

**Subhash Chander Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/682182](http://sooperkanoon.com/682182)

**Court :** Delhi

**Decided On :** Jul-26-1989

**Reported in :** 1990CriLJ1217

**Judge :** Santosh Duggal, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 306 and 498-A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 161, 173, 190, 190(1), 193, 193(1), 207, 207A, 209, 226, 227, 228, 239, 240, 319, 319(1) and 319(4); Evidence Act - Sections 8; Criminal Law (Amendment) Act, 1952

**Appeal No. :** Criminal Revn. No. 174 of 1988

**Appellant :** Subhash Chander

**Respondent :** The State

**Judgement :**

ORDER

1. The petitioner in this revision petition assails the order passed by Additional Sessions Judge, Delhi on 22nd August, 1988 whereby his application, raising legal objections in respect of the order of summoning of the petitioner, Subhash Chander to face trial as an accused in the case, together with three others already committed to his court, passed on 23rd September, 1987, was dismissed.

2. The facts succinctly put are as under :

Kusum, wife of the petitioner's elder brother Harish Chander, died by hanging herself from a ceiling fan on the night intervening 29th and 30th August, 1986 in the house of the accused persons. On the allegations that the deceased took this extreme step on account of constant harassment and maltreatment on the part of her husband, husband's brother (petitioner herein) and husband's parents, a case was registered on the basis of the statement of Kusum's father, Kamal Nain Sehgal, vide FIR No. 514 dated 30th August, 1986 at Police Station Punjabi Bagh, Delhi for offences under sections 498-A/306 read with S. 34 IPC.

3-4. After investigation, the police submitted final report to the Court but whereas the other three co-accused namely, Harish Chander and his parents : Smt. Sumitra Devi and Ram Saran Dass were sent up for trial name of the petitioner was mentioned only in col. 2 of the report submitted under section 173 of the Criminal Procedure Code (for short the Code.

5. The magistrate ordered summoning of the accused persons on presentation of the challan, and thereafter nothing that one of the offences with which the accused persons were charged, namely, 5.306 IPC, being exclusively triable by the Court of Sessions, passed on order of committal of the accused to the said Court. After the case was received in the court of the Additional Sessions Judge, on being marked to him by the Sessions Judge, he posted the case for 23rd September, 1987 for arguments on charge. However, on the adjourned date, when the court was to consider the question of charge, against the persons sent up for trial, the Addl. Public Prosecutor attached to the court, made a statement orally, and also by means of an application that Subhash Chander, whose name had been shown in Col. 2 of the final report, be also summoned as an accused, as there were statements of witnesses equally implicating him, respecting allegations of cruelty, and harassment towards the deceased Kusum. On being satisfied, that there existed material against this person also for offences under section 498-A/306/34 IPC, an order of summoning him to face trial was passed.

6. After putting in appearance, the petitioner raised objections as to the legality of the order of summoning on the contention that since he was not sent up for trial by the police, the court could not exercise any power to summon him on the strength

of statements recorded during investigation by the police.

7. It was further contended on his behalf that the proper stage to summon this person mentioned in column 2 of the final report was only after trial had commenced and evidence has been recorded in court, and in case any incriminating material had come out, against him so as to appear to the court that he could also be one of the offenders, and then this power could be exercised in the manner envisaged by S. 319 of the Code.

8. The matter appears to have been argued at length before the trial court, inasmuch as the Addl. Public Prosecutor as well as the complainant's counsel, controverted the objection raised by petitioner's counsel, in this regard. The court by detailed order recorded on 22nd August, 1988, rejected the contentions canvassed on behalf of the petitioner and held that he had ample powers to summon the petitioner whose name was shown in col. 2 of the challan, on the basis of the evidence collected during investigation and thus decided to proceed further against all the accused persons, including the present petitioner. By separate order recorded on the same day, he found prima facie, on the basis of the documents and material placed before him, that the accused persons had been constantly harassing and mal-treating the deceased Kusum and as a result of cruelty perpetrated on her she has taken recourse to this drastic step of taking her life and thus they were all prima facie guilty of cruelty as well as abetment of the suicide and thus framed charges against them for the offences under section 498-A and 306 read with S. 34 of the I.P.C.

9. As noted at the outset, the order is under challenge in this revision petition. It is argued in the first instance that there is no power in a court under the Cr.P.C. 1973 barring the provisions of S. 319, and that unless the trial commences, and some facts come to light during the recording of evidence the court cannot proceed to summon any person as an accused, not sent up for trial.

10. This contention was elaborately canvassed by Bawa Gurcharan Singh during hearing, who argued that once cognizance of a case has been taken by a magistrate, against the accused sent up for trial, then the court can proceed only against said person or persons, and that unless evidence had been recorded and

some material had come on record, during recording of the evidence, there was no power with the Addl. Sessions Judge to summon the petitioner, not sent up for trial, as an accused. He built up his arguments by contending that the statements of witnesses recorded by police during investigation was not 'evidence' within the meaning of S. 319 of the Code, although those statements could constitute prima facie material for proceeding further, against the persons already before the court as accused. He contended therefore that the order of the Addl. Sessions Judge suffers from a jurisdictional error and was not sustainable.

11. Mr. Bawa argued that there was a catena of authorities subscribing to the proposition as canvassed by him to the effect that unless the case reaches the stage, contemplated by S. 319 of the Code, the court has absolutely no power for summoning a person not originally sent up for trial. According to him, the law was very clearly laid down in this regard by a judgment of this Court reported in 1987 Chand. Cri. C 173 : D. K. Razdan v. State, and the present case was on all fours with the said case, and that the impugned order was vitiated by the vice of impropriety, inasmuch as the Addl. Sessions Judge as a subordinate court under the jurisdiction of High Court of Delhi, was bound by the judgment of this Court and the rule of precedents left no scope for him to take a contrary view.

12. The learned counsel further submitted that the Addl. Sessions Judge failed to properly appreciate the dictum laid down by the Supreme Court in the case of Joginder Singh v. State of Punjab, : 1979 CriLJ333 , and that the trial judge went wrong in preferring to follow the judgment of the Patna High Court, albeit of a Full Bench, in preference to that of Delhi High Court, inasmuch as the impugned order is based entirely on the judgment of Patna High Court reported in , (Sk. Latfur Rahman v. State).

13. Before proceeding to examine the contentions raised in this revision petition as to the legality of the impugned order, I would like to put on record a strong disapproval of the wanton disregard displayed by the Addl. Sessions Judge, in respect to the judgment of this Court in the case of D. K. Razdan (supra), and which was cited before him, as is apparent from his own order. He appears to have been so much overwhelmed by the Full Bench judgment of the Patna High

Court in the case of Sk. Latfur Rahman (supra) that he totally became oblivious of his duty to abide by the view as propounded in a judgment of the High Court to which he was subordinate. In face of the judicial adventurism displayed by the concerned Addl. Sessions Judge (since retired), I find it necessary to stress that in our judicial system, the time honoured principle of precedential law has acquired a sanctity, which no subordinate court can lose sight of. The Supreme Court in a very recent judgment, : [1989]178ITR548(SC) , (Union of India v. Raghubir Singh (dead) by Lrs.), has highlighted this, by reiterating that in our system governed by a hierarchy of courts, the 'doctrine of binding precedent is a cardinal feature of its jurisprudence.'

14. Inasmuch as the Addl. Sessions Judge betrayed an appallingly misguided approach, and blatantly misdirected himself, I feel it apposite to deprecate this approach of a court, subordinate to this Court, but have to leave the matter at that, as the concerned Addl. Sessions Judge has since retired. Suffice it to say that the principles enunciated herein ought to serve as guidelines for all subordinate courts, and henceforth this Court shall not brook an deviation there from.

15. Although, while exercising revisional jurisdiction when the propriety of the order passed by lower court is also under scrutiny, I could have disposed of the revision petition on this ground alone, but since the counsel have argued the matter at length, and in view of the issues raised and canvassed, I consider it necessary to examine the matter in its entirety.

16. One of the core arguments, as advanced by petitioner's counsel is that the power to summon a person as accused who has not been sent up for trial by the police is confined only to provisions of S. 319 of the Code, and that at no earlier stage the Addl. Sessions Judge could have resorted to exercise of this power. According to him, it is only after trial has commenced, and evidence taken in court, that the question of summoning a person, not accused before the court can arise for consideration. Besides the judgment of Delhi High Court in the case of D. K. Razdan (supra), he relies in support of this contention on a judgment of Andhra Pradesh High Court reported in , P. China Lingaiah v. The State expounding the view that in view of the bar created by S. 193 of the Code in the way of a Court of

Sessions in taking cognizance as a court of original jurisdiction, the said Court cannot at the stage of consideration of charge summon any person as an accused who was neither charge-sheeted nor committed to Sessions. In that case also, the Sessions Judge after hearing the Public Prosecutor passed an order of summoning of a person as an accused on the basis of evidence and material that was shown to be existing with the prosecution. On a challenge to that order having been raised in the proceedings, which went up to the High Court in a revision petition, the view was expressed, as earlier noted, that a person who is not committed to the Court of Sessions, cannot be summoned as an accused because a Court of Sessions cannot directly take cognizance of a case.

17. Mr. Bawa argued that same was the view of Punjab and Haryana High Court as expressed by a learned single Judge in the case reported as 1988 Chand. Cr. C 554, (Mithlesh Kumar v. State of Haryana), where it was held that it was only after evidence had been recorded during trial that provisions of S. 319 of the Code come into play and it was then that the Court may summon any other person to stand trial along with the persons already accused before the Court where it appeared from the evidence led that such a person has committed an offence. He added that earlier also a similar view was expressed in the case reported as 1984 Chand Cri. C 434, (Lala Ram v. State of Haryana), and before that in the case reported as 1983 Chand Cri C 94, Gurtej Singh v. Jagrup Singh, propounding the view that a criminal court in exercise of power under section 319 of the Code was not entitled to take into consideration the material collected during investigation, and that the court has to look only into the evidence of the prosecution, led before it, and no other material.

18. He also referred to a single Bench judgment of Kerala High Court reported as 1989 Cri. LJ 8 , E. P. Narayanan v. State of Kerala where it was held that the evidence contemplated in S. 319(1) of the Code was 'evidence' as defined in S. 8 of the Evidence Act, according to which this expression 'means and includes statements made before the Court by witnesses in relation to fact under enquiry and documents produced for inspection of Court.' As a corollary, the Court expressed the view, that it was only this 'evidence' recorded by Court which can be material for the Court for formation opinion within the meaning of S. 319(1) of

the Code for proceeding against a person not being an accused, and that this will not include statement made to the police under section 161 of the Code, and the material collected during investigation.

19. The learned counsel also placed reliance on a judgment of the Rajasthan High Court in case reported as 1982 Cri LJ 2341, (Hukamaram v. State of Rajasthan), in support of his contention that but for the provisions of S. 319 of the Code, there is no other power with a Court of Sessions to Summon a person as an accused and that this power can be exercised only after evidence has been recorded during trial by the Court.

20. Although Sodhi Teja Singh, Standing Counsel for Delhi Administration, conceded the position as set up by learned counsel for the petitioner, but Mr. K. K. Sud, as counsel for the complainant party, vehemently repudiated the contentions advanced by Bawa Gurcharan Singh. He argued that the Supreme Court has held in the case of Raghubana Dubey v. State of Bihar) : 1967 CriLJ1081 that once a magistrate takes cognizance of an offence, he can proceed against those offenders also, who have not been sent up by the police, and that the Supreme Court cleared the matter beyond doubt by laying down that :

'Summoning of additional accused is part of proceedings initiated by taking cognizance of an offence.'

He also countered the contention of the learned counsel for the petitioner based on the judgment of Joginder Singh : 1979 CriLJ333 (supra) to the effect that it was only after the Court has recorded evidence in court that the provisions of S. 319 of the Code come into play, pointing out that this was never the issue before the Supreme Court, and it was only on the facts of that case where evidence had been recorded in court, that narrative stated so, but it was nowhere categorically held that except for the provisions of S. 319 of the Code, there was no power with a Court to summon a person as an additional accused.

21. According to Mr. Sood, under the new Code as amended in 1973, the magistrate has no power but to peruse the charge sheet or final report and then if prima facie an offence triable by the Court of Sessions is made out, then to commit

the accused person for session trial, and that it is only when the Sessions Judge takes up the case for consideration in charge, that he applies his judicial mind for the first time to the case and at that stage it was perfectly open to him to look into the material collected by the police during investigation, and which the prosecution is entitled to refer to, while showing to the Court about the existence of a prima facie case, at the stage covered by Sections 226 to 228 of the Code. He placed strong reliance on the Full Bench judgment of Patna High Court reported as . Latfur Rahman v. State, which after an exhaustive and comparative examination of the relevant provisions of the new Code vis-a-vis the corresponding provisions of the old Code, and taking note of the entire spectrum of case law on the subject, countered the view that S. 319 of the Code was sole repository of the power of a court in the matter of summoning of a person, not earlier arrayed as an accused, to face trial before the Court, together with the other persons arraigned as accused before it.

22. This judgment overruled an earlier judgment, where it was held that no Court can take steps to summon an accused or issue warrants against a person to appear before it, and face trial at the pre-trial stage, by high-lighting the fact that the Supreme Court has repelled this view in unequivocal terms in the case of Raghubans Dubey : 1967 CriLJ1081 (supra), and more expressly in the case : 1978 CriLJ1687 Hareram Satpathy v. Tikaram Agarwala, where order of a magistrate summoning an additional accused, wholly on the basis of statements made by witnesses under section 161 of the Code was upheld, even when no fresh evidence was at all recorded in the case.

23. Mr. Sud also referred to a Division Bench judgment of Calcutta High Court : AIR1962 Cal133 , Saifar v. State of West Bengal where it was held that a magistrate takes cognizance under section 190(1)(b) of the Code on a police report not merely of a person particularly named in the charge sheet but of the offence, and, therefore, the magistrate is entitled to summon additional accused against whom he considers that there was good evidence after perusal of the statements recorded by the police under S. 161 of the Code and the other documents referred to in S. 173, even without examination of witnesses in Court, and also to a judgment of the Punjab & Haryana High Court reported as 1979

P&H; LR 286, (Randhir Singh v. Kala Singh), rejecting the contention that a Court of Sessions can proceed against those accused only who have been committed for sessions trial, holding that :

'There is no scope for the argument that by taking cognizance under section 193 of the Code, the Sessions Judge can only proceed against those accused, case against whom is committed to his court. He assumes jurisdiction of the case for an offence on the commitment, and not against the accused.'

It was further held :

'He can summon the accused against whom material is available before him in the documents and record submitted by the police under section 173 of the Code, about which mention is made under sections 227 and 228 of the Code, though he may not have been challenged by the police, and consequently not committed to the Court.'

24. On reference by Mr. Sud to judgments particularly in the case of Raghubans Dubey : 1967 CriLJ1081 (supra) and Hareram Satpathy : 1978 CriLJ1687 (supra), Bawa Gurcharan Singh took up the position that a magistrate being court of original jurisdiction and the one who takes cognizance of the offence, could be considered to be having power to summon an accused at the stage he was considering the question of prima facie guilt or otherwise, under the provisions of Ss. 239 and 240 of the Code, of the persons sent up for trial by the police, the Court of Sessions was debarred from doing so, for the short reason that it was not a court of original jurisdiction, and there was an express bar in the Code in the shape of S. 193 in its way of taking cognizance of a case except by committal through a magistrate and that in face of this position, he can proceed against those persons only who stand committed to him unless of course during trial, as contemplated by S. 319 of the Code prosecution evidence reveals that there may be some other person or persons involved in the commission of the offence, besides those already before the Court.

25. I am afraid this argument has a beguiling simplicity, and proceeds on a fallacious approach to the effect that whereas a magistrate being a court, who

takes cognizance in the first instance can look to material sent up with the final report or the charge-sheet by the police, while considering the existence of prima facie case against accused persons before him, and can on the basis of that material summon others not sent up for trial the Court of Sessions was debarred from doing so, for reason of not being court of original jurisdiction.

26. A plain reading of S. 193 of the Code makes the fallacy, in this approach, manifest because all that this provision says is that a Court of Sessions can take cognizance of an offence only after commitment of the case to that Court a magistrate under the provisions of S. 209 of the Code. Once that is done, and these stands committed, then the embargo placed under S. 193 of the Code is lifted. The doubt, if any, in this regard has been set at rest by the Supreme Court itself in the case of Joginder Singh : 1979 CriLJ333 (supra), observing as under :

'It will be noticed that both under S. 193 and S. 209 the commitment is of 'the case' and not of 'the accused' whereas under the equivalent provision of the old Code viz. S. 193(1) and S. 207A it was 'the accused' who was committed and not 'the case'.

And further that :

'It is true that there cannot be a committal of the case without there being an accused person before the Court, but this only means that before a case in respect of an offence is committed, there must be some accused suspected to be involved in the crime before the Court but once the case in respect of the offence qua those accused who are before the Court is committed then the cognizance of the offence can be said to have been taken properly by the Sessions Court and the bar of S. 193 would be out of the way .....

26A. The question is, therefore, no longer rest integra. It is now settled proposition that since what is committed to the Court of Sessions is not an accused but the case, the Sessions Court becomes entitled to proceed against not only the accused originally sent up for trial and committed to it for trial but also other persons who may appear to be guilty from the evidence or material on record.

27. This proposition can be further extended, in the light of the judgment of the Supreme Court, in the case of Hareram Satpathy : 1978 CriLJ1687 (supra) where order of a magistrate summoning an accused on the basis of statements under section 161 of the Code and other material sent with the report under section 173 was upheld on the principle laid down in the case of Raghubans Dubey : 1967 CriLJ1081 (SC) (supra) holding as under :

'..... once cognizance has been taken by the magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceedings initiated by his taking cognizance of an offence.'

28. In this judgment, decision of the Calcutta High Court in the case of Saifar 1962 Cri LJ 283 (supra) was also noted, to the effect that :

'..... when a Magistrate takes cognizance under section 190(1)(b) on the police report, he takes cognizance of the offence and not merely of the particular persons named in the charge sheet, and, therefore, the Magistrate is entitled to summon additional accused against whom he considers that there was good evidence, after perusal of the statements recorded by the police under section 161 and the other documents referred to the S. 173 even without examination of witnesses in Court.'

29. It is pertinent to note that although in the case of Joginder Singh : 1979 CriLJ333 (supra) and Raghubans Dubey : 1967 CriLJ1081 (supra) some evidence had been recorded in Court, but in the case of Hareram Satpathy (Raj) (supra), it was not so. On the strength of this judgment, and also that of Raghubans Dubey : 1967 CriLJ1081 , where Division Bench judgment of Calcutta High Court in the case of Saifar 1962 (1) Cri LJ 283 (supra) was quoted with approval, where also no evidence in Court had been recorded, and in view of the clear dictum of the Supreme Court in the case of Joginder Singh : 1979 CriLJ333 (supra) that once case is committed to the Court of Sessions, the bar of S. 193 is removed the inference indubitably is that a Court of Sessions stands on the same footing after

committal as that of the magistrate, in so far as question of cognizance is concerned and further that at the stage it considered the question of charge under the provisions of Sections 227 and 228, which are pari materia to Sections 239 and 240 of the Code, then it is for the first time that it applies its judicial mind to the case and it is at that time that under the provisions of S. 226, the Public Prosecutor of the Court has to open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

30. It is thus clear that at the opening stage, the prosecutor gets a right to lay before the Court the entire evidence collected by the investigating agency and sent up with the report under section 173 Cr.P.C. as also statements under section 161 of the Code to prima facie satisfy the Court as to the material whereby he intends to prove the guilt of the accused. That is the stage just after taking of the cognizance by Court of Sessions under section 193 on committal of the case to him and it can certainly be said on the strength of the cases referred to above namely, Hareram Satpathy : 1978 CriLJ1687 (supra), Saifar (1962 Cri LJ 283 (supra), Raghubans Dubey : 1967 CriLJ1081 (supra) and Joginder Singh : 1979 CriLJ333 (supra), that at the time the Court applies its mind to the facts of the case in its entirety and if the material placed before it reveals the involvement or culpability of some other persons also, who had not been sent up for trial by the police, then it is within the power of the court to summon those persons also for trial as a part of the process of taking cognizance, rather it is its duty to do so because as held in the case of Raghubans Dubey, the summoning of the additional accused is part of the proceedings initiated by his taking cognizance of an offence.

31. The proposition that a Court can summon a person as additional accused, not initially sent up for trial, on the basis of the material collected during investigation, has also been endorsed by the Supreme Court in the case : 1984 CriLJ647 A. R. Antulay v. Ramdas Srinivas Nayak. The contention of Mr. Bawa that the aforesaid case was under the provisions of Criminal Law (Amendment) Act, 1952 where the case was before the Court of Special Judge, acting as Court of original jurisdiction, and thus the said judgment can be no authority to say that the Court of Sessions

enjoys the same power, is inconsequential in face of the judgment in the case of Joginder Singh : 1979 CriLJ333 (supra), to the effect that once an accused has been committed to the Court of Sessions, then the bar under section 193 of the Code is removed. It follows as a logical corollary that the Court of Sessions, then exercises the power as a court taking cognizance, and can function in the same manner while examining the case under section 226 to 228 of the Code, as a magistrate can do at the stage of Sections 239 and 240 of the Code.

32. It is pertinent to note the Mr. Bawa candidly conceded that a magistrate trying a warrant case, when considering question of framing of charge under sections 239 and 240 of the Code can summon an offender as an additional accused without recording evidence if he were satisfied on the basis of the report under section 173 of the Code that a prima facie case was made out against him.

33. If that is so, there seems to be no valid reason for him to argue that while exercising power under similar provisions of law, namely, Ss. 227 and 228 of the Code, a Court of Sessions is debarred from exercising that power, particularly when the Supreme Court has held that after committal of the case, the embargo placed by S. 193 stands lifted.

34. One other aspect has also to be borne in mind, namely, holding that a magistrate can, at the stage of considering the charge under sections 239 and 240 can look into the material placed before him by the prosecutor to examine the existence of a prima facie case, and proceed to summon a person not accused before him to stand trial, but a Court of Sessions cannot do so, will lead to very anomalous results because it would seem to suggest that the sessions trial should proceed mechanically on the basis of police report under section 173, and that whereas a Magistrate can look into the material collected during investigation, Court of sessions cannot do so Such an interpretation would also be against the legislative intendment which was made apparent when the Cr.P.C. was amended in 1973 with apparent emphasis on expedition of trial, as evidenced by changes, such as curtailment of committal proceedings, and abolition of revisionary jurisdiction against interlocutory orders.

35. The principle of harmonious construction thus goads towards the inference that it could never have been the intention that till the time prosecution evidence is recorded in Court, 'and some incriminating facts revealed, the Court of Session cannot look into the case, and see who could be the guilty persons and summon them also for trial, when it is examining it in a broad spectrum from the angle of existence of prima facie case, when under section 226 of the Code the Public Prosecutor has been given right, to place before the Court the entire material sent up with S. 173 report, and which has been termed as 'evidence' to that extent. The proposition as set forth on behalf of the petitioner looks incongruous in this setting because such an interpretation is bound to lead to delay in trial, as S. 319 enjoins upon the Court to record entire evidence de novo in the presence of newly added accused which means taking the entire proceedings back to the stage of charge. That the intention was clearly to aim at expedition of trial, has also been highlighted by the Supreme Court though in a different context, in the case of Jaginder Singh : 1979 CriLJ333 (supra), by observing that :

'The Law Commission in its 41st Report which led to amendment of Cr.P.C. in 1973, intended that the whole case against the accused should be proceeded with expeditiously.'

36. Unless there is an express bar in the Statute against the adoption of a particular course of action, then that interpretation should be adopted, which leads to desired result, namely, speedy and prompt trial. This can be ensured by adopting the interpretation as given by Patna High Court in the case of Sk. Latfur Rahman (supra), based in its turn on a cumulative reading of the three Supreme Court judgments in the cases of Raghubans Dubey : 1967 CriLJ1081 (supra), Hareram Satpathy (supra) and Jaginder Singh : 1979 CriLJ333 (supra). To concede to the Court of Session power of looking into the material placed before him by the Public Prosecutor at the stage of consideration of the case after taking cognizance and summoning of suspects to stand trial, would be a better course, than relegating him to the position of mechanically proceeding on the basis of the police report, and then continue with the trial up to the stage when prosecution evidence is recorded and then summon additional accused and thereafter record the evidence over again as enjoined upon by S. 319(4)(b), after additional accused

appears before him, thus holding up the decision of the case, qua other accused also, who would be more likely than not in custody, resulting in hardship to them, besides wastage of Court's time.

37. I am alive to the fact that Mr. Bawa, petitioner's counsel, has cited certain judgments in support of his contention. With all respects, I do not feel handicapped in taking the view I propose to adopt, in face of judgments of other Courts because in so far as the decisions of Punjab and Haryana High Courts are concerned, they lose sight of a Division Bench judgment of their own High Court, reported in (1979) 81 Punj LR 286, *Randhir Singh v. Kala Singh*, and another Single Bench judgment in the case of *Lal Chand v. State of Haryana*. I have also noted that the learned single Judge in the case of *Lala Ram (supra)* chose not to follow the Single Bench judgment of his own Court in the case of *Lal Chand (supra)* by reference to a Supreme Court judgment in the case of *Municipal Corpn. of Delhi v. Ram Krishan Rohtagi* : 1983 CriLJ159 but that judgment nowhere says that but for S. 319 of the Code, there is no other power or other stage for taking cognizance against a person not sent up to face trial by the accused.

38. That case like the case *Joginder Singh* : 1979 CriLJ333 (*supra*) proceeded on its own facts namely, where the power had been exercised under section 319 of the Code and in that context the Supreme Court held that since the power has been validly exercised, there was no scope for interference. This judgment does not warrant the narrow interpretation to the effect that except for S. 319, there was no other power with a Court of Session to summon a person an additional accused who is not already before that Court.

39. The judgment of Andhra Pradesh High Court in the case of *P. China Lingaiah v. State*, has been expressly overruled by the Supreme Court itself in the case of *Joginder Singh's case (supra)*.

40. One of the other judgments of this Court referred to by Mr. Bawa, also of, a learned single Judge, reported in (1987) 3 Crimes 645 (Del), *Baldev Kumar v. State* also nowhere exposed the proposition that except for S. 319, there was no provision or power to summon a person, as an additional accused. It was rather implicit from a reading of that judgment vis-a-vis the facts in that case there was

no other evidence against the person, who was originally mentioned in column 2 but was summoned by the Magistrate as an accused, on the basis only of confessional statement of a co-accused. It was in that context that it was held that unless that statement found corroboration in material particulars by independent evidence recorded by the Court, it was no evidence, and in this view of the matter it was held that in such a situation it was only after evidence had been recorded, as contemplated by S. 319, that Court could proceed to summon the petitioner therein as accused. This judgment, therefore, suggests that had there been evidence which could be taken into consideration, without requiring corroboration in Court, then there could have been no objection to the summoning of the petitioner, in that case as an accused, even before the stage of S. 319.

41. On a conspectus of all the authorities and the relevant provisions, it becomes established that it rather duty of a Court to summon a person as an additional accused at the time applies its judicial mind for the first time in a case, as this is part and parcel of the process of taking cognizance of the case.

42. I would have thus no hesitation in holding that the Additional Sessions Judge on an application being made by Addl. Public Prosecutor at the stage of the case as envisaged by Sections 226, 227 and 228 of the Code could take into consideration the material placed before him including statements of witnesses under section 161 of the Code and summon the petitioner as an accused. I feel free to straightway express this view, in spite of the judgment of a learned single Judge of this Court, in the case of D. K. Razdan v. State, 1987 Chand Cri C 173, because I am fortified by the decision of the Supreme Court in this report in the cases of Raghubans Dubey : 1967 CriLJ1081 (supra) and Hareram Satpathy : 1978 CriLJ1687 (supra), both of which do not seem to have been brought to the notice of my learned brother in the above case.

43. With all deference, I find myself unable to subscribe to the view that S. 193 is a disabling section. It is no doubt so, but to a limited extent, namely, up to the time the case is committed to the Court of Session and once that stage is over, the bar is lifted, and a Court of Session becomes a Court taking cognizance of the case in the same manner as a Magistrate does under section 190 of the Code. Again with

all respects, it would not be correct to say that S. 319 is the only provision empowering the Court to summon a person other than the accused, to face trial, in view of the Supreme Court judgments noticed above.

44. The provision of S. 319 occurring in Chap. XXIV of the Code titled : 'GENERAL PROVISIONS AS TO ENQUIRIES AND TRIALS', is apparently an enabling provision, but is not so worded, as to be read as an exclusive provision. I would say that this provision was incorporated with a view to remove the disability or hurdle in the way of a Court, which could have been set up once the trial had started, in case evidence revealed involvement of some other persons also. It cannot mean that before that, and while the Court applies its judicial mind for the first time to the case either under sections 239 and 240, or 226 to 228 of the Code. it should proceed like an automation and not look beyond what the police chose to do, because to hold so would mean vesting immense powers in the investigating agency, and render the Court powerless till some witness comes before the Court, and deposes about the guilt of persons not sent up for trial.

45. I would also like to dispose of one more line of argument because emphasis was laid on the fact that S. 319 has reference to power of summoning during enquiry or trial, and that since trial does not commence till after the framing of the charge, the power of summoning cannot be exercised, till evidence is recorded. Apart from the fact that it is not possible to subscribe to the view that S. 319 is the sole repository of this power in the light of the foregoing discussion, otherwise also I have no hesitation in saying that it will be too sweep in a proposition to endorse that until evidence is recorded, the trial cannot be said to have commenced.

46. It is pertinent to note that Chapter xviii of the Code titled : 'TRIAL BEFORE A COURT OF SESSION' starts from S. 225 onwards. I am of the considered view that 'chapter heading' also gives a very clear indication as to the legislative intendment. I am buttressed in propounding this view in what Maxwell has to say in his Interpretation of Statutes' Twelfth Edition at page 11 to the effect that, 'The headings prefixed to sections or sets of sections in some modern statutes are regarded as preamble to those section.' The author at page 6, states that 'preamble' in which the main objects of the Act are set out, are legitimate aids in

construing the enacting parts. On an analogy of reasoning, it can thus be said that chapter heading can also be used as aid for interpreting the meaning of the sections enshrined in the chapter. Same role is attributed to 'chapter heading' by Cross in his Statutory Interpretation by saying that 'headings are appropriately consulted to resolve an ambiguity in the text'.

47. Bindra's Interpretation of Statutes, 7th Edition, also says that 'chapter headings' :

'constitute an important part of the Act itself, and they may be read not only as explaining the sections which immediately follow them, as a Preamble to a statute may be looked to, to explain its enactments, but as affording as it appears to be (me ?) a better key to the construction of the sections which follow than might be afforded by a mere Preamble.'

Further,

'The title of a chapter is not a determining factor regarding the interpretation of the provisions of a section in the chapter but the title certainly throws considerable light upon the meaning of the section and where it is not inconsistent with the section one should presume that the title correctly describes the object of the provisions of the chapter :

Vepa P. Sarathi in his 'Interpretation of Statutes', second edition, at page 255 also opined that : 'title or heading of group of sections may be looked to for interpreting the section'. A Division Bench of Calcutta High Court in case : AIR1950 Cal349 also held that though the title of a chapter is not a determining factor regarding the interpretation of the provisions of a section in the Chapter but the title certainly throws considerable light upon the meaning of the section and where it is not inconsistent with the section one should presume that the title correctly describes the object of the provisions of the Chapter.

48. In this view of the matter, it would not be correct to say that the trial does not commence before a Court of Session till evidence is recorded because chapter heading as : 'TRIAL BEFORE A COURT OF SESSION' starts from the stage when

a prosecutor under section 226 is entitled to open the case before the Court by describing the charge brought against the accused, stating what evidence he proposed to prove the guilt of the accused. Thus, the statement of the case even at the pre-charge stage by the Public Prosecutor before the Court, is also meant to be part of the trial process before a Court of Session, and in that sense it can be said that trial has commenced, and as such the material which is sufficient to come, to prima facie view to proceed against the accused before the Court, including the statements of the witnesses under section 161 of the Code, can also form a basis for the Court to see if any other person might be involved in the case, and to summon that person also to face the trial. This would obviate the necessity of going back on evidence, as the procedure under section 319 envisages, and thus advances the legislative intendment, as well as the desired object of public interest, to ensure speedy and prompt trial of persons sent to Court.

49. I reiterate that I would have normally felt obliged to refer the matter for opinion of a larger Bench, in view of the judgment of a learned single Judge of this Court in the case of D. K. Razdan (supra), but I refrain from doing so because of the clear authority of the Supreme Court in the case of Hareram Satpathy : 1978 CriLJ1687 (supra), read in conjunction with Joginder Singh's case : 1979 CriLJ333 (supra) and the view expressed by the Supreme Court in the case of Raghubans Dubey (supra) particularly when I find that the judgments in the two cases - namely the last mentioned as well as the first one were not noticed by the learned single Judge, deciding the above case.

50. I accordingly proceed to dispose of the matter, and as a result of the foregoing discussion, I find no merit in the contentions raised on behalf of the petitioner, and dismiss the petition.

51. No order as to costs.

52. The trial Court records be sent back so that the case can proceed.

53. Petition dismissed.