

**State Vs. Har Narain Etc.**

**State Vs. Har Narain Etc.**

**SooperKanoon Citation :** [sooperkanoon.com/683660](http://sooperkanoon.com/683660)

**Court :** Delhi

**Decided On :** Sep-02-1975

**Reported in :** 1976CriLJ562; 1975RLR518

**Judge :** V.D. Misra, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 210

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 226 of 1974

**Appellant :** State

**Respondent :** Har Narain Etc.

**Advocate for Def. :** Mr. D.C. Mathur

**Advocate for Pet/Ap. :** K.L. Arora,; B.B. Lil,; D.C. Mathur,;

**Judgement :**

**V.D. Misra, J.**

(1) Har Narain respondent No. 1, Karta of Hindu Undivided Family, was running business in the name and style of M/S. Chiranji Lal Ramjl Das, Delhi. This firm is assessed to income tax. On November )2, 1965 the said Hindu Undivided Family was converted into a registered partnership firm with Har Narain and his five Sobs being (he partners. This firm had various branches situated at different places.

One of the branches was run under the name of M/s. less Om Parkash Gauri Shankar, Delhi.

(2) During the course of assessment it was noticed that Har Narain had made false verification and had also falsified the records of M/s. Om Parkash Gauri Shankar with the assistance of other respondents. It was found that Har Narain along with other respondents with the intention to defraud the income-tax authorities had committed offences under section 193, Indian Penal Code, and section 52 of the Income Tax Act, 1922 between June 12, 1951 and February 15, 1956. The matter was duly reported to the Central Bureau of Investigation for investigation.

(3) On November 13, 1967 the Income Tax Officer filed a complaint against the respondents under section 52 of the Income Tax Act, 1922 and section 193, Indian Penal Code. The same day a charge sheet was filed by the Inspector of Police, C B.I., against the respondents under 'section 120-B read with section 420, 477A, 467/471 Indian Penal Code ., section 193 Indian Penal Code . and section 52 of the Income Tax Act, 1922, and section 420, 477A, 467/471 Indian Penal Code ., 193 Indian Penal Code . and section 52 of the Income Tax Act 1922' after obtaining the requisite consent under section 196-A (2) of the Code of Criminal Procedure, 1898 (hereinafter referred to as the old Code).

(4) On November 14, 1967 an application was moved by the prosecution praying that the two cases be amalgamated and tried together at one trial. After summoning the accused and hearing them the Special Magistrate by his order dated May 27, 1968 dismissed the application and directed that the police case should be enquired under section 207-A, where as in the complaint case the procedure laid down under section 208 of the old Code be followed. 34 witnesses were examined in the complaint case. while 29 witnesses were examined in the police case till April 1, 1974 when the Code of Criminal Procedure, 1973 (hereinafter referred to as the new Code) came into force. Now the Special Prosecutor requested the Magistrate to apply section 210 of the new Code and try the two cases together as if both the cases were instituted on a police report. The Magistrate held that though the new Code was applicable because of the

provisions contained in section 484(2)(a) of the new Code, the case was not covered by the provisions of section 210. The present petition filed by the State is directed against the order of the Magistrate.

(5) It is conceded by the respondents that proviso to clause (a) of sub-section (2) of section 484 of the new Code makes the new Code applicable to both the cases but it is contended that the cases are not covered by section 210. Now whereas under the old Code offences under section 467/471 were triable by a Court of Session, these are now triable by a Magistrate of the First Class. In other words, had the cases been triable under the new Code by Court of Session, section 209 of the new Code would have become applicable and the cases would have stood committed to the Court of Session.

(6) The old Code did not contain any provision corresponding to section 210 of the new Code. The Joint Select Committee states the object of enacting this section thus:

'It has been brought to the notice of the committee that sometimes when a serious case is under investigation by the police, some of the persons concerned file a complaint and quickly get an order of acquittal either by collusion or otherwise. There upon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the committee has provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if no such report is received, the Magistrate would be free to dispose of the complaint case.'

S. 210 is

(7) It is contended by the respondents that since the offences alleged to have been committed by them in the complaint case and the police report are different, the provisions of this section are not attracted. Now, one of the ingredients of sub-section (1) is that the offence enquired into or tried by the Magistrate in the complaint case should also be under police investigation. The word 'offence has

been defined in section 2(n) of the Code as 'any act or omission made punishable by any law of the time being in force.....' In other words, it is the act or omission which has to be common. As long as the facts under investigation by the police include the facts mentioned in the complaint case, then it will make no difference if the police comes to the conclusion that offence not mentioned in the complaint have been committed by the accused. In the instant case a bare reading of the police report and the complaint shows that the facts complained of are the same. It is true that the period covered by the police report is longer than the period covered by the complaint case. But that is because after the matter had been reported to the police the assessed filed further income-tax returns for the succeeding periods and the police found that similar offences had been committed by the respondents in the succeeding periods.

(8) Once the criteria laid down in sub-section (1) are satisfied, then if the Magistrate takes cognizance of 'any offence' against 'any person who is an accused in the complaint case' on the basis of police report, it is the duty of the Magistrate under sub-section (2) to try two cases together as if they were instituted on a police report. The respondents contend that the words 'any offence' used in sub-section (2) show that the offence cognizance of which is taken on the basis of the police report should be the same which is being enquired into or tried in the complaint case. In my opinion this contention is not well-founded. The word 'any' does not denote or refer to a particular or a specific offence. On the other hand, it suggests that it is sufficient if cognizance of 'an offence' is taken. The Concise Oxford Dictionary gives the meaning of 'any' thus : 'One, some (no matter which), as have you any wool have you any of them were any Frenchmen there 'The Shorter Oxford Dictionary gives its meaning when used in singular equivalent to 'a' thus : 'no matter which, or what'; when used as plural equivalent to 'some' it means 'no matter which, of what kind or how many.' It, therefore, follows that if, on the basis of a police report, cognizance of an offence, though it may be different from the offence mentioned in the complaint, is taken, the first ingredient of sub-section (2) is satisfied. The second ingredient of the sub-section is that cognizance of offence should be taken against 'any person who is an accused in the complaint case. This would be satisfied if cognizance of the offence is taken against even only one of the person accused in the complaint case. Where both the ingredients

are satisfied, the procedure to be followed in the two cases is as if both were instituted on police report.

(9) The ingredients of sub-section (3) are couched in the negative. The Shorter Oxford Dictionary shows that when the word 'any' is used with a proceeding negative it means 'None at all, of any kind, etc., not even one.' It follows therefore that the expression 'the police report does not relate to any accused in the complaint case', mean that none of the accused in the complaint case is the subject matter of the police report. Similarly the expression 'does not take cognizance of any offence on the police report' means that cognizance of no offence is taken. It is only when the conditions laid down under sub-section (3) are satisfied that the two cases have to be tried according to the separate procedure laid down for each of them. This sub-section also shows that as long as the police report relates to one of the accused mentioned in the complaint case and the Magistrate takes cognizance of an offence on the basis of the police report, the case will fall under sub-section (2) and the procedure mentioned therein will have to be followed.

(10) I wish to make it clear that in this case section 210 has become applicable because of the legal fiction created by section 484(2)(a) of the Code, and, therefore, the Magistrate staying proceedings in the complaint case and calling for the police report, as envisaged in subsection (1), has no relevance. The Supreme Court in State of Bombay V. Pandurang Vinayak and others, : 1953 CriLJ1049 , while holding that full effect must be given to the statutory fiction and it should be carried to its logical conclusion, quoted with approval the following observations of Lord Asquith in East End Dwellings Co. Ltd. V. Finsbury Borough Council, (1952) A.C. 109 : 'If you are bidden to treat an imaginary state of affairs as real, you must surely, 'unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs'

(11) In the instant case the police report is against all the persons who are named as accused in the complaint case. The Magistrate took cognizance of various offences on the police report when he started commitment proceedings under section 207-A of the old Code. therefore, the ingredients of sub-section section (2) stand satisfied and the complaint case has to be tried as if it was instituted on a police report.

(12) Mr. D.C. Mathur, learned counsel for the respondents, lastly contends the Magistrate had no jurisdiction to take cognizance of the offences mentioned in the charge sheet. I find that the cognizance was taken more than seven years ago and this question was never raised through out the proceedings. I cannot allow him to raise it for the first time in this petition made by the State.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**