**Harjiram and ors. Vs. the State of Rajasthan**

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**Court** : Rajasthan

**Decided On :** Jan-31-1979

**Reported in** : 1979WLN105

**Judge** : M.C. Jain, J.

**Appeal No.** : S.B. Criminal Misc Appeal No. 177/78

**Appellant** : Harjiram and ors.

**Respondent** : The State of Rajasthan

**Disposition** : Application dismissed

**Judgement** :

M.C. Jain, J.

1. This is an application under Section 482, CrPC, by Harji Ram, Bhanwarsingh, Mansharam and kirtaram against the order of the learned sessions Judge. Churu, dated 5-10-1978 whereby process was ordered to be issued against the applicants in the case committed by the Chief Judicial Magistrate, Churu, for trial to the court of Sessions.

2. In order to appreciate the controversy in the present application, it would be proper to take notice of some material facts. The prosecution case is, that there was enmity between the complainant party and the accused party in connection with the land in dispute. The complaint Bhinwaram along with his brother's wife Gaura and two sons Jetharam and Jagguram were living in their field aid for some time past his brother Gyanaram, Gumanaram and Gyanaram's wife Mst. Shanti were also living there. It is said that the accused persons armed with weapons, entered into the field of the complainant on the night intervening 16-6-78 and 17-3-78 and assaulted Gumanaram, Gyanaram, Gaura, Mst. Shanti and Jetharam. Gumanaram received 21 Injuries out of which two were grievous with sharp edged weapon; Gyanaram had 14 injuries, Mst. Gaura 22, Mst. Shanti 8 and Jetharam 14. These injuries were caused with blunt objects. A report of the occurrence was lodged at the police station, Sandwa, District Churu at 5.00, a.m., on 17-6-78 by one Bhinwaram Meghwal as a result of which FIR No. 24 was registered for the commission of offences under Section 147, 148, 149, 447, 325, 323 and 379, IPC. The police after completion of the investigation presented a charge sheet against twelve accused persons for the offences under Sections 307 326, 147, 148 and 149, IPC. The Chief Judicial Magistrate then committed the case 10 the Court of Sessions for trial vide his order dated 16-8-78.

3. On 7-9-78 the Public Prosecutor presented an application that six more person, the applicants and Harchandram son of Gumanaram and Rameshwar son of Kesuram, Meghwals, are involved in the commission of the offences, so after taking cognizance against them process may be issued. The learned Sessions Judge, after hearing the Public Prosecutor, the counsel for the complainant and the counsel for the accused persons, partly allowed the application and issued process against the applicants and the application was injected in respect of Harchandram and Rameshwar as their names were rot mentioned by any of the witnesses in their statements before the police The learned Sessions Judge relying on the authority of this Court Ajayab Singh and Anr. v. State of Rajasthan 1977 WLN 553 took cognizance against the applicants after looking into the statements of Gumanaram, Gyanaram and Jugle recorded by the police under Section 161, CrPC. Aggrieved against this order of the learned Sessions Judge, this application has been filed.

4. I have heard the learned Counsel for the applicants and the learned Public Prosecutor for the State.

5. The learned Counsel for the applicants submitted that no cognizance could be taken by the learned Sessions Judge against the applicants as the applicants were not committed to the court of Sessions. He submitted that Ajayab Singh's case (supra) of this Court needs further consideration in view of the two decisions one of Delhi High Court Abdul Mnjid and Ors. v. The State (Delhi Administration) Delhi 1978 Cr.L.J. 239 and the other of Andhra Pradesh High Court Ratanchala China Lingaiah v. The State and Ors. 1977 Cr.L.J. 415 and a contrary decision of this Court Veera v. State of Rajasthan 1978 RLW 450.

6. The learned Public Prosecutor, on the other hand, urged that the view taken in Ajayab Singh's case (supra) needs no further consideration in view of the Supreme Court decision in Joginder Singh v. The State of Punjab 1979 Cr.L.R. (SC) (21), which has over ruled the Andhra Pradesh case.

7. The main question which arises for consideration in the present application is as to whether the learned Sessions Judge could take cognizance against the applicants on the basis of the record of the case and documents submitted by the police after investigation and whether he could order issue of process against the applicants? In order to decide this question it is essential to look into the relevant provisions of the New Code of Criminal Procedure & for facility of reference they are re-produced below:

193 Cognizance of offences by Courts of Sessions : Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Sessions 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.

209. Commitment of case to Court of Sessions 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 audit appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall.

(a) commit the case to the Court of Sessions.

227 - Discharge:

If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, He shall discharge the accused and record his reasons 'for so doing.'

228. Framing of charge:

(1) If after such consideration and hearing as aforesaid, the Judge is or opinion that there is ground for presuming that the accused has committed an offence which-

(a) ...

(b) is exclusively, triable by the Court, he shall frame in writing a charge against the accused.

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 bring the accused has committed any offence for which such person could be tried together with the accused, the Court any proceed against such person for the offence which he appears to have committed.

(2) Where such prison is not attending the. Court, he may be arrested or summoned, as the circumstances of she 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 enquiry 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 respect of such person shall be commenced afresh, aid 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. In the Old Code of Criminal Procedure there was a provision relating to cognizance of offences, in Courts of Sessions contained in Section 193 Section 193 (New) reproduces Sub-section (1) of Section 193 of the Old Code with two significant charges. For the words 'the accused has been committed' the words 'the case has been committed' have been substituted and for the words 'duly empowered, in that behalf,' the words 'under this Code' have been substituted, at the end. Section 193 is a disabling provision. It places restrictions on the Court of Session to take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code. Under the old provision, the Court of Sessions could not take cognizance of the offence unless the accused has been committed to it. It would be pertinent to note that under the present Section 193 the Court of

Sessions takes cognizance of the offence, though this cognizance cannot be taken unless the 'case' has been committed. It would appear from this provision that when the case has been committed to the Court of Sessions, the Court of Sessions is empowered to take cognizance of any offence, that would mean that a Court of Sessions is empowered to proceed against any person, who is suspected to have committed the offence. Taking cognizance of an offence as a court of original jurisdiction must amount to the initiation of the proceedings for the first time. Under the Old law, the trial of the persons who were not com timed to the Sessions was invalid and absence of any commitment was a defect in substance and not in form But it is not so, in view of the present provision. Section 193 further makes a provision for exception as well. If in the body of the Code the Court of Session is empowered to take cognizance without commitment of any case, then under these provisions, cognizance of any offence can be taken by the Court of Sessions, which would be clear from the clause except as otherwise expressly provided this in Code' or by any other law for the time being in force'. Sections 199, 345 and 349 are these provisions in which a Court of Session can take cognizance of offence without commitment by a Magistrate Further Section 319 must be read along with Section 193. Under Section 319 the Sections Judge will have power to array any person as co-aroused in the case before him, whether he is attending the court or not when in the course of any inquiry into or trial of, an offence, it appears from the evidence that any person not being the accused his committed any offence for which such person could be tried together with the accused facing the trial. Thus, Section 319 confers power to proceed against other persons appearing to be guilty of offence from the evidence in the course of any inquiry or trial.

9. It may be further mentioned that under the New Code, there are no provisions regarding committal inquiries and under Section 209, Cr.P.C. (New) the Magistrate is only required to commit the case to the Court of Sessions when it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions & the Court of Sessions is required to consider as to whether there is sufficient ground for proceeding against the accused If there is no sufficient ground for proceeding against the accused, the Sessions Judge shall discharge the accused and record his reasons for so doing under Section 227, Cr.P.C. and if he is of opinion that there is ground for presuming that the accused has committed an offence exclusively triable by the court of Sessions, the Sessions Judge shall frame a charge against the accused. From the provisions under Section 227 and 228, Cr.P.C., it would appear that the Sessions judge is required to consider the record of the case and the documents submitted therewith and is further required to hear the submissions of the accused and the prosecution. It may be stated that even at this stage, without any evidence being recorded by the Sessions Judge at the trial, if the Sessions Judge finds that there is some material against certain persons, who are not the accused before him he may direct that those persons may be brought before him for trial, as the case already stands committed to him and he is empowered and competent to take cognizance of the offence. The bar under Section 193 would not come in his way as the case stands committed to him and he is required to take cognizance of the offence and as such on the basis of the police papers submitted to him, he may proceed even against those persons, who are nit before him as accused. The only object of Section 193 (Old) in restricting a Sessions Court from taking cognizance of any offence unless he accused his been committed, was to secure to the accused a preliminary inquiry whereby the accused is acquainted of the circumstances of the offence imputed to him but in the New Code, committal inquiry is done away with a view to secure speedy trial of serious and grader offences triable by Court of Sessions.

10. In the Andhra Pradesh case this view has been taken that Section 193 of the New Coda is still a bar for the Sessions Judge in taking cognizance as a court of original jurisdiction other than those named in the case committed, and it was further held that under Section 319 the Sessions Court has no power to add any person as an accused other than those shown in the case committed even though there appears to be some evidence against such it person. A similar view has been taken in Abdul Majid's case (supra) by the Delhi High Court, in which reliance has been placed on Patananchala Lingaiahs' case (supra) of the Andhra Pradesh High Court. It may be mentioned that the Andhra Pradesh's case stands over-ruled by the Supreme Court in to decision Joginder Singh v. The State of Punjab 1973 Cr.L.R. (SC) 21. In Jogender Singh's case (supra) the Additional Sessions Jadge, Ludhiana, was proceeding with the trial and during the course of trial recorded the evidence of Joginder Singh and Ajaib Singh. They, in their statements, implicated Joginder Singh and Ramsingh in the incident. Thereupon at the instance of Mohinder Singh, the Public Prosecutor moved an application before the Additional Sessions Judge for summoning & trying Joginder Singh and Ramsingh along with the three accused, facing trial. The learned Additional Session Judge directed the attendance of Joginder Singh & Ramsingh to be procured and further directed the it they should stand their trial together with the three accused The learned Addition d Sessions Judge negative the contention of the counsel for the accused the Sessions judge had no jurisdiction or power to summon Jogindersingh and Ramsingh, as they were neither charge-sheeted nor committed and the Sessions Court had as jurisdiction or power directly to take cognizance against them. The learned Additional Sessions Judge presumably exercised his powers under Section 319, CrPC. A Criminal Revision was preferred against the order which was dismissed and the appellants took up the muter before the Supreme Court by special leave. His Lordship Tulzapurkar, J, speaking for the court, considered the provisions of Section 193, 209 and 419 and held as under:

It is true that there cannot be a committal of the case without there being an accused person before the Court, but this only means that before a case is respect of an offence is committed there must be some accused suspected to be involved in the crime before the Court but once the case in respect of the offence qua these accused who are before the Court is committed than the cognizance of the offence can be said to hive been taken properly by the Sessions Court and the bar of Section 193 would be out of the way and summoning of additional persons who appear to be involved in the crime from the evidence led during the trial and directing them to stand their trial along with those who had already been committed must be re girded as incidental to such cognizance and a part of the normal process that follows it otherwise the conferal of the power under Section 319(1) upon the Sessions Court would be rendered nugatory. Further Section 319(4)(b) enacts deeming provisions in that behalf dispensing with the formal committal order against the newly added accused. Under that provisions it is provided that where the Court proceeds against any person under Sub-section (1) then 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; in other words, such person must be deemed to be an accused at the time of commitment because it is at that point of time the Sessions Court in law takes cognizance of the offence.

Their Lordships further referred to a decision Raghubans Dubey v. State of Bihar : 1967CriLJ1081 wherein, the Supreme Court has explained what is meant by taking cognizance of an offence & in that connection extracted a quotation of Sikri, J., as he then was , in which it was observed that once cognizance has been taken by the

Magistrate, he takes cognizance of an offence and not the offenders once he takes cognizance of an offence, it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police, some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding incite by his taking cognizance of an offence. After extracting the above observations of Sikri, J., his Lordship further observed as under:

It will thus appeal clear that under Section 193 read with Section 209 of the Code when case is committed to the court of Sessions in respect of an offence the Court of Sessions takes cognizance of the offence and not of the accused and once the Sessions Court is properly seized of the case as a result of the committal order against some accused, the power under Section 319(1) can come into play and such Court can add any person, not an accused before it, as an accused and direct him to be tried along with the other accused for the offence which such added accused appears to have committed from the evidence recorded at the trial. Looking at the provisions from this angle there would be no question of reading Section 319(1) subject or subordinate to Section 193.

The decision of the Andhra Pradesh High Court (supra) was referred to before their Lordships, but was held to be erroneous. Thus, it would appear that he view expressed in the decisions of the Andhra Pradesh High Court and Delhi High Court (supra) and in Veera's case of this Court stands overruled. In view of the above decision of the Supreme Court the question ceases to be res integra and so it is not necessary to refer to the other decisions cited before me, but still it would be proper to make a mention of them.

11. In Weryam Singh v. The State of Punjab 1978 Cr.L.J. 762 six accused persons were challenged by the police for various offences and were committed to the Court of Sessions Waryam Singh was mentioned in Column No. 2 of the charge-sheet indicating that according to the police he had not committed the offence complained against. The Additional Sessions Judge on the consideration of the material on record summoned Waryam Singh as an accused. Thereupon, Waryam Singh filed a petition under Section 482 of the Code of Criminal Procedure. Relying upon the decision of Dayasing v. State of Punjab 1977 Punj. L.J. (Cri.) 246, decided by R.N. Mittal, J., held that after the Court of Sessions has taken cognizance of a case which has been committed to it, it has the power under Section 319 to summon any person other than the accused who appears to it to have committed any offence for which he could be tried together with the accused, facing trial together with the accused, facing trail. The aforesaid Andhra Pradesh case was dissented.

12. In S.S. Chaudhary v. State of U.P. and Ors. 1978 Cr.L.J. 391 it was observed that Section 319 give discretion to a Court to proceed against a person who is not an accused at the trial It does not make it incumbent on the Court to postpone the trial and proceed against the person concerned in the same trial. In this case the petitioner S.S. Chaudhary was standing trial before the Sessions Judge, Dehradun, for the offence under Sections 120B, 204, 467 477A, 466 & 409, IPC, and Section 5(sic)2 of the Prevention of Corruption Act During the course of trial J.N. Khanna was examined as PW 7 When his statement was being recorded, an application was moved by the petitioner for postponing the trial and arraigning J.N. Khanna as a co-accused under Section 319, Cr.P.C. When the Sessions Judge dismissed the application of Criminal Misc. Writ petition was presented and in that connection their Lordships

considered the provision of Section 319, Cr.P.C., as above.

13. Reference may also be made to N.N. Punnappa v. State of Karnataka and Anr. 1918 Cr.L.J. 1551. Their Lordships considered the powers of the Magistrate to issue process against persons who were found concerned with the offence on further perusal of the police report. In this connection Nesargi, J., considered the provisions of Sections 239, 319 and 173(8). As regards Section 319, it was observed that, 'even when evidence h being recorded or collected in the course of any inquiry or trial of an offence a Magistrate has power to proceed against the other persons appearing to be guilty of the offence of which he has taken cognizance and against whom the evidence collected points. Therefore, it is apparent that a Magistrate has wide powers in issuing process at various stages after he takes cognizance of an offence oi offences.'

14. In Trinimong Sangtam v. State of Nagaland 1978 Cr.L.J. (NUC) 174 (GAUHATI) it was held that the Magistrate is empowered to summon additional accused under Section 319, Cr.P.C., as it was part of proceeding initiated after cognizance of offence is taken. The Magistrate takes cognizance of offence and not of offenders.

15. The cases of Trinimong Sangtam and N.V. Punappa deal with the powers of Magistrate.

16. Shri K.C. Gaur submitted that Section 319, if at all, can be attracted, can be attracted only when some evidence has been recorded in the course of inquiry or trial and not prior to that. He urged that in the case before the Supreme Court (supra) statements of two witnesses were recorded and thereafter process was ordered to be issued against Joginder Singh and Ramsingh In the present case he submitted that that stage has not reached so far and the learned Sessions Judge has ordered issue of process only on the application of the Public Prosecutor on consideration of the police papers. In this connection it may be stated that in Ajayab Singh's case (supra) this Court has considered this matter & has held that the statement recorded by the police constitutes evidence and can be looked into for the purpose of proceeding against those persons, who are not facing trial. In Ajayab Singh's case (supra) the matter was considered on the alternative basis In para 5 of the judgment the provision of Section 193 was considered and from the angle of Section 319, the matter was examined in para 7 and it has been found that the term evidence used in Section 319, CrPC, includes the statement recorded by the police under Section 161, CrPC and the documents submitted in the court along with the challan. Even if it is held that Section 319 cannot be made applicable at this stage without recording any evidence at the trial as contended by Shri Gaur, still, in my opinion, under Section 193, Sessions Judge has powers to proceed against those persons who are not before him. A combined reading of Section 193, 227 and 228, will leave no room for doubt that those persons who are not facing trial can be proceeded against, if prima facie it is found that such persons have involvement or are concerned with or are suspected in the commission of an offence. When the Sessions Judge possesses powers of discharge under Section 227 with regard to those accused persons who are before him on consideration of the record of the case and documents submitted therewith, then the Sessions Judge, in my opinion, is equally empowered to proceed against those persons who are not before him as be is empowered to take cognizance of an offence under Section 193, when the case stands committed to him. As Magistrate takes cognizance of an offence & not against offenders, so Sessions Judge also takes cognizance of an offence and not against particular accused persons who are before

him. It is true that in the Supreme Court case (supra) the accused persons were added after recoding of the two statements, during the course of trial, but still from the observations made by their I Lordships of the Supreme Court, it would appear that the accused can be added on consideration of the charge-sheet and documents submitted therewith, as in view of the Supreme Court, the Sessions Judge is empowered to take cognizance of an offence, like that of a Magistrate, when the case is committed to him.

17. In view of the above discussion, in my opinion, this application is devoid of any force.

18. In the result, this application is dismissed.

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