HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Revision Petition No. 568/2019

1. Laxman Singh @ Bunty S/o Shri Prem Singh, aged about 41 Years, R/o Motipura Sadar Dist. Sawai Madhopur Raj.
2. Devi Singh S/o Inder Singh, aged about 34 Years, R/o Gudla Teh. Bamanwas Dist. Sawai Madhopur Raj.
3. Varun Singh S/o Harsahay, aged about 36 Years, R/o Brijmbas Gangapur City Sadar Dist. Sawai Madhopur Raj.
4. Babulal Gurjar @ Brijmohan S/o Mal Ji, R/o Gurjar Baroada Teh. Bamanwas Dist. Sawai Madhopur Raj.
5. Badan Singh S/o Harsahay Gurjar, R/o Bahubad Teh. Gangapur City PS Gangapur City Sadar Dist. Sawai Madhopur Raj.
6. Tapender S/o Pukhraj, R/o Mahramda Teh. Bamanwas Dist. Sawai Madhopur Raj.
7. Nitesh @ Bablu S/o Babulal @ Brijmohan Gurjar, R/o Gurjar Baroda Teh. Bamanwas Dist. Sawai Madhopur Raj.
8. Narendra @ Chapa S/o Pukhraj, R/o Mahramda Teh. Bamanwas Dist. Sawai Madhopur Raj.
9. Kunji Lal Gurjar S/o Rajhans, R/o Brahmwas Gangapur City Dist. Sawai Madhopur Raj.

----Petitioners

Versus

1. State of Rajasthan, through PP
2. Vedprakash Arya S/o Hukum Chand Arya, R/o Ghee Walon Ki Gali Gangapur City Dist. Sawai Madhopur Raj.

----Respondents

For Petitioner(s) : Mr. Rajveer Singh, Adv.
Mr. P L Saini, Adv.

For Respondent(s) : Mr. Atul Sharma, PP
Mr. Sankalp Sogani, Adv.
Ms. Muskan Verma, Adv.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

Reserved on : 16/04/2024
Pronounced on : 23/04/2024
Reportable

Cognizance & Objectives of Criminal Procedure:-

"Criminal law serves the purpose of maintaining law and order by providing predictability. It protects individual rights. Criminal law makes it possible to resolve conflicts and disputes between quarreling citizens. It provides a peaceful, orderly way to handle grievances. It also provides protection, to society from criminals, who inflict harms to others. For this there are penal law which prohibit doing of certain acts by declaring those as offences and punishable with penalty. To put in other words, Criminal law deals with offences and helps to protect the society from falling into the state of anarchy.

This part of law is substantive law but for implementing it someone is to be authorized who can punish the guilty by adopting certain specified procedure. This aspect is dealt with by other part of law, i.e., procedural law.

Procedural law provides machinery for the implementation of substantive criminal law. In absence of procedural laws, the substantive laws are of no use. Without it no one will be able to know the way how the offenders will be prosecuted and by whom. In fact both the laws are complementary to each other. The procedural law is contained in Code of Criminal Procedure, 1973.

The main objective of criminal procedure is to provide a fair trial to the accused by taking into consideration the principles of natural justice and to carry out the spirit of

Article 22 of the Constitution. There are various processes that need to be followed to administer justice. It includes pre-trial procedure and procedures for various trials. Trial procedure is initiated by taking cognizance of offence and then by beginning proceedings and finally arriving a decision by following the procedure laid in the code.

The word cognizance has its origin from the old French term "connaissance" which means "recognition, wisdom, knowledge, familiarity" and also from the word "conoistre" which means "to know". It is also derived from the Latin word "cognosis" where the con means to "with" and "gnosis" means "to know".

The word 'cognizance' has not been defined in the criminal procedure code, but the meaning of cognizance is derived from the number of precedents and judicial pronouncements. The dictionary meaning of cognizance is "taking account of", "taking note of", "to gain knowledge about", "to have knowledge regarding something".

Lexicon Webster's Dictionary, defines the word cognizance as, "The range of mental observation or awareness, the fact of being aware, knowledge, (Law) the powers given to a Court to deal with a given matter, jurisdiction."

The meaning of Cognizance given in Black's Law Dictionary, reads as under, Cognizance:- Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter, or power and authority to make it.

"Cognizance" in general means 'knowledge' or 'notice', and 'taking cognizance of offence' means taking notice, or

becoming aware of the alleged commission of an offence. The Court will have to take cognizance of the offence before it could proceed with the conduct of the trial. Taking cognizance does not involve any kind of formal action but occurs as soon a Magistrate applies his mind to the suspected commission of an offence for the purpose of legal proceedings. So, taking cognizance is the application of judicial mind."[1]

Factual Matrix:-

1. Invoking the revisional jurisdiction, contained under Section 397 read with Section 401 of Cr.P.C., the petitioners have approached this Court assailing the validity and legality of the impugned order dated 11.02.2019 passed by the learned Additional Sessions Judge No.17, Jaipur Metropolitan, Jaipur, in Sessions Case No.9/2018 by which the application filed by the complainant-respondent (hereinafter referred to as "the complainant") under Section 193 Cr.P.C. has been allowed and cognizance has been taken against the petitioners for the offences punishable under Sections 148, 323, 341, 325, 379, 307 read with Section 149 of I.P.C. and arrest warrants have been issued against petitioner Nos.4 to 9.

Submissions by the petitioners:-

2. Learned counsel for the petitioners submits that an F.I.R. was registered at the instance of the complainant-respondent bearing No.861/2017 with Police Station Mansarovar, Jaipur against the accused persons, but after investigation, charge-sheet was submitted only against the petitioners, namely, Laxhman

1 Article on "Cognizance of Offences" written by Mr. Pradeep Mehta, Faculty Member Chandigarh Judicial Academy.

Singh @ Bunty, Devi Singh and Varun Singh for the offences punishable under Section 323, 341, 325, 308, 379 of I.P.C. before the Court of Additional Chief Metropolitan Magistrate No.6, Jaipur Metropolitan, Jaipur, who vide order dated 05.10.2018 took cognizance against above three persons for the offences stated above. Counsel submits that since the offence punishable under Section 308 of I.P.C. was triable by the Court of Sessions, hence the case was committed to the Court of Sessions Judge, Jaipur Metropolitan, Jaipur who transferred the same to the Court of Additional Sessions Judge No.17, Jaipur Metropolitan, Jaipur. Counsel submits that after committal of the aforesaid case, the learned Additional Sessions Judge posted the case for framing of charges. At this stage, the complainant submitted an application under Section 193 Cr.P.C. for taking cognizance against all the accused, i.e., petitioner Nos.1 to 3 and the rest of the accused persons (petitioner Nos.4 to 9), who were not charge-sheeted for the offences punishable under Section 148, 323, 341, 325, 379, 307 read with Section 149 of IPC. Counsel submits that the said application filed by the respondents came to be allowed vide order dated 11.02.2019 and cognizance has been taken against all the accused persons for the offences, as stated above and arrest warrants have been issued against the petitioner Nos.4 to 9 as well.

3. Counsel submits that once cognizance was taken against the three accused-persons, namely, Laxman Singh @ Bunty, Devi Singh and Varun Singh (petitioner Nos.1 to 3) by the learned Magistrate, there was no reason or occasion available with the Additional Sessions Judge to take cognizance against them for the

offences under Section 307 and other offences punishable under the Indian Penal Code. Counsel submits that such an order amounts to review of order which is not permissible as per Section 362 of Cr.P.C. Counsel further submits that after thorough investigation in the matter, the investigating agency did not find involvement of the rest of the accused-persons, namely, Babulal Gurjar @ Brijmohan, Badan Singh, Tapender, Nitesh @ Bablu, Narendra @ Chapa and Kunji Lal Gurjar, and that is why, no charge-sheet was submitted against them. Counsel submits that there was no evidence available against them for taking cognizance and even then the application filed by the complainant-respondent has been allowed. Counsel submits that the learned Additional Sessions Judge should have waited till the stage of Section 319 of Cr.P.C. because at the time of allowing the application, no material was available against these six persons for taking cognizance against them. Counsel submits that under these circumstances, the impugned order dated 11.02.2019 is not legally sustainable in the eye of law and the same is liable to be quashed and set aside.

4. In support of his contentions, counsel for the petitioners has placed reliance upon the judgment passed by the Hon'ble Apex Court, in the case of **Balveer Singh & Anr. Vs. State of Rajasthan & Anr.** reported in **2016 AIR (SC) 2266** and submitted that in view of the above submissions made by him hereinabove, the petition may be allowed.

Submissions by the Respondents:-

5. Per contra, learned counsel for the complainant-respondent as well as the learned Public Prosecutor opposed the arguments

raised by the counsel for the petitioners and submitted that under the Criminal Procedure Code, cognizance of the offence is taken and not of the offenders. Counsel submits that there was ample evidence available on record against all the accused-persons for taking cognizance against them for the offences punishable under Sections 148, 323, 341, 325, 379, 307 read with Section 149 of IPC, but the police has submitted charge-sheet only against few accused-persons, namely, Laxhman Singh @ Bunty, Devi Singh and Varun Singh. Counsel submits that in spite of having ample evidence against rest of the accused-persons, no charge-sheet was submitted against them by the police. Counsel submits that as per the statements of the injured and other eye-witnesses and medical report available on the record, a prima facie case was made out against the accused-persons for taking cognizance against them for the offences under Section 307 and other offences punishable under the Indian Penal Code. Counsel submits that under these circumstances, learned Additional Sessions Judge has rightly allowed the application filed by the complainant under Section 193 Cr.P.C. Counsel further submits that under these circumstances, interference of this Court is not warranted.

6. In support of their contentions, he has placed reliance upon the two judgments:-

(I) **R.N. Agarwal Vs. R. C. Bansal** reported in **(2015) 1 SCC 48.**

(II) **Shodan Singh and Ors. Vs. State of Rajasthan** reported in **2017 (2) RLW 1565 (Raj.).**

7. Counsel submits that in view of the submissions made hereinabove, the instant petition is liable to be rejected.

Analysis, Discussions and Reasonings:-

8. Heard and considered the submissions made at Bar and perused the material available on the record.

9. Basically, the impugned order dated 11.02.2019 has been challenged in two parts, i.e., taking cognizance twice against the petitioner Nos.1 to 3 and taking cognizance against the petitioner Nos.4 to 9 who were not charge-sheeted.

10. This Court shall first proceed to decide the second part of challenge to the cognizance order dated 11.02.2019 passed against the petitioner Nos.4 to 9.

11. This fact is not in dispute that names of the accused-petitioners No.4 to 9 have been mentioned in FIR as well as in the statements of the informant-Ved Prakash Arya and the allegations of causing the occurrence have been levelled against 10-12 accused persons. This fact is not in dispute that after investigation, police has submitted a charge-sheet only against the petitioner Nos.1 to 3 and left the rest of the accused, i.e., the petitioner Nos.4 to 9. This fact is also not in dispute that the learned Additional Chief Metropolitan Magistrate No.6, Jaipur Metropolitan took cognizance against the petitioner Nos.1 to 3 under Section 323, 341, 325, 308 and 379 of IPC vide order dated 05.10.2018 and committed the case to the Court of Sessions Judge, Jaipur Metro as the offence under Section 308 of I.P.C. was triable by the Court of Sessions who transferred the same to the Court of Additional Sessions Judge No.17, Jaipur Metropolitan, Jaipur. Thereafter, the case was posted for hearing the arguments on charges. It is worthy to note here that the order of taking cognizance dated 05.10.2018 was never challenged by the

complainant-respondent No.2 before any competent Court of law and the said order has attained finality.

12. At the later stage, i.e., on 24.01.2019, the complainant submitted an application under Section 193 Cr.P.C. for taking cognizance against all the accused-persons under Section 307 and other offences of I.P.C. After hearing the arguments, the learned Trial Judge allowed the application vide order dated 11.02.2019 and again took cognizance against the petitioner Nos.1 to 3 for the offences under Section 148, 323, 325, 379 and 307 read with Section 149 of I.P.C. and for the same offences, cognizance was taken against the petitioner Nos.4 to 9 who were not charge-sheeted by the police.

13. Aggrieved by the impugned order dated 11.02.2019, the petitioners have approached this Court by way of filing this petition.

14. The crux of the arguments of the petitioners is that for the first time, the Magistrate took cognizance of the offence vide order dated 05.10.2018 and committed the matter to the Court of Sessions and again cognizance was taken against all the accused persons on 11.02.2019, while there was no reason or occasion to take cognizance against the present petitioners without waiting till the stage of Section 319 CrPC. The other contention of the counsel is that cognizance of the offence is taken and not of the offenders and when cognizance of the offence has already been taken on 05.10.2018, then the subsequent impugned order dated 11.02.2019 taking cognizance against the petitioners is not sustainable in the eye of law.

15. There were conflicting views about the stage and power of taking cognizance under Section 193 CrPC by the Court of Sessions in different judgments of Hon'ble Apex Court in the case of **Ranjit Singh Vs. State of Punjab** reported in **(1998) 7 SCC 149**, **M/s Swil Ltd. Vs. State of Delhi and Anr.** reported in **(2001) 6 SCC 670, Rajindra Prasad Vs. Bashir & Ors.** reported in **(2001) 8 SCC 522, Kishun Singh Vs. State of Bihar** reported in **(1993) 2 SCC 16** and **Kishori Singh Vs. State of Bihar** reported in **(2004) 13 SCC 11**. The conflict was that whether cognizance can be taken by the Court of Sessions against the left out accused under Section 193 CrPC or the Court should wait till the stage of Section 319 CrPC. In order to get clarity on the point, the matter was referred to the Constitutional Bench of Five Judges of Hon'ble Supreme Court in the case of **Dharampal** (supra), where the following six questions came up for consideration, as follows:-

> "(i) Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?
>
> ii) If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?
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> iii) Having decided to issue summons against the Appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in

issuing summons against them without following such procedure?

iv) Can the Session Judge issue summons under Section 193 Cr.P.C. as a Court of original jurisdiction?

v) Upon the case being committed to the Court of Session, could the Session Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was reached in order to take recourse thereto?

vi) Wan Ranjit Singh's case (supra), which set aside the decision in Kishun Singh's case(supra), rightly decided or not?"

16. Question Nos.4, 5 and 6, being relevant for deciding the controversy involved in this petition, and the same were answered by the Constitutional Bench of the Hon'ble Apex Court in para 37 to 42 of the judgment passed in the case of **Dharam Pal** (supra), is reproduced as under:-

"37. Questions 4, 5 and 6 are more or less interlinked. The answer to question 4 must be in the affirmative, namely, that the Session Judge was entitled to issue summons under Section 193 Cr.P.C. upon the case being committed to him by the learned Magistrate.

38. Section 193 of the Code speaks of cognizance of offences by Court of Session and provides as follows:-

"**193. Cognizance of offences by Courts of Session.** - Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

The key words in the Section are that "no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has

been committed to it by a Magistrate under this Code." The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr. Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said Section.

39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there by any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge.

40. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not

named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

41. We are also unable to accept Mr. Dave's submission that the Session Court would have no alternative, but to wait till the stage under Section 319 Cr.P.C. was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session.

42. The Reference to the effect as to whether the decision in Ranjit Singh's case (supra) was correct or not in Kishun Singh's case (supra), is answered by holding that the decision in Kishun Singh's case was the correct decision and the learned Session Judge, acting as a Court of original jurisdiction, could issue summons under Section 193 on the basis of the records transmitted to him as a result of the committal order passed by the learned Magistrate."

17. The above view taken by the Constitutional Bench was reiterated by the Hon'ble Apex Court in the case of **Balveer Singh Vs. State of Rajasthan** reported in **(2016) 6 SCC 680** and para 24 and 25 are quite relevant for decision of the instant matter:-

"24. Keeping in view the aforesaid legal position, we may now discuss the circumstances under which the cognizance was taken by the Session Judge. Here is a case where the Police report which was submitted to the Magistrate, the IO had not included the appellants as accused persons. The complainant had filed application before the learned Magistrate with prayer to take cognizance against the appellants as well. This application was duly considered and rejected by the learned Magistrate. The situation in this case is, thus, not where the investigation report/chargesheet filed under Section

173(8) of the Code implicated the appellants and appellants contended that they are wrongly implicated. On the contrary, the Police itself had mentioned in its final report that case against the appellants had not been made out. This was objected to by the complainant who wanted the Magistrate to summon these appellants as well and for this purpose the application was filed by the complainant under Section 190 of the Code. The appellants had replied to the said application and after hearing the arguments, the application was rejected by the Magistrate. This shows that order of the Magistrate was passed with due application of mind whereby he refused to take cognizance of the alleged offence against the appellants and confined it only to the son of the appellants. This order was not challenged. Normally, in such a case, it cannot be said that the Magistrate had played 'passive role' while committing the case to the Court of Sessions. He had, thus, taken cognizance after due application of mind and playing an “active role” in the process. The position would have been different if the Magistrate had simply forwarded the application of the complainant to the Court of Sessions while committing the case. In this scenario, we are of the opinion that it would be a case where Magistrate had taken the cognizance of the offence. Notwithstanding the same, the Sessions Court on the similar application made by the complainant before it, took cognizance thereupon. Normally, such a course of action would not be permissible.

25. The next question is as to whether this Court exercise its powers under Article 136 of the Constitution to interdict such an order. We find that the order of the Magistrate refusing to take cognizance against the appellants is revisable. This power of revision can be exercised by the superior Court, which in this case, will be the Court of Sessions itself, either on the revision petition that can be filed by the aggrieved party or even suo moto by the revisional Court itself. The Court of Sessions was, thus, not powerless to pass an order in his revisionary jurisdiction. Things would have been different had he passed the impugned order taking cognizance of the offence against the

> appellants, without affording any opportunity to them, since with the order that was passed by the learned Magistrate a valuable right had accrued in favour of these appellants. However, in the instant case, we find that a proper opportunity was given to the appellants herein who had filed reply to the application of the complainant and the Sessions Court had also heard their arguments. For this reason, we are not inclined to interfere with the impugned order and dismiss this appeal."

18. The crux of both the judgments of the Hon'ble Apex Court in the case of **Dharampal** (supra) and **Balveer Singh** (supra) is that after committal of a case by the Magistrate, the Court of Sessions is conferred with the original jurisdiction under Section 193 CrPC and it is competent to take cognizance against the accused persons not charge-sheeted by the police.

19. The High Court of Allahabad took a different view in Criminal Misc. Application No.38681/2019 and the following view was taken:-

> "In the present matter as the cognizance has already been taken by the learned Sessions Judge and charges were framed against the accused after considering the police papers annexed with the charge-sheet and the trial had started, it would not be proper for the trial court to take further cognizance of the case and to summon the three accused by the impugned order. The summoning of the three accused by the impugned order is not in consonance with the legal provisions of law. The cognizance taken by the trial Sessions Court under Section 193 Cr.P.C. for the second time is not perfectly valid and permissible by law. The impugned order is not legally proper and the impugned order transpires that the trial sessions court has abused the process of law. The impugned order is liable to be quashed."

20. It is note-worthy to mention here that in the above matter before the Allahabad High Court, cognizance was taken by the Court of Sessions and charges were framed against the left out accused persons and the trial started. The newly arrayed accused persons assailed this order before the Allahabad High Court and the said Court was of the firm view that for the trial Court, it was not proper to take further cognizance and summon the accused persons. It was held that cognizance taken by the Sessions Court under Section 193 CrPC for the second time was not valid and was not permissible by law and accordingly the order was quashed and set aside.

21. The above view taken by the Allahabad High Court was assailed before the Hon'ble Apex Court in the case of **Rafiusshan Vs. State of U.P. & Ors.** by way of filing **Criminal Appeal No.1347/2021 (arising out of SLP (Crl.) No.1752/2020)** and the judgment passed by the Allahabad High Court was quashed by the Apex Court with the following observations:-

> "The Sessions Judge is entitled to issue summons under Section 193 CrPC upon the case being committed to him by the Magistrate. Section 193 CrPC speaks of cognizance of offences by the Court of Session. The key words in the section are that "no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code".
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> The provision of Section 193 CrPC entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The Second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. The submission that the cognizance indicated in Section

193 CrPC deals not with cognizance of an offence, but of the commitment order passed by the Magistrate, was specifically rejected in view of the clear wordings of Section 193 CrPC that the Court of Session may take cognizance of the offences under the said section.

Cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceeding to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 of the Code will, therefore, have to be understood as the Magistrate playing a passive role in committing the case to the Court of Session on findings from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the Sessions Judge.

In the process of coming to the aforesaid conclusions, this Court in Dharam Pal Vs. State of Haryana (supra) accepted the view expressed in the case of **Kishun Singh Vs. State of Bihar**, reported in **(1993) 2 SCC 16** the Sessions Court has jurisdiction in commital of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. It specifically held that upon committal under Section 209 of the Code, the Sessions Judge may summon those persons shown in Column 2 of the police report to stand trial along with those already named therein.

Interestingly, at the same time, the Court in the case of Dharam Pal Vs. State of Haryana (supra) also held that it would not be correct to hold that

> on receipt of a police report and seeing that the case is triable by a Court of Session, the Magistrate has no other function but to commit the case for trial to the Court of Session and the Sessions Judge has to wait till the stage under Section 319 of the Code is reached before proceeding against the persons against whom a prima facie case is made out from the material contained in the case papers sent by the Magistrate while committing the case to the Court of Session.
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> xxxx xxxx xxxx
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> The instant matter is completely covered by the question posed in paragraph 7.4 of the decision in Dharam Pal. As stated by this Court, once the case is committed to the Court of Sessions, the Court of Sessions assumes original jurisdiction and that it would be within its power to pass appropriate directions under Section 193 of the Code. The decision of the High Court in the instant case, is not consistent with the law laid down by this Court. We, therefore, allow this appeal, set aside the order passed by the High Court and restore the order passed by the Trial Court."

22. Again the same issue came up before the Hon'ble Apex Court that whether cognizance can be taken against the accused under Section 190 CrPC by the Magistrate and under Section 193 CrPC by the Sessions Judge without waiting till the stage of Section 319 CrPC. The Hon'ble Apex Court reiterated that if the material available before the Court reveals that there is prima facie involvement of a person not charge-sheeted, then cognizance can be taken against such person. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Sessions in summoning an accused upon taking cognizance, whose name may not feature in the FIR or police report. In the case of **Nahar Singh Vs. The State of Uttar Pradesh and Anr.**

(Criminal Appeal No.443/2022) decided on 16.03.2022, it has been held by the Hon'ble Supreme Court in para 20, as under:-

> "20. In the cases of **Raghubans Dubey** (supra), **SWIL Ltd.** (supra) and **Dharam Pal** (supra), the power or jurisdiction of the Court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the F.I.R. or police report."

23. This Court has taken into consideration, the position of law reflected in these authorities. Hence, it is clear from the authoritative judgments of Hon'ble Apex Court in the case of **Dharampal** (supra), **Balveer Singh** (supra), **Rafiusshan** (supra) and **Nahar Singh** (supra) that the Court of Sessions is empowered to take cognizance against those persons under Section 193 CrPC who have been left by the police and who have

not been arrayed as accused by the Investigating Agency with the charge-sheet.

24. In the instant case, since prima facie evidence were found against the petitioner Nos.4 to 9 by the trial Court, the cognizance has rightly been taken against them in exercise of the powers contained under Section 193 Cr.P.C., without waiting for the stage carved out under Section 319 Cr.P.C. Hence, this Court is of the opinion that there is no perversity in the impugned order dated 11.02.2019 to the extent of petitioner Nos.4 to 9 and the same is found to be correct and valid, hence the same is upheld.

25. Now, this Court would proceed to decide the first part of the contention that "whether cognizance can be taken against the petitioner Nos.1 to 3 again on 11.02.2019, particularly, when the cognizance has already been taken against them by the Magistrate vide order dated 05.10.2018".

26. After due application of mind, the Magistrate took cognizance against the petitioner Nos.1 to 3 under Section 323, 341, 325, 308 and 379 of IPC vide order dated 05.10.2018 and committed the matter to the Court of Sessions as the offence under Section 308 was triable by the Court of Sessions. This order of cognizance was never challenged by the complainant before any competent Court of law. It cannot be said that the Magistrate had played "passive role" while committing the case to the Court of Sessions. He had taken cognizance after due application of mind and played an "active role" in the process. The Magistrate had taken cognizance against the petitioner Nos.1 to 3 under Section 308 of

I.P.C. and again the trial Court, i.e., Additional Sessions Judge had taken cognizance against the same accused, i.e., petitioner Nos.1 to 3 under Section 307 of I.P.C. along with other offences of I.P.C., such a course of action would not be permissible.

27. The cognizance has already been taken against the petitioner Nos.1 to 3 by the Magistrate under Section 323, 341, 325, 308 and 379 of I.P.C. vide order dated 05.10.2018, thereafter again cognizance has been taken against the same petitioner Nos.1 to 3 by the Court of Additional Sessions Judge under Section 148, 323, 341, 325, 379 and 307 read with Section 149 of I.P.C. vide order dated 11.02.2019 and such an act of the Additional Sessions Judge tantamounts to taking of cognizance twice for certain different offences by two Courts at different stages. The Additional Sessions Judge has thus by the impugned order has taken fresh cognizance against the petitioner Nos.1 to 3 under Section 307 of I.P.C., therefore, such a course of action cannot be held to be in accordance with law. No doubt, on committal of the case by the Magistrate to the Court of Sessions with reference to Section 209 Cr.P.C., the restrictions on the powers of Court of Sessions, including that of the Additional Sessions Judge, would get lifted as in that event the Court of Sessions/Additional Sessions Judge would exercise such power as a Court of "original jurisdiction". But a conjoint reading of Section 193 and 209 Cr.P.C., would make it clear that the situation wherein part cognizance has been taken by the Magistrate and part cognizance has been taken by the Additional Sessions Judge cannot be held to be legally permissible. Hence, the impugned subsequent order dated 11.02.2019 passed

against the petitioner Nos.1 to 3 is not legally sustainable in the eye of law and the same is liable to be quashed and set aside.

Conclusion:-

28. In view of the discussions made hereinabove, the impugned order dated 11.02.2019 stands quashed and set aside qua petitioner Nos.1 to 3 and the same is upheld qua-petitioner Nos.4 to 9. This order, however, would not create any difficulty for the Additional Sessions Judge in invoking its powers under Sections 227 and 228 Cr.P.C. at the stage of passing orders on charges or discharge for the appropriate offences on the basis of material available on the record.

29. While passing the operative part of the order dated 11.02.2019, the trial Court has summoned the petitioner Nos.4 to 9 by arrest warrants, their personal liberty was protected by this Court by passing an interim order staying their arrest. Hence, this Court deems it just and proper to direct the trial Court to secure the appearance of the petitioner Nos.4 to 9 through bailable warrants instead of arrest warrants. Their arrest warrants are converted into bailable warrants.

30. With the aforesaid modification in the impugned order, this petition stands disposed of.

31. Stay application and all application(s), pending if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

Aayush Sharma/20