

**Raj Kumar and ors. Vs. State**

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**Court :** Delhi

**Decided On :** Nov-09-1998

**Reported in :** 1999IAD(Delhi)873; 77(1999)DLT409

**Judge :** J.B. Goel, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 190 and 193; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 307

**Appeal No. :** Crl. M.(M) No. 1777 of 1998

**Appellant :** Raj Kumar and ors.

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. K.K. Sud and; Ms. Kamna Vohra, Advs; Mr. S.P. Minocha

**Judgement :**

**J.B. Goel, J.**

1. In this petition under Section 482 of the Code of Criminal Procedure (for short 'the Code'), the nine petitioners have challenged the legality and validity of the order dated 6.6.1998 passed by the learned Addl. Ses-sions Judge (ASJ), Delhi summoning the petitioners under Section 193 of the Code before trial has started to stand trial for offence under Sections 302/307/24 along with three other accused

persons already challaned.

2. Briefly, the facts are that in an incident which took place at about 7.30 p.m. on 19.12.1997, deceased Kesho Ram and his son Dharmender Kumar were attacked by some persons at their House No.1357, Gandhi Nagar, Delhi in which Kesho Ram had received fatal injuries and his son Dharmender Kumar had received injuries. The deceased was removed to GTB Hospital, Shahdara by his injured son and daughter Sunita at 8.30 p.m. He was found 'brought dead'. Some one had given information on PCR which was transmitted to Police Station, Gandhi Nagar where DD No.26-A was recorded at 8.25 p.m. Information of his admission as dead in that hospital was also conveyed to the Police Station where DD No.27-A was recorded at 8.45 p.m. SI Amrit Raj on receipt of copy of the DD report proceeded to the spot and finding no eye witness there and on spot enquiries made his report that a case under Section 302, IPC be registered and FIR No.267/97 was registered at 9.30 p.m. On the same night, inter alia, statements of Dharmender Kumar and his mother Smt. Saroj were recorded who had made statements as eye-witnesses and had narrated the events and circumstances of the accident, names of assailants, their roles and weapon used by them. They had named the assailants\_Pankaj, Rohit, Manoj, Amrit s/o Bobby, Anil, Raja, Sunil, Raj Kumar, Babloo, Ashok, Kamal and Deepak. Statements of Smt. Sunita and Manoj, son and daughter of the deceased were also recorded on the same night who had also stated that their aforesaid brother had told them the aforesaid names of the assailants.

3. Post-mortem was conducted on 20.12.1997 at about 11.30 a.m. and the doctor had noted 15 external injuries on the deceased. MLC of Dharmender Kumar showing stab injuries was also taken into possession. It appears Raj Kumar one of the accused who had also been injured had also been admitted in that hospital on the same day and his MLC was also taken into possession during investigation. Accused Raj Kumar @ Raja, Kamal Raj s/o Kesho Ram Sharma and Deepak were arrested on 22.12.1997, the latter two are son and nephew of the deceased. Disclosure statements of these accused were recorded on 22.12.1997 and 23.12.1997. A dagger was recovered at the instance of Raj Kumar @ Raja on 23.12.1997 and in the opinion of the post-mortem doctor, injuries No. 1, 4, 7, 10

and 15 are possible with this weapon. Remaining assailants were not arrested. However, a report dated 10.3.1998 under Section 173 of the Code was submitted to the Magistrate concerned (MM) against the aforesaid three accused only for offences under Sections 147, 148, 149, 324, 302 and 452, IPC and Section 27 of the Arms Act. Regarding the remaining persons named as assailants, it was stated that some of them are absconding and some have been interrogated and further investigation was continuing and if evidence is available, supplementary report will be submitted against them.

4. The learned MM took cognizance and in due course committed the aforesaid three accused persons to the Court of Sessions on 31.3.1998. The learned MM did not make any order nor sought further report about the other aforesaid alleged 9 assailants.

The learned ASJ on committal after hearing the Counsel for the accused committed and for State, and relying on the Supreme Court judgment in *Kishun Singh Vs . State of Bihar : 1993 CriLJ1700* came to the conclusion that on the basis of material on record, Pankaj, Rohit, Amit, Manoj, Anil, Sunil, Raj Kumar, Babloo @ Sudhir and Ashok Kumar were also involved in the commission of the crime, exercised power under Section 193 of the Code and summoned them through warrants of arrest.

5. The said nine persons have come here under Section 482 of the Code. By an ex parte order dated 12.6.1998, their arrest has been stayed by this Court. Learned Counsel for the petitioners has relied on the recent judgment of Supreme Court in *Ranjit Singh Vs . State of Punjab : 1998 CriLJ4618* .

6. The ratio of *Kishun Singh's* case (supra) was followed in *Nissar Vs . State of U.P. : 1995 CriLJ2118* . However, the correctness of this view was doubted in *Raj Kishore Prasad Vs . State of Bihar, : 1996 CriLJ2523* . This controversy has now been settled by a bench of 3 judges of Supreme Court in *Ranjit Singh v. State of Punjab* (supra) and the view taken in *Kishun Singh's* case has been overruled and it has been held that 'after the case is committed, the Sessions Judge has no power under Section 193 of the Code to add any other person to the array of accused except under Section 319 after reaching the evidence collection stage

and besides that he has no such power'.

7. The learned Counsel for the State in view of this authoritative judgment does not support the impugned order passed under Section 193 of the Code. For that reason, this order is not sustainable.

8. However, learned Counsel for the State has contended that the Supreme Court in para 23 of this judgment has also held that it is open to the Sessions Court on committal to send a reference to the High Court detailing the situation so that the High Court can under its inherent jurisdiction or revisional power direct the committing Magistrate to rectify the committal order by issuing process to such left out accused. The contention is that on the facts and circumstances and on the material available on record, the ASJ has prima facie found the involvement of the 9 petitioners. He has also come to the conclusion that the offence is an alarming in nature and that it is expedient to summon them as accused and having so held and the offence being grave and serious, he would necessarily make a reference to this Court for invoking inherent power under Section 482 of the Code or revisional power in accordance with the Supreme Court judgment in the above case. The legal position has been crystalised by the judgment on 22.9.1998 whereas the impugned order was passed earlier. In these circumstances, this would be unnecessary and avoidable exercise, and that it is expedient in the interest of justice to save time and this is a fit case for this Court to suo motu exercise inherent jurisdiction or revisional power under Section 401 of the Code. He has referred to the material on record and as also noticed by the learned ASJ in the impugned order.

9. The learned Counsel for the petitioner strongly contests this. He has contended that this course is neither warranted nor it is proper for the reasons, firstly, in the report under Section 173, the Investigating Agency has stated that so far as the other persons are concerned, the investigation has not been closed and is being continued and that if their involvement is found, further report will be submitted. Contention is that in view of this, it is neither legally permissible nor is proper for this Court to suo motu exercise such power and thereby to interfere in the investigation being made by the police; secondly in *Ranjit Singh (supra)*, it is not

the law laid down that a Court of Sessions is bound to make a reference in each and every case to the High Court for invoking its power under Section 482 or in revision. Such a power, as noticed in that judgment, could be resorted to only in extreme and rare cases and only for rectifying or correction of grave mistakes. Examples of such cases are also given in this very judgment of Ranjit Singh and that the present case is not of that class/category. For this, reliance has also been placed on *Roopchand Lal & Anr. v. State of Bihar & Anr.*

10. In this cited case, the police had submitted a report under Section 169 of the old Code that no case was made out for sending the accused for trial. The Magistrate, however, disagreeing directed the police to submit a charge-sheet. After referring to the case law and the relevant provision of law, it was held that there was no power expressly or impliedly conferred under the Code on a Magistrate to call upon the police to submit a chargesheet when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial.

11. This authority is of no relevance as the police has not sent its final report and the point involved here is quite different. In this case in hand, the police has not submitted its report so far as the remaining persons are concerned. And such a report has not been submitted subsequently till the impugned order was passed by the learned ASJ or till today.

12. The question here is whether the Magistrate could act on the basis of material on record to proceed against the left out alleged assailants without waiting for the police report. The question is what is the scope of the power of a Magistrate in such circumstances.

13. It is well established that when a report of a cognizable offence is made to the police, it is the duty of the police to make proper investigation expeditiously and without waste of time and submit a report. This is all the more necessary in heinous crimes like murder. The occurrence took place on 19.12.1997 and the police had not made up its final mind for about six months. I have perused the investigations file. From the material available in the investigation file, so far it may not reasonably be possible to say that the involvement of the present petitioners

could be safely excluded.

14. Sub section (1) of Section 190 of the Code reads as under:

190. Cognizance of offences by Magistrates\_(1) Subject to the provisions of this Chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specially empowered in this behalf under Sub-section

(2) may take cognizance of any offence:

(a) upon receiving a complaint of facts which constitutes such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

15. A Magistrate has power to take cognizance of an offence in the three situations noticed above. In this case, the material before the Magistrate was a police report already submitted. In *State of Maharashtra v. Sharadchandra Vinayak Dongre & Others* 1995 SCC (Cri.) 16 : 4 (1994) CCR 776, regarding the power of the Magistrate under Section 190(1)(b) of the Code, it has been held that a Magistrate can take cognizance upon a police report if he is satisfied that material placed by the prosecution is sufficient for taking cognizance. He is not debarred from doing so even if the police subsequently files an application to file supplementary charge-sheet. And even if the Investigating Officer terms a police report as 'incomplete', it does not take away the jurisdiction of the Magistrate to take cognizance of the offence, if the material is sufficient for him to be satisfied that it was a fit case for him to take cognizance of the offence. The Magistrate is not bound by the label given to the report or the charge-sheet by the Investigating Officer and it is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the prosecution with the report was sufficient to take cognizance or not.

16. The question whether on the material available on record, the Magistrate could take cognizance of the offence against the left-over accused persons or not would

be for the Magistrate to consider and decide. In the present case, the learned MM had not exercised such a power while taking cognizance and before committing the case to the Court of Sessions. He has also not kept supervision over the investigation and that is why the report has not been submitted by the police within a reasonable time and the reasons thereof nor it has kept the Magistrate informed of the steps taken so far. The learned ASJ has found that on the basis of material on record, involvement of the nine petitioners was prima facie established.

17. Two courses are now open after the impugned order is set aside. Firstly, the Sessions Judge may make a reference, if he thinks proper, to this Court to exercise revisional or inherent powers and if such a reference is made, then it would be for this Court to exercise such power and if it so chooses to exercise, the case will have to be remitted back to the Magistrate concerned to apply his mind further on the material on record and either to direct the police to submit further report or to make appropriate order on the material on record and if necessary to rectify the order of committal already made.

18. The offence is grave and serious. The learned ASJ has prima facie found that a case is made out against the present nine petitioners also and if the case is remitted back to him, most probably, he would like to make a reference to this Court which will be a sheer waste of time and avoidable exercise. It is not in the interest of justice and proper administration of justice to adopt an avoidable course. It is well established that under Section 401 read with Section 397 this Court has ample power to correct or set aside an illegal, improper or incorrect order, or finding to correct grave failure or mis-carriage of justice arising from erroneous or defective orders or errors arising out of misconception of law, irregularity of procedure, misconception of law of a subordinate Court. And this power can be exercised suo motu also. This Court has inherent powers under Section 482 of the Code to interfere even if revision under Section 397 or Section 401 may not lie as it is the paramount power of continuous superintendence of the High Court under Section 482 to interfere and set right a wrong which has or may result in miscarriage of justice.

19. In my view, in these circumstances, it is a fit case to exercise jurisdiction by this Court under Section 482 or under Section 401 of the Code and to direct the learned MM to apply his mind and take a decision. If he considers that there is material to proceed against some or all the present petitioners, he shall proceed to summon those left-over accused and rectify the committal order already passed, otherwise to take further steps to get the investigation expedited in accordance with law.

20. This petition is accordingly allowed. The impugned order is set aside. The Magistrate concerned is directed to pass appropriate order according to law in the light of observations made above. Keeping in view the gravity of the offence, he shall proceed further expeditiously.

21. Record received from the learned ASJ shall be sent to the learned MM concerned forthwith.

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