

Sukhdas and ors Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-27-2001

Reported in : 2001CriLJ3138; 2001(2)WLN683

Judge : N.P. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 154, 156, 156(3), 158, 161, 169, 170, 173, 173(1), 190, 190(1), 192, 193, 200, 202, 203, 204, 204(1), 207, 208, 209, 210, 220, 225, 226, 227, 228, 230, 231, 319 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 149, 302, 307, 324, 342, 365, 366, 448, 451 and 506; SC/ST (Prevention of Atrocities) Act - Sections 3(10); Arms Act - Sections 27

Appeal No. : S.B. Cr. Revision No. 525 of 1997

Appellant : Sukhdas and ors

Respondent : State of Rajasthan

Advocate for Def. : B.S. Bhati, Public Prosecutor

Advocate for Pet/Ap. : J.S. Choudhary, Adv. for the Complainant and; M.L. Garg, Adv.

Disposition : Revision dismissed

Judgement :

Gupta, J.

(1). This revision seeks to assail the order of the learned Civil Judge (Jr. Division) cum Judicial Magistrate, Ist Class Nohar dt. 14.10.97 whereby the learned Magistrate rejected the final report and the application under Section 169, took cognizance against all the accused persons for the offence under Sections 302, 342, 147, 148 and 149 IPC and ordered the accused Gopa Das and Bhagat Ram to be served by arrest warrant as the other accused petitioners Sukhdas, Narayan Das and Sohan Das were already appearing on bail.

(2). The brief facts of the case are that on 20.6.92 at about 2 a.m. In the night the complainant Mohanlal lodged an oral report to the effect that on 19.6.92 he along with his son Panna Ram reached their village Ghirana at about 8 p.m. after attending their date of hearing in the Court at Nohar, at that time when they were passing through the back side street of the house of accused Sukhdas Swami, at that time the five accused persons came in the street, Sohan Das and Gopa Das were armed with lathis, who caught hold of Panna Ram and lifted him to the Bara of Sukh Das, and then Sohan Das and Gop Das each inflicted one lathi blow on Panna Ram, and then poured kerosene and set him ablaze. On Panna Ram raising cry, the complainant ran under fear by going in the other street, informed his younger brother Sohanlal, then they along with Gulab Singh, Ralan Singh, Sheokaran, Rupa Ram etc. reached the Bara of Sukh Das, and found Panna Ram burnt and unconscious. At that time Narayan Das came and asked the complainant to take away Panna Ram. On this report a case under Sections 307, 365, 342, 147, 148, 149 IPC, and Section 3(10) SC/ST (Prevention of Atrocities) Act, was registered. After completing the investigation the police submitted a final report 'Adam Waqua' and requested for release of the arrested accused persons under Section 169 Cr. P.C. This final report was submitted on 5.12.1992. In the meanwhile, on 23.10.92 the complainant filed a proper complaint for this very Incident, whereupon office report was made on 30.11.92, on which date an adjournment was sought on behalf of the complainant, significantly the case was adjourned to 16.12.92, on which date the learned Presiding Officer was on leave and the case was adjourned to 6.1.93 since by then the F.R. has been submitted, on 11.1.93 the complaint was ordered to be attached with F.R. (probably as

contemplated by Section 210 Cr. P.C.) and thereafter the matter went on being adjourned along with the F.R. for one reason or the other, and ultimately the impugned order was passed,

(3). The impugned order has been assailed before me on a purely legal ground, to the effect that, where in a case triable exclusively by a Court of Sessions, the police submits a final negative report, the Magistrate has no jurisdiction to take cognizance against any of the accused persons on that final report, and the power to take cognizance rests only in the Sessions Judge under Section 193 Cr. P.C., or with this Court under Section 482 Cr. P.C. or on a reference being made to it. The other alternative course open to the learned Magistrate, according to the learned counsel for the petitioner, is, to hold an enquiry under Section 200 and/or 202 Cr. P.C. on the private complaint already filed by the complainant, and if the requirements of Section 204 are established, to issue process thereunder. It was thus contended that the impugned order is without jurisdiction, and is liable to be quashed. Reliance in this regard was placed on four judgments of Hon'ble Supreme Court in the cases of Kishun Singh vs. State of Bihar (1), Raj Kishore Prasad vs. State of Bihar (2), Ranjit Singh vs. State of Punjab (3) and Kishore Singh vs. State of Bihar (4),

(4). Mr. Choudhary learned counsel for the complainant supported the impugned order, contending that under Section 190 Cr. P.C. the learned Magistrate has the power to take cognizance by rejecting the final report. Reliance in this regard was placed on the judgment of Hon'ble the Supreme Court in Abhinandan Jha vs. Dinesh Mishra (5). It was also contended by Mr. Choudhary that a look at the provisions of Section 204 of the Code, would show that its applicability is not confined to the cases instituted on a private complaint only, and process thereunder can be issued even in cases where the learned Magistrate takes cognizance by rejecting the final report, by exercising power under Section 190 Cr. P.C.

(5). Learned P.P. adopted the arguments of Mr. Choudhary.

(6). I have considered the rival submissions and have gone through the legal position.

(7). To appreciate the rival submissions, in my view it would be gainful to reproduce the provisions of Sections 154, 156, 173, 190, 193, 200, 202, 204, 209, 210 and 319 Cr. P.C. which respectively read as under:-

154. Information in cognizable cases.- (1) Lively information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and [he substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer-in-charge of a police station in relation to that offence.

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

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

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

173. Report of police officer on completion of investigation.-

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, slating:-

(a) the names of the parties;

(b) the nature of the information'

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

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

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

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

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report:-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do he may furnish to the accused copies of all or any of the documents referred to in sub section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

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 constitute 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.

(2) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.

193. Cognizance of offences by Court 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.

200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses.-

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192;

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them.

202. Postponement of issue of process.- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction or investigation shall be made, -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or.

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In any inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a police station except the power to arrest without warrant.

204. Issue of process.- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be.-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having

jurisdiction.

(2) No summons or warrant shall be issued against the accused u/sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

209. Commitment of case to Court of Session when offence is triable exclusively by it.-When in a case instituted on a police report, or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall.-

(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.-

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

319. Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then.-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced,

(8). Thus, under the scheme of things, one thing is inherent that the system of administration of criminal justice is so framed that courts' power to find and proceed against the accused, and to take cognizance is not subject to any fetters, whether of submission of charge-sheet by the police, or of the private complaint being lodged, or the like, and in the set up of things the Magistrate is entitled to take cognizance of any offence, of course subject to certain restrictions imposed by certain statutes like, limitation, or requirement of previous sanction of the specified authority, or the locus to lodge the complaint, or the like. Another thing is also inherent that, once the cognizance of the offence is taken, to quote the words of Hon'ble Supreme Court in *Raghubans Dubey vs. State of Bihar* (6), 'it becomes the court's duty to find out who the offenders really are, and if the court finds that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons by summoning them.' The only question is as to how the cognizance is to be taken, when it is to be taken, and by whom it is to be taken, and whether in the circumstances of the present case the learned Magistrate was within his jurisdiction to take cognizance as done by the impugned order.

(9). The machinery/system of criminal law on commission of any offence is broadly set into motion either lodging a report to the police under Section 154, or by lodging a private complaint. On lodging first report, the police machinery is to investigate into the offence, and u/S. 173 is to forward its report to the Magistrate empowered to take cognizance of the offence, in the form prescribed by the State Government. Obviously the report may be to the effect that offence has or has not been committed, if it finds the offence to have been committed, it may also report the accused or accuseds who are found to have committed the offence, or may report that no accused could be found who may have committed the offence

reported (report 'Adam Pata'). Likewise on a private complaint being made under Chapter XV, the Magistrate may take cognizance, and is to examine upon oath the complainant and the witnesses present if any, he may before deciding to issue process, enquiry into the case himself, or direct an investigation to be made by a police officer, or by such other person as he thinks fit for the purposes of deciding as to whether there is sufficient ground for proceeding, and thereafter may proceed either under Section 203 or 204 as the case may be. The Magistrate may also before taking cognizance order investigation to be made by the police officer, under Section 156(3), and in that event police is to submit report under Section 173.

(10). However, it is significant to note that even in case of private complaint, cognizance is not taken under Chapter XV but this Chapter provides for steps to be taken by the Magistrate 'taking cognizance of an offence'. The power of taking cognizance is conferred on the Magistrate by Section 190 Cr. P.C. and thereunder, subject to provisions of Chapter XIV, the cognizance may be taken by the Magistrate (i) upon receiving a complaint of facts which constitute such offence (commonly known as private complaint), (ii) upon a police report of such facts, (in) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Thus, under Section 190 the cognizance can be taken by the Magistrate concerned in any of these eventualities.

(11). At this very place I may refer to Section 204 which finds place in Chapter XVI and deals with the subject of issue of process. A look at this provision of Section 204, as quoted above, makes it clear that the only requirement of this Section is that, in the opinion of the Magistrate taking cognizance of an offence, there should be sufficient ground for proceeding. Significantly this section does not speak about its applicability whether to the case instituted on a private complaint, or on a police report, or to a case where cognizance is taken by Magistrate under Section 190(1)(c). Therefore, this Section 204 applies alike to either of these situations.

(12). Thus it is also clear that the subject of taking cognizance, and subject of issue of process are two entirely different independent things. The requirements

necessary for taking cognizance is, coming to the knowledge of the Magistrate the commission of any offence, while the requirement for issue of process is existence of sufficient ground for proceeding, obviously against a particular accused or accuseds.

(13). It may be noted here that the subject of taking cognizance applies alike to the offences triable by the Magistrate, so also to the offence exclusively triable by the Court of Sessions. However, the procedure to be adopted by the learned Magistrate, after the accused either appears, or is brought before the Magistrate, differs, depending upon the nature of the offence involved in the case, inasmuch as if the offence appears to the Magistrate to be triable exclusively by the Court of Sessions, then u/S. 209 he is to commit it after complying with the provisions of Section 207 or 208 as the case may be, and in other cases he may proceed with the case under other provisions of the Code (with which I am not concerned in the present case). There may be another eventuality like the one in the present case viz., that with respect to the same offence a first report also may have been lodged wherein investigation may be in progress, and at the same time a private complaint may also have been filed. This eventuality is adequately taken care of by the provisions of Section 210 Cr. P.C. wherein, under sub-section (1), the Magistrate is to stay the proceedings, and call for the report on the matter from the police officer conducting the investigation, where the investigation is in progress. While under sub-section (2) if the report is made by the Investigating Officer u/S. 173 (whether reporting the offence to have been committed and by the named accused or accuseds, or no offence to have been committed or Adam Pata), and if on such report the cognizance of any offence is taken by the Magistrate against any person who is accused in the complaint case, the Magistrate is to inquire into or try together the complaint case and the case arising out the police report as if both the cases were instituted on the police report. While under sub-section (3) if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he is to proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the Code. At this place I may further point out that after the enactment of the new Code of Criminal Procedure, the pre-committal inquiry in cases exclusively triable by Court of Sessions has been done away with, and in

such cases (sessions triable cases), the Magistrate is only to ensure the compliance of the provisions of Section 207 and 208, and then is to simply commit the case under Section 209, obviously where either process is issued under Section 204 or where the police reports the offence to have been committed by the accused or accuseds specified in the charge-sheet, and forwards them to him.

(14). All these propositions are not in controversy before me, and have been stated only for the purpose of properly grasping the controversy involved in the present case. The question precisely canvassed before me is viz. In a situation where during pendency of the investigation a private complaint is made for sessions triable offence and before any inquiry is held on that complaint, the police submits a negative report 'Adam Vakua', or while submitting charge-sheet against some of the accused mentioned in the first report, but reports non- involvement of some of the accused persons i.e. submits charge-sheet only against some of the accused persons while exonerating others, regarding sessions triable offence, what is the course open to the learned Magistrate? viz. as to whether he is powerless to react on the police final report, and the only course open to him is to proceed under Chapter XV before deciding to proceed under Chapter XVI, or without holding any inquiry under Chapter XV and on the basis of the papers produced by the police along with final report he can take cognizance of the offence, or in the other eventuality he can proceed against the remaining accused persons as well?

(15). The contention of the learned counsel for the petitioner on the basis of the aforesaid four judgments of Hon'ble Supreme Court, and Section 193 so also Section 319 Cr. P.C. is that in such event, so far as the Magistrate is concerned, the only course open to him is to proceed under Chapter XV, and then as a result of that inquiry if he finds that there is sufficient ground for proceeding, to issue process u/S. 204 Cr. P.C.

(16). Accordingly I would like to discuss the ratio laid down by the Hon'ble Supreme Court in the various cases cited by the learned counsel for the petitioner.

(17). In Kishun Singh's case the question precisely was as to, whether Court of Sessions to which a case is committed for trial by a Magistrate can, without itself

recording evidence, summon a person not named in the police report, presented u/S. 173 of the Code to stand trial along with those named therein, in exercise of power conferred u/S. 319 Cr. P.C.?

(18). The facts of the case were that the victim was alleged to have been attacked by 20 persons including the appellants before the Hon'ble Supreme Court. The first report was lodged the same day, naming all the 20 persons as assailants. After investigation a charge-sheet was forwarded on 10.6.90 to the learned Magistrate wherein only 18 persons, other than two appellants were shown as the offenders. The names of the two appellants were not included in the said report, as in the opinion of the Investigating Officer their involvement in the commission of crime was not established. As such the final report to that effect was submitted on 4.9.1990, on which date no order was passed by the learned Chief Judicial Magistrate. 18 persons named in the report were committed under Section 209 to stand trial. When the matter came up before the learned Sessions Judge, an application was u/S. 319 Cr. P.C. was presented praying that material on record annexed to the report u/S. 173 revealed the involvement of the two appellants also, and hence they should be summoned and arraigned before the Court as accused, along with 18 accused persons already named in the charge-sheet. Thereupon a show cause notice was issued to the two appellants, who contended their non- involvement and supported the final report. The learned Sessions Judge by rejecting this plea, and exercising discretion vested u/S. 319 Cr. P.C. impleaded them as co-accused. This was done before any evidence was recorded i.e. before commencement of actual trial. It is in the backdrop of these facts that the matter was examined by the Hon'ble Supreme Court on the anvil of Section 319 Cr. P.C., corresponding to Section 351 of the old Code, Section 193 of the new Code as well as corresponding 193 of the old Code, and in para 11 dealing with the scope of Section 319(1) held that:-

'This power, if seems clear to us, can be exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this sub-section contemplates existence of some evidence appearing in the course of trial wherefrom the Court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named

by the police.'

(19). It was of course held that, even a person who had earlier been discharged would fall within the sweep of power conferred under Section 319, and therefore, it was held that Section 319 cannot be invoked in a case like one before the Hon'ble Supreme Court where no evidence was led at the trial. Thus, in substance it was held that Section 319 covers the post cognizance stage where in the course of an inquiry or trial the involvement or complicity of the person or persons not named by Investigating Officer has surfaced which necessitates the exercise of power u/S. 319. Then in para 13 the overall scheme of powers/motive in which criminal law can be set into motion was considered. Then in para 14 the crucial question involved in the case was considered, and held that of course when cognizance has been taken u/S. 190(1) in warrant cases, the Court is required to frame charge. While Sec, 227 confers a power on the Sessions Court wherein before framing the charge, if on consideration of record of the case and document submitted therewith, the Sessions Judge considers that there is no sufficient ground for proceeding against the accused, he is, for reasons to be recorded, to discharge the accused. It is only when the Judge is of the opinion that there is a ground for presuming that the accused has committed an offence that he will proceed to frame a charge and record the plea of the accused as per Section 228 or may proceed under Section 227, as the case maybe. But then for this purpose the Judge is required to examine the record of the case and the documents submitted therewith only.

(20). At this stage the crucial question which emerged before Hon'ble the Supreme Court was that if, on application of mind for this limited purpose, the Judge finds that besides the accused arraigned before him the complicity or, involvement of others in the commission of the crime prima facie surfaces from the material placed before him, what course of action should he adopt? And by considering various facets of the question posed by the learned counsel for the State, it was held that once the court takes cognizance of the offence (not the offender) it becomes the court's duty to find out the real offender, and if it comes to the conclusion that besides the persons put up for trial by the police, some others are also involved in the commission of the crime, it is the court's duty to summon them

to stand trial along with those already named, since summoning them would only be a part of the process of taking cognizance. It is in this process that Hon'ble the Supreme Court noticed the change introduced in the language of Sec, 193 Cr. P.C. and has found as under:-

'....once the case is committed to the Court of Sessions by a Magistrate under the Code, the restriction placed on the power of the Court of Sessions to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under section 209 to the Court of Sessions the bar of section 193 is lifted thereby investing the Court of Sessions complete and unfettered jurisdiction of the Court or original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record.'

(21). It is with these findings that Hon'ble the Supreme Court held that the learned Sessions Judge was not right in exercising power u/S. 319 of the Code. However, it was found that since the Court of Sessions u/S. 193 of the Code had the power to summon the appellants, as their Involvement in the commission of the crime prima facie appeared from the record of the case, the Hon'ble Supreme Court upheld the order by holding that it is well settled that once it is found that the power exists, the exercise of power under a wrong provision will not render the order illegal or invalid.

(22). Thus, Kishun Singh's case firstly was a case where the case had been committed to the Court of Sessions and secondly was a case where the court was considering the question as to whether the Sessions Court had the power to summon some more accused persons, whose complicity in the commission of the crime can prima facie be gathered from the material available on record.

(23). In Raj Kishore Prasad's case (supra) the question involved was as to, can a Magistrate undertaking commitment under Section 209 Cr.P.C. of a case triable by a Court of Sessions, associate another person as accused, in exercise of power under Section 319 of the Code of Criminal Procedure, or under any other provision of the Code?

(24). The facts in this case were that a first report was lodged about the informant's brother being attacked by one Avadh Kishore and when informant came close to the place of occurrence, he found the accused abusing and saying to the victim that he would not let him remain alive, and on seeing the first informant and his helpers having come the assailant ran away. During investigation two witnesses claim to have seen and heard beforehand the appellant Raj Kishore Prasad, the brother of the assailant Avadh Kishore, to have exhorted the accused to kill the deceased, whereafter the actual assailant is said to have assaulted the deceased. After investigation the police filed a report against the actual assailant only. When the papers were laid before the Magistrate, the first informant made an application requiring the Magistrate to exercise his power to summon the appellant so as to send him to stand trial alongside the accused sent up by the police before the Court of Sessions. This application was dismissed by the learned Magistrate, however, was allowed in revision by the Sessions Judge, and the High Court was unsuccessfully approached u/S. 482 Cr. P.C.

(25). It is in this background that the Hon'ble Supreme Court examined the scope of Section 209 and 319 and also considered the objects and reasons of dispensing with the pre-committal inquiry as it existed under the old Code, and held that the preliminary inquiries then known as 'committal proceedings' have been abolished in cases triable by a Court of Sessions. It was held that functions left to be performed by the Magistrate, such as granting copies, preparing the records, notifying the public prosecutor etc. are thus preliminary or ministerial in nature. It is of course true that the Magistrate at that juncture takes cognizance of a sort, but that is solely to perform those preliminary functions as a facilitator, towards placement of the case before the Court of Sessions, rather than being an adjudicator. It is thus manifest that in the sphere of the limited functioning of the Magistrate, no application of mind is required in order to determine any issue raised, or to adjudge anyone guilty or not, or otherwise to pronounce upon the truthfulness of any version. The role of the Magistrate thus is only to see that the package sent to the Court of Session is in order, so that it can proceed straightaway with the trial and that nothing is lacking in content, as per requirements of Sections 207 and 208 of the Code of Criminal Procedure. Such proceedings thus, were held not to fall squarely within the ambit of 'inquiry' as

defined in Section 2(g) of the Code of Criminal Procedure,Therefore, it was found legitimate to conclude that the Magistrate at the stage of Section 209 Cr. P.C. is forbidden to apply his mind to the merit of the matter and determine as to whether any accused need be added or subtracted to face trial before the Court of Sessions. Thereafter the Hon'ble Supreme Court considered the scope of Section 319, referred to Kishun Singh's case, and after quoting the findings and consequences of Kishun Singh's case, in para 15 expressed their reservation to such a view, even though that view has been met with approval in Nisar vs. State of U.P. (7), (another judgment of two Hon'ble Judges as was the case in Kishun Singh's case so also as is in Raj Kishore Prasad's case), and held as under:-

'There seemingly is no intermediate stage envisaged between commitment and trial or the trial proceeding splitting into pre-charge trial and after charge trial. Trial beings with Section 225....The stage of Sections 227 and 228 comes as the next step after observance of such procedure, as part of trial. It is thus designed that proceedings to discharge or charge the accused are part of trial. Addition of an accused by summoning or resummoning a discharged accused, and that too without hearing the accused, has only been permitted in the manner provided by Section 319 Cr. P.C. on evidence adduced during the course of trial, and in no other way. Having thus expressed our doubts we do not, as at present advised, take the matter any further because the fact situation of the present case does not warrant its resolution, a dire necessity.'

(26). Then in para 16 it was clearly concluded that power under Section 209 Cr. P.C. to summon a new offender was not vested with a Magistrate on the plain reading of its text, as well as proceedings before him not being an 'inquiry', and material before him not being 'evidence'. When such power was not so vested, his refusal to exercise it cannot be corrected by a Court of Revision, which may be the Court of Sessions itself awaiting the case on commitment, merely on the specious ground that the Court of Sessions can, in any event, summon the accused to stand trial, along with the accused meant to be committed for trial before it. It is with these findings that the order impugned was set aside as the stage u/S. 319 did not reach.

(27). In Ranjit Singh's case which is a judgment by three Hon'ble Judges of the Supreme Court, decided on a reference as a larger Bench, the question involved was as to whether Sessions Court can add a new person in a case pending before it at a stage prior to collecting any evidence. The question arose because of the decisions in Kishun Singh's case, Nisar's case and the reservations expressed in Raj Kishore Prasad's case about the legal proposition propounded in Kishun Singh's case.

(28). The facts of this case were that a first report was lodged alleging that eight persons including the appellant formed themselves into an unlawful assembly, and on the exhortation of the appellant, one of the members of the unlawful assembly snatched away the rifle of a gunman and fired at victim, who succumbed to the injuries later. In the rioting, some other persons also sustained injuries. The police, submitted the report u/S. 173 wherein the appellant Ranjit Singh had been completely exonerated. After the case was committed to the Court of Sessions the first informant filed a petition praying that the appellant be also arraigned as an accused, as his exoneration by the investigating agency was improper. This order was unsuccessfully assailed by the appellant before the High Court. It is on these facts that Hon'ble Supreme Court considered the scope of Sections 319, 209, 204, 207, 208 and 220 etc. and after referring to judgment in Kishun Singh's case, and in Joginder Singh vs. State of Punjab (8), a three Judges Bench judgment, posed the question as under:-

'With the committal order, the Sessions Court gets unfettered jurisdiction to take cognizance of the offences involved in the case. But the crucial question is whether such jurisdiction would envelop powers to summon any person as an accused other than those covered by the committal order?'

(29). For answering this question the changes made in the new Section 209 Cr. P.C. was noticed and found that the power u/S. 209 to remand the accused to custody until such commitment has been made, subject to the provisions relating to bail, refers to only the accused against whom the Magistrate had already issue summons or warrant u/S. 204(1)(b), and the powers u/S. 204(1)(b) were held to be exercisable in respect of any offence in warrants case, whether it is triable by the

Court of Sessions or a Magistrate. Then it was held that once the accused is before the Magistrate, in the next stage the Magistrate is to supply the copies of the document referred in Section 207 if it is a case instituted on police report, and otherwise the documents referred to in Section 208 of the Code, and in that sequence Section 209 was referred. Then provisions of Chapter XVIII were referred to. Considering the scheme of Section 225 and 226 it was held in para 7 that during the said stage the Court of Sessions can deal only with the accused who is referred to in Section 209. The accused who can appear or can be brought before a Sessions Court at that stage is only that accused who is referred to in Section 209. Section 227 deals with the power of the court to decide whether that accused is to be discharged or not...The stage of evidence collection commences only next (vide Sections 230 and 231 of the Code). And thus it was held that from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 of the Code, that court can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused. In the result in para 20 it was held as under:-

'Thus, once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked. We are unable to find any other power for the Sessions Court to permit addition of new person or persons to the array of the accused. Of course it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers.'

(30). Then visualising the situations like the one in Kishun Singh's case and the one in the case in hand before the Hon'ble Supreme Court where all the materials produced by the Investigating Agency clearly show the positive involvement of a person who is not shown in the array of the accused due to some inadvertence or omission, what should be the course open? and the answer was given in para 23 as under:-

'Though such situations may arise only in extremely rare cases, the Sessions Court is not altogether powerless to deal with such situations to prevent a miscarriage of justice. It is then open to the Sessions Court to send a report to the High Court detailing the situation so that the High Court can in its inherent powers or revisional powers direct the committing Magistrate to rectify the committal order by issuing process to such left-out accused. But we hasten to add that the said procedure need be resorted to only for rectifying correcting such grave mistake.'

(31). Thus, the larger Bench did not uphold the observations in Kishun Singh's case regarding the powers of the Sessions Court under Section 193 of the Code to take cognizance of the offence to include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the materials available on record.

(32). Coming to Kishore Singh's case the question involved was as to, whether the Magistrate has jurisdiction to issue process against the persons not charge-sheeted by the police while submitting report u/S. 173 for an offence triable exclusively by the Court of Sessions though charge-sheeting some of the accused persons, in case from the material forwarded by the police in the opinion of the learned Magistrate the complicity of such left out person also appears?

(33). The facts of this case were that the police filed charge- sheet against some of the accused persons named in the first report, while the three appellants were not charge-sheeted. The offence in question was one triable by court of Sessions, the learned Magistrate on receipt of the charge-sheet, vide order dt. 10.6.97 took cognizance against the persons arraigned as accused for the offence u/S. 302/34, 324 and 448 IPC and Section 27 of the Arms Act. Later on, on the prayer of the prosecution vide order dt. 22.10.97 issued non-bailable warrant of arrest against the other three persons being the appellant's before the Hon'ble Supreme Court, who had not been charge-sheeted by the police while submitting report u/S. 173 though named as accused in the first report. This order was successfully challenged in revision before the Sessions Court, but that order was set aside by the High Court, and that is how the matter went to the Hon'ble Supreme Court.

(34). The contention raised before Hon'ble Supreme Court was that when the police files a charge-sheet and arrays some only as accused persons though many more might have been named in the first report, the Magistrate or Sessions Judge would have no jurisdiction to array them as accused persons at a stage prior to Section 319 Cr. P.C. stage, when some evidence or materials are collected in course of trial. While the contention on the other side was that there is no fetter on the powers of the Magistrate to take cognizance of the offence and also to issue process against all offenders against whom the Magistrate thinks that there are sufficient material, notwithstanding the fact that on completion of investigation police has filed charge-sheet only against some of them.

(35). Hon'ble the Supreme Court proceeded to hold that this question is squarely answered by the two decisions of the Supreme Court in Raj Kishore Prasad's case and the three Judges Bench decision in Ranjit Singh's case and held that the Magistrate could not have issued process against those persons who may have been named in the F.I.R. as accused persons but not chargesheeted in the chargesheet. It was held that when some evidence or materials are brought on record in course of trial, or only when a reference is made either by the Magistrate while passing an order of commitment or by the learned Sessions Judge to the High Court and the High Court, on examining the material, comes to the conclusion that sufficient materials exists against them even though the police might not have filed charge-sheet, then only they could also be arrayed as 'accused persons.'

(36). Thus all the cases cited by the learned counsel for the petitioner are the cases where the police did file chargesheet finding the accused persons to be guilty of the offence triable by the Court of Sessions, but at the same time was alleged to have left out some more accused persons against whom offence was prima facie alleged to be made out even from the papers forwarded by the police along with its report u/S. 173.

(37). As against this the learned counsel for the complainant Shri J.S. Choudhary places strong reliance upon the judgment in Abhinandan Jha's case. The question that was for consideration before Hon'ble the Supreme Court in that case was as

to whether a Magistrate can direct the police to submit a charge-sheet, when police after investigation into a cognizable offence, had submitted a final report under Section 173 in the Court. This case was decided in two appeals being appeals No. 218 and 238 and the facts of both the cases, for the present purpose were similar, inasmuch as the facts of the Appeal No. 218 were, that a report was lodged about a thatched house burning and the accused persons were seen running away from the scene. The police made an investigation and submitted a final report to the effect that the offence complained of was false. The Magistrate received this report on 13.6.65 but in the meanwhile a protest petition was filed challenging correctness of the report submitted by the police. The learned Magistrate perused the police diary and after hearing counsel for the complainant and the Public Prosecutor passed an order dt. 27.10.65 directing the police to submit a charge sheet against petitioners (accused). This order was under challenge before the Hon'ble Supreme Court. While the facts of the case in Appeal No. 238 were, that a report was lodged on 24.2.64 to the effect that informant's daughter was missing from Feb. 21, 1964 and that the appellants in the appeal had kidnapped her. On this a case under Section 366 IPC was registered and the police after investigation submitted a final report to the effect that girl concerned had been recovered and that she had stated that she had, of her own accord, eloped. In this case also protest petition was filed challenging the statement of the police and a complaint was also filed. The learned Magistrate after perusal of the case diary, hearing the lawyer for the complainant and the accused so also the Public Prosecutor directed the Investigating Officer to submit a charge sheet against the accused for the offence u/S. 366 IPC which order was under challenge before the Hon'ble Supreme Court.

(38). Hon'ble the Supreme Court after undertaking review of the entire case law on the subject in view of the conflicting opinions of the various High Courts, came to the conclusion as under:-

'Though it may be that a report submitted by the police may have to be dealt with judicially, by a Magistrate, and although the Magistrate may have certain supervisory powers, nevertheless, we are not inclined to agree with the further view that from these considerations alone it can be said that when the police

submits a report that no case has been made out for sending up an accused for trial, it is open to the Magistrate to direct the police to file a chargesheet.'

(39). However, Hon'ble the Supreme Court further considered as to what is the course of action open to be adopted by the learned Magistrate in such circumstances and on that aspect, in this very para it was held as under:-

'But, we may make it clear, that this is not to say that the Magistrate is absolutely powerless, because, as will be indicated later, it is open to him to take cognizance of an offence and proceed, according to law.'

(40). Then the elaborate conclusion with regard to the situations were given by the Hon'ble Supreme Court in para 15 of the said judgment as to what is the position when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out sending up an accused for trial, being the final report? It was held as under:-

'Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under S. 156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under section 190(1)(b), notwithstanding the contrary opinion of the police, expressed in the final report.

(41). This judgment in Abhinandan Jha's case has consistently been followed by Hon'ble the Supreme Court. In this regard I may refer to the decision rendered in

Tula Ram vs. Kishore Singh (9), which was a case instituted on a private complaint wherein the learned Magistrate sent the matter for investigation under Section 156(3) and the police submitted a final report. In those facts the legal position was summarised by Hon'ble the Supreme Court as under:-

'Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereunder he can act on the report and discharge the accused or straightway Issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190....'

(42). Then in H.S. Bains vs. Union Territory of Chandigarh (10), again it was a case instituted on a private complaint which was sent for investigation u/S. 156(3) wherein the police submitted a final report stating that the case against alleged accused was not true and that it might be dropped, the learned Magistrate after perusing the report submitted by the police dissented with the conclusion of the police, took cognizance of the offence u/S. 451 & 506 1PC and directed issue of process which was challenged by the accused persons and ultimately the matter went to the Hon'ble Supreme Court. After referring to previous judgments in Abhinandan Jha's case and Tula Ram's case and after referring to Section 190, 200 to 203 of the Code held in para 6 onwards as under:-

'...,on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Section 200. Thereafter if in his opinion there is no sufficient ground forproceeding he may dismiss the complaint under Section 203. If in his opinion there is sufficient ground for proceeding he may issue process under Section 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as lie thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the

Magistrate may, instead of taking cognizance of the offence, order an investigation under Section 156(3). The police will then investigation and submit a report under Section 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(b) and straightway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report under Section 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further'.

(43). Thus, according to the view taken in these judgments even in cases where the police submits a final report, it is open to the Magistrate either to accept the final report or if he so thinks fit to direct further investigation or if from the material forwarded with report, in the opinion of the Magistrate offence is made out, he may straightway take cognizance and, still fourth course open to the learned Magistrate in a case where a complaint is filed or protest petition is filed, to take cognizance and held inquiry under Chapter XV and then proceed u/S. 203 and 204 as the case may be.

(44). In the background of above case law, the submission made on behalf of the learned counsel for the petitioner is that since Hon'ble the Supreme Court in cases cited by him takes the view that the Magistrate or even the learned Sessions Judge has no jurisdiction to take cognizance and issue process against the accused persons left out, the impugned order is bad. The argument elaborated is that when the police submits a report of its investigation and in that report it finds some of the accused persons to be involved and does not find others to be so involved, so far as accused persons against whom no involvement is reported, qua them the report is a negative final report and since in such cases Hon'ble the Supreme Court has consistently held that the Magistrate or even the learned Sessions Judge has no jurisdiction to take cognizance at any pre-trial stage, the mere fact that the police files a negative report against all the accused persons is of no consequence inasmuch as it does remain a final report whether it be against some of the accused or against all the accused, and therefore, he submits that the

view taken in Ranjit Singh's case should be followed.

(45). In my opinion the two sets of judgment referred to above do not take any conflicting view and they cover independent field. The set of cases cited by the learned counsel comprehend cases where the police submits a chargesheet but only against some of the accused persons and finds the left out accused persons to be not involved in the offence while the other set of cases comprehend a situation that a total negative final report is given. Since the present is a case where a total negative final report is given, the case in hand is more appropriately covered by the set of cases followed by the judgment of Hon'ble Supreme Court in Abhinandan Jha's case.

(46). The argument of learned counsel for the petitioner about the final negative report filed against some of the accused persons while forwarding some of the accused persons for trial is very much a final negative report for the purpose of taking cognizance, is of course attractive but has its own flaws, so as not to be accepted. In this regard I may consider the point only from the stand point of cases where the offence involved is one exclusively triable by Sessions Judge, that being the case in hand and do not mean to embark upon it as a blanket proposition of law.

(47). The basic flaw in the argument of learned counsel for the petitioner is that the learned counsel proceeds with the assumption that in cases where some of the accused are chargesheeted while some of them are left out, Issuing process against them by the learned Magistrate tantamounts to taking cognizance against them. While in my view this is not the correct legal proposition inasmuch as, as held by the Hon'ble Supreme Court repeatedly that cognizance is taken of 'an offence and not of the accused persons an offender'.. So far as accused persons is concerned only process is issued against him after cognizance is taken, subject to fulfillment of other requirement of law, viz., that there is sufficient ground for proceeding against a particular accused person. This process of coming to a conclusion about the existence of sufficient ground for proceeding against accused persons is a process involving application of mind on the part of the learned Magistrate, and this is to be done after taking cognizance, whether it be on a

private complaint in which he may held inquiry u/S. 200 and 202 or may be on perusal of the papers filed by the police along with report u/S. 173. Thus since the cognizance is taken of an offence and not of the accused persons, the question has to be viewed from the stand point, as to whether the learned Magistrate has jurisdiction to take cognizance of offence or not, in a case where police submits a report u/S. 173, whether chargesheeting some of the accused persons, or submitting a negative final report regarding all the accused persons, and in view of the judgments referred above by me starting from Abhinandan Jha's case it is established law that the Magistrate has power to straightway reject the negative report and take cognizance of the offence.

(48). It is in this sequence that once the cognizance is taken of an offence triable by Sessions Court, what is to be done? It is on this point that the precise controversy sought to be raised by the learned counsel for the petitioner comes in, and is required to be answered.

(49). Once the learned Magistrate decides to take cognizance of an offence triable by a Sessions Court on a police report one eventuality can be where the police gives a total negative report, in that event the Magistrate after taking cognizance may issued process against such accused persons who according to him appeared to be involved in the offence i.e. against whom there is sufficient ground for proceeding, obviously u/S. 204 after the accused appear, he may proceed u/S. 207 and then 209 and commit them for trial to the Sessions Court.

(50). The other eventuality can be that if the police, submits a report reporting an offence to have been committed and to have been so committed by some of the accused persons, and leaves out some of the accused/accuseds. It is this eventuality with which I am faced in the present case. In my view in that eventuality since the police report duly supported by material enclosed herewith report an offence to have been committed, the Magistrate can very well take cognizance of the offence. Here I may reiterate that, even in this eventuality the Magistrate takes cognizance, only of the offence, and not of the offenders. The moment he takes cogniance of the offence on this police report, since the accused who are charged with the offence are clearly forwarded to the learned Magistrate

with the report (subject to the provisions of bail), immediately the other provisions of the Code spring into action. As such the learned Magistrate is then to proceed to see as to whether the offence appears to be one triable exclusively by the Court of Sessions or not, if he finds in the affirmative, he is to commit after complying with the provisions of Section 207, otherwise he is to proceed under the other chapter of the Code.

(51). It is at this stage, that the distinction flowing from two sets of decisions of Hon'ble the Supreme Court comes in, inasmuch as in a case where there is a total negative report, the Magistrate applies his mind only at the stage of taking cognizance, and he may take cognizance of the offence by rejecting the police report. As against which, in cases where the police does report the commission of the offence and submits chargesheet only against some of the accused persons then the learned Magistrate has to take cognizance, but then it is to be seen as to whether he can proceed against remaining accused persons or not? For appropriately answering this, I would like to comprehend the situations that may arise, and then would see as to which of the situations are permitted by law? If the learned Magistrate were to be conceded the power to proceed against other accused persons also which have been left out by the police, a judicial discretion in the nature of an inquiry will have to be conceded in favour of the Magistrate to be held after taking cognizance of the offence, and before committing the case to the Sessions, and obviously in that event, i.e. if such power is to be conceded, it well nigh possible that as a result of this inquiry the learned Magistrate may come to a conclusion about there being no material whatever even against the accused persons charge-sheeted by the police. In that event the question again would be as to whether the learned Magistrate will have the power to discharge them? And the answer has expressly been given in the negative by Hon'ble the Supreme Court in the cases cited by Mr. Garg. In this view of the matter no such power of inquiry can be conceded to the learned Magistrate, with the obvious result that the Magistrate simply has to commit the case and remand the accused as contemplated by Section 209.

(52). It is in this sequence that the question about the power of the Magistrate or the Sessions Court to proceed against the remaining accused persons has been

considered by the Hon'ble Supreme Court in the cases cited by Mr. Garg.

(53). Thus, the two categories of cases, one being where the police submits a total negative report (Adam Vakua and/or Adam Pata), and the other category of cases where the police submits chargesheet against some of the accused persons while gives a final negative report against some of the accused persons, do stand on a different footings and the power of the Magistrate so also the bar against the power of the Magistrate available or applicable to one category of cases cannot be applied to the other category of cases where the offence being the one exclusively triable by the Court of Sessions. And consequently it is held that though in cases where the police submits charge-sheet against some of the accused persons, the Magistrate cannot proceed against the remaining accused persons, this bar cannot be applied to cases where the police submits a total negative report, so as to deprive the learned Magistrate of the power of taking cognizance. Likewise since the learned Magistrate has the power of taking cognizance in cases where police submits a total negative final report, the Magistrate cannot be held to have power to proceed against the remaining accused persons where police submits chargesheet against some of the accused persons, by invoking the principle that qua left out accused persons, the police report tantamounts to giving of final negative report.

(54). In this view of the matter, in my view the cases cited by Mr. Garg do not help him and the situation is more aptly covered by the set of decisions of Hon'ble Supreme Court led by Abhinandan Jha's case referred by me above, according to which the learned Magistrate was right in taking cognizance as done by the impugned order, as the present is a case where a total negative report Adam Vakua has been submitted by the police.

(55). As a result of the aforesaid discussion I do not find any force in the revision and the same is, therefore, dismissed. Record of the learned trial court be returned forthwith. Since the matter relates to the year 1992, the learned court below is directed to most expeditiously proceed with the matter and in accordance with law.