious death should not depend merely upon the opinion the police may form, but there should be a further check by enabling a local Magistrate to hold an independent inquiry (29 Cr. LJ 1068).

11 DLR 134 (WP)—Fateh Sher Vs. Khan Yasin Khan -Magistrate dismissing complaint under section 203 can neither look into reports submitted under section 174 or 176 nor can he dismiss it on such report.

Revision—Revision lies against the proceeding of the Magistrate before Sessions Judge under section 435 and 439A Cr.P.C.