Supreme Court of India
Ranjit Singh vs State Of Punjab on 22 September, 1998
Bench: K.T.Thomas, Syed Shah Quadri

PETITIONER:
RANJIT SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 22/09/1998

BENCH:
K.T.THOMAS, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT THOMAS. J Leave granted.

The issue raised in the present appeal is this : Whether Sessions Court can add a new person to the array of accused in a case pending before it at a stage prior to collecting any evidence? The Sessions Judge before whom the said issue was first raised in this case held that he could do so on the strength of the decision of a two Judge Bench of this Court in Kishun Singh Vs. State of Bihar (1993 2 SCC

16). Appellant, who was the accused so added challenged the order in revision before the High Court of Punjab and Haryana and a learned Single Judge who heard it, dismissed the revision following the ratio in Kishun Singh (supra) which was re-affirmed by this Court in Nissar Vs. State of U.P. (1995 2 SCC 23). While considering the question whether a committing magistrate can exercise power under Section 319 of the Code of Criminal Procedure (for short "the Code"), a two Judge Bench of this Court has, in Raj Kishore Prasad vs. State of Bihar (1996 4 SCC 495) expressed reservation about the legal position propounded in Kishun Singh's case. Now the question is directed to be considered by a larger Bench in the light of the reservation expressed in Raj Kishore's case. Hence this appeal came to be listed before a three Judge Bench.

Facts, barely necessary for disposal of this appeal, are following :

On 24.12.1996, an FIR was lodged at Rajkot Police Station (Punjab) alleging that eight persons (including the present a pellant) formed themselves into an unlawful assembly at about 8 P.M. 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 Chamkaur Singh who succumbed to the gunshot injuries later. In the rioting some other persons also sustained injuries. After the case was committed to the Court of Sessions the de facto complainant (Darshan Singh who furnished the first information) filed a petition before the Session Judge on 5-6-1997 praying that appellant also be arraigned as an accused singh his exoneration by investigating agency was improper. Learned Sessions Judge allowed the said petition and appellant was summoned as an accused in the case. That order of the Sessions Judge was challenged before the High Court but it was confirmed by the impugned order. Shri T.S.Arunachalam, Senior Advocate for the appellant contended that the only provision which enables a Sessions Court to add a new accused is Section 319 of the Code and powers thereunder could be invoked only on the strength of evidence in the trial, but not otherwise. According to the learned senior counsel when investigating agency had found the appellant innocent the court has no power to overrule that conclusion without additional material placed before the court in the manner permitted by law. Otherwise the purpose of requiring the investigating officer to submit final report under Section 173 of the Code would be obliterated. The contingency mentioned in the illustration cited by their Lordships in Kishun Singh's case (supra) is a rank exception which need not be taken into account for formulating a legal principle and even otherwise the ratio laid down in the said case requires reconsideration, contended the learned senior counsel.

Shri R.S. Sodhi, learned counsel who argued for the State defended the impugned order on the premise that Sessions Court has such powers which have been well recognized by this Court in Kishun Singh's case as well as in Nissar Singh's case (supra).

Section 319 of the Code reads thus :

> "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 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."

The said provision is an improved form of its corresponding provision (Section 351) in the old Criminal Procedure Code, 1898. The subtle change brought about in the present Section has been succiently delineated by Ahmadi, J (as his Lordship then was) in Kishun Singh's case in the following lines:

> "It is, therefore, manifest that Section 319 of the Code is an improved version of Section 351 of the old Code, the Changes having been introduce therein on the suggestion of the Law Commission to make it comprehensive so that even persons not attending the court can be arrested or summoned as the circumstances of the case may require and by deleting the words 'of which such court can take cognizance' and by adding clause (b) it is clarified that the implement of a new person as an accused in the pending proceedings will not make any difference insofar as taking of cognizance is concerned."

Now it is well neigh settled that "evidence" envisaged in Section 319 of the Code is the evidence tendered during trial of the case if the offence is triable by a court of Session. The material placed before the committal court cannot be treated as evidence collected during enquiry or trial. (vide Rajkishore Prasad Vs. State of Bihar, 1996 4 SCC

495).

In Kishun Singh's case the above position, though in a different context has been highlighted through the following observations:

> "On a plain reading of sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. This power, it 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."

In fact learned Judges were reiterating the legal position abumbrated by a three Judge Bench of this Court in Joginder Singh and anr. Vs. State of Punjab and anr. (1979 1 SCC 345).

Having found so an endeavour was made in Kishun Singh's case to see whether power to add any other person to the array of accused can be traced out from the Code be hors Section 319, if the Judge finds that besides the accused arraigned before him the complicity of another person in the

commission of the crime has prima facie surfaced from the material before him. The fear expressed was that if such an approach is not adopted, the matter will slip into the hands of the investigation officer who may or may not send up for trial an offender for trial even if prima facie evidence exists. After detailed discussion their Lordships held thus:

> "On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of 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 faie be gathered from the material available on record."
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> (underlining supplied) It is regarding the last part of the aforesaid observations that serious arguments were addressed by the counsel urging reconsideration thereof. We have no doubt that with the committal order Session 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.

The change made by the new Code in Section 209 is that it is the "case" which is committed to the Court of Session and not the accused. But while committing the case to the Court of Session the committing court has a further duty which is in respect of the accused in the case. Section 209 says that the committal court has to "remand the accused to custody until such commitment has been made" subject to the provisions relating to bail. The accused referred to in the section is the accused against whom the Magistrate has already issued summons or warrant under Section 204 (1) (b) of the Code. The said clause reads thus:

> "If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -
>
> (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a Isummons, 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".

The said power can be exercised in respect of any offence in warrant cases whether it is triable by a Court of Session or a magistrate. Once the accused is before the magistrate, in the next stage he has to supply copies of documents referred to in Section 207 if it is a case instituted on police report, and otherwise the documents referred to in Section 208 of the Code. We have to read Section 209 in the aforesaid sequences of provisions.

> "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 Magistate 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."

Commitment of a case to the Court of Session will be complete only on compliance with the formalities enumerated in Section 209 which includes dealing with the accused in the manner mentioned therein.

Now, we may look at the procedure for trial before the Court of Session as laid down in Chapter XVIII of the Code which contains practically all the provisions relating to such trial. The commencing Section 225 of the Chapter only says that prosecution shall be conducted by a Public Prosecutor. The next Section 226 says that "when the accused appears or is brought before the Court in pursuance of a commitment of the case under Section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused." It is clear that during the said stage the Court of Session can deal only with the accused who is referred to in Section 209. The accused who can appear or can be broght before a Session 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. If he is not discharged the Session Court is obliged to frame a charge against that accused as per Section 228 of the Code. Thereafter the plea of that accused has ton be recorded as enjoined by Section 229. The stage of evidence collection commences only next. (vide Sections 230 & 231 of the Code.) So from the stage of committal till the Session 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 Session Court to add any other person to the array of the accused.

Thus once the Session 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 Session 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. But then one more question may survive. In a

situation where the Session Judge notices from the materials produced but before any evidence is taken, that any other person should also have necessarily been made an accused (without which the framing of the charge would be defective or that it might lead to miscarriage of justice) is the Session Court completely powerless to deal with such a contingency? One such situation is cited by the learned Judges through an illustration narrated in Kishun Singh's case (supra) as follows:

> "Where two persons A & B attack and kill X & it is found from the material placed before the Judge that the fatal blow was given by A whereas the blow inflicted by B had fallen on a non-vital part of the body of X. If A is not challenged by the police, the Judge may find it difficult to charge B for the murder of X with the aid of Section 34 IPC. If he cannot summon A, how does he frame the charge against B?"

Another instance can be this. All the materials produced by the investigating agency would clearly show the positive involvement of a person who was not shown in the array of accused due to some inadvertance or ommision. Should the court wait until evidence is collected to get that person arraigned in the case?

Though such situations may arise only in extremely rare cases the Session Court is not altogether powerless to deal with such situations to prevent miscarriage of justice. It is then open to the Session 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 or correcting such grave mistakes. For the foregoing reasons we find it difficult to support the observations in Kishun Singh's case that powers of the Session Court under Section 193 of the Code to take cognizance of the offence would include the summoning of the person or persons whose complicity in the commission of the trial can prima facie be gathered from the materials available on record.

In the result we set aside the impugned order of the Session Court adding the appellant as an accused in the case. However, we make it clear that we do so without prejudice to the powers of Session Court to add any person in the array of the accused under Section 319 of the Code.

The appeal is thus allowed.