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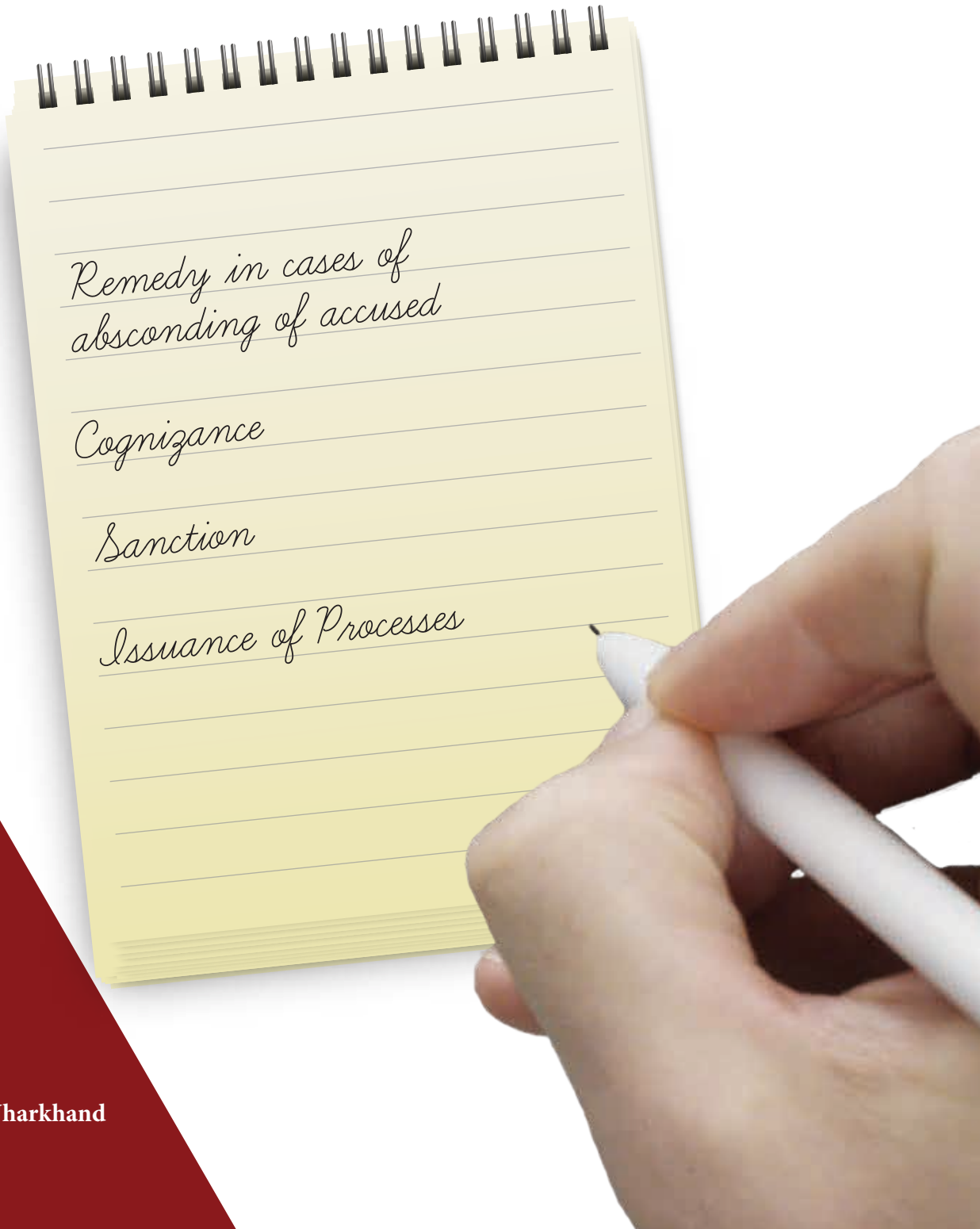
READING MATERIAL ON CRIMINAL TRIAL



Prepared by:-
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READING MATERIAL

on

TRIAL OF CASES

Prepared by :

Judicial Academy Jharkhand

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PART I

Points to Ponder

To tide over the anomalous situation created by institution of multiple FIRs in the same incident, would it not have been proper for the court of session to direct joint trial of the different sessions cases arising out of the same incident in the light of the provisions contained in section 220 of Cr.P.C. ?

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (DB) No. 969 of 2018

Aran Bara ...Appellant
Versus
The State of Jharkhand ...Respondent

CORAM : THE HON'BLE MR. JUSTICE APARESH KUMAR SINGH
THE HON'BLE MR. JUSTICE KAILASH PRASAD DEO

For the Appellant : Mr. Shekhar Prasad Sinha, Adv.

For the State : Ms. Vandana Bharti, A.P.P

04/02.07.2019 Heard learned counsel for the appellant and learned A.P.P. for the State on the prayer for suspension of sentence made through I.A. No. 5221 of 2019.

Sole appellant along with six others have been convicted for the offence punishable under Sections 302/354 of I.P.C and 3 & 4 of the Prevention of Witch Practices Act, 1999 by the impugned judgment dated 2nd August, 2018 rendered in Sessions Trial No. 347 of 2016/T.R. No. 15 of 2018 by the Court of learned Additional Judicial Commissioner-VII-cum-Spl. Judge, C.B.I. (AHD)-cum-Spl. Court (CAW), Ranchi and have been sentenced to undergo Rigorous Imprisonment for life with a fine of Rs. 25,000/- each under Section 302 of I.P.C with a default sentence; Rigorous Imprisonment for five years under Section 354 of I.P.C with a default sentence; Rigorous Imprisonment of three months with a fine of Rs. 1,000/- each for the offence punishable under Section 3 of the Prevention of Witch Practices Act, 1999 with a default sentence and also sentenced to undergo Rigorous Imprisonment for six months with a fine of Rs. 2,000/- each for the offence punishable under Section 4 of the Prevention of Witch Practices Act, 1999 with a default sentence. All the sentences have been ordered to run consecutively.

Learned counsel for the appellant submits that five other co-convicts have preferred Cr. Appeal (D.B) No. 1106 of 2018 against the common impugned judgment. They have been enlarged on bail by granting them suspension of sentence during pendency of the appeal vide order dated 15th May, 2019 passed by a co-ordinate Bench of this Court. Allegation and evidence as against this appellant is also same and similar. Therefore, appellant may be enlarged on bail by granting him privilege of suspension of sentence during pendency of this appeal.

Learned counsel for the appellant also submitted that in Cr. Appeal (D.B) No. 1060 of 2018 arising out of Sessions Trial No. 345 of 2016, appellant has been granted bail by this Bench vide order dated 24th June, 2019 taking into account that other eight co-convicts have been granted bail by a co-ordinate Bench of this Court in Cr. Appeal (D.B) No. 1107 of 2018.

When the matter was taken up on 25th June, 2019, it transpired that the appellant has been convicted in two similar cases. Learned Additional Public Prosecutor was directed to ascertain as to how many F.I.Rs have been instituted at Mandar Police Station on 22nd June, 2016 with same and similar allegations in respect of the same place of occurrence and the corresponding Sessions Trial Cases; number of the accused persons, who are facing trial in those cases and those who have been convicted/acquitted by the concerned Court.

Learned counsel for the appellant was also directed to file an affidavit stating as to in how many cases the appellant is facing trial of similar nature and convicted; the number of concerned appeals, if any preferred against those convictions.

On behalf of the appellant affidavit has been filed on 27th June, 2019, inter alia, stating that on the allegation of killing of five ladies practicing witchcraft four separate police cases, namely, (1)

Mandar P.S. Case No. 91/2015(S.T. No. 347/16), (2) Mandar P.S. Case No. 89/2015 (S.T. No. 2/16), (3) Mandar P.S. Case No. 92/2015(S.T. No. 346/16) and (4) Mandar P.S. Case No. 90/2015(S.T. No. 345/16) have been registered. In these four Sessions Trial appellant has been acquitted in Sessions Trial No. 346/16 arising out of Mandar P.S. Case No. 92/2015 while six others were convicted.

Learned counsel for the State has also filed an affidavit today, wherein at para-6 onwards the following facts have been stated. Four F.I.Rs were instituted under Mandar Police Station as named above.

Altogether nine Sessions Trials have been conducted arising out of four F.I.Rs, which are as follows:

Sl.No.	S.T.No.	Arising out of Mandar P.S Case No.
01.	002/2016	89/2015
02.	345/2016	90/2015
03.	346/2016	92/2015
04.	347/2016	91/2015
05.	285/2018	89/2015
06.	219/2019	91/2015
07.	220/2019	91/2015
08.	221/2019	91/2015
09.	222/2019	89/2015

In S.T. No. 02/2016 there were 39 accused persons; S.T.No. 346/2016 there were same 40 accused as in S.T.No. 345/2016; in S.T.No. 347/2016 same 40 accused as in S.T.No. 345/2016; S.T.No. 285/2018 trial is pending as against accused, Mangal Khalkho; S.T. Nos. 219/2019,220/19,221/2019 and 22/2019 have been amalgamated as against three accused persons.

At Para-9 name of the convicts in each of the four Sessions Trial which has been concluded, has been given while other five Sessions Trial are still pending. It is appropriate to extract the chart showing the Sessions Trial no. and name of the convicts as against them in these four Sessions Trial Cases.

Sl.No.	S.T.No.	Convicts
01.	02/2016	Burnwas Khalkho, Xaveer Khalkho, Mojesh Khalkho, Krishna Khalkho, Baldeo Khalkho, Sannu Oraon, Sannu Khalkho, Arun Bara, Sandip Khalkho, Sachin Khalkho, Albinus Khalkho
02.	345/2016	Sandip Khalkho, Sachin Khalkho, Romit Khalkho, Xaveer Khalkho,Mojesh Khalkho, Krishna Khalkho, Baldeo Khalkho, Aran Bara, Rajesh Tigga
03.	346/2016	Mojesh Khalkho, Xaveer Khalkho, Sachin Khalkho, Sandip Khalkho, Krishna Khalkho, Baldeo Khalkho,
04.	347/2016	Sandip Khalkho, Sachin Khalkho, Krishna Khalkho, Baldeo Khalkho, Xaveer Khalkho, Rajesh Tigga, Aran Bara
05.	285/2018	Trial is pending.

06. 219/2019 Trial is pending.

07. 220/2019 Trial is pending.

08. 221/2019 Trial is pending.

09. 222/2019 Trial is pending.

Lower Court Records of all these four Sessions Trial have been summoned before this Court in connection with the appeals preferred by the convicts thereunder. F.I.R no. Sessions Trial no., date and time of institution of Fardbeyan; name of the informant; total number of named accused persons in each of these F.I.Rs and the Police Officer, who recorded the Fardbeyan are being incorporated in the form of a chart hereinbelow:

F.I.R No.	S.T.No.	Date & Time of institution of Fardbeyan	Informant	Total named accused	Police Officer recorded Fardbeyan
89/2015	02/16	08.08.2015 at 1.00 hours	Anima Khalkho	49	A.S.I., Kameshwar Prasad Singh
90/2015	345/16	08.08.2015 at 1.15 hours	Sukumar Khalkho	47	S.I., Ram Narayan Singh, O.C
91/2015	347/16	08.08.2015 at 1.10 hours	Sibi Khalkho	49	S.I. S.C Kondangkel
92/2015	346/2016	08.08.2015 at 1.10 Hours	Suna Khalkho	58	S.I. S. Sundi

Purpose for which the above details have been extracted shall be dealt with in the later part of this order.

Learned Additional Public Prosecutor has in course of argument opposed the prayer for suspension of sentence of this appellant on merits. He submits that five ladies were killed on the allegations of practicing witchcraft, which has led to the institution of four F.I.Rs. and corresponding 9 sessions trial. Appellant has faced conviction in three of the sessions trial cases while acquitted in one of them. Learned Additional Public Prosecutor, however, does not dispute that this appellant has been granted bail in Cr.Appeal(D.B) No. 1060 of 2019 arising out of Sessions Trial No. 345 of 2016. Other five co-convicts in the instant S.T No. 347 of 2016 have been enlarged on bail by a co-ordinate Bench of this Court on 15th May, 2019 in Cr.Appeal (D.B) No. 1106 of 2018.

We have considered the submission of learned counsel for the appellant and State and taken note of the facts and circumstances noted above as also the relevant material evidence relied upon by them on the prayer made for suspension of sentence of this appellant.

Having regard to the fact that other five co-convicts have been enlarged on bail by a co-ordinate Bench of this Court in Cr. Appeal (D.B.) No. 1106 of 2018 arising out of the same S.T. Case, we are inclined to enlarge the appellant on bail by granting him privilege of suspension of sentence during pendency of this appeal. Accordingly, let the appellant, Arun Bara be released on bail, during pendency of this appeal, on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each, to the satisfaction of learned Additional Judicial Commissioner-VII-cum-Spl. Judge, C.B.I. (AHD)-cum-Spl. Court (CAW), Ranchi in connection with Sessions Trial No. 347 of 2016/T.R. No. 15 of 2018 arising out of Mandar P.S. Case No. 91 of 2015, corresponding to G.R. Case No. 4820 of 2015, subject to the condition that one of the bailors should be blood relative of the appellant. Appellant and his bailor shall not change their address without prior permission of Trial Court.

I.A. No. 5221 of 2019 stands allowed accordingly. In view of the conspicuous facts noticed hereinabove, both from the affidavit of the State and the relevant material particulars culled out from the Lower Court Records in connection with four Sessions Trial cases named above, we consider it appropriate that the instant order be communicated to the Home Secretary, Government of Jharkhand, Director General of Police and Director (Prosecution), Jharkhand. It is expected that State functionaries would enquire and ascertain whether it was proper to record separate F.I.Rs for the above occurrences, which has led to nine separate trials when most of the accused persons are common and prosecution witnesses also appear to be common. Let a copy of this order be also sent to the Director, Judicial Academy.

Sd/-(Aparesh Kumar Singh, J)
Sd/-(Kailash Prasad Deo, J.)

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Points to Ponder

Why a proper order under section 299 Cr.P.C. was not drawn and the evidence were not recorded in the absence of the absconding accused by the trial court ?

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 309 of 2013

Gorkha Gope ...Appellant
Versus
The State of Jharkhand ...Respondent

With

Cr. Appeal (DB) No. 264 of 2012

Mohan Gope ...Appellant
Versus
The State of Jharkhand ...Respondent

CORAM : HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE KAILASH PRASAD DEO

For the Appellants : Mr. Rajendra Prasad Gupta, Advocate

For the State : M/s Rajiv Ranjan Mishra, GP-II, Ram Prakash Singh, A.P.P.

12/ 06.03.2019 Two affidavits have been filed, one on behalf of the Superintendent of Police, West Singhbhum and other on behalf of the Home Department, pursuant to our order dated 20.02.2019. Learned GP-II Mr. Rajiv Ranjan Mishra has prayed for six weeks' time since the authorities are in the process of deliberation and consultation with all concerned to formulate a mechanism to deal with the issue. We are inclined to allow four weeks' time to them to do the needful.

2. The affidavit of the Superintendent of Police, West Singhbhum indicates that one absconder / accused, Sadhu Charan Gope, son of late Antu Gope died sometime in the year 2011. A Report has been given to that effect by the Village Munda (Annexure-C). The other absconder / accused Budh Ram Gope is not traceable in spile of search, proclamation, etc. Upon direction of the Police Headquarters earlier, a criminal case under section 174A of the Indian Penal Code has been instituted against him on 26.02.2019 bearing Chakradharpur P.S. Case No. 25/2019. Learned A.P.P. Mr. Ram Prakash Singh submits that the absconder / accused is not traceable for the last ten years.

3. What steps were taken for tracing the absconder / accused Budh Ram Gope over all these years, is not evident from the affidavit. They need to delineate the steps taken in that regard in the next affidavit. Having regard to the request made, let the case appear on 10.04.2019 as unfixed case.

4. Let a copy of the order dated 20.02.2019 be also sent to the Director, Judicial Academy for the needful.

Sd/-
(Aparesh Kumar Singh, J)

Sd/-
(Kailash Prasad Deo, J)

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 309 of 2013

Gorkha Gope ...Appellant
Versus
The State of Jharkhand ...Respondent

With

Cr. Appeal (DB) No. 264 of 2012

Mohan Gope ...Appellant
Versus
The State of Jharkhand ...Respondent

CORAM : HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE KAILASH PRASAD DEO

For the Appellants : Mr. R.P. Gupta, Advocate

For the State : Mr. R.P. Singh, A.P.P.

11/ 20.02.2019 These two appeals are one more instance where we find that out of four persons, two have been chargesheeted (appellants herein) and sent up for trial while the other two namely Budhram Gope and Sadhucharan Gope chargesheeted as absconders. The instant appeals arise out of Chakradharpur P.S. Case No.139/2006 registered on 7th November 2006; chargesheet bearing no.30/2007 dated 12th March 2007 submitted under Sections 302/201/307/120B/34 I.P.C. Appellants before us have been convicted by the learned Sessions Court in Sessions Trial No.114/2007 and have been in custody since their apprehension except that appellant Mohan Gope has been granted bail pursuant to the suspension of sentence accorded by this Court on 2nd May 2017. This indicates that two accused persons are at large since the commission of the offence and they have never been brought to face trial before the Court, whereas the two accused persons/appellants herein after facing trial and conviction have served sentence for about 10 years and more. Though we do not know the fate of these appeals at this stage, but in either of events precious judicial time is likely to be consumed in the fresh trial of the other two accused persons and possibly at the appellate stage as well, if they are convicted. In case these appeals are allowed, two accused persons who have never submitted to the jurisdiction of the criminal justice system, would possibly avail the benefit thereof.

We may usefully refer to at least three such criminal appeals or batch of criminal appeals which have been taken up by this Court in the last three days where similar situation has arisen :

(i) Cr. Appeal (DB) No.537/2014 : The instant appeal arises out of Bariatu (Gonda) P.S. Case No. 60/2002 registered on 15.04.2002 corresponding to G. R. No. 1044/2002 (S. T. No. 208/2003); chargesheet no.77/2002 dated 5.7.2002 submitted under Sections 302/34 I.P.C. When this appeal was taken up on 18th February 2019, we found that two of the accused persons had been convicted in 2004 itself and upon due inquiries from the office it transpired that their Cr. Appeals bearing Cr. Appeals (DB) No.1885/2004 and 1974/2004 were pending adjudication before this Court. The convict in Cr. Appeal (DB) No.537/2014 was also an absconder, who was apprehended after 8-9 years and a fresh trial of this appellant was conducted leading to his conviction from which the instant Cr. Appeal (DB) No.537/2014 arises. In order to avoid conflict of decision and to ensure conformity in the decision, all these appeals have been directed to be listed on 13th March 2019.

(ii) During hearing of Cr. Appeal (DB) No.141/1996(R) on 18th February 2019, we were surprised to find that a chargesheeted accused Jageshwar Gope had been absconding since 1993 itself. He has not submitted to the jurisdiction of the Court and not faced the rigors of the trial. In this case also for the aforesaid reason we have sought instruction from the investigating agency whether the said accused has been apprehended or not and/or has faced trial thereafter or not. This matter is running on the Board today, but desired information has not yet come. This appeal arises out of Nimiyaghat P.S. Case No.106/1993 registered on 02.10.1993 corresponding to G.R. No.1551/1993 (S.T. No.14/1994) bearing chargesheet no.110/1993 dated 31.12.1993.

(iii) Cr. Appeal (DB) No.200/2014 and 745/13 were listed before this Court on 19th February 2019 and taken up. During the course of hearing we again found that another accused Rajendra Samad @ Raju Samad had absconded during trial at the stage of Section 313 Cr.P.C. after the entire evidence of prosecution had been led. In this case again we thought it proper to defer the matter to enable the learned A.P.P. to ascertain the facts relating to his apprehension and whether he has faced trial and/or what is the stage of that trial. In the instant two appeals also one of the appellants Manoj Kumar Nayak @ Suraj Nayak has been in custody, though the other convict/ appellant Ram Singh Samad @ Ranchi Samad has been enlarged on bail during pendency of these appeals. These appeals arise out of Goilkera P.S. Case No.31/2006 registered on 16.12.2006 corresponding to G.R. No.382/2006 (S.T. No.99/2007) bearing chargesheet no.08/2007 dated 14.3.2007 submitted under Sections 302/201/120B/34 IPC.

There can be an argument on behalf of the appellants who are before the Court that their cases should not be deferred because one or the other accused has escaped the rigors of the trial and is still at large. However, the issue involved is of larger significance relating to the effective functioning of the criminal justice delivery system. We are constrained to say that these facts have cropped up at the stage of final hearing of the appeals when the matters have to be deferred for the aforesaid reasons causing unnecessary consumption of Court's time.

Since these instances are not isolated in nature, but are being noticed on regular basis and reflect a systemic problem, we requested learned Government Pleader No.II Mr. Rajiv Ranjan Mishra to assist us and take proper instruction from the concerned. We are of the view that since these issues are of larger importance concerning criminal justice delivery system, it needs to be brought to the notice of Home Secretary, Government of Jharkhand; Director General of Police, Government of Jharkhand; Director, Prosecution, Government of Jharkhand as well. We are also of the view that the matter needs to be brought to the notice of the learned Advocate General, so that an appropriate mechanism can be devised through the assistance of the learned State Counsel/Additional Public prosecutor to undertake due diligence in all such matters well ahead of the dates when the appeals are likely to be taken up for final hearing, so that they are properly instructed.

In the instant two appeals also, the relevant facts need to be ascertained by the learned A.P.P. The Superintendent of Police, West Singhbhum, Chaibasa shall undertake due diligence in the matter and report to the Court before the next date by way of an affidavit to be filed by an officer of suitable rank on his behalf.

Let a copy of this order be handed over to the office of learned Advocate General. Let the name of learned G.P.II Mr. Rajiv Ranjan Mishra be reflected in the cause list as counsel for the State along with learned A.P.P. Mr. Ram Prakash Singh. Copy of the order be sent to the officers named above i.e. the Secretary, Home, Government of Jharkhand; the Director General of Police, Jharkhand and the

Director of Prosecution, Jharkhand through FAX apart from the usual mode.

These appeals are, therefore, adjourned to 6th March 2019.

Sd/-(Aparesh Kumar Singh, J.)
Sd/-(Kailash Prasad Deo, J.)

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Points to Ponder

Despite several directions of the Hon'ble Court for not publishing the name of the victim of rape cases in the light of the provisions contained in section 228A of IPC and directions contained in the judgment of Hon'ble Supreme Court in the matter of Nipun Saxena Vs. Union of India reported in (2019) 2 SCC 703 Why the directions are not being followed in its true intent and spirit ?

(2019) 2 Supreme Court Cases 703 : (2019) 1 Supreme Court Cases (Cri) 772 : 2018 SCC OnLine SC 2772

In the Supreme Court of India

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

NIPUN SAXENA AND ANOTHER . . Petitioners;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Writ Petitions (C) No. 565 of 2012[†] with Nos. 568 of 2012, 22, 148 of 2013, Writ Petition (Crl.) No. 1 of 2013 and SLP (Crl.) No. ... Crl. MP No. 16041 of 2014[†], decided on December 11, 2018

A. **Penal Code, 1860 — Ss. 228-A, 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB and 376-E — Victims of sexual offences as specified in S. 228-A(1) IPC — Disclosure of name and identity of — Prohibition as to, under S. 228-A — Object, applicability and scope of — Considering the exceptions to the said prohibition, held, S. 228-A prohibits not only the publication of the name of the victim but also the disclosure of any other matter which may make known the identity of the victim**

— Hence, no person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any fact which can lead to the victim being identified and which should make her identity known to the public at large — Object behind such legislation is to protect the aforesaid victims from any hostile discrimination or harassment in future — Words and Phrases — "Identity of any person" — Crimes Against Women and Children — Disclosure of names of victims

(Paras 9 to 12 and 50.1)

State of Punjab v. *Gurmit Singh*, (1996) 2 SCC 384 : 1996 SCC (Cri) 316; *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551 : 2004 SCC (Cri) 31, *relied on*

Aju Varghese v. *State of Kerala*, 2018 SCC OnLine Ker 5397, *referred to*

B. **Protection of Children from Sexual Offences Act, 2012 — Ss. 33(7), 37 and 24(5) — Minor/Child victims of sexual offences under Pocso Act — Disclosure of identity of — Can only be permitted by Special Court, if such disclosure is in the interest of the child — "Interest of the child" — What is**

— Disclosure of name of child to make the child a symbol of protest cannot normally be treated to be in the interest of the child — Further held, it is neither feasible nor would it be advisable to clearly lay down what is the meaning of the phrase "interest of the child" — Each case in this regard would be decided by Special Court on its own facts — Penal Code, 1860 — S. 228-A — Words and Phrases — "Interest of the child" — Juvenile Justice (Care and Protection of Children) Act, 2015, S. 74

(Paras 34, 35 and 50.8)

Bijoy v. *State of W.B.*, 2017 SCC OnLine Cal 417 : 2017 Cri LJ 3893, *approved*

Subash Chandra Rai v. *State of Sikkim*, 2018 SCC OnLine Sikk 29 : 2018 Cri LJ 3146, *referred to*

C. **Protection of Children from Sexual Offences Act, 2012 — Ss. 33(7), 24(5) and 37 — Child victims of sexual offences — Disclosure of name and identity of — Bar as to, under Pocso Act — Applicability of — Held, applies even to dead victims — Penal Code, 1860 — S. 228-A — Constitution of India — Art. 21 — Dignity and Privacy of the dead**

(Para 40)

D. **Criminal Procedure Code, 1973 — Ss. 154, 156 to 162, 164-A, 168, 172 and 173 — FIR**

and consequent police investigation — Sexual offences against women and children — Protection of identity of victims of — Prohibition as to disclosure of identity of such victims under S. 228-A IPC and Pocso Act, 2012 — Invocation — Exception to police officials — Disclosure of name of victim in FIR and during investigation — Duty and caution required on the part of police officials in respect of

— Held, though the name of victim will have to be disclosed in FIR, the copy of FIR relating to offences under Ss. 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and offences under Pocso Act must not be put in the public domain — However, the Sessions Judge/Magistrate/Special Court concerned can for reasons to be recorded in writing and keeping in view the interest of victim permit the copy of FIR to be given to certain person(s) — Police officers investigating such cases should as far as possible use a pseudonym to describe the victim unless it is absolutely necessary to write down her identity — Even in matters where the identity of victim is required to be disclosed, like (i) when samples are taken from her body, (ii) when medical examination is conducted, (iii) when DNA profiling is done, (iv) when date of birth of victim has to be established by getting records from school, etc., the police officers should move with circumspection and disclose as little of the identity of the victim as possible but enough to link the victim with the information sought — Authorities to which the name of victim is disclosed by investigating agency or court are also duty-bound to keep the name and identity of victim a secret and not disclose it in any manner except in their report which should only be sent in a sealed cover — Police to ensure that all correspondences or memos exchanged or issued wherein the name of victim is disclosed, are kept in a sealed cover and are not disclosed to public at large including media and persons seeking information under RTI Act — Thus, police should keep all documents in which the name of victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of victim is removed in all records which may be scrutinised in the public domain — This sealed cover can be filed in court along with report under S. 173 CrPC — Penal Code, 1860, Ss. 228-A(1) and (2)(a) and Ss. 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E — Protection of Children from Sexual Offences Act, 2012, Ss. 19, 24(5) and 33(7)

(Paras 13, 50.5 and 50.6)

E. **Protection of Children from Sexual Offences Act, 2012 — S. 23 — Restrictions on media, and duty and caution required on its part, while reporting sexual offences committed against children — Considering relevant provisions of Pocso Act and intention of legislature to protect the privacy and reputation of a child victim, held, media cannot disclose any material/information which may lead to disclosure of identity of a child victim — Any violation in this regard will amount to an offence under S. 23(4) of Pocso Act**

— Distinguishing the case where a child victim belongs to a small village from the one where such victim belongs to a large city, held, in the former case, even the disclosure of name of village of victim may contravene the provisions of S. 23(2) of Pocso Act — Thus held, a duty has been cast upon

media to ensure that it does nothing and gives no information which could directly or indirectly lead to disclosure of identity of child victim — Reportage of such cases should be done sensitively keeping in mind the best interest of the victims — Media should not sensationalise such matters — It should refrain from talking to victim because every time the victim repeats the tale of misery, the victim again undergoes the trauma which he/she has gone through — Press and Media Laws — Press/Media reporting/publication — Sexual crimes against women and children — Constitution of India, Arts. 19(1)(a) and (2)

(Paras 37 to 39)

F. **Penal Code, 1860 — S. 228-A(2)(c) — Minor victim of any sexual offence which is specified in S. 228-A(1) IPC — Disclosure of identity of, by, or with the authorisation in writing of, the next of kin of the victim, as provided under S. 228-A(2)(c) IPC — Invocation of provision as to, after enactment of Pocso Act, 2012 — Held, because of enactment of Pocso Act, 2012 which deals specifically with minors, S. 228-A(2)(c) IPC no longer applies to a case where the victim is a minor**

— In fact, the words "or minor" occurring in S. 228-A(2)(c) should for all intents and purposes be deemed to be deleted therefrom — Interpretation of Statutes — Subsidiary Rules — Generalia specialibus non derogant — Protection of Children from Sexual Offences Act, 2012

(Para 15)

G. **Penal Code, 1860 — Ss. 228-A(1) and (2)(c) — Victims of sexual offences as specified in S. 228-A(1) IPC — Disclosure of identity of any such victim who is dead or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim, as provided under S. 228-A (2)(c) IPC — Prerequisite as to — Prohibition under proviso to S. 228-A(2)(c) that no authorisation as to disclosure of identity must be given by the next of kin of the victim to anybody other than the Chairman or the Secretary of any recognised welfare institution or organisation — Applicability of, in a situation where till date neither the Central Government nor any State Government has recognised any such welfare institution or organisation to whom the next of kin should give the said authorisation — Absence of any rules, procedures or guidelines with regard to identification and functioning of such organisations/institutions — Effect — Issuance of necessary directions by Supreme Court exercising power under Art. 142 of the Constitution**

— Held, in cases where victim of sexual offence specified in S. 228-A IPC is dead or of unsound mind, the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the disclosure of her identity exist, which must be decided by the competent authority — That competent authority presently stated to be Sessions Judge — Until Government acts under S. 228-A(2)(c) and lays down a criteria as per directions of Supreme Court herein for identifying the aforesaid welfare institutions or organisations, an application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under S. 228-A(2)(c) IPC should be made only to Sessions Judge concerned — Constitution of India, Art. 142

(Paras 16 to 18, 20, 21, 50.2 and 50.7)

H. **Penal Code, 1860 — S. 228-A — Victims of sexual offences as specified therein — Filing of appeal by, on acquittal of accused — Disclosure of name of such victim in memo of appeal — Held, is not necessary — Victim can file appeal with permission of court under a pseudonymous name or coded identity — Procedure to be followed and duty of court in such a case — Laid down — Criminal Procedure Code, 1973, S. 372**

Held :

Section 228-A IPC imposes a clear-cut bar on the name or identity of the victim being disclosed. Therefore, where the accused is acquitted and the victim of the offence wants to file an appeal under Section 372 CrPC, she is not bound to disclose her name in the memo of appeal. Such a victim can move an application to the Court praying that she may be permitted to file a petition under a pseudonymous name e.g. '*X*' or '*Y*' or any other such coded identity that she may choose. However, she may not be permitted to give some other name which may indirectly harm another person. There may be certain documents in which her name will have to be disclosed e.g. the power of attorney and affidavit(s) which may have to be filed as per the Rules of the Court. The Court should normally allow such applicant to file the petition/appeal in a pseudonymous name. The victim can file such an appeal by showing her name as '*X*' or '*Y*' along with an application for non-disclosure of the name of the victim. In a sealed envelope to be filed with the appeal she can enclose the document(s), in which she can reveal her identity as required by the Rules of the appellate court. The Court can verify the details but in the material which is placed in the public domain the name of the victim shall not be disclosed. The application moved by the victim should be heard by the court in chamber and the name should not be reflected even in the cause list till such matter is decided. Any document disclosing the name and identity of the victim should not be in the public domain.

(Paras 28 and 50.4)

I. **Penal Code, 1860 — S. 228-A(3) — Proceedings before a court with respect to sexual offences specified in S. 228-A IPC — Held, are in-camera proceedings — Restrictions with respect to printing or publication or reporting by press of any matter as to the said proceedings**

— Held, the printing or publication of any matter in relation to the said proceedings is an offence unless such publication is made with previous permission of the court concerned — During these proceedings, nobody must be present in court except the presiding officer, the court staff, the accused, his counsel, the public prosecutor, the victim, if she wants to be there, or the witnesses — However, the bounden duty of all the said persons is to ensure that what

happens in court is not disclosed outside — As regards the reporting of such cases by press, though the press can report about the fixing of the case before the court, the purpose of its listing and examination of the witnesses, but it cannot report what transpired inside the court or what was the evidence or the statement of victim or witnesses — Criminal Procedure Code, 1973 — Ss. 327(2) and (3) — Constitution of India — Arts. 19(1)(a) and (2) — Press and Media Laws — Press/Media reporting/publication — Sexual crimes against women and children

(Paras 22 and 23)

Nivedita Jha v. *State of Bihar*, 2018 SCC OnLine SC 1616, *cited*

J. **Penal Code, 1860 — S. 228-A(2)(b) — Adult victim of any sexual offence which is specified in S. 228-A(1) IPC — Disclosure of identity of, in terms of S. 228-A(2)(b) IPC — Prerequisites as to**

— Held, such a victim can obviously authorise any person in writing to disclose her name — But, this has to be a voluntary and conscious act of the victim

(Para 14)

K. **Evidence Act, 1872 — Ss. 137 and 138 — Cross-examination of victims of rape — Manner in which to be conducted — Duty of Presiding Judge — Cross-examination in such cases should be done with a certain level of decency and respect to women at large**

— Presiding Judge should prevent the defence from asking defamatory and unnecessary questions about victim's morals and character — Constitution of India — Art. 21 — Penal Code, 1860 — Ss. 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB and 376-E — Criminal Law — Crimes Against Women and Children — Rape

(Para 5)

L. **Protection of Children from Sexual Offences Act, 2012 — S. 1, Preamble and Statement of Objects and Reasons — Nature of Pocso Act — Held, is gender neutral and applies to all children**

(Para 30)

M. **Constitution of India — Art. 21 — Dignity, Right to — Even dead persons have their own dignity — Hence, they cannot be denied dignity only because they are dead**

(Para 40)

N. **Penal Code, 1860 — S. 228-A(2)(c) — Words "next of kin" as occurring therein — Meaning of — Plea that the said words will have to be given the same definition as is contemplated under the Succession Act, 1925 — Not gone into — "Next friend" of victim when may move application**

— Held, in certain cases, the interest of the next of kin may not be the same as the interest of the victim — In such circumstances, the applicant as to disclosure of identity of victim may not be the next of kin, but the "next friend" of victim, who may be entitled to move such an application — Issue as to who is the "next friend" will have to be decided by court or competent authority in each case — Words and Phrases — "Next of kin", "next friend"

(Para 19)

O. **Protection of Children from Sexual Offences Act, 2012 — S. 1, Preamble and Statement of Objects and Reasons — Child victims of sexual offences — Protection of fundamental and other basic human rights of, by complying with provisions of law in letter and spirit — Directions issued by Calcutta High Court in *Bijoy*, 2017 SCC OnLine Cal 417 with regard to — Approved and annexed to present judgment (set out in para 53 herein) — Chairpersons and Members of Juvenile Justice Committee of all High Courts in the country — Directed to go through said judgment of Calcutta High Court and issue similar directions keeping in view the particular needs of each High Court/State**

(Paras 45 and 53)

Bijoy v. *State of W.B.*, 2017 SCC OnLine Cal 417 : 2017 Cri LJ 3893, *approved*

P. **Penal Code, 1860 — S. 228-A — Victims of sexual offences as specified in S. 228-A(1) IPC — Disclosure of identity of — Prohibition as to, under S. 228-A — Applicability — Initiation of campaign to protect rights of such victims and mobilise public opinion — Held, can be done even without disclosing the identity of such victims**

(Para 17)

Q. **Protection of Children from Sexual Offences Act, 2012 — Ss. 33(4), 36 and 37 — Trial of sexual offences committed against children — Need to establish child-friendly courts — Emphasised — Such courts can also be used for trial of cases of rape against women**

(Paras 46 to 49)

R. **Criminal Procedure Code, 1973 — S. 154 — FIR — Crimes against women and children — Establishment of "One-Stop Centres", which can be used as a central police station where all crimes against women and children in a town/city are registered — Direction issued for, to be implemented in one year — Requirement of well trained staff sensitive to needs of victims (including counsellors and psychiatrists) and various facilities (pertaining to medical, videoconferencing for recording statement of victims under S. 164 CrPC, courtroom, etc.) to be available at such One-Stop Centres — Location of such Centres i.e. not to be within the court complex but near it — Penal Code, 1860 — Ss. 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB and 376-E — Protection of Children from Sexual Offences Act, 2012, S. 19**

(Paras 49, 50.9 and 51)

S. **Words and Phrases — "Media" — Reference to "media" in present judgment — Includes all types of media including press, electronic and social media, etc.**

(Para 3)

W-D/61469/CR

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Mehlwal, Raju Sonkar, Chirag M. Shroff, V.G. Pragasam, Prabu Ramasubramanian, S. Manuraj, Ms Aditi Gupta, Satya Mitra, T.N. Rama Roy, Hitesh Kr. Sharma and T. Veera Reddy, Advocates] for the appearing parties;

Nipun Saxena, Petitioner-in-Person.

Chronological list of cases cited ***on page(s)***

1. 2018 SCC OnLine Ker 5397, *Aju Varghese* v. *State of Kerala* 71

2. 2018 SCC OnLine SC 1616, *Nivedita Jha* v. *State of Bihar* 71

3. 2018 SCC OnLine Sikk 29 : 2018 Cri LJ 3146, *Subash Chandra Rai* v. *State of Sikkim* 72

4. 2017 SCC OnLine Cal 417 : 2017 Cri LJ 3893, *Bijoy* v. *State of W.B.* 722*d*, 722*d-e*, 724*f*

5. (2003) 8 SCC 551 : 2004 SCC (Cri) 31, *Bhupinder Sharma* v. *State of H.P.* 71

6. (1996) 2 SCC 384 : 1996 SCC (Cri) 316, *State of Punjab* v. *Gurmit Singh* 710*a*, 715*e*, 716*a*

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.— How and in what manner the identity of adult victims of rape and children who are victims of sexual abuse should be protected so that they are not subjected to unnecessary ridicule, social ostracisation and harassment, is one of the issues which arises in these cases.

2. We are dividing this judgment into two parts. The first part deals with the victims of the offence of rape under the Penal Code, 1860 (for short "IPC") and the second part deals with victims who are subjected to offences under the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO").

3. In this judgment any reference to "media" will include all types of media including press, electronic and social media etc.

PART I

4. Unfortunately, in our society, the victim of a sexual offence, especially a victim of rape, is treated worse than the perpetrator of the crime. The victim is innocent. She has been subjected to forcible sexual abuse. However, for no fault of the victim, society instead of empathising with the victim, starts treating her as an "untouchable". A victim of rape is treated like a "pariah" and ostracised from society. Many times, even her family refuses to accept her back into their fold. The harsh reality is that many times cases of rape do not even get reported because of the false notions of so-called "honour" which the family of the victim wants to uphold. The matter does not end here. Even after a case is lodged and FIR recorded, the police, more often than not, question the victim like an accused. If the victim is a young girl who has been dating and going around with a boy, she is asked in intimidating terms as to why she was dating a boy. The victim's first brush with justice is an unpleasant one where she is made to feel that she is at fault; she is the cause of the crime.

5. If the victim is strong enough to deal with the recriminations and insinuations made against her by the police, she normally does not find much succour even in court. In court the victim is subjected to a harsh cross-examination wherein a lot of questions are raised about the victim's morals and character. The Presiding Judges sometimes sit like mute spectators and normally do not prevent the defence from asking such defamatory and unnecessary questions. We want to make it clear that we do not, in any manner, want to curtail the right of the defence to cross-examine the prosecutrix, but the same should be done with a certain level of decency and respect to women at large. Over a period of time, lot of effort has been made to sensitise the courts, but experience has shown that despite the earliest admonitions, the first as far back as in 1996[1], the courts even today reveal the identity of the victim.

6. Section 228-A was introduced in IPC vide Amendment Act 43 of 1983 with effect from 25-12-1983 and reads as follows:

> "**228-A.** ***Disclosure of identity of the victim of certain offences, etc.***—(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB or Section 376-E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.
>
> (2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—
>
> (*a*) by or under the order in writing of the officer in charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or
>
> (*b*) by, or with the authorisation in writing of, the victim; or
>
> (*c*) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:
>
> Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.
>
> *Explanation*.—For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.
>
> (3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.
>
> *Explanation*.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section."

7. We may also refer to Section 327 of the Code of Criminal Procedure, 1973 (for short "CrPC") which provides that courts should be open and normally public should have access to the courts. Sub-section (2) of Section 327 was inserted by the same Amendment Act 43 of 1983. Section 327, as amended, reads as follows:

> "**327.** ***Court to be open.***—(1) The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to

be an open court, to which the public generally may have access, so far as the same can conveniently contain them:

> Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.
>
> (2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB or Section 376-E of the Penal Code (45 of 1860) shall be conducted *in camera*
>
> Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court:
>
> Provided further that *in camera* trial shall be conducted as far as practicable by a woman Judge or Magistrate.
>
> (3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court:
>
> Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties."

(emphasis supplied)

8. Vide the Amendment Act of 1983 cases of rape, gang rape, etc. were excluded from the category of cases to be tried in open court. Later other similar offences were included vide Amendment Act of 2013.

9. Sub-section (1) of Section 228-A, provides that any person who makes known the name and identity of a person who is an alleged victim of an offence falling under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E commits a criminal offence and shall be punishable for a term which may extend to two years.

10. What is however, permitted under sub-section (2) of Section 228-A IPC is making known the identity of the victim by printing or publication under certain circumstances described therein. Any person, who publishes any matter in relation to the proceedings before a court with respect to such an offence, without the permission of the court, commits an offence. The Explanation however provides that printing or publication of the judgment of the High Courts or the Supreme Court will not amount to any offence within the meaning of IPC.

11. Neither IPC nor CrPC define the phrase "identity of any person". Section 228-A IPC clearly prohibits the printing or publishing "the name or any matter which may make known the identity of the person". It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such victim. We are clearly of the view that the phrase "matter which may make known the identity of the person" does not solely mean that only the name of

the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the law-makers was that the victim of such offences should not be identifiable so that they do not

face any hostile discrimination or harassment in the future.

12. A victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being. Our criminal jurisprudence does not provide for an adequate witness protection programme and, therefore, the need is much greater to protect the victim and hide her identity. In this regard, we may make reference to some ways and means where the identity is disclosed without naming the victim. In one case, which made the headlines recently, though the name of the victim was not given, it was stated that she had topped the State Board Examination and the name of the State was given. It would not require rocket science to find out and establish her identity. In another instance, footage is shown on the electronic media where the face of the victim is blurred but the faces of her relatives, her neighbours, the name of the village, etc. is clearly visible. This also amounts to disclosing the identity of the victim. We, therefore, hold that no person can print or publish the name of the victim or disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

13. Sub-section (2) of Section 228-A IPC makes an exception for police officials who may have to record the true identity of the victim in the police station or in the investigation file. We are not oblivious to the fact that in the first information report (for short "FIR") the name of the victim will have to be disclosed. However, this should not be made public and especially not to the media. We are of the opinion that the police officers investigating such cases and offences should also as far as possible either use a pseudonym to describe the victim unless it is absolutely necessary to write down her identity. We make it clear that the copy of an FIR relating to the offence of rape against a women or offences against children falling within the purview of POCSO shall not be put in the public domain to prevent the name and identity of the victim from being disclosed. The Sessions Judge/Magistrate/Special Court can for reasons to be recorded in writing and keeping in view the interest of the victim permit the copy of the FIR to be given to some person(s). Some examples of matters where her identity will have to be disclosed are when samples are taken from her body, when medical examination is conducted, when DNA profiling is done, when the date of birth of the victim has to be established by getting records from school, etc. However, in these cases also the police officers should move with circumspection and disclose as little of the identity of the victim as possible but enough to link the victim with the information sought. We make it clear that the authorities to which the name is disclosed when such samples are sent, are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court. There can be no hard-and-fast rule in

this behalf but the police should definitely ensure that the correspondence or memos exchanged or issued wherein the name of the victim is disclosed are kept in a sealed cover and are not disclosed to the public at large. They should not be disclosed to the media and they shall also not be furnished to any person under the Right to Information Act, 2015. We direct that the police officials should keep all the documents in which the name of the victim is disclosed in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised by a large number of people. The sealed cover can be filed in the court along with the report filed under Section 173 CrPC.

14. As far as clause (*b*) of sub-section (2) of Section 228-A IPC is concerned, if an adult victim has no objection to her name being published or identity being disclosed, she

can obviously authorise any person in writing to disclose her name. This has to be a voluntary and conscious act of the victim. There are some victims who are strong enough and willing to face society even after their names are disclosed. Some of them, in fact, help other victims of rape and they become a source of inspiration to other rape victims. Nobody can have any objection to the victim disclosing her name as long as the victim is a major.

15. Coming to clause (*c*) of sub-section (2) of Section 228-A IPC, we are of the opinion that where the victim is a minor, Section 228-A will no longer apply because of the enactment of POCSO which deals specifically with minors. In fact, the words "or minor" should for all intents and purposes be deemed to be deleted from clause (*c*) of sub-section (2) of Section 228-A IPC.

16. The vexatious issue which troubles us is with regard to the next of kin of the victim giving an authority to the Chairman or the Secretary of recognised welfare institutions or organisations to declare the name. As per the materials placed before us till date neither the Central Government nor any State Government has recognised any such social welfare institutions or organisations to whom the next of kin should give the authorisation.

17. Before dealing with this technical aspect as to whom the authorisation is to be given, we feel that a word of caution is needed with regard to the right of the next of kin of the victim. A person of unsound mind is as much a citizen of the country as a sane person. A person of unsound mind who is also subjected to such a heinous sexual offence suffers a trauma which is unimaginable. The issue for consideration is — in what circumstances the next of kin should be permitted to authorise the naming and identification of the victim? It was urged before us that in certain matters the name of the victim should be permitted to be disclosed or published because the name and face of the victim can then become a rallying point to prevent other such sexual offences. The victim becomes a symbol of protest or is treated as an iconic figure. We are not at all impressed with this argument. Should the person who is dead or who is of unsound mind be permitted to become a symbol if such person herself might not want to be a rallying point? We are also of the considered view that it is not at all necessary to disclose the identity of the victim to arouse public opinion and sentiment. This is a serious issue dealing with victims of heinous sexual offences and needs

to be dealt with sensitivity. Furthermore, all of us are fully aware that without disclosing her true identity "Nirbhaya" became the most effective symbol of protest the country has ever known. If a campaign has to be started to protect the rights of the victim and mobilise public opinion it can be done so without disclosing her identity.

18. We may also add that in this modern age where we have dealt with cases where daughters have been raped by their fathers, where victims of rape especially minor victims are very often subjected to this heinous crime either by family members or friends of the family, it is not unimaginable that the so-called next of kin may for extraneous reasons including taking money from a media house or a publishing firm which wants to publish a book, disclose the name of the victim. We do not, in any manner, want to comment upon the role of the parents but we cannot permit even one case of this type and in the larger interest we feel that, as a matter of course, the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, without permission of the competent authority.

19. It has been urged on behalf of the Union of India that the words "next of kin" will have to be given the same definition as is contemplated under the Succession Act, 1925. We do not want to enter into this dispute. As pointed by us, in certain cases, the interest of the next of kin may not be the same as the interest of the victim. In such circumstances, the applicant may not be the next of kin, but the "next friend" of the child,

who may be entitled to move such an application. It will be for the court or the competent authority to decide who is the "next friend".

20. As pointed out above, neither the Central Government nor any State Government has recognised any such welfare institution or organisation. No guidelines have been laid down in IPC as to what will be the nature of such organisation and what will be the qualifications of the persons who are made the Chairman or Secretary of such organisation. These matters cannot be left indeterminate.

21. There may be cases where the identity of the victim, if not her name, may have to be disclosed. There may be cases where a dead body of a victim is found. It is established that the victim was subjected to rape. It may not be possible to identify the victim. Then, obviously her photograph will have to be published in the media. Even here, we would direct that while this may be done, the fact that such victim has been subjected to a sexual offence need not be disclosed. There may be other situations where the next of kin may be justified in disclosing the identity of the victim. If any such need should arise, then we direct that an application to authorise disclosure of identity should be made only to the Sessions Judge/Magistrate concerned and the said Sessions Judge/Magistrate shall decide the application on the basis of the law laid down by us. We are exercising power under Article 142 of the Constitution in this regard because the Government has not identified any social or welfare institution/organisation and the law as laid down cannot be administered. We direct that if

the Government wants to actually act under Section 228-A(2)(*c*) IPC, it must before identifying such social welfare institution or organisation clearly lay down some rules or clear-cut criteria in this regard. What should be the nature of the organisation? How should the application be made? In what manner that application should be dealt with? A clear-cut procedure must be laid down. Till that is done, our directions shall prevail.

22. As far as sub-section (3) of Section 228-A IPC is concerned, we would like to make it clear that IPC clearly lays down that nobody can print or publish any matter in relation to any proceedings falling within the purview of Section 228-A and in terms of Section 327 (2) CrPC. These are in-camera proceedings and nobody except the presiding officer, the court staff, the accused, his counsel, the public prosecutor, the victim, if at all she wants to be present or the witness shall be there. It is the bounden duty of all of them to ensure that what happens in court is not disclosed outside. This is not to say that there can be no reporting of such cases. The press can report that the case was fixed before court and some witnesses were examined. It can report for what purpose the case was listed but it cannot report what transpired inside the court or what was the statement of the victim or the witnesses. The evidence cannot be disclosed. We are not elaborating and dealing with the issue of publication in press in greater detail since this issue is engaging our attention in *Nivedita Jha case*[2] but it is clear that nobody can be permitted to violate Section 327(3) CrPC, the language of which is very clear and unambiguous.

23. Sub-section (3) of Section 228-A IPC makes printing or publication of any matter in relation to such proceedings before a court an offence unless its publication is made with the previous permission of such court.

24. This Court, more than two decades back in *Gurmit Singh case*[1] raised a note of caution. It found that sexual crimes against women were rising. This Court held that victims of sexual abuse or assault were treated without any sensitivity during the course of investigation and trial. The Court further held that trial of rape cases in camera should be the rule and open trial an exception. Though the Court did not refer to Section 228-A IPC, the following observations are pertinent: (SCC pp. 403-04, paras 21-22)

"*21*. Of late, crime against women in general and rape in particular is on the

increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The

courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. ...

22. There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of the Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence."

25. Dealing with Section 327 CrPC in *Gurmit Singh case*[1] this Court held as follows: (SCC pp. 404-05, para 24)

"*24.* ... It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an *open court*, under the gaze of public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood. ... The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout. In the present case, the trial court has repeatedly used the name of the victim in its order under appeal, when it could have just referred to her as the prosecutrix. We need say no more on this aspect and hope that the trial courts would take recourse to the provisions of Sections 327(2) and (3) CrPC liberally. Trial of rape cases *in camera* should be the rule and an *open trial* in such cases an exception."

(emphasis in original)

26. *Bhupinder Sharma* v. *State of H.P.*[3] is one of first cases where specific reference was made to Section 228-A IPC. This Court held as follows: (SCC p. 554, para 2)

> "2. We do not propose to mention the name of the victim. Section 228-A of the Penal Code, 1860 (in short "IPC") makes disclosure of the identity of victims of certain offences punishable. Printing or publishing the name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by the High Court or the Supreme Court. But keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of a High Court or a lower court, the name of the victim should not be indicated. We have chosen to describe her as "victim" in the judgment."

This Court held that the bar imposed under Section 228-A IPC did not in term apply to the printing or publication of judgments of the High Courts and the Supreme Court because of the Explanation to Section 228-A. However, keeping in view the social object of preventing the victims or ostracising of victims, it would be appropriate that in judgments of all the courts i.e. trial courts, High Courts and the Supreme Court the name of the victim should not be indicated. This has been repeated in a large number of cases and we need not refer to all.

27. The Kerala High Court in *Aju Varghese* v. *State of Kerala*[4] held as follows: (SCC OnLine Ker para 8)

> "*8.* The statutory provision as explained by the Supreme Court clearly shows that the provision was specifically intended to ensure that the victim is not exposed to further agony by the consequent social victimization or ostracism pursuant to disclosure of her identity. It is clear that, it is intended to protect her from psychological and sociological torture or mental agony, that may follow the unfortunate incident of sexual violence. Society has a duty to support the victims of sexual violence and to ensure that they come back to normalcy and start leading a normal life. Victims of such violence are not denuded of their fundamental right to privacy and are liable to be insulated against unnecessary public comments. Definitely, it serves an avowed social purpose and has an element of public interest involved in it. Section is so clear, unambiguous and the consequence of breach of it is inescapable and the question whether the disclosure was intended, bona fide or without knowledge of law has no relevance. Hence, the provision of Section 228-A IPC prohibiting the disclosure of the name by an accused is absolute and cannot be diluted."

28. Before parting with this aspect, we would like to deal with a situation not envisaged by the law-makers. As we have held above, Section 228-A IPC imposes a clear-cut bar on the name or identity of the victim being disclosed. What happens if the accused is acquitted and the victim of the offence wants to file an appeal under Section 372 CrPC? Is she bound to disclose her name in the memo of appeal? We are clearly of the view that such a victim can move an application to the court praying that she may be permitted to file a petition under a pseudonymous name e.g. '*X*' or '*Y*' or any other such coded identity that she may choose. However, she may not be permitted to give some other name which may indirectly harm another person. There may be certain documents in which her name will have to be disclosed e.g. the power of attorney and affidavit(s) which may have to be

filed as per the Rules of the Court. The Court should normally allow such applicant to file the petition/appeal in a pseudonymous name. Where a victim files an appeal we direct that such victim can file such an appeal by showing her name as '*X*' or '*Y*' along with an application for non-disclosure of the name of the victim. In a sealed envelope to be filed with the appeal she can enclose the document(s), in which she can reveal her identity as required by the Rules of the appellate court. The Court can verify the details but in the material which is placed in the public domain the name of the victim shall not be disclosed. Such an application should be heard by the Court in chambers and the name should not be reflected even in the cause list till such matter is decided. Any documents disclosing the name and identity of the victim should not be in the public domain.

PART II

29. In this part of the judgment we shall deal with the issues which relate to non-disclosure of the name and identity of a victim falling within the purview of POCSO. At the outset, we may note that the reasons which we have given in Part I of the judgment dealing with the adult victims, apply with even greater force to minor victims.

30. A minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracisation and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Efforts are made to hush up the crime. It is now recognised that a child needs extra protection. India is a signatory to the United Nations Convention on the Rights of Child, 1989 and Parliament thought it fit to enact POCSO in the year 2012, which specifically deals with sexual offences against all children. The Act is gender neutral and whatever we say in this part will apply to all children.

31. Chapter VI of POCSO deals with procedure relating to recording the statement of a child. Section 24 deals with the statement recorded by the police. For our purpose sub-section (5) of Section 24 is relevant which reads as follows:

> "**24. *Recording of statement of a child.***—(1)-(4) * * *
>
> (5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child."

32. Section 25 of POCSO states that statements of the child recorded under Section 164 CrPC which permits an advocate to be present will not be applicable in the case of children. Trials under POCSO are conducted by the Special Court which is expected to be child-friendly and specifically provides that the Special Court shall not permit aggressive questioning or character assassination of the child.

33. Sub-section (7) of Section 33 which is relevant reads as follows:

> "**33. *Procedure and powers of Special Court.***—(1)-(6) * * *
>
> (7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:
>
> Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
>
> *Explanation.*—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed."

34. Section 37 provides that all trials under POCSO are to be conducted in camera

unless otherwise specifically decided for reasons to be recorded by the Special Court. A bare reading of Section 24(5) and Section 33(7) makes it amply clear that the name and identity of the child is not to be disclosed at any time during the course of investigation or trial and the identity of the child is protected from the public or media. Furthermore, Section 37 provides that the trial is to be conducted in camera which means that the media cannot be present. The entire purpose of POCSO is to ensure that the identity of the child is not disclosed unless the Special Court for reasons to be recorded in writing permits such disclosure. This disclosure can only be made if it is in the interest of the child and not otherwise. One such case where disclosure of the identity of the child may be necessary can be where a child is found who has been subjected to a sexual offence and the identity of the child cannot be established even by the investigating team. In such a case, the investigating officer or the Special Court may allow the photograph of the child to be published to establish the identity. It is absolutely clear that the disclosure of the identity can be permitted by the Special Court only when the same is in the interest of the child and in no other circumstances. We are of the view that the disclosure of the name of the child to make the child a symbol of protest cannot normally be treated to be in the interest of the child.

35. It is contended by the learned Amicus Curiae that interest of the child has not been defined. We are of the view that it is neither feasible nor would it be advisable to clearly lay down what is the meaning of the phrase "interest of the child". We have, however, given some examples hereinabove and we do not

want to tie down the hands of the Special Court, which may have to deal with such cases. Each case will have to be dealt within its own factual scenario.

36. Section 23 of POCSO contains provisions which relate to procedure for media. It reads as follows:

> "**23. *Procedure for media.***—(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.
>
> (2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:
>
> Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
>
> (3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.
>
> (4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both."

37. Sub-section (1) of Section 23 prohibits any person from filing any report or making any comments on any child in any form, be it written, photographic or graphic without first having complete and authentic information. No person or media can make any comments which may have the effect of lowering the reputation of the child or infringing upon the privacy of the child. Sub-section (2) of Section 23 clearly lays down that no report in any media shall disclose identity of a child including name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to the disclosure of the identity of the child. This clearly shows that the intention of the

legislature was that the identity of the child should not be disclosed directly or indirectly. The phrase "any other particulars" will have to be given the widest amplitude and cannot be read only ejusdem generis. The intention of the legislature is that the privacy and reputation of the child is not harmed. Therefore, any information which may lead to the disclosure of the identity of the child cannot be revealed by the media. The media has to be not only circumspect but a duty has been cast upon the media to ensure that it does nothing and gives no information which could directly or indirectly lead to the identity of the child being disclosed.

38. No doubt, it is the duty of the media to report every crime which is committed. The media can do this without disclosing the name and identity of the victim in case of rape and sexual offences against children. The media not only has the right but an obligation to report all such cases. However, media should be cautious not to sensationalise the same. The media should refrain from talking to the victim because every time the victim repeats the tale of misery, the victim again undergoes the trauma which he/she has gone through.

Reportage of such cases should be done sensitively keeping the best interest of the victims, both adult and children, in mind. Sensationalising such cases may garner television rating points (TRPs) but does no credit to the credibility of the media.

39. Where a child belongs to a small village, even the disclosure of the name of the village may contravene the provisions of Section 23(2), Pocso because it will just require a person to go to the village and find out who the child is. In larger cities and metropolis like Delhi the disclosure of the name of the city by itself may not lead to the disclosure of the identity of the child but any further details with regard to the colony and the area in which the child is living or the school in which the child is studying are enough (even though the house number may not be given) to easily discover the identity of the child. In our considered view, the media is not only bound not to disclose the identity of the child but by law is mandated not to disclose any material which can lead to the disclosure of the identity of the child. Any violation of this will be an offence under Section 23(4).

40. The learned Amicus Curiae urged that child for purposes of publication should only mean a living child. Her contention appears to be that when the child is dead then the name and identity of child can be disclosed. Her submission is based on the assumption that if the name and identity of the child is disclosed, public sentiment can be generated and a movement can be started to get justice for the child. According to her, it is difficult to garner such support if the name of the deceased child victim is not disclosed. We are not at all in agreement with this submission. The same reasoning which we have given above for victims will apply to dead victims also. In the case of dead victims, we have to deal with another factor. We have to deal with the important issue that even the dead have their own dignity. They cannot be denied dignity only because they are dead.

41. Though in this case we are dealing with cases of victims but we may make reference to Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which reads as follows:

> "**74. *Prohibition on disclosure of identity of children***.—(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:
>
> Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.

(3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both."

42. The name, address, school or other particulars which may lead to the identification of the child in conflict with law cannot be disclosed in the media. No picture of such child can be published. A child who is not in conflict with law but is a victim of an offence especially a sexual offence needs this protection even more.

43. The Sikkim High Court in *Subash Chandra Rai* v. *State of Sikkim*[5] dealing with this issue held as follows: (SCC OnLine Sikk para 34)

"*34*. The mandate of the provision requires no further clarification. Suffice it to say that neither for a child in conflict with law, or a child in need of care and protection, or a child victim, or witness of a crime involved in matter, the name, address, school or other particulars which could lead to the child being tracked, found and identified shall be disclosed, unless for the reasons given in the proviso extracted hereinbefore. The Police and Media as well as the Judiciary are required to be equally sensitive in such matters and to ensure that the mandate of law is complied with to the letter."

44. In *Bijoy* v. *State of W.B.*[6], the Calcutta High Court has given a detailed judgment setting out the reasons while dealing with the provisions of POCSO and held that neither during investigation nor during trial the name of the victim should be disclosed.

45. The Calcutta High Court in *Bijoy case*[6] has also given other directions to ensure that the provisions of the law are followed in letter and spirit, and the fundamental rights of a child victim and other basic human rights are protected. We are in agreement with all these directions. Though some of the issues dealt with in these directions do not strictly arise in this case, keeping in view the fact that we are dealing with the rights of children, we are annexing the directions issued by the Calcutta High Court as Annexure 1 to this judgment. We request all the Chairpersons and Members of all the Juvenile Justice Committee of all the High Courts in the country to go through the judgment of the Calcutta High Court and the directions issued therein and they may issue similar directions, keeping in view the particular needs of each High Court/State.

46. Before parting we would like to emphasise the need to have child-friendly courts. POCSO mandates setting up of child-friendly courts. Though some progress has been made in this regard, a lot still requires to be done.

47. Any litigant who enters the court feels intimidated by the atmosphere of the court. Children and women, especially those who have been subjected to sexual assault are virtually overwhelmed by the atmosphere in the courts. They are scared. They are so nervous that they, sometimes, are not even able to describe the nature of the crime accurately. When they are cross-examined in

a hostile and intimidatory manner then the nervousness increases and the truth does not come out.

48. It is, therefore, imperative that we should have courts which are child-friendly. Section 33(4) POCSO enjoins on the Special Court to ensure that there is child-friendly

atmosphere in court. Section 36 lays down that the child should not see the accused at the time of testifying. This is to ensure that the child does not get scared on seeing the alleged perpetrator of the crime. As noted above, trials are to be conducted in camera. Therefore, there is a need to have courts which are specially designed to be child-friendly and meet the needs of child victims and the law.

49. These courts need not only be used for trying cases under Pocso but can also be used as trial courts for trying cases of rape against women. In fact, it would be in the interest of children and women, and in the interest of justice if One-Stop Centres are also set up in all the districts of the country as early as possible. These One-Stop Centres can be used as a central police station where all crimes against women and children in the town/city are registered. They should have well-trained staff who are sensitive to the needs of children and women who have undergone sexual abuse. This staff should be given adequate training to ensure that they talk to the victims in a compassionate and sensitive manner. Counsellors and psychiatrists should also be available on call at these Centres so that if necessary the victims are counselled and in some cases it would be appropriate if the counsellors question the victims in a manner in which they have been trained to handle the victims of such offences. These One-Stop Centres should also have adequate medical facilities to provide immediate medical aid to the victims and the medical examination of the victims can be conducted at the Centre itself. These One-Stop Centres should also have video conferencing facility available where the statement of the victims to be mandatorily recorded under Section 164 CrPC can be recorded using video conferencing facilities and the victims need not be produced in the Court of the Magistrate. There should be courtroom(s) in these One-Stop Centres which can be used for trial of such cases. As far as possible these Centres should not be situated within the court complex but should be situated near the court complex so that the lawyers are also not inconvenienced. Resultantly, the victims of such offences will never have to go to a court complex which would result in a victim-friendly trial. One such Centre which has already been set up is "BHAROSA" in Hyderabad. This can be used as a model for other One-Stop Centres in the country.

50. In view of the aforesaid discussion, we issue the following directions:

50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

50.2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the disclosure of her identity

exist, which shall be decided by the competent authority, which at present is the Sessions Judge.

50.3. FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under Pocso shall not be put in the public domain.

50.4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.

50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.

50.6. All the authorities to which the name of the victim is disclosed by the

investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

50.7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(*c*) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228-A(1)(*c*) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.

50.8. In case of minor victims under Pocso, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

50.9. All the States/Union Territories are requested to set up at least one "One-Stop Centre" in every district within one year from today.

51. A copy of this judgment be sent to the Registrars General of all the High Courts so that the same can be placed before the Chairpersons of the Juvenile Justice Committee of all the High Courts for issuance of appropriate orders and directions and also to ensure that sincere efforts are made to set up One-Stop Centres in every district.

52. In view of the above, we dispose of these petitions as far as issues dealt with hereinabove are concerned.

53. **ANNEXURE — 1**

(Directions issued by the Calcutta High Court in *Bijoy* v. *State of W.B.*[5], SCC OnLine Cal para 40)

"1. Police Officer or the Special Juvenile Police Unit receiving complaint as to commission or likelihood of commission of offence under the Act shall forthwith register the same in terms of Section 19 of the Act and furnish a copy free of cost to the child and/or his/her parents and inform the child or his/her parents or any person in whom the child has trust and confidence of his/her right to legal aid and representation and if the child is unable to arrange for his/her legal representation, refer the child to

the District Legal Services Authority for necessary legal aid/representation under Section 40 of the Act. Failure to register first information report in respect of offences punishable under Sections 4, 6, 7, 10 and 12 of Pocso shall attract penal liability under Section 166-B of the Penal Code as the aforesaid offences are cognate and/or pari materia to the Penal Code offences referred to in the said penal provision.

2. The police officer on registration of FIR shall promptly forward the child for immediate emergency medical aid, whenever necessary, and/or for medical examination under Section 27 of the Act and ensure recording of the victim's statement before the Magistrate under Section 25 of the Act. In the event, the police officer or the Special Juvenile Police Unit is of the opinion that the child falls within the definition of "child in need of (sic) care and protection" as defined under Section 2(*d*) of the Juvenile Justice (Care and Protection of Children) Act, 2000, [as suitably modified by the Juvenile Justice (Care and Protection of Children) Act, 2015 (sic)] the said police officer or the Special Juvenile Police Unit shall forthwith forward the child to the jurisdictional Child Welfare Committee for providing care, protection, treatment and rehabilitation of the child in accordance with law.

3. Whenever a registration of FIR is reported to the Special Court, the Special Court shall make due enquiries from the investigating agency as to compliance of the aforesaid requirements of law as stated in Directions 1 and 2, above and pass necessary orders to ensure compliance thereof in accordance with law, if necessary.

4. Officer in charge of the police station and the investigating officer in the case including the Special Juvenile Police Unit shall ensure that the identity of the victim is

not disclosed in the course of investigation, particularly at the time of recording statement of the victim under Section 24 of the Act (which as far as practicable may be done at the residence or a place of choice of the victim or that of his/her parents/custodian, as the case may be), his/her examination before the Magistrate under Section 25 of the Act, forwarding of the child for emergency medical aid under Section 19(5) and/or medical examination under Section 27 of the Act.

5. The investigating agency shall not disclose the identity of the victim in any media and shall ensure that such identity is not disclosed in any manner whatsoever except the express permission of the Special Court in the interest of justice. Any person including a police officer committing breach of the aforesaid requirement of law shall be prosecuted in terms of Section 23(4) of the said Act.

6. Trial of the case shall be held in camera in terms of Section 37 of the Act and evidence of the victim shall be promptly recorded without unnecessary delay and following the procedure of screening the victim from the accused person as provided in Section 36 of the Act. The evidence of the victim shall be recorded by the Court in a child-friendly atmosphere in the presence of the parents, guardian or any other person in whom the child has trust and confidence by giving frequent breaks and the Special

Court shall not permit any repetitive, aggressive or harassive questioning of the child particularly as to his/her character assassination which may impair the dignity of the child during such examination. In appropriate cases, the Special Court may call upon the defence to submit its questions relating to the incident during cross-examination in writing to the court and the latter shall put such questions to the victim in a language which is comprehensible to the victim and in a decent and non-offensive manner.

7. In the event, the victim is abroad or is staying at a far off place or due to supervening circumstances is unable to physically attend the court to record evidence, resort shall be taken for recording his/her evidence by way of video conference.

8. The identity of the victim particularly his/her name, parentage, address or any other particulars that may reveal such identity shall not be disclosed in the judgment delivered by the Special Court unless such disclosure of identity is in the interest of the child.

9. The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child. In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim. The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund. The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under Section 357-A of the Code of Criminal Procedure, 1973 (sic) or any other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted. If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of

trial in terms of Section 33(8) of the Act.

10. The Special Court shall ensure that the trial in cases under Pocso is not unduly protracted and shall take all measures to conclude the trial as expeditiously as possible preferably within a year from taking cognizance of the offence without granting unreasonable adjournment to the parties in terms of Section 35(2) of the Act."

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[1] Under Article 32 of the Constitution of India

[1] *State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384 : 1996 SCC (Cri) 316

[2] *Nivedita Jha* v. *State of Bihar*, 2018 SCC OnLine SC 1616

[3] *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551 : 2004 SCC (Cri) 31

[4] *Aju Varghese* v. *State of Kerala*, 2018 SCC OnLine Ker 5397

[5] *Subash Chandra Rai* v. *State of Sikkim*, 2018 SCC OnLine Sikk 29 : 2018 Cri LJ 3146

[6] *Bijoy* v. *State of W.B.*, 2017 SCC OnLine Cal 417 : 2017 Cri LJ 3893

Points to Ponder

* In case where chargesheet has been submitted but instead of submitting chargesheet the investigation is kept pending against some absconding accused persons, can the court of sessions proceed against such accused under section 319 Cr.P.C. in the light of the ratio laid down in the case of Hardeep Singh Vs. State of Punjab reported in (2014) 3 SCC 92, to avoid multiplicity of trials arising from the same incidence ?

* Is there any legal impediment in proceeding against a person whome there are sufficient materials available in the case diary but the investigation has been kept pending against him ?

* Even if a charge sheet is submitted subsequently against such absconding accused against whome the sessions case has already proceed u/s 319 Cr.P.C. why not his case be sent for being tagged with the original record ?

(2014) 3 Supreme Court Cases 92 : (2014) 2 SCC (Cri) 86 : 2014 SCC OnLine SC 26

In the Supreme Court of India

(BEFORE P. SATHASIVAM, C.J. AND DR B.S. CHAUHAN, RANJANA P. DESAI, RANJAN GOGOI AND S.A. BOBDE, JJ.)

Criminal Appeal No. 1750 of 2008

HARDEEP SINGH . . Appellant;

Versus

STATE OF PUNJAB AND OTHERS . . Respondents.

With

Criminal Appeal No. 1751 of 2008

MANJIT PAL SINGH . . Appellant;

Versus

STATE OF PUNJAB AND ANOTHER . . Respondents.

With

SLP (Crl.) No. 9184 of 2008

BABUBHAI BHIMABHAI BOKHIRIA AND ANOTHER . . Appellants;

Versus

STATE OF GUJARAT AND OTHERS . . Respondents.

With

SLP (Crl.) No. 7209 of 2010

RAJENDRA SHARMA AND ANOTHER . . Appellants;

Versus

STATE OF MADHYA PRADESH AND ANOTHER . . Respondents.

With

SLP (Crl.) No. 5724 of 2009

RAVINDER KUMAR AND ANOTHER . . Appellants;

Versus

STATE OF HARYANA AND OTHERS . . Respondents.

With

SLP (Crl.) No. 5975 of 2009

TEJ PAL AND ANOTHER . . Appellants;

Versus

STATE OF HARYANA AND OTHERS . . Respondents.

With

SLP (Crl.) No. 9040 of 2010

JUNED PAHALWAN . . Appellant;

Versus

STATE OF UTTAR PRADESH AND ANOTHER . . Respondents.

With

SLP (Crl.) No. 5331 of 2009

RAJESH ALIAS SANJAI . . Appellant;

Versus

STATE OF UTTAR PRADESH AND ANOTHER . . Respondents.

With

SLP (Crl.) No. 9157 of 2009

RAMDHAN MALI AND ANOTHER . . Appellants;

Versus

STATE OF RAJASTHAN AND ANOTHER . . Respondents.

With

SLPs (Crl.) Nos. 4503-504 of 2012

TEJ SINGH . . Appellant;

Versus

STATE OF UTTAR PRADESH . . Respondent.

Criminal Appeals No. 1750 of 2008[1] with No. 1751 of 2008, SLPs (Crl.) Nos. 9184 of 2008, 5331, 5724, 5975, 9157 of 2009, 7209, 9040 of 2010 and 4503-504 of 2012, decided on January 10, 2014

A. **Criminal Procedure Code, 1973 — S. 319 — Object — Real culprit should not get away unpunished — This is part of concept of "fair trial" — Provision is based on the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) — Constructive and purposive interpretation should be adopted so as to advance the object and cause of justice — Court should give full effect to words used in the provision — Constitution of India — Arts. 20 and 21 — Fair trial**

B. **Criminal Procedure Code, 1973 — Ss. 319, 300 and 398 — Power to proceed under S. 319 against persons not arraigned as accused — When available — Stage(s) at which it may be exercised — Persons who may be proceeded against — Degree of satisfaction necessary for court to exercise power under S. 319 — Discharged accused — When may be summoned — "In the course of any inquiry into, or trial of, an offence, if it appears from the evidence" — Interpretation of**

— "Inquiry" means pre-trial inquiry by court, thus, held, court can exercise power under S. 319 prior to commencement of trial, once court inquiry has commenced and at any time till conclusion of trial — "Trial" commences after framing of charge

— The word "evidence" in S. 319 CrPC has to be broadly understood and not literally as evidence brought during a trial — Thus, materials which have come before court in course of inquiry can be used for (i) corroboration of evidence recorded by court after commencement of trial, (ii) for exercise of power under S. 319, and (iii) also to add an accused whose name is shown in Col. 2 of the charge-sheet

— Statement made in examination-in-chief constitutes "evidence" and court exercising power under S. 319 post commencement of trial, need not wait for evidence against person proposed to be summoned to be tested by cross-examination

— Degree of satisfaction for invoking S. 319 should be of more than a prima facie case as exercised at time of framing of charge but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of person sought to be added as accused

— Person not named in FIR or though named in FIR but who has not been charge-sheeted can be summoned under S. 319 — But in case of accused who has been discharged, requirements of Ss. 300 and 398 must be complied with before summoning him afresh under S. 319

C. **Criminal Procedure Code, 1973 — S. 319 — Stage(s) at which power can be exercised under — "In the course of any inquiry into, or trial of, an offence" — Meaning of "course" —**

Power under S. 319 can be exercised at any time after commencement of inquiry into an offence by court i.e. inquiry commences before court with filing of charge-sheet/complaint before court and before conclusion of trial, except during stage of Ss. 207 to 209 which is not a judicial step in the true sense — Word "inquiry" in S. 319 cannot be treated as surplusage — Thus power under S. 319 can be exercised at court inquiry stage, since court has before it material collected by prosecution, to which it can apply its mind to find out whether any person, who can be accused, has been erroneously or deliberately not arraigned by the prosecuting agency — In complaint cases also, when evidence of complainant or his witnesses is recorded at the Ss. 200 to 202 stage, if any evidence against person(s) other than person(s) accused in complaint comes before court even before framing of charges or issuance of process, same can be used to exercise power under S. 319 in respect of such person at inquiry stage under Ss. 200 to 204 — Degree of satisfaction for invoking S. 319 during course of court inquiry stage (as also during course of trial stage), should be of more than prima facie case as exercised at time of framing of charge but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of person sought to be added as accused — Words and Phrases — "Course"

D. **Criminal Procedure Code, 1973 — Ss. 319 and 2(g) — "Inquiry" by court and "trial" — Meaning — Distinction — Commencement of — Inquiry by court commences after filing of charge -sheet/complaint and is the forerunner of trial — Trial commences upon framing of charges and recording of evidence — The view taken in certain cases that in a criminal case, trial commences on cognizance being taken, is overruled**

E. **Criminal Procedure Code, 1973 — Ss. 209, 207, 208 and 319 — Inquiry by court or trial — Stage of committal of case to Court of Session is neither stage of inquiry nor of trial**

(Paras 23 and 24)

F. **Criminal Procedure Code, 1973 — Ss. 207 to 209 — Duties of Magistrate under — Administrative in nature — "Application of mind" distinguished from "judicial application of mind" — Application of mind to the merits of the case**

G. **Interpretation of Statutes — Basic Rules — Literal or strict construction — When language of statute is plain and unambiguous, court should give effect to the same and should not go behind the express language so as to add or subtract any word — Criminal Procedure Code, 1973, S. 319**

H. **Interpretation of Statutes — Presumptions in Interpretation — Presumption against redundancy or surplusage — Redundancy — No word in a statute should be treated as redundant or surplusage — Legislature is presumed to have used words deliberately and consciously for carrying out**

purposes of statute — Criminal Procedure Code, 1973 — S. 319 — Doctrines and Maxims — *A verbis legis non est recedendum* (from the words of law, there must be no departure)

I. **Criminal Procedure Code, 1973 — Ss. 193 and 319 — Power of Sessions Court to add person as accused under S. 193 — Reiterated, Sessions Court need not necessarily wait till the stage of S. 319 is reached to direct a person, not facing trial, to appear and face trial as an accused — S. 193 confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it**

J. **Criminal Procedure Code, 1973 — Ss. 190, 193, 319, 209, 200 to 202 and 204 — Arraignment of persons as accused under Ss. 190/193/319 — Competent court — Offences whether exclusively triable by Sessions Court or not**

— For offences exclusively triable by Sessions Court, held, Sessions Court alone is competent therefor, from and during cognizance stage itself under S. 193 [as held in *Dharam Pal*, (2014) 3 SCC 306] and then during course of court inquiry thereafter and trial, under S. 319 — Magistrate at the stage of Ss. 207 to 209 CrPC is forbidden, by express provision of S. 319, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session — [Ed.: Thus, for all other offences Court of Magistrate is competent to arraign person as accused from and during stage of cognizance itself under S. 190 {as held by three-Judge Bench in *Dharam Pal*, (2004) 13 SCC 9 and two-Judge Bench in *SWIL Ltd.*, (2001) 6 SCC 670, both of which have been affirmed by the five-Judge Bench in *Dharam Pal*, (2014) 3 SCC 306} and then during course of court inquiry thereafter and trial, under S. 319 as held herein, *see also* Shortnote 7] — Doctrines and Maxims — Expressio

unius est exclusio alterius — When can express provision for a certain result be implied from scheme of statute/statutory provision

K. **Criminal Procedure Code, 1973 — Ss. 200 to 202 and 319 — Addition of accused other than persons named in complaint — Power of court under S. 319 in respect of — Stages at which may be exercised — Held, power under S. 319 can be exercised both at court inquiry stage under Ss. 200 to 202 and during trial**

L. **Criminal Procedure Code, 1973 — Ss. 319 and 200 to 202, 300(5) and 398 — "Inquiry" — Inquiries under Ss. 200 to 202, 300(5) and 398 are species of inquiry contemplated under S. 319**

(Paras 117.2 and 115)

M. **Criminal Procedure Code, 1973 — Ss. 200 to 202 — Nature of material that comes before court at Ss. 200 to 202 stage, held, can qualify as "evidence" under S. 3 Evidence Act, 1872, but as accused is not before court at that stage, such material can only be used for corroboration of evidence proper led during the trial — Evidence Act, 1872, Ss. 3, 137 and 138**

N. **Criminal Procedure Code, 1973 — Ss. 319 and 200 to 202 — "Evidence" for the purposes of exercising power under S. 319 to add accused — Held, the word "evidence" in S. 319 CrPC has to be broadly understood and not literally as evidence brought during a trial — Thus, "evidence" for purposes of S. 319 includes evidence proper, oral or**

documentary, adduced before court during trial, and apart from such evidence, any material coming before court after taking of cognizance of offence and during inquiry by court before commencement of trial, may not be evidence stricto sensu but can be utilised to corroborate evidence recorded in court after commencement of trial and for exercising power under S. 319

O. **Evidence Act, 1872 — S. 3 — "Evidence" — Definition is exhaustive — Interpretation of Statutes — Internal Aids — Definition clause — Use of words "means and includes" in definition indicates it is exhaustive**

A two-Judge Bench of the Supreme Court in *Hardeep Singh*, (2009) 16 SCC 785, noticing the conflict between the judgments in *Rakesh*, (2001) 6 SCC 248 and *Mohd. Shafi*, (2007) 14 SCC 544 expressed a doubt about correctness of the view in *Mohd. Shafi case*. On consideration of the reference, a three-Judge Bench by order dated 8-12-2011 in *Hardeep Singh*, (2013) 4 SCC 277 opined that in view of the reference already made in *Dharam Pal*, (2004) 13 SCC 9, the issues involved being identical in nature, the same should be resolved by a Bench consisting of at least five Judges. The reference made in *Dharam Pal*, (2004) 13 SCC 9 came to be answered in relation to the power of a Court of Session to invoke Section 319 CrPC at the stage of committal of the case to a Court of Session. The said reference was answered by a five-Judge Bench in *Dharam Pal*, (2014) 3 SCC 306 wherein it was held that a Court of Session can with the aid of Section 193 CrPC proceed to arraign any other person and summon him for being tried even if the provisions of Section 319 CrPC could not be pressed in service at the stage of committal.

Accordingly, the present Bench was required to answer the following questions:

(*i*) What is the stage at which power under Section 319 CrPC can be exercised?

(*ii*) Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

(*iii*) Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

(*iv*) What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

(*v*) Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?

In this reference, the Bench was *primarily* concerned with the stage at which powers under Section 319 CrPC can be invoked; *secondly*, the material on the basis whereof the invoking of powers under Section 319 CrPC can be justified; and *thirdly*, the manner in which powers under Section 319 CrPC have to be exercised.

Answering the reference in the terms below, the Supreme Court

Held :

The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law.

(Para 8)

Section 319 CrPC springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. This is also a part of fair trial and in order to achieve this very end that the legislature thought of incorporating provisions of Section 319 CrPC. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the abovementioned avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject-matter of trial.

(Paras 12, 13 and 9)

The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

(Para 19)

The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by not being arraigned in the trial in spite of possibility of his complicity which can be gathered from the documents presented by the prosecution.

(Para 18)

The stage of inquiry commences, insofar as the court is concerned, with the filing of the charge-sheet and the consideration of the material collected by the prosecution, that is mentioned in the charge-sheet for the purpose of trying the accused. This has to be understood in terms of Section 2(*g*) CrPC, which defines an inquiry. The word "inquiry" in Section 319 CrPC is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial.

(Paras 27 and 39)

Trial is distinct from an inquiry and must necessarily succeed it. The purpose of the trial is to fasten the responsibility upon a person on the basis of facts

presented and evidence led in this behalf. As "trial" means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same. The "trial" commences only on charges being framed. The view taken in certain cases that in a criminal case, trial commences on cognizance being taken, is overruled.

(Paras 29 and 38)

Raghubans Dubey v. *State of Bihar*, AIR 1967 SC 1167 : 1967 Cri LJ 1081; *V.C. Shukla* v. *State*, 1980 Supp SCC 92 : 1980 SCC (Cri) 695; *Moly* v. *State of Kerala*, (2004) 4 SCC 584 : 2004 SCC (Cri) 1348; *State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389 : 1957 Cri LJ 567; *Ratilal Bhanji Mithani* v. *State of Maharashtra*, (1979) 2 SCC 179 : 1979 SCC (Cri) 405, *affirmed*

T. Sriramulu v. *K. Veerasalingam*, ILR (1915) 38 Mad 585; *Narayanaswamy Naidu* v. *Emperor*, ILR (1909) 32 Mad 220 : 1 Ind Cas 228, *approved*

Common Cause v. *Union of India*(1996) 6 SCC 775 : 1997 SCC (Cri) 42, *affirmed on this point, standing overruled otherwise*

State of U.P. v. *Lakshmi Brahman*, (1983) 2 SCC 372 : 1983 SCC (Cri) 489; *Dagdu Govindshet Wani* v. *Punja Vedu Wani*, (1936) 38 Bom LR 1189; *Sahib Din* v. *Crown*, ILR (1922) 3 Lah 115; *Fakhruddin* v. *Crown*, ILR (1924) 6 Lah 176; *Labhsing* v. *Emperor*, (1934) 35 Cri LJ 1261 (JCC); *Gomer Sirda* v. *Queen Empress*, ILR (1898) 25 Cal 863, *overruled*

Section 319 CrPC has used the expression "in the course of" inquiry or trial. The word "course" ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time: duration and not a fixed point of time. The word "course" occurring in Section 319 CrPC, clearly indicates that the power can be exercised only during the period when the inquiry has been commenced by the court and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial inquiry and the trial stage before the court. The word "course" therefore, allows the court to invoke the power under Section 319 CrPC to proceed against any person from the initial stage of inquiry by the court up to the stage of the conclusion of the trial. The court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused.

(Para 40)

Union of India v. *Madan Lal Yadav*, (1996) 4 SCC 127 : 1996 SCC (Cri) 592; *CIT* v. *East West Import & Export (P) Ltd.*, (1989) 1 SCC 760 : 1989 SCC (Tax) 208; *State of Travancore-Cochin* v. *Shanmugha Vilas Cashewnut Factory*, AIR 1953 SC 333 *relied on*

Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. The stage of committal is neither an inquiry nor a trial, and is only a pre-trial stage, intended to put the criminal process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

(Paras 47 and 23)

The proposition that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 CrPC cannot be exercised, does not seem to have been disturbed by the five-Judge Bench in *Dharam Pal*, (2014) 3 SCC 306. The dispute therein was resolved visualising a situation wherein the court was concerned with procedural delay and it was held therein that the Sessions Court should not necessarily wait till the stage of Section 319 CrPC is reached to direct a person, not facing trial, to appear and face trial as an accused. The five-Judge Bench therein, therefore, rightly held that Section 193 CrPC confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

(Para 53)

Thus, after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

(Para 117.1)

Dharam Pal v. *State of Haryana*, (2014) 3 SCC 306, *clarified* and *followed*

Kishun Singh v. *State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470, *affirmed*

Ranjit Singh v. *State of Punjab*, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554; *Raj Kishore Prasad* v. *State of Bihar*, (1996) 4 SCC 495 : 1996 SCC (Cri) 772, *partly overruled* and *partly affirmed*

[Ed.: *Ranjit Singh* v. *State of Punjab*, (1998) 7 SCC 149 and *Raj Kishore Prasad* v. *State of Bihar*, (1996) 4 SCC 495 need to be carefully scrutinised since there are many rulings in each case which have been overruled while other rulings have been affirmed, both in *Dharam Pal* v. *State of Haryana*, (2014) 3 SCC 306 and herein.]

Yeluchuri Venkatachennaya, In re, (1920) 11 LW 435 : ILR (1920) 43 Mad 511, *referred to*

There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 CrPC i.e. provisions of Sections 200, 201, 202, etc. CrPC applicable in the case of complaint cases. Complaint case is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act, 1872 comes before the court. There does not seem to be any restriction in the provisions of Section 319 CrPC so as to preclude such evidence as coming before the court in complaint cases even before charges have been framed or the process has been issued. But at that stage as there is no accused before the court, such evidence can be used only to corroborate the evidence recorded during the trial or for the purpose of Section 319 CrPC, if so required. What is essential for the purpose of the Section 319 CrPC is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 CrPC acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (*1*) inquiry (*2*) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202

CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally as evidence brought during a trial. Obviously, therefore there is no difficulty in invoking powers of Section 319 CrPC at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses is being recorded.

(Paras 54, 56, 117.2 and 117.3)

Hardeep Singh v. *State of Punjab*, (2009) 16 SCC 785 : (2010) 2 SCC (Cri) 355, *affirmed*

SWIL Ltd. v. *State of Delhi*, (2001) 6 SCC 670 : 2001 SCC (Cri) 1205, *clarified* and *impliedly affirmed*

Hardeep Singh v. *State of Punjab*, Criminal Revision No. 773 of 2006, order dated 23-10-2006 (P&H); *Hardeep Singh* v. *State of Punjab*, (2013) 4 SCC 277 : (2013) 2 SCC (Cri) 367; *Dharam Pal* v. *State of Haryana*, (2004) 13 SCC 9 : (2006) 1 SCC (Cri) 273, *referred to*

Thus, by no means can it be said that provisions of Section 319 CrPC cannot be pressed into service during the course of "inquiry" by the court. The word "inquiry" is not surpulsage in Section 319 CrPC. To say that powers under Section 319 CrPC can be exercised only during trial would be reducing the impact of "inquiry" by the court.

(Paras 46 and 42)

An interpretation which leads to the conclusion that a word used by the legislature is redundant should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim *a verbis legis non est recedendum* which means, "from the words of law, there must be no departure" has to be kept in mind.

(Para 42)

The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind

the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said. The statute is required to be interpreted without doing any violence to the language used therein.

(Para 43)

No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute. An interpretation which renders a provision otiose should be avoided, otherwise it would mean that in enacting such a provision, the legislature was involved in an exercise in futility.

(Para 44)

Patel Chunibhai Dajibha v. *Narayanrao Khanderao Jambekar*, AIR 1965 SC 1457; *Martin Burn Ltd.* v. *Corpn. of Calcutta*, AIR 1966 SC 529; *M.V. Elisabeth* v. *Harwan Investment and Trading (P) Ltd.*, 1993 Supp (2) SCC 433; *Sultana Begum* v. *Prem Chand Jain*, (1997) 1 SCC 373; *State of Bihar* v. *Bihar Distillery Ltd.*, (1997) 2 SCC 453; *Institute of Chartered Accountants of India* v. *Price Waterhouse*, (1997) 6 SCC 312; *South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies*, (1998) 2 SCC 580 : 1998 SCC (L&S) 703; *Rohitash Kumar* v. *Om Prakash Sharma*, (2013) 11 SCC 451, *relied on*

According to Section 3 of the Evidence Act, "evidence" means and includes:

"(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the court; such documents are called documentary evidence."

The word "evidence" has been defined in Section 3 of the Evidence Act. It is an exhaustive definition. Wherever the words "means and include" are used, it is an indication of the fact that the definition "is a hard-and-fast definition", and no other meaning can be assigned to the expression that is put down in the definition. It indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expression.

(Paras 59 to 70)

Mahalakshmi Oil Mills v. *State of A.P.*, (1989) 1 SCC 164 : 1989 SCC (Tax) 56; *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Labour Court*, (1990) 3 SCC 682 : 1991 SCC (L&S) 71; *P. Kasilingam* v. *P.S.G. College of Technology*, 1995 Supp (2) SCC 348; *Hamdard (Wakf) Laboratories* v. *Labour Commr.*, (2007) 5 SCC 281 : (2007) 2 SCC (L&S) 166; *Ponds India Ltd.* v. *CTT*, (2008) 8 SCC 369; *Feroze N. Dotivala* v. *P.M. Wadhwani*, (2003) 1 SCC 433; *Kalyan Kumar Gogoi* v. *Ashutosh Agnihotri*, (2011) 2 SCC 532 : (2011) 1 SCC (Civ) 513 : (2011) 1 SCC (Cri) 741; *Ameer Trading Corpn. Ltd.* v. *Shapoorji Data Processing Ltd.*, (2004) 1 SCC 702; *Omkar Namdeo Jadhao* v. *Second Addl. Sessions Judge, Buldana*, (1996) 7 SCC 498 : 1996 SCC (Cri) 488; *Ram Swaroop* v. *State of Rajasthan*, (2004) 13 SCC 134 : 2005 SCC (Cri) 61; *Pedda Narayana* v. *State of A.P.*, (1975) 4 SCC 153 : 1975 SCC (Cri) 427; *Sat Paul* v. *Delhi Admn.*, (1976) 1 SCC 727 : 1976 SCC (Cri) 160; *State (Delhi Admn.)* v. *Laxman Kumar*, (1985) 4 SCC 476 : 1986 SCC (Cri) 2; *Lok Ram* v. *Nihal Singh*, (2006) 10 SCC 192 : (2006) 3 SCC (Cri) 532; *Sunil Mehta* v. *State of Gujarat*, (2013) 9 SCC 209 : (2013) 3 SCC (Cri) 881, *relied on*

Tomlin's Law Dictionary; *Wigmore on Evidence*, referred to

However, the stage of inquiry by the court does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it at the inquiry stage is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to be tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to

exercise such powers even at the stage of court inquiry and it is for this reason that the legislature has consciously used separate terms, namely, "inquiry" and "trial" in Section 319 CrPC.

(Para 54)

The circumstances that lead to the inference being drawn up by the court for summoning a person under Section 319 arise out of the availability of the facts and material that come up before the court. The material should disclose complicity of the person in the commission of the offence which has to be the material that appears from the evidence during course of any inquiry into or trial of offence.

(Paras 58, 78 and 77)

The inquiry by the court is neither attributable to the investigation nor the prosecution, but by the court itself for collecting information to draw back a curtain that hides something material. The unveiling of facts other than the

material collected during investigation before the Magistrate or court before trial actually commences, is part of the process of inquiry by the court. An inquiry can be conducted by the Magistrate or the court at any stage during the proceedings before the court. This power is preserved with the court and has to be read and understood accordingly. The outcome of any such exercise should not be an impediment in the speedy trial of the case. Though the facts so received in an inquiry by the Magistrate or the court may not be evidence, yet it is some material that makes things clear and unfolds concealed or deliberately suppressed material that may facilitate the trial. In the context of Section 319 CrPC it is information of complicity. Such material therefore, can be used even though not an evidence in stricto sensu, but information on record collected by the court during inquiry itself, as a prima facie satisfaction for exercising the powers under Section 319 CrPC.

(Paras 79 to 82)

It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to the court while making an inquiry into or trying an offence, that the court can utilise or take into consideration under Section 319 CrPC for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. Apart from evidence in the strict legal sense recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. This would harmonise such material with the word "evidence" as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

(Paras 83 and 85)

The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 CrPC. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it even before trial, under Section 319 CrPC.

(Para 84)

Guriya v. *State of Bihar*, (2007) 8 SCC 224 : (2007) 3 SCC (Cri) 521; *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470; *Lal Suraj* v. *State of Jharkhand*, (2009) 2 SCC 696 : (2009) 1 SCC (Cri) 844; *Rajendra Singh* v. *State of U.P.*, (2007) 7 SCC 378 : (2007) 3 SCC (Cri) 375, *affirmed*

P. **Criminal Procedure Code, 1973 — S. 319 — "Evidence" for the purposes of exercising power under S. 319 during course of trial — Statement recorded in examination-in-chief is evidence and material on basis of which court can form prima facie opinion about complicity of some other person and necessity of bringing him to face trial in exercise of power — Court need not wait till that evidence is tested upon cross-examination for exercise of power under S. 319 — In fact, power under S. 319 can be exercised at any time after commencement of court inquiry into an offence i.e. which commences before court with filing of charge-sheet/complaint before court and at any stage before conclusion of trial (*see* Shortnote *C* in**

detail) — In view of expression "such person could be tried" in S. 319, a mini-trial by having examination and cross-examination is not contemplated at S. 319 CrPC stage as such mini-trial would affect right of person sought to be arraigned as accused, as under S. 319(4) such person would be entitled to fresh trial — Evidence Act, 1872 — Ss. 137, 138 and 3 — Examination-in-chief — Statement made in, untested by cross-examination — Value and use — Is rebuttable evidence

Held :

Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence. Evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

(Paras 89, 90 and 86)

All that is required for the exercise of the power under Section 319 CrPC is that, it must *appear* to the court that some other person who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief to do so, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). Section 319 also uses the words "such person *could* be tried" instead of *should* be tried. Hence, what is required is not to have a mini-trial at the Section 319 stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, such a mini-trial would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of Section 319(4) CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same.

(Para 90)

Moreover, there does not seem to be any logic behind waiting till the cross-examination of the witness is over for exercising power under Section 319 CrPC. At the time of exercise of power under Section 319 CrPC, the person sought to be arraigned as an accused, is in no way participating in the trial. Even if the cross-examination of the witness concerned is to be taken into consideration, the person sought to be arraigned as an accused cannot cross-examine the witness(es) prior to passing of an order under Section 319 CrPC, as such a procedure is not contemplated by CrPC. Secondly, invariably the State would not oppose or object to naming of more persons as accused as it would only help the prosecution in completing the chain of evidence, unless the witness(es) are obliterating the role of persons already facing trial. More so, Section 299 CrPC enables the court to record evidence in the absence of the accused in the circumstances mentioned therein.

(Para 91)

Thus power under Section 319 CrPC can also be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said

evidence is tested on cross-examination, for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

(Paras 92 and 117.4)

Hardeep Singh v. *State of Punjab*, (2009) 16 SCC 785 : (2010) 2 SCC (Cri) 355; *Rakesh* v. *State of Haryana*, (2001) 6 SCC 248 : 2001 SCC (Cri) 1090, *affirmed*

Mohd. Shafi v. *Mohd. Rafiq*, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889; *Harbhajan Singh* v. *State of Punjab*, (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135, *clarified*

Q. **Criminal Procedure Code, 1973 — S. 319 and Ss. 204, 227, 228, 239, 240, 241, 242 and**

245 — Degree of satisfaction required for invoking power under S. 319 — "It appears from the evidence" — Meaning of "appears" — Degree of satisfaction for summoning a person under S. 319 contrasted with degree of satisfaction required to summon original accused

— The court at the stage of framing of the charge has to apply the test of prima facie case — However, at the S. 319 stage when summoning subsequent accused, though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity — Thus, the test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction — The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused — Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different — Words and Phrases — "Appears"

Held :

The Supreme Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 CrPC, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the materials brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further against the accused.

(Para 100)

State of Karnataka v. *L. Muniswamy*, (1977) 2 SCC 699 : 1977 SCC (Cri) 404; *All India Bank Officers' Confederation* v. *Union of India*, (1989) 4 SCC 90 : 1989 SCC (L&S) 627; *Stree Atyachar Virodhi Parishad* v. *Dilip Nathumal Chordia*, (1989) 1 SCC 715 : 1989 SCC (Cri) 285; *State of M.P.* v. *Krishna Chandra Saksena*, (1996) 11 SCC 439 : 1997 SCC (Cri) 35; *State of M.P.* v. *Mohanlal Soni*, (2000) 6 SCC 338 : 2000 SCC (Cri) 1110; *Dilawar Balu Kurane* v. *State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310; *Union of India* v. *Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609; *Suresh* v. *State of Maharashtra*, (2001) 3 SCC 703 : 2001 SCC (Cri) 621; *Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76 : 1991 SCC (Cri) 47; *State of Maharashtra* v. *Priya Sharan Maharaj*, (1997) 4 SCC 393 : 1997 SCC (Cri) 584; *State of Bihar* v. *Ramesh Singh*, (1977) 4 SCC 39 : 1977 SCC (Cri) 533, *affirmed*

Section 319(1) CrPC empowers the court to proceed against other persons who "appear" to be guilty of offence, though not an accused before the court. The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof.

(Para 93)

At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. Under Section 319 CrPC, though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "*for which such person could be tried together with the accused*". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.

(Paras 95, 105 and 106)

Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

(Para 117.5)

Vikas v. *State of Rajasthan*, (2014) 3 SCC 321; *Rajendra Singh* v. *State of U.P.*, (2007) 7 SCC 378 : (2007) 3 SCC (Cri) 375; *Hardeep Singh* v. *State of Punjab*, (2009) 16 SCC 785 : (2010) 2 SCC (Cri) 355, *affirmed*

Mohd. Shafi v. *Mohd. Rafiq*, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889; *Ram Singh* v. *Ram Niwas*, (2009) 14 SCC 25 : (2010) 1 SCC (Cri) 1278; *Sarabjit Singh* v. *State of Punjab*, (2009) 16 SCC 46 : (2010) 2 SCC (Cri) 141; *Brindaban Das* v. *State of W.B.*, (2009) 3 SCC 329 : (2009) 2 SCC (Cri) 79; *Michael Machado* v. *CBI*, (2000) 3 SCC 262 : 2000 SCC (Cri) 609, *overruled on this point*

Pyare Lal Bhargava v. *State of Rajasthan*, AIR 1963 SC 1094 : (1963) 2 Cri LJ 178; *Palanisamy Gounder* v. *State*, (2005) 12 SCC 327 : (2006) 1 SCC (Cri) 568, *relied on*

R. **Criminal Procedure Code, 1973 — Ss. 319 and 193 — Persons whose names did not appear in FIR or in charge-sheet or did not appear in main part of charge-sheet but appeared in Col. 2 thereof and who were not summoned as accused in exercise of power under S. 193, held, can be summoned under S. 319**

S. **Criminal Procedure Code, 1973 — Ss. 319, 227, 258, 300(5) and 398 — Summoning/Arraigning of discharged person under S. 319 — When permissible — There is no reason why inquiry as contemplated by S. 300(5) and S. 398 cannot be an inquiry under S. 319 — Accordingly, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Ss. 300(5) and 398 — If during or after such**

inquiry, there appears to be evidence against such person warranting his arraignment as accused, power under S. 319 CrPC can be exercised

Held :

A person whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 CrPC can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled.

(Paras 111 and 116)

Dharam Pal v. *State of Haryana*, (2014) 3 SCC 306, *followed*

Anju Chaudhary v. *State of U.P.*, (2013) 6 SCC 384 : (2013) 4 SCC (Cri) 503; *Suman* v. *State of Rajasthan*, (2010) 1 SCC 250 : (2010) 1 SCC (Cri) 770; *Lal Suraj* v. *State of Jharkhand*, (2009) 2 SCC 696 : (2009) 1 SCC (Cri) 844; *Lok Ram* v. *Nihal Singh*, (2006) 10 SCC 192 : (2006) 3 SCC (Cri) 532; *Joginder Singh* v. *State of Punjab*, (1979) 1 SCC 345 : 1979 SCC (Cri) 295, *clarified* and *affirmed*

However, a person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate

the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 CrPC without resorting to the provision of Section 319 CrPC directly.

(Para 112)

Power under Section 398 CrPC is in the nature of revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. According to Section 300(5) CrPC, a person discharged under Section 258 CrPC shall not be tried again for the same offence except with the consent of the court by which he was discharged or of any other court to which the first-mentioned court is subordinate. Further, Section 398 CrPC provides that the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make an inquiry into the case against any person who has already been discharged. Both these provisions contemplate an inquiry to be conducted before any person, who has already been discharged, is asked to again face trial if some evidence appears against him. Section 319 CrPC can also be invoked at the stage of inquiry. There is no reason why inquiry as contemplated by Section 300(5) CrPC and Section 398 CrPC cannot be an inquiry under Section 319 CrPC. Accordingly, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Sections 300(5) and 398 CrPC. If during or after such inquiry, there appears to be an evidence against such person, power under Section 319 CrPC can be exercised.

(Paras 115, 116 and 117.6)

Sohan Lal v. *State of Rajasthan*, (1990) 4 SCC 580 : 1990 SCC (Cri) 650; *MCD* v. *Ram Kishan Rohtagi*, (1983) 1 SCC 1 : 1983 SCC (Cri) 115, *affirmed*

T. **Criminal Procedure Code, 1973 — Ss. 319 and 2(g) — "Court" — Power to proceed against person, not being accused, under S. 319 is conferred on "court" and not on any officer not acting as court — Only Court of Session or Court of Magistrate performing duties as competent court may exercise power under S. 319**

Held :

The power conferred under Section 319 CrPC is only on the court. This has to be understood in the context that Section 319 CrPC empowers only the court to proceed against such person. The comparison of the words used under Section 319 CrPC has to be understood distinctively from the word used under Section 2(*g*) defining an inquiry other than the trial by a Magistrate or a court. Here the legislature has used two words, namely, the Magistrate or court, whereas under Section 319 CrPC only the word "court" has been recited. This has been done by the legislature to emphasise that the power under Section 319 CrPC is exercisable only by the court and not by any officer not acting as a court. Thus, the Magistrate not functioning or exercising powers as a court can make an inquiry in particular proceeding other than a trial but the material so collected would not be by a court during the course of an inquiry or a trial. The conclusion therefore, in short, is that in order to invoke the power under Section 319 CrPC, it is only a Court of Session or a Court of Magistrate performing the duties as a court under CrPC that can utilise the material before it for the purpose of Section 319 CrPC.

(Paras 15 and 16)

U. **Criminal Procedure Code, 1973 — S. 319 — Nature — Enabling provision**

(Para 22)

Dharam Pal v. *State of Haryana*, (2014) 3 SCC 306, *followed*

R-D/52768/CR

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Chronological list of cases cited ***on page(s)***

68. (1979) 2 SCC 179 : 1979 SCC (Cri) 405, *Ratilal Bhanji Mithani* v. *State of Maharashtra* 11!

69. (1979) 1 SCC 345 : 1979 SCC (Cri) 295, *Joginder Singh* v. *State of Punjab* 13

70. (1977) 4 SCC 39 : 1977 SCC (Cri) 533, *State of Bihar* v. *Ramesh Singh* 13

71. (1977) 2 SCC 699 : 1977 SCC (Cri) 404, *State of Karnataka* v. *L. Muniswamy* 136*l*

72. (1976) 1 SCC 727 : 1976 SCC (Cri) 160, *Sat Paul* v. *Delhi Admn.* 128*l*

73. (1975) 4 SCC 153 : 1975 SCC (Cri) 427, *Pedda Narayana* v. *State of A.P.* 128*l*

74. AIR 1967 SC 1167 : 1967 Cri LJ 1081, *Raghubans Dubey* v. *State of Bihar* 11

75. AIR 1966 SC 529, *Martin Burn Ltd.* v. *Corpn. of Calcutta* 12

76. AIR 1965 SC 1457, *Patel Chunibhai Dajibha* v. *Narayanrao Khanderao Jambekar* 12

77. AIR 1964 SC 949 : (1964) 2 Cri LJ 44, *Ramnarayan Mor* v. *State of Maharashtra* 129*b-c*, 131*b*

78. AIR 1963 SC 1094 : (1963) 2 Cri LJ 178, *Pyare Lal Bhargava* v. *State of Rajasthan* 13

79. AIR 1957 SC 389 : 1957 Cri LJ 567, *State of Bihar* v. *Ram Naresh Pandey* 11

80. AIR 1953 SC 333, *State of Travancore-Cochin* v. *Shanmugha Vilas Cashewnut Factory* 121*g*

81. (1936) 38 Bom LR 1189, *Dagdu Govindshet Wani* v. *Punja Vedu*

Wani **(overruled)** 12

82. (1934) 35 Cri LJ 1261 (JCC), *Labhsing* v. *Emperor* **(overruled)** 12

83. ILR (1924) 6 Lah 176, *Fakhruddin* v. *Crown* **(overruled)** 12

84. ILR (1922) 3 Lah 115, *Sahib Din* v. *Crown* **(overruled)** 121*a*

85. (1920) 11 LW 435 : ILR (1920) 43 Mad 511, *Yeluchuri Venkatachennaya, In re* 11

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87. ILR (1909) 32 Mad 220 : 1 IC 228, *Narayanaswamy Naidu* v. *Emperor* 120*a*

88. ILR (1898) 25 Cal 863, *Gomer Sirda* v. *Queen Empress* 12

The Judgment of the Court was delivered by

DR B.S. CHAUHAN, J.— This reference before us arises out of a variety of views having been expressed by this Court and several High Courts[1] of the country on the scope and extent of the powers of the courts under the criminal justice system to arraign any person as an accused during the course of inquiry or trial as contemplated under Section 319 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC").

2. The initial reference was made by a two-Judge Bench[2] vide order dated 7-11-2008 in the leading case of *Hardeep Singh* (Criminal Appeal No. 1750 of 2008) where noticing the conflict between the judgments in *Rakesh* v. *State of Haryana*[3] and a two-Judge Bench decision in *Mohd. Shafi* v. *Mohd. Rafiq*[4], a doubt was expressed about the correctness of the view in *Mohd. Shafi*[4]. The doubts as categorised in paras 75 and 78 of the reference order led to the framing of two questions by the said Bench which are reproduced hereunder: (*Hardeep Singh case*[2], SCC p. 803, para 75)

> "(*1*) When the power under sub-section (1) of Section 319 of the Code of addition of the accused can be exercised by a court? Whether application under Section 319 is not maintainable unless the cross-examination of the witness is complete?
>
> (*2*) What is the test and what are the guidelines of exercising power under sub-section (1) of Section 319 of the Code? Whether such power can be exercised only if the court is satisfied that the accused summoned *in all likelihood* would be convicted?"
>
> (emphasis in original)

3. The reference was desired to be resolved by a three-Judge Bench whereafter the same came up for consideration and vide order dated 8-12-2011[5], the Court opined that in view of the reference made in *Dharam Pal* v. *State of Haryana*[6], the issues involved being identical in nature, the same should be resolved by a Constitution Bench consisting of at least five Judges. The Bench felt that since a three-Judge Bench has already referred the

matter of *Dharam Pal*[6] to a Constitution Bench, then in that event it would be appropriate that such overlapping issues should also be resolved by a Bench of similar strength.

4. Reference made in *Dharam Pal*[6] came to be answered in relation to the power of a Court of Session to invoke Section 319 CrPC at the stage of committal of the case to a Court of Session. The said reference was answered by the Constitution Bench in *Dharam Pal* v. *State of Haryana*[7] [hereinafter called *Dharam Pal (CB)*], wherein it was held that a Court of Session can with the aid of Section 193 CrPC proceed to array any other person and summon him for being tried even if the provisions of Section 319 CrPC could not be pressed in service at the stage of committal.

5. Thus, after the reference was made by a three-Judge Bench[5] in the present case, the powers so far as the Court of Session is concerned, to invoke Section 319 CrPC at the stage of committal, stood answered finally in the aforesaid background.

6. On the consideration of the submissions raised and in view of what has been noted above, the following questions are to be answered by this Bench:

6.1. (*i*) What is the stage at which power under Section 319 CrPC can be exercised?

6.2. (*ii*) Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

6.3. (*iii*) Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

6.4. (*iv*) What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

6.5. (*v*) Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?"

7. In this reference what we are *primarily* concerned with, is the stage at which such powers can be invoked and, *secondly*, the material on the basis whereof the invoking of such powers can be justified. To add as a corollary to the same, *thirdly*, the manner in which such power has to be exercised, also has to be considered.

8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

9. The presumption of innocence is the general law of the land as every man is presumed to be innocent unless proven to be guilty. Alternatively, certain statutory presumptions in relation to certain class of offences have been raised against the accused

whereby the presumption of guilt prevails till the accused discharges his burden upon an onus being cast upon him under the law to prove himself to be innocent. These competing theories have been

kept in mind by the legislature. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. This is also a part of fair trial and in our opinion, in order to achieve this very end that the legislature thought of incorporating provisions of Section 319 CrPC. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the abovementioned avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject-matter of trial.

10*. In order to answer the aforesaid questions posed, it will be appropriate to refer to Section 351 of the Criminal Procedure Code, 1898 (hereinafter referred to as "the old Code"), where an analogous provision existed, empowering the court to summon any person other than the accused if he is found to be connected with the commission of the offence. However, when the new CrPC was being drafted, regard was had to the 41st Report of the Law Commission where in Paras 24.80 and 24.81 recommendations were made to make this provision more comprehensive. The said recommendations read:

> "**24.80.** ***Section 351 limited to offenders in courts.***—It happens sometimes, though not very often, that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. It is only proper that the Magistrate should have the power to call and join him in the proceedings. Section 351 provides for such a situation, but only if that person happens to be attending the court. He can then be detained and proceeded against. There is no express provision in Section 351 for summoning such a person if he is not present in court. Such a provision would make Section 351 fairly comprehensive, and we think it proper to expressly provide for that situation.
>
> **24.81.** ***How is cognizance taken?***—Section 351 assumes that the Magistrate proceeding under it has the power of taking cognizance of the new case. It does not, however, say in what manner cognizance is taken by the Magistrate. The modes of taking cognizance are mentioned in Section 190, and are, apparently, exhaustive. The question is, whether against the newly added accused, cognizance will be supposed to have been taken on the Magistrate's own information under Section 190(1)(*c*), or only in the manner in which cognizance was first taken of the offence against the accused. ... The question is important, because the methods of inquiry and trial in the two cases differ. About the true position under the existing law, there has been difference of opinion, and we think it should be made clear. It seems to us that the main purpose of this particular provision is, that the whole case against all known suspects should be proceeded with expeditiously, and convenience requires that cognizance against the newly added accused should be taken in the same manner against the other accused. We, therefore, propose to recast Section 351 making it

comprehensive and providing that there will be no difference in the mode of taking cognizance if a new person is added as an accused during the proceedings. It is, of course, necessary (as is already provided) that in such a situation the evidence must he reheard in the presence of the newly added accused."

11. Section 319 CrPC as it exists today, is quoted hereunder:

"**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 reheard;

(*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."

(emphasis supplied)

12. Section 319 CrPC springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

14. The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of CrPC and the judgments that have been relied on for the said purpose. The controversy centres around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

15. It would be necessary to put on record that the power conferred under Section 319 CrPC is only on the court. This has to be understood in the context that Section 319 CrPC empowers only the court to proceed against such person. The word "court" in our hierarchy of criminal courts has been defined under Section 6 CrPC, which includes the Courts of Session, Judicial Magistrates, Metropolitan Magistrates as well as Executive Magistrates. The

Court of Session is defined in Section 9 CrPC and the Courts of the Judicial Magistrates have been defined under Section 11 thereof. The Courts of the Metropolitan Magistrates have been defined under Section 16 CrPC. The courts which can try offences committed under the Penal Code, 1860 or any offence under any other law, have been specified under Section 26 CrPC read with the First Schedule. The Explanatory Note (2) under the heading of "Classification of offences" under the First Schedule specifies the expression "Magistrate of First Class" and "any Magistrate" to include Metropolitan Magistrates who are empowered to try the offences under the said Schedule but excludes Executive Magistrates.

16. It is at this stage that the comparison of the words used under Section 319 CrPC

has to be understood distinctively from the words used under Section 2(*g*) defining an inquiry other than the trial by a Magistrate or a court. Here the legislature has used two words, namely, the Magistrate or court, whereas under Section 319 CrPC, as indicated above, only the word "court" has been recited. This has been done by the legislature to emphasise that the power under Section 319 CrPC is exercisable only by the court and not by any officer not acting as a court. Thus, the Magistrate not functioning or exercising powers as a court can make an inquiry in a particular proceeding other than a trial but the material so collected would not be by a court during the course of an inquiry or a trial. The conclusion therefore, in short, is that in order to invoke the power under Section 319 CrPC, it is only a Court of Session or a Court of Magistrate performing the duties as a court under CrPC that can utilise the material before it for the purpose of the said section.

17. Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 CrPC or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so

strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

20. Coming to the stage at which power under Section 319 CrPC can be exercised, in *Dharam Pal*[6], this Court had noticed the conflict in the decisions of *Kishun Singh* v. *State of Bihar*[8] and *Ranjit Singh* v. *State of Punjab*[9] and referred the matter to the Constitution Bench. However, while referring the matter to a Constitution Bench, this Court affirmed the judgment in *Kishun Singh*[8] and doubted the correctness of the judgment in *Ranjit Singh*[9]. In *Ranjit Singh*[9], this Court observed that from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 CrPC, that the court can deal with only the accused referred to in Section 209 CrPC and there is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused, while in *Kishun Singh*[8], this Court came to the conclusion that even the Sessions Court has power under Section 193 CrPC to take cognizance of the offence and summon other persons whose complicity in the commission of the trial can prima facie be gathered from the materials available on record and need not wait till the stage of Section 319 CrPC is reached. This Court in *Dharam Pal*[6] held that the effect of *Ranjit Singh*[9] would be that in less serious offences triable by a Magistrate, the said court would have the power to proceed against those who are mentioned in Column 2 of the charge-sheet, if on the basis of material on record, the Magistrate disagrees with the conclusion reached by the police,

but, as far as serious offences triable by the Court of Session are concerned, that court will have to wait till the stage of Section 319 CrPC is reached.

21. At the very outset, we may explain that the issue that was being considered by this Court in *Dharam Pal (CB)*[7], was the exercise of such power *at the stage of committal of a case* and the court held that even if Section 319 CrPC could not be invoked at that stage, Section 193 CrPC could be invoked for the said purpose. We are not delving into the said issue which has been answered by the five-Judge Bench of this Court. However, we may clarify that the opening words of Section 193 CrPC categorically recite that the power of the Court of Session to take cognizance would commence only after committal of the case by a Magistrate. The said provision opens with a non obstante clause "except as otherwise expressly provided by this Code or by any other law for the time being in force". The section therefore is clarified by the said opening words which clearly means that if there is any other provision under CrPC, expressly making a provision for exercise of powers by the court to take cognizance, then the same would apply and the provisions of Section 193 CrPC would not be applicable.

22. In our opinion, Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial. It is this part which is under reference before this Court and therefore in our opinion, while answering the question referred to herein, we do not find any conflict so as to delve upon the situation that was dealt with by this Court in *Dharam Pal (CB)*[7].

23. In *Yeluchuri Venkatachennaya, In re*[10], the Court held that an inquiry is a stage before the committal to a higher court. In fact, from a careful reading of the judgments under reference i.e. *Ranjit Singh*[9] and *Kishun Singh*[8], it emerges that there is no dispute even in these two cases that the stage of committal is neither an inquiry nor a trial, for in both the cases, the real dispute was whether Section 193 CrPC can be invoked at the time of committal to summon an accused to face trial who is not already an accused. It can safely be said that both the cases are in harmony as to the said stage neither being a stage of inquiry nor a trial.

24. Once the aforesaid stand is clarified in relation to the stage of committal before the Court of Session, the answer to the question posed now, stands focussed only on the stage at which such powers can be exercised by the court other than the stage of committal and the material on the basis whereof such powers can be invoked by the court.

Question (i) — What is the stage at which power under Section 319 CrPC can be exercised?

25. The stage of inquiry and trial upon cognizance being taken of an offence, has been considered by a large number of decisions of this Court and that it may be useful to extract the same hereunder for proper appreciation of the stage of invoking of the powers under Section 319 CrPC to understand the meaning that can be attributed to the words "inquiry" and "trial" as used under the section.

26. In *Raghubans Dubey* v. *State of Bihar*[11], this Court held: (AIR p. 1169, para 9)

> "9. ... 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 initiated by his taking cognizance of an offence."

27. The stage of inquiry commences, insofar as the court is concerned, with the filing of the charge-sheet and the consideration of the material collected by the prosecution, that is mentioned in the charge-sheet for the purpose of trying the accused. This has to be understood in terms of Section 2(*g*) CrPC, which defines an inquiry as follows:

> "**2. (*g*) 'inquiry'** means every inquiry, other than a trial, conducted under this Code by a Magistrate or court."

28. In *State of U.P.* v. *Lakshmi Brahman*[12], this Court held that from the stage of filing of charge-sheet to ensuring the compliance with the provision of Section 207 CrPC, the court is only at the stage of inquiry and no trial can be said to have commenced. The above view has been held to be per incuriam in *Raj Kishore Prasad* v. *State of Bihar*[13], wherein this Court while observing that Section 319(1) CrPC operates in an ongoing inquiry into, or trial of, an offence, held that at the stage of Section 209 CrPC, the court is neither at the stage of inquiry nor at the stage of trial. Even at the stage of ensuring compliance with Sections 207 and 208 CrPC, it cannot be said that the court is at the stage of inquiry because there is no judicial application of mind and all that the Magistrate is required to do is to make the case ready to be heard by the Court of Session.

29. Trial is distinct from an inquiry and must necessarily succeed it. The purpose of the trial is to fasten the responsibility upon a person on the basis of facts presented and evidence led in this behalf. In *Moly* v. *State of Kerala*[14], this Court observed that though the word "trial" is not defined in the Code, it is clearly distinguishable from inquiry. Inquiry must always be a forerunner to the trial.

30. A three-Judge Bench of this Court in *State of Bihar* v. *Ram Naresh Pandey*[15] held: (AIR p. 394, para 6)

> "*6.* ... The words 'tried' and 'trial' appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words 'tried' *and 'trial'* have been used in the sense of reference to *a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance*. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration."
>
> (emphasis supplied)

31. In *Ratilal Bhanji Mithani* v. *State of Maharashtra*[16], this Court held: (SCC p. 189, para 28)

> "*28.* Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. *The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry.* After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end."
>
> (emphasis supplied)

32. In *V.C. Shukla* v. *State*[17], this Court held: (SCC p. 126, para 39)

"*39.* ... the proceedings starting with Section 238 of the Code including any discharge or framing of charges under Section 239 or 240 amount to a trial."

33. In *Union of India* v. *Madan Lal Yadav*[18], a three-Judge Bench while dealing with the proceedings in General Court Martial under the provisions of the Army Act 1950, applied legal maxim *nullus commodum capere potest de injuria sua propria* (no one can take advantage of his own wrong), and referred to various dictionary meanings of the word "trial" and came to the conclusion: (SCC pp. 136 & 141-42, paras 19 & 27)

"*19.* It would, therefore, be clear that trial means act of proving or judicial examination or determination of the issues including *its own*[11] jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary thereto. *The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial.*

* * *

27. Our conclusion further gets fortified by the scheme of the trial of a criminal case under the Code of Criminal Procedure, 1973 viz. Chapter XIV 'Conditions requisite for initiation of proceedings' containing Sections 190 to 210, Chapter XVIII containing Sections 225 to 235 and dealing with 'trial before a Court of Session' pursuant to committal order under Section 209 and in Chapter XIX 'trial of warrant cases by Magistrates' containing Sections 238 to 250, etc. It is settled law that under the said Code trial commences the moment cognizance of the offence is taken and process is issued to the accused for his appearance, etc. Equally, at a sessions trial, the court considers the committal order under Section 209 by the Magistrate and proceeds further. It takes cognizance of the offence from that stage and proceeds with the trial. *The trial begins with the taking of the cognizance of the offence and taking further steps to conduct the trial.*"

(emphasis supplied)

34. In *Common Cause* v. *Union of India*[19], this Court while dealing with the issue held: (SCC p. 776, para 1)

"*1. II* (*i*) In cases of trials before the Sessions Court the trials shall be treated to have commenced *when charges are framed under Section 228 of the Code of Criminal Procedure, 1973* in the cases concerned.

(*ii*) In cases of trials of warrant cases by Magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced *when charges are framed against the accused concerned* under Section 246 of the Code of Criminal Procedure, 1973.

(*iii*) In cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under Section 251 whether they plead guilty or have any defence to make."

(emphasis supplied)

35. In *Raj Kishore Prasad*[13], this Court said that as soon as the Prosecutor is present before the court and that court hears the parties on *framing of charges and discharge*, trial is said to have commenced and that there is no intermediate stage between committal of case and framing of charge.

36. In *Narayanaswamy Naidu* v. *Emperor*[20], a Full Bench of the Madras High Court held that: (ILR p. 234)

"... Trial begins when the accused is charged and called on to answer and then the question before the Court is whether the accused is to be acquitted or convicted and not whether the complaint is to be dismissed or the accused discharged."

A similar view has been taken by the Madras High Court subsequently in *T. Sriramulu* v. *K. Veerasalingam*[21].

37. However, the Bombay High Court in *Dagdu Govindshet Wani* v. *Punja Vedu Wani*[22] referring to *Sriramulu*[21] held: (Bom LR p. 1191)

"... There is no doubt that the Court did take the view that in a warrant case the trial only commences from the framing of the charge.... But, according to my experience of the administration of criminal justice in this Presidency, which is not inconsiderable, the courts here have always accepted the definition of trial which has been given in *Gomer Sirda* v. *Queen Empress*[23], that is to say, 'trial' has always been

understood to mean the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case."

A similar view has been taken by the Lahore High Court in *Sahib Din* v. *Crown*[24], wherein it was held that for the purposes of Section 350 of the Code, a trial cannot be said to commence only when a charge is framed. The trial covers the whole of the proceedings in a warrant case. This case was followed in *Fakhruddin* v. *Crown*[25] and in *Labhsing* v. *Emperor*[26].

38. In view of the above, the law can be summarised to the effect that as "trial" means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the "trial" commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken.

39. Section 2(*g*) CrPC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under CrPC by the Magistrate or the court. The word "inquiry" is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial.

40. Even the word "course" occurring in Section 319 CrPC, clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word "course" therefore, allows the court to invoke this power to proceed against any person from the initial stage of inquiry up to the stage of the conclusion of the trial. The court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused. The word "course" ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time: duration and not a fixed point of time. (See *CIT* v. *East West Import & Export (P) Ltd.*[27])

41. In a somewhat similar manner, it has been attributed to the word "course" the meaning of being a gradual and continuous flow advanced by journey or passage from one place to another with reference to period of time when the movement is in progress. (See *State of Travancore-Cochin* v. *Shanmugha Vilas Cashewnut Factory*[28].)

42. To say that powers under Section 319 CrPC can be exercised only during trial would be reducing the impact of the word "inquiry" by the court. It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim *a verbis legis non est recedendum* which means, "from the words of law, there must be no departure" has to be kept in mind.

43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate.

44. No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was "most unwarranted besides being uncharitable". (Vide *Patel Chunibhai Dajibha* v. *Narayanrao Khanderao Jambekar*[29], *Martin Burn Ltd.* v. *Corpn. of Calcutta*[30], *M.V. Elisabeth* v. *Harwan Investment and Trading (P) Ltd.*[31], *Sultana Begum* v. *Prem Chand Jain*[32], *State of Bihar* v. *Bihar Distillery Ltd.*[33], *Institute of Chartered Accountants of India* v. *Price Waterhouse*[34] and *South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies*[35].)

45. This Court in *Rohitash Kumar* v. *Om Prakash Sharma*[36], after placing reliance on various earlier judgments of this Court held: (SCC pp. 460-61, paras 27-29)

> "*27.* The court has to keep in mind the fact that, while interpreting the provisions of a statute, it can neither add, nor subtract even a single word. ... A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to *add and amend*, or by construction, make up for the deficiencies, which have been left in the Act. ...
>
> *28.* The statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the

legislature might have done, or what the duty of the legislature to have said or done was. The courts have to administer the law as they find it, and it is not permissible for the court to twist the clear language of the enactment in order to avoid any real or imaginary hardship which such literal interpretation may cause. ...

29. ... under the garb of interpreting the provision, the court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation."

(emphasis in original)

46. Thus, by no means can it be said that provisions of Section 319 CrPC cannot be pressed into service during the course of "inquiry". The word "inquiry" is not surplusage in the said provision.

47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

48. It may be pertinent to refer to the decision in *Raj Kishore Prasad*[13] where, in order to avoid any delay in trial, the Court emphasised that such a

power should be exercised keeping in view the context in which the words "inquiry" and "trial" have been used under Section 319 CrPC and came to the conclusion that such a power is not available at the pre-trial stage and should be invoked only at the stage of inquiry or after the evidence is recorded.

49. A two-Judge Bench of this Court in *SWIL Ltd.* v. *State of Delhi*[37], held that once the process has been issued, the power under Section 319 CrPC cannot be exercised at that stage, since it is neither an inquiry nor a trial.

50. In *Ranjit Singh*[9], the Court held: (SCC p. 156, paras 19-20)

"*19.* So 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.

20. 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."

51. In *Kishun Singh*[8], the Court while considering the provision of the old Code, the Law Commission's recommendation and the provisions in CrPC, held that Section 319 CrPC is an improved provision upon the earlier one. It has removed the difficulty of taking cognizance as cognizance against the added person would be deemed to have been taken as originally against the other co-accused. Therefore, on the Magistrate committing the case under Section 209 CrPC to the Court of Session, the bar of Section 193 CrPC gets

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 facie be gathered from the material available on record, though who is not an accused before the court.

52. In *Dharam Pal (CB)*[7], the Constitution Bench approved the decision in *Kishun Singh*[8] that the Sessions Judge has original power to summon the accused holding that: (SCC p. 319, paras 37 and 38)

> "*37.* ... the Sessions Judge was entitled to issue summons under Section 193 CrPC upon the case being committed to him by the learned Magistrate.
>
> *38.* ... The key words in [Section 193] are that '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'. The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section"

53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 CrPC cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in *Dharam Pal (CB)*[7]. The dispute therein was resolved visualising a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 CrPC is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 CrPC confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC.

55. Accordingly, we hold that the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove.

56. There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 CrPC i.e. provisions of Sections 200, 201, 202, etc. CrPC

applicable in the case of complaint cases. As has been

discussed herein, evidence means evidence adduced before the court. Complaint case is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872 (hereinafter referred to as "the Evidence Act") comes before the court. There does not seem to be any restriction in the provisions of Section 319 CrPC so as to preclude such evidence as coming before the court in complaint cases even before charges have been framed or the process has been issued. But at that stage as there is no accused before the court, such evidence can be used only to corroborate the evidence recorded during the trial (*sic* or) for the purpose of Section 319 CrPC, if so required. What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 CrPC acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 CrPC is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 CrPC at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses are being recorded.

57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.

Question (iii)—Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319 CrPC, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 CrPC indicate that the material has to be "where ... it appears from the *evidence*" before the court.

59. Before we answer this issue, let us examine the meaning of the word "evidence". According to Section 3 of the Evidence Act, "evidence" means and includes:

"**(1)** all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the court;

such documents are called documentary evidence."

60. According to *Tomlin's Law Dictionary*, evidence is

"the means from which an inference may logically be drawn as to the existence of a fact. It consists of proof by testimony of witnesses, on oath; or by writing or records."

61. Bentham defines "evidence" as

"any matter of fact, the effect, tendency or design of which presented to mind, is to produce in the mind a persuasion concerning the existence of some other matter of fact—a persuasion either affirmative or disaffirmative of its existence. Of the two facts so connected, the latter may be distinguished as the principal fact, and the former as the evidentiary fact."

62. According to *Wigmore on Evidence*, evidence represents:

"any knowable fact or group of facts, not a legal or a logical principle, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative, on the part of the tribunal, as to the truth of a proposition, not of law, or of logic, on which the determination of the tribunal is to be asked."

63. The provision and the abovementioned definitions clearly suggest that it is an exhaustive definition. Wherever the words "means and include" are used, it is an indication of the fact that the definition "is a hard-and-fast definition", and no other meaning can be assigned to the expression that is put down in the definition. It indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expression. (Vide *Mahalakshmi Oil Mills* v. *State of A.P.*[38], *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Labour Court*[39], *P. Kasilingam* v. *P.S.G. College of Technology*[40], *Hamdard (Wakf) Laboratories* v. *Labour Commr.*[41] and *Ponds India Ltd.* v. *CTT*[42].)

64. In *Feroze N. Dotivala* v. *P.M. Wadhwani*[43], dealing with a similar issue, this Court observed as under: (SCC p. 443, para 14)

"*14.* Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined."

65. We, therefore proceed to examine the matter further on the premise that the definition of the word "evidence" under the Evidence Act is exhaustive.

66. In *Kalyan Kumar Gogoi* v. *Ashutosh Agnihotri*[44], while dealing with the issue this Court held: (SCC p. 544, para 33)

"*33.* The word 'evidence' is used in common parlance in three different senses: (*a*) as equivalent to relevant, (*b*) as equivalent to proof, and (*c*) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts. Though, in the definition of the word 'evidence' given in Section 3 of the Evidence Act one finds only oral and documentary evidence, this word is also used in phrases such as best evidence, circumstantial evidence, corroborative

evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc."

67. In relation to a civil case, this Court in *Ameer Trading Corpn. Ltd.* v. *Shapoorji Data Processing Ltd.*[45], held that the examination of a witness would include evidence-in-chief, cross-examination or re-examination. In *Omkar Namdeo Jadhao* v. *Second Addl. Sessions Judge, Buldana*[46] and *Ram Swaroop* v. *State of Rajasthan*[47], this Court held that the statements recorded under Section 161 CrPC during the investigation are not evidence. Such statements can be used at the trial only for contradictions or omissions when the witness is examined in the court. (See also *Pedda Narayana* v. *State of A.P.*[48], *Sat Paul* v. *Delhi Admn.*[49] and *State (Delhi Admn.)* v. *Laxman Kumar*[50].)

68. In *Lok Ram* v. *Nihal Singh*[51], it was held that it is evident that a person,

"even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added [as an accused] to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and *not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence*". (SCC p. 196, para 10)

(emphasis supplied)

69. The majority view of the Constitution Bench in *Ramnarayan Mor* v. *State of Maharashtra*[52] has been as under: (AIR p. 953, para 9)

"*9.* It was urged in the alternative by counsel for the appellants that even if the expression 'evidence' may include documents, such documents would only be those which are duly proved at the enquiry for commitment, because what may be used in a trial, civil or criminal, to support the judgment of a Court is evidence duly proved according to law. But by the Evidence Act which applies to the trial of all criminal cases, the expression 'evidence' is defined in Section 3 as meaning and including all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry and documents produced for the inspection of the court. *There is no restriction in this definition to documents which are duly proved by evidence.*"

(emphasis supplied)

70. Similarly, this Court in *Sunil Mehta* v. *State of Gujarat*[53], held that: (SCC p. 217, para 16)

"*16.* It is trite that evidence within the meaning of the Evidence Act and so also within the meaning of Section 244 CrPC is what is recorded in the manner stipulated under Section 138 in the case of oral evidence. Documentary evidence would similarly be evidence only if the documents are proved in the manner recognised and provided for under the Evidence Act unless of course a statutory provision makes the document admissible as evidence without any formal proof thereof."

71. In *Guriya* v. *State of Bihar*[54], this Court held that in exercise of the powers under Section 319 CrPC, the court can add a new accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary.

72. In *Kishun Singh*[8], this Court held: (SCC p. 27, paras 11-12)

"*11. 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 [under Section 319(1)], 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. Even a person who has earlier been discharged would fall within the sweep of the power conferred by Section 319 of the Code. Therefore, stricto sensu, Section 319 of the Code cannot be invoked in a case like the present one where no evidence has been led at a trial wherefrom it can be said that the appellants appear to have been involved in the commission of the crime along with those already sent up for trial by the prosecution.

12. But then it must be conceded that Section 319 covers the post-cognizance stage where in the course of an inquiry or trial the involvement or complicity of a person or persons not named by the investigating agency has surfaced which necessitates the exercise of the discretionary power conferred by the said provision."

(emphasis supplied)

73. A similar view has been taken by this Court in *Raj Kishore Prasad*[13], wherein it was held that: (SCC p. 499, para 8)

"*8.* ... In order to apply Section 319 [CrPC], it is thus essential that the need to proceed against the person other than the accused, appearing to be guilty of offence, arises only on evidence recorded in the course of any inquiry or trial."

74. In *Lal Suraj* v. *State of Jharkhand*[55], a two-Judge Bench of this Court held that: (SCC p. 701, para 16)

"*16.* ... A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 CrPC, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction."

75. A similar view has been reiterated by this Court in *Rajendra Singh* v. *State of U.P.*[56], observing that the court should not exercise the power under Section 319 CrPC on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. The word "evidence" in Section 319 CrPC contemplates the evidence of the witnesses given in the court.

76. Ordinarily, it is only after the charges are framed that the stage of recording of evidence is reached. A bare perusal of Section 227 CrPC would show that the legislature has used the terms "record of the case" and the

"documents submitted therewith". It is in this context that the word "evidence" as appearing in Section 319 CrPC has to be read and understood. The material collected at the stage of investigation can at best be used for a limited purpose as provided under Section 157 of the Evidence Act i.e. to corroborate or contradict the statements of the witnesses recorded before the court. Therefore, for the exercise of power under Section 319 CrPC, the use of word "evidence" means material that has come before the court during an inquiry or trial by it and not otherwise. If from the evidence led in the trial the court is of the opinion that a person not accused before it has also committed the offence, it may summon such person under Section 319 CrPC.

77. With respect to documentary evidence, it is sufficient, as can be seen from a bare perusal of Section 3 of the Evidence Act as well as the decision of the Constitution Bench[52], that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial.

78. It is, therefore, clear that the word "evidence" in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation.

79. The inquiry by the court is neither attributable to the investigation nor the prosecution, but by the court itself for collecting information to draw back a curtain that hides something material. It is the duty of the court to do so and therefore the power to perform this duty is provided under CrPC.

80. The unveiling of facts other than the material collected during investigation before the Magistrate or court before trial actually commences is part of the process of inquiry. Such facts when recorded during trial are evidence. It is evidence only on the basis whereof trial can be held, but can the same definition be extended for any other material collected during inquiry by the Magistrate or court for the purpose of Section 319 CrPC?

81. An inquiry can be conducted by the Magistrate or court at any stage during the proceedings before the court. This power is preserved with the court and has to be read and understood accordingly. The outcome of any such exercise should not be an impediment in the speedy trial of the case. Though the facts so received by the Magistrate or the court may not be evidence, yet it is some material that makes things clear and unfolds concealed or deliberately suppressed material that may facilitate the trial. In the context of Section 319 CrPC it is an information of complicity. Such material therefore, can be used even though not an evidence in stricto sensu, but an information on record collected by the court during inquiry itself, as a prima facie satisfaction for exercising the powers as presently involved.

82. This pre-trial stage is a stage where no adjudication on the evidence of the offences involved takes place and therefore, after the material along

with the charge-sheet has been brought before the court, the same can be inquired into in order to effectively proceed with framing of charges. After the charges are framed, the prosecution is asked to lead evidence and till that is done, there is no evidence available in the strict legal sense of Section 3 of the Evidence Act. The actual trial of the offence by bringing the accused before the court has still not begun. What is available is the material that has been submitted before the court along with the charge-sheet. In such situation, the court only has the preparatory material that has been placed before the court for its consideration in order to proceed with the trial by framing of charges.

83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. This would harmonise such material with the word "evidence" as material that would be supportive in nature to facilitate the exposition of any other accomplice whose

complicity in the offence may have either been suppressed or escaped the notice of the court.

84. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 CrPC. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The "evidence" is thus, limited to the evidence recorded during trial.

Question (ii)—Does the word "evidence" in Section 319 CrPC mean as arising in examination-in-chief or also together with cross-examination?

86. The second question referred to herein is in relation to the word "evidence" as used under Section 319 CrPC, which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins

with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In *Rakesh*[3], it was held that: (SCC p. 252, para 10)

> "*10.* ... It is true that finally at the time of trial the accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court's power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not."

87. In *Ranjit Singh*[2], this Court held that: (SCC p. 156, para 20)

> "*20.* ... it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers."

88. In *Mohd. Shafi*[4], it was held that the prerequisite for exercise of power under Section 319 CrPC is the satisfaction of the court to proceed against a person who is not an accused but against whom evidence occurs, for which the court can even *wait till the cross -examination is over* and that there would be no illegality in doing so. A similar view has been taken by a two-Judge Bench in *Harbhajan Singh* v. *State of Punjab*[5][7]. This Court in *Hardeep Singh*[2] seems to have misread the judgment in *Mohd. Shafi*[4], as it construed that the said judgment laid down that for the exercise of power under Section 319 CrPC, the court has to necessarily wait till the witness is cross-examined and on complete appreciation of evidence, come to the conclusion whether there is a need to proceed under Section 319 CrPC.

89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to

complicity of some other person who may be connected with the offence.

90. As held in *Mohd. Shafi*[1] and *Harbhajan Singh*[57], all that is required for the exercise of the power under Section 319 CrPC is that, it must *appear* to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under

Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words "such person *could* be tried" instead of *should* be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the *court is satisfied* that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

91. Further, in our opinion, there does not seem to be any logic behind waiting till the cross-examination of the witness is over. It is to be kept in mind that at the time of exercise of power under Section 319 CrPC, the person sought to be arraigned as an accused, is in no way participating in the trial. Even if the cross-examination is to be taken into consideration, the person sought to be arraigned as an accused cannot cross-examine the witness(es) prior to passing of an order under Section 319 CrPC, as such a procedure is not contemplated by CrPC. Secondly, invariably the State would not oppose or object to naming of more persons as an accused as it would only help the prosecution in completing the chain of evidence, unless the witness(es) is obliterating the role of persons already facing trial. More so, Section 299 CrPC enables the court to record evidence in absence of the accused in the circumstances mentioned therein.

92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

Question (iv)—What is the degree of satisfaction required for invoking the power under Section 319 CrPC?

93. *Section 319(1) CrPC empowers the court to proceed against other persons who* ***appear*** *to be guilty of offence, though not an accused before the court.* The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof.

94. In *Pyare Lal Bhargava* v. *State of Rajasthan*[58], a four-Judge Bench of this Court was concerned with the meaning of the word "appear". The Court held that the appropriate meaning of the word "appears" is "seems". It

imports a lesser degree of probability than proof. In *Ram Singh* v. *Ram Niwas*[59], a two-Judge Bench of this Court was again required to examine the importance of the word "appear" as appearing in the section. The Court held that for the fulfilment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as the accused in the case.

95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas* v. *State of Rajasthan*[60], held that on the *objective satisfaction* of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

96. In *Rajendra Singh*[56], the Court observed: (SCC p. 388, para 16)

> "*16.* Be it noted, *the court need not be satisfied that he has committed an offence.* It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is 'may' and not 'shall'. The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression 'appears' indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."
>
> (emphasis supplied)

97. In *Mohd. Shafi*[4], this Court held that it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 CrPC, it must arrive at a satisfaction that there exists a possibility that the accused so *summoned in all likelihood would be convicted*.

98. In *Sarabjit Singh* v. *State of Punjab*[61], while explaining the scope of Section 319 CrPC, a two-Judge Bench of this Court observed: (SCC pp. 54-55, paras 21-23)

> "*21.* ... For the aforementioned purpose, the courts are required to apply *stringent tests*; one of the tests being whether evidence on record is

such which *would reasonably lead to conviction of the person sought to be summoned.*

> *22.* ... Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. *While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction.*
>
> *23.* Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients

thereof viz. (*i*) an extraordinary case, and (*ii*) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied."

(emphasis supplied)

99. In *Brindaban Das* v. *State of W.B.*[62], a two-Judge Bench of this Court took a similar view observing that: (SCC p. 335, para 25)

"*25.* ... the court is also required to consider *whether such evidence would be sufficient to convict the person being summoned*. Since issuance of summons under Section 319 CrPC entails a de novo trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay the trial, the trial court has to exercise such discretion with great care and perspicacity."

(emphasis supplied)

A similar view has been reiterated by this Court in *Michael Machado* v. *CBI*[63].

100. However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 CrPC, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide *State of Karnataka* v. *L. Muniswamy*[64], *All India Bank Officers' Confederation* v. *Union of India*[65], *Stree Atyachar Virodhi Parishad* v. *Dilip Nathumal Chordia*[66], *State of M.P.* v. *Krishna Chandra Saksena*[67] and *State of M.P.* v. *Mohanlal Soni*[68].)

101. In *Dilawar Balu Kurane* v. *State of Maharashtra*[69], this Court while dealing with the provisions of Sections 227 and 228 CrPC, placed a very heavy reliance on the earlier judgment of this Court in *Union of India* v. *Prafulla Kumar Samal*[70] and held that while considering the question of framing the charges, the court may weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and whether the materials placed before the court disclose *grave suspicion* against the accused which has not been properly explained. In such an eventuality, the court is justified in framing the charges and proceeding with the trial. The court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but the court should not make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial.

102. In *Suresh* v. *State of Maharashtra*[71], this Court after taking note of the earlier judgments in *Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijjaya*[72] and *State of Maharashtra* v. *Priya Sharan Maharaj*[73], held as under: (*Suresh case*[71], SCC p. 707, para 9)

"*9.* ... at the stage of Sections 227 and 228 the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as the gospel truth even if it is opposed to common sense or the broad probabilities of the case. *Therefore, at the stage of framing of the charge the court has to consider the material with a view to find out if there is ground* ***for presuming that the accused has committed the offence*** *or that there is not sufficient*

*ground for proceeding against him and** not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction**. (Priya Sharan case[73], SCC p. 397, para 8)"*

(emphasis in original)

103. Similarly in *State of Bihar* v. *Ramesh Singh*[74], while dealing with the issue, this Court held: (SCC p. 42, para 4)

"*4.* ... If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

104. In *Palanisamy Gounder* v. *State*[75], this Court deprecated the practice of invoking the power under Section 319 CrPC just to conduct a fishing inquiry, as in that case, the trial court exercised that power just to find out the real truth, though there was no valid ground to proceed against the person summoned by the court.

105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "*for which such person could be tried together with the accused*". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.

Question (v)—In what situations can the power under this section be exercised: not named in FIR; named in the FIR but not charge-sheeted or has been discharged?

107. In *Joginder Singh* v. *State of Punjab*[76], a three-Judge Bench of this Court held that as regards the contention that the phrase "*any person not being the accused*" occurring in Section 319 CrPC excludes from its operation an accused who has been released by the police under Section 169 CrPC and has been shown in Column 2 of the charge-sheet, the contention has merely to be rejected. The said expression clearly covers any person who is not being tried already by the court and the very purpose of enacting such a provision like Section 319(1) CrPC clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court, are included in the said expression.

108. In *Anju Chaudhary* v. *State of U.P.*[77], a two-Judge Bench of this Court held that even in the cases where the report under Section 173(2) CrPC

is filed in the court and investigation records the name of a person in Column 2, or even does not name the person as an accused at all, the court in exercise of its powers vested under Section 319 CrPC can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

109. In *Suman* v. *State of Rajasthan*[78], a two-Judge Bench of this Court observed that: (SCC p. 257, para 17)

> "*17.* ... There is nothing in the language of this sub-section from which it can be inferred that a person who is named in the FIR or complaint but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the court finds that such person has committed any offence for which he could be tried together with the other accused."

110. In *Lal Suraj*[55], a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been charge-sheeted, he may come within the purview of the description of such a person as contained in Section 319 CrPC. A similar view had been taken in *Lok Ram*[51], wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

111. Even the Constitution Bench in *Dharam Pal (CB)*[7] has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the charge-sheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 CrPC can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled.

112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 CrPC without resorting to the provision of Section 319 CrPC directly.

113. In *Sohan Lal* v. *State of Rajasthan*[79], a two-Judge Bench of this Court held that once an accused has been discharged, the procedure for enquiry envisaged under Section 398 CrPC cannot be circumvented by prescribing to procedure under Section 319 CrPC.

114. In *MCD* v. *Ram Kishan Rohtagi*[80], this Court held that: (SCC p. 8, para 19)

> "*19.* ... if the prosecution can at any stage produce evidence which satisfies the court that ... those who have not been [arraigned]*** as accused [or]**** *against whom*

proceedings have been quashed, have also committed the offence, the court can take cognizance against them [under Section 319 CrPC] and try them along with the other accused."

115. Power under Section 398 CrPC is in the nature of revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. According to Section 300(5) CrPC, a person discharged under Section 258 CrPC shall not be tried again for the same offence except with the consent of the court by which he was discharged or of any other court to which the first-mentioned court is subordinate. Further, Section 398 CrPC provides that the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make an inquiry into the case against any person who has already been discharged. Both these provisions contemplate an inquiry to be conducted before any person, who has already been discharged, is asked to again face trial if some evidence appears against him. As held earlier, Section 319 CrPC can also be invoked at the stage of inquiry. We do not see any reason why inquiry as contemplated by Section 300(5) CrPC and Section 398 CrPC cannot be an inquiry under Section 319 CrPC. Accordingly, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Sections 300 (5) and 398 CrPC. If during or after such inquiry, there appears to be an evidence against such person, power under Section 319 CrPC can be exercised. We may clarify that the word "trial" under Section 319 CrPC would be eclipsed by virtue of above provisions and the same cannot be invoked so far as a person discharged is concerned, but no more.

116. Thus, it is evident that power under Section 319 CrPC can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 CrPC without taking recourse to provisions of Section 300(5) read with Section 398 CrPC.

117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

— What is the stage at which power under Section 319 CrPC can be exercised?

AND

— Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

Answer

117.1. In *Dharam Pal case*[2], the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (*1*) inquiry (*2*) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in

Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii)—Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv)—What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under Section 319(4)(*b*) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge*****. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v)—Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh.

118. The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.

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[†] From the Judgment and Order dated 23-10-2006 of the High Court of Punjab and Haryana at Chandigarh in Crl. Revision No. 773 of 2006

[1] **Ed.**: The reference is to *Hardeep Singh* v. *State of Punjab*, Criminal Revision No. 773 of 2006, order dated 23-10-2006 (P&H); *Manjitpal Singh* v. *State of Punjab*, Criminal Revision No. 1648 of 2006, order dated 23-10-2006 (P&H); *Babubhai Bhimabhai Bokhiria* v. *State of Gujarat*, Special Criminal Application No. 638 of 2008, decided on 11-12-2008 (Guj); *Rakesh Sharma* v. *State of M.P.*, Criminal Revision No. 130 of 2010, order dated 13-8-2010 (MP); *Ravinder Kumar* v. *State of Haryana*, CRM-M No. 17317 of 2009, order dated 10-7-2009 (P&H); *Juned Pahalwan* v. *State of U.P.*, Criminal Appeal No. 30034 of 2009, decided on 14-12-2009 (All); *Rajesh* v. *State of U.P.*, Criminal Revision No.

2128 of 2009, order dated 3-6-2009 (All); *Govind* v. *State of Rajasthan*, Criminal Revision Petition No. 583 of 2009, order dated 7-8-2009 (Raj) and *Tej Singh* v. *State of U.P.*, Criminal Revision No. 5399 of 2011, decided on 4-5-2012 (All).

[2] *Hardeep Singh* v. *State of Punjab*, (2009) 16 SCC 785 : (2010) 2 SCC (Cri) 355

[3] (2001) 6 SCC 248 : 2001 SCC (Cri) 1090 : AIR 2001 SC 2521

[4] *Mohd. Shafi* v. *Mohd. Rafiq*, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899

[5] *Hardeep Singh* v. *State of Punjab*, (2013) 4 SCC 277 : (2013) 2 SCC (Cri) 367

[6] *Dharam Pal* v. *State of Haryana*, (2004) 13 SCC 9 : (2006) 1 SCC (Cri) 273

[7] *Dharam Pal* v. *State of Haryana*, (2014) 3 SCC 306 : AIR 2013 SC 3018

[*] **Ed.**: Para 10 corrected vide Official Corrigendum No. F. 3/Ed.B.J./2/2014 dated 15-1-2014.

[8] *Kishun Singh* v. *State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470

[9] *Ranjit Singh* v. *State of Punjab*, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554 : AIR 1998 SC 3148

[10] (1920) 11 LW 435 : ILR (1920) 43 Mad 511

[11] AIR 1967 SC 1167 : 1967 Cri LJ 1081

[12] (1983) 2 SCC 372 : 1983 SCC (Cri) 489 : AIR 1983 SC 439

[13] *Raj Kishore Prasad* v. *State of Bihar*, (1996) 4 SCC 495 : 1996 SCC (Cri) 772 : AIR 1996 SC 1931

[14] (2004) 4 SCC 584 : 2004 SCC (Cri) 1348

[15] AIR 1957 SC 389 : 1957 Cri LJ 567

[16] (1979) 2 SCC 179 : 1979 SCC (Cri) 405 : AIR 1979 SC 94

[17] 1980 Supp SCC 92 : 1980 SCC (Cri) 695 : AIR 1980 SC 962

[18] (1996) 4 SCC 127 : 1996 SCC (Cri) 592

[††] **Ed.**: The words have been emphasised in original.

[19] (1996) 6 SCC 775 : 1997 SCC (Cri) 42 : AIR 1997 SC 1539

[20] ILR (1909) 32 Mad 220 : 1 IC 228

[21] ILR (1915) 38 Mad 585

[22] (1936) 38 Bom LR 1189

[23] ILR (1898) 25 Cal 863

[24] ILR (1922) 3 Lah 115

[25] ILR (1924) 6 Lah 176

[26] (1934) 35 Cri LJ 1261 (JCC)

[27] (1989) 1 SCC 760 : 1989 SCC (Tax) 208 : AIR 1989 SC 836

[28] AIR 1953 SC 333

[29] AIR 1965 SC 1457

[30] AIR 1966 SC 529

[31] 1993 Supp (2) SCC 433 : AIR 1993 SC 1014

[32] (1997) 1 SCC 373

[33] (1997) 2 SCC 453 : AIR 1997 SC 1511

[34] (1997) 6 SCC 312

[35] (1998) 2 SCC 580 : 1998 SCC (L&S) 703 : AIR 1998 SC 703

[36] (2013) 11 SCC 451 : AIR 2013 SC 30

[37] (2001) 6 SCC 670 : 2001 SCC (Cri) 1205 : AIR 2001 SC 2747

[38] (1989) 1 SCC 164 : 1989 SCC (Tax) 56 : AIR 1989 SC 335

[39] (1990) 3 SCC 682 : 1991 SCC (L&S) 71

[40] 1995 Supp (2) SCC 348 : AIR 1995 SC 1395

[41] (2007) 5 SCC 281 : (2007) 2 SCC (L&S) 166

[42] (2008) 8 SCC 369

[43] (2003) 1 SCC 433

[44] (2011) 2 SCC 532 : (2011) 1 SCC (Civ) 513 : (2011) 1 SCC (Cri) 741 : AIR 2011 SC 760

[45] (2004) 1 SCC 702 : AIR 2004 SC 355

[46] (1996) 7 SCC 498 : 1996 SCC (Cri) 488 : AIR 1997 SC 331

[47] (2004) 13 SCC 134 : 2005 SCC (Cri) 61

[48] (1975) 4 SCC 153 : 1975 SCC (Cri) 427 : AIR 1975 SC 1252

[49] (1976) 1 SCC 727 : 1976 SCC (Cri) 160 : AIR 1976 SC 294

[50] (1985) 4 SCC 476 : 1986 SCC (Cri) 2 : AIR 1986 SC 250

[51] *Lok Ram* v. *Nihal Singh*, (2006) 10 SCC 192 : (2006) 3 SCC (Cri) 532 : AIR 2006 SC 1892

[52] *Ramnarayan Mor* v. *State of Maharashtra*, AIR 1964 SC 949 : (1964) 2 Cri LJ 44

[53] (2013) 9 SCC 209 : (2013) 3 SCC (Cri) 881 : JT (2013) 3 SC 328

[54] (2007) 8 SCC 224 : (2007) 3 SCC (Cri) 521 : AIR 2008 SC 95

[55] *Lal Suraj* v. *State of Jharkhand*, (2009) 2 SCC 696 : (2009) 1 SCC (Cri) 844

[56] *Rajendra Singh* v. *State of U.P.*, (2007) 7 SCC 378 : (2007) 3 SCC (Cri) 375 : AIR 2007 SC 2786

[57] (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135

[58] AIR 1963 SC 1094 : (1963) 2 Cri LJ 178

[59] (2009) 14 SCC 25 : (2010) 1 SCC (Cri) 1278

[60] (2014) 3 SCC 321 : (2013) 11 Scale 23

[61] (2009) 16 SCC 46 : (2010) 2 SCC (Cri) 141 : AIR 2009 SC 2792

[62] (2009) 3 SCC 329 : (2009) 2 SCC (Cri) 79

[63] (2000) 3 SCC 262 : 2000 SCC (Cri) 609 : AIR 2000 SC 1127

[64] (1977) 2 SCC 699 : 1977 SCC (Cri) 404 : AIR 1977 SC 1489

[65] (1989) 4 SCC 90 : 1989 SCC (L&S) 627 : AIR 1989 SC 2045

[66] (1989) 1 SCC 715 : 1989 SCC (Cri) 285

[67] (1996) 11 SCC 439 : 1997 SCC (Cri) 35

[68] (2000) 6 SCC 338 : 2000 SCC (Cri) 1110 : AIR 2000 SC 2583

[69] (2002) 2 SCC 135 : 2002 SCC (Cri) 310

[70] (1979) 3 SCC 4 : 1979 SCC (Cri) 609 : AIR 1979 SC 366

[71] (2001) 3 SCC 703 : 2001 SCC (Cri) 621 : AIR 2001 SC 1375

[72] (1990) 4 SCC 76 : 1991 SCC (Cri) 47

[73] (1997) 4 SCC 393 : 1997 SCC (Cri) 584 : AIR 1997 SC 2041

** **Ed.**: Emphasis has been supplied to the matter between the two asterisks.

[74] (1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018

[75] (2005) 12 SCC 327 : (2006) 1 SCC (Cri) 568

[76] (1979) 1 SCC 345 : 1979 SCC (Cri) 295 : AIR 1979 SC 339

[77] (2013) 6 SCC 384 : (2013) 4 SCC (Cri) 503

[78] (2010) 1 SCC 250 : (2010) 1 SCC (Cri) 770 : AIR 2010 SC 518

[79] (1990) 4 SCC 580 : 1990 SCC (Cri) 650

[80] (1983) 1 SCC 1 : 1983 SCC (Cri) 115 : AIR 1983 SC 67

*** **Ed.**: The word in the original is "arrayed". It is humbly submitted that this learned five-Judge Bench having substituted it with the more appropriate "arraigned" has provided valuable precision to the terminology to be used.

**** **Ed.**: The addition of the word "or" which is missing in the original, it would seem, is in the nature of a judicial correction, since accused against whom proceedings have been quashed are a class apart from persons who may not have been arraigned at all.

***** **Ed.**: The conclusion of law as stated in para 106, p. 138*c-d*, may be compared: "Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction". *See also* especially in para 100 at p. 136*f-g*.

Points to Ponder

What are the requirements and ingredients of an order taking cognizance and an order for summoning of accused persons ?

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 2744 of 2013

1. Amresh Kumar Dhiraj
2. Mithilesh Kumar Chaudhary
3. Brajesh Kumar Chaudhary
4. Rajesh Kumar Chaudhary
5. Mukesh Kumar Chaudhary ...Petitioner(s)
Versus
1. State of Jharkhand
2. Raj Kumar Agarwal ...Opp. Parties

CORAM: HON'BLE MR. JUSTICE ANANDA SEN

For the Petitioner : Mr. A.K.Chaturvedi, Advocate

For the State : Mrs. Vipul Divya, A.P.P.

For O.P. no. 2 : Mr. Avishek Prasad, Advocate

12/27.11.2019 Heard learned counsel appearing for the petitioners, learned counsel for the State and the learned counsel for O.P. No. 2.

2. This case has been listed today under the heading for Orders on a petition being I.A. No. 6862 of 2019, praying therein to extend the period of stay, which was granted in favour of these petitioners by this Court vide order dated 08.10.2014. Now, all the parties agree for final disposal of the case, rather than to argue on the stay petition.

3. Learned counsel for the petitioners submits that the cognizance and summoning order dated 13.08.2013, passed by the Additional Chief Judicial Magistrate, Latehar in Complaint Case No. C-20 of 2013 is under challenge. He submits that the impugned order will show that the Court has not applied its mind while taking cognizance. He submits that merely in a mechanical manner, cognizance has been taken in this case and thereafter summons have been issued against these petitioners. It is argued that before issuing summons, the Magistrate is duty bound to record his satisfaction that there are sufficient materials to proceed against the accused persons and then only he should issue summons. He further submits that this is a mandate casted upon the Magistrate in terms of Section 204 of the Code of Criminal Procedure, which has been over looked by the Magistrate while issuing process under Section 204 Cr.P.C.

4. Learned counsel appearing for O.P. No. 2 submits that the cognizance was taken after going through the statements of the witnesses and the Court found that there is prima-facie case made out under Sections 147, 341, 323, 325 & 504 of the Indian Penal Code. He submits that some of the witnesses were the injured witnesses, who also sustained fracture injuries on the hands of these petitioners. Thus, according to him, the court has rightly taken cognizance against the petitioners for the offence.

5. I have gone through the records of the case and the composite cognizance order and the order issuing process.

6. An FIR was registered being Chandwa P.S. Case No. 33 of 2011 against these petitioners for allegedly committing offence punishable under Sections 147, 149, 341, 379, 325 & 427 of the Indian Penal Code. After investigation, the police submitted final form exonerating these petitioners. A protest -cum-complaint was filed by O.P. no. 2, which was registered as Complaint Case C-20 of 2013. After inquiry, the impugned order dated 13.08.2013 was passed by the Magistrate. While I go through the impugned order, I find that it has been mentioned therein

that four inquiry witnesses were examined and on perusal of their statements, the Court found that prima-facie case is made out for committing an offence punishable under Sections 147, 341, 323, 325 & 504 of the Indian Penal Code against all the five accused persons/petitioners. Thereafter, summons was issued to the accused persons. This impugned order dated 13.08.2013 is a composite order, i.e. an order taking cognizance and an order issuing summons.

7. Section 190 of the Code of Criminal Procedure provides for taking cognizance of an offence. Relevant portion of Section 190(1) of the Code of Criminal Procedure reads as follows:-

"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."

8. From perusal of the aforesaid provision of law, I find that a court can take cognizance under Section 190(1) (a) upon receiving a complaint of facts which constitute such offence and (b) upon a police report of such facts, and on upon information received from any person etc.

9. In this case, admittedly, the police report exonerated the petitioners. Thereafter, the informant filed a complaint-cum-protest petition, which was taken up by the Magistrate as a complaint, upon which cognizance, in this case, has been taken. Thus, the cognizance, in this case, is taken under the provisions of Section 190(1)(a) of the Code of Criminal Procedure.

10. The word "cognizance" is not defined in the Code of Criminal Procedure. In the case of "S.K.Sinha, Chief Enforcement Officer- versus- Videocon International Ltd. & Others, reported in (2008) 2 SCC 492", the Hon'ble Supreme Court in Para-19 has held as follows:-

"19. *The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it cannot 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone."*

11. Thus, the word "cognizance" means taking note of the facts, by the Magistrate, which constitute an offence. In the aforesaid judgment the Hon'ble Supreme Court has also held that taking cognizance is thus a sine qua non or condition precedent for holding a valid trial. When a cognizance order is sought to be quashed, the Hon'ble Supreme Court has held that when from bare perusal of the FIR or the complaint an offence is made out then the order taking cognizance cannot be quashed. This means that the court has to take cognizance of an offence after perusal of the FIR, police papers and charge sheet, if an offence is made out. In a complaint case, if from bare perusal of the complaint an offence is made out, the court has to take cognizance. Thus, it can be said that the court has to apply its mind and come to a conclusion that an offence is made out. If the offence is made out, he has to take cognizance of the offence. Thus, the Hon'ble Supreme Court in the case of ***"S.K.Sinha, Chief Enforcement Officer" (supra)*** has held that the cognizance is taken of an offence and not of an offender.

It is settled that, cognizance is always taken against offence and not against offender. The offence herein means "any offence." It is not limited to the penal provision mentioned in the FIR or in the complaint only. Since cognizance is taken not against the offender but against offence, it can

be said that the order taking cognizance is "offence centric" and not "person centric". Against a person summons/warrants are issued, cognizance is not taken.

12. At the stage of taking cognizance it is only to be seen as to whether any offence is made out or not. At this stage the court is not to go into the merit of the case made out by the police in the charge sheet or in the complaint. Nor at this stage the success of the case is to be weighed by a detail order. The duty of the Magistrate is limited at this stage.

It is clear that it is not necessary to pass a detail order giving detail reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind. If the Magistrate after going through the complaint petition and the statements of the other witnesses or after going through the FIR, case diary and charge sheet or the complaint, as the case may be comes to a conclusion that the offence is made out, he is bound to take cognizance of the offence. The order should reflect application of judicial mind to the extent that from the FIR, the case diary or complaint, offence is made out.

13. After taking cognizance the next step which the court has to take is to decide whether to issue process under Section 204 of the Code of Criminal Procedure or not. It is necessary to quote Section 204 of the Code of Criminal Procedure, which is quoted herein below:-

"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 under 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."*

14. Sub-section (1) of Section 204 provides that if in the opinion of a Magistrate, who is taking cognizance, there are sufficient ground for proceeding, then he has to issue summons or warrant in the appropriate case, as envisaged in Section 204(1)(a)(b). Two important phrase in this sub-section (1) of Section 204 is (i) **"in the opinion of a Magistrate"** and (ii) **"there is sufficient ground for proceeding"**. From the reading of the aforesaid section, it is quite clear that if there exists sufficient ground to proceed against the accused, the Magistrate has to form an opinion to that effect and proceed. Proceeding in this contest means issuing summons or warrant in term of sub-section (i)(a) or (i)(b) as the case may be. This proceeding is against a person, i.e. the accused. Thus, this provision of law, i.e. Section 204 Cr.P.C. is a person centric clause, whereas Section 190 Cr.P.C., i.e. taking cognizance, as discussed above, is offence centric.

15. The question is, when can a process under Section 204 Cr.P.C be issued? It does not mean that if cognizance of an offence is taken, the Magistrate has to issue summon against all the named accused persons in the complaint or FIR. This is not what Section 204 Cr.P.C. envisages. As per the provision of Section 204 Cr.P.C. only if there is sufficient ground to proceed, then only the Magistrate has to proceed. As the proceeding is against a person/accused, the Magistrate has to

form an opinion that there are sufficient materials against the accused to proceed. There may be situation when from the records it would be evident that there are no sufficient materials to proceed against some of the accused persons, though in general an offence is made out. If this would be the situation, then summons cannot be issued against all the accused, rather it should be issued only against those accused persons against whom there are sufficient materials to proceed.

16. In the case of ***"S.M.S. Pharmaceuticals Ltd. -versus- Neeta Bhalla, reported in (2005) 8 SCC 89***, the Hon'ble Supreme Court in Para-5 has held as follows:-

> **"5.** *Section 203 of the Code empowers a Magistrate to dismiss a complaint without even issuing a process. It uses the words "after considering" and "the Magistrate is of opinion that there is no sufficient ground for proceeding". These words suggest that the Magistrate has to apply his mind to a complaint at the initial stage itself and see whether a case is made out against the accused persons before issuing process to them on the basis of the complaint. For applying his mind and forming an opinion as to whether there is sufficient ground for proceeding, a complaint must make out a prima facie case to proceed This, in other words, means that a complaint must contain material to enable the magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words "if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground of proceeding". The words "sufficient ground for proceeding" again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."*

17. The Hon'ble Supreme Court in the case of ***"M/s GHCL Employees Stock Option Trust- versus- M/s India Infoline Limited, reported in [2013 (2) East Cr. C. 326 (SC)"*** has held that before issuing summons the Court has to record its satisfaction that prima-facie case is made out against the accused. According to this Court, this is the satisfaction as envisaged under Section 204 Cr.P.C. and not under Section 190 Cr.P.C. This satisfaction has to be recorded only for the purpose of issuing process. The Magistrate has to see whether there are any materials to proceed against the accused person. Consideration for taking cognizance is different than that of issuing process. One is directed towards the offence and the other is towards the person. This cannot be mixed, even if a composite order is passed.

18. As held earlier, Section 190 Cr.P.C. is offence centric where the Magistrate has only to see whether any offence is made out or not. While exercising jurisdiction under Section 190 Cr.P.C. he has not to see as to who are the persons, who have committed the offence against whom he needs to proceed. This fact, as to whether, who has committed the offence and to be proceeded against, is to be seen while exercising jurisdiction under Section 204 Cr.P.C. At this point, the Magistrate has to see whether there are materials and allegation against the person to proceed against or not. If are materials to proceed then he has to issue summons or warrant as the case may be.

19. In both the circumstances the Court has to apply his mind. In the case of ***"Dy. Chief Controller of Imports & Exports- versus- Roshanlal Agarwal, reported in (2003) 4 SCC139"***, the Hon'ble Supreme Court has held in Para-9 as follows:-

> **"9.** *In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there*

is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board- versus- Mohan Meakins Ltd and after noticing the law laid down in Kanti Bhadra Shah-versus- State of W.B., it was held as follows (SCC p. 749, para-6):-

"The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The Process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order." There is no legal requirement to pass a detailed order while issuing summons.

20. In the case of ***"Sunil Bharti Mittal - versus- CBI, reported in (2015) 4 SCC 609"***, the Hon'ble Supreme Court has held that an opinion to proceed further against the accused is to be stated in the order itself. Further in the case of ***"Anil Kumar & Others -versus- M.K.Aiyappa & Another, reported in (2013) 10 SCC 705"*** at para-11 the Hon'ble Supreme Court while dealing with the scope of Section 156(3) Cr.P.C. has held that the application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though detailed reasons need not to be given. The proper satisfaction should be recorded by the Judge.

21. Further in the case of "Pepsi Food Limited and Another- versus- Special Judicial Magistrate & Others, reported in (1998) (5) SCC 749" the Hon'ble Supreme Court in para-28 has observed as follows:-

"28. *Summoning of an accused in a criminal case is a serious matter Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any f the accused."*

This proposition has also been reiterated by the Hon'ble Supreme Court in the case of ***"Ramdev Food Products Private Limited- versus- State of Gujrat, reported in (2015) 6 SCC 439"***.

22. The order taking cognizance under Section 190 Cr.P.C. and order issuing process under Section 204 Cr.P.C., can very well a composite order but as observed, the application of mind would be different in both cases. This application of mind must be reflected in the order itself. The order should not be mechanical. Magistrate has to mention at least that there are sufficient materials to proceed against the persons and what are the *prima-facie* materials to proceed against them. He need not pass a detail judgment evaluating the materials, which are before him. The detail reasons as to why he is taking cognizance or issuing process are not to be mentioned but at least what are the bare minimum *prima-facie* materials against the accused-petitioners should be mentioned in the order issuing summon and prima facie what offence is alleged, in the order taking cognizance.

23. Applying the aforesaid principle, while going through this impugned order, I find that though the Magistrate has mention that there are statements of the witnesses, but what are the prima-facie materials to proceed against these petitioners and others have not been whispered. In a most mechanical manner, in one line, this impugned order has been passed summoning the accused. The Hon'ble Supreme Court in the case of ***"S.M.S. Pharmaceuticals Ltd." and "Ramdev Food Products Private Limited" (supra)*** has held that summoning an accused is a very serious matter and has got far reaching implications on the person who has been summoned.

Thus, a serious order, i.e. summoning order should not be issued casually in a mechanical manner. I find that the order taking cognizance and the summoning order, in this case, is passed in a most casual manner without recording his satisfaction and as to what are the bare minimum materials available on record. I also find that the court has taken cognizance against the accused, which is not the mandate of law. As mentioned earlier cognizance is to be taken against an offence and warrant/ summon is to be issued against accused. Further, the nature of satisfaction will also have to be different while passing both the orders.

The facts, which appear before the Magistrate, have to be bifurcated by him, (i) offence centric (ii) person centric. The offence centric fact will be the basis of the order taking cognizance under Section 190 Cr.P.C. and person centric fact to be the basis of order under Section 204 Cr.P.C.

24. Thus, I have no other alternative but to set aside the impugned order dated 13.08.2013 and remit back the matter to the Magistrate for passing a fresh order under Section 190 Cr.P.C. and 204 Cr.P.C. in accordance with law. Accordingly, the impugned order dated 13.08.2013, passed by the Additional Chief Judicial Magistrate, Latehar in Complaint Case No. C-20/2013, is hereby set aside and the matter is remitted back to the Magistrate.

25. Thus, this application stands allowed.

I.A. No. 5399 of 2016

In view of the final order passed in the main application, this interlocutory application has become infructuous. Accordingly, it is dismissed as such.

(Ananda Sen, J)

❑❑❑

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 3060 of 2019

Kartikesh Mishra @ Kartikesh Kumar Mishra ...Petitioner(s)

Versus

The State of Jharkhand ...Opp. Parties

CORAM: HON'BLE MR. JUSTICE ANANDA SEN

For the Petitioner(s) : M/s Faisal Khan and S. M. Shahzad, Advocates.

For the State : A.P.P.

05/29.11.2019: The petitioner has challenged the orders dated 3.6.2019 and 11.7.2019, by which, the processes under Sections 82 and 83 Cr.P.C, have been issued against the petitioner.

It is necessary to quote the aforesaid orders.

> "3.6.2019: Complainant has filed attendance through lawyer. Accused is absent.
> O/c to issue process 82 against the accused.
> Put up on 11.7.2019.
>
> 11.7.2019: Complainant filed Hazari through lawyer. Accused is absent.
> O/c to issue process under Section 83 Cr.P.C against accused.
> Put up case on 17.8.2019 on appearance."

The aforesaid orders are absolutely cryptic as the same do not reflect subjective satisfaction as to why the process under Sections 82 and 83 has been issued.

Since the subjective satisfaction is missing, the orders impugned dated 3.6.2019 and 11.7.2019 by which, the process under Sections 82 and 83 Cr.P.C has been issued against the petitioner in connection with Complaint Case No. 2613 of 2013, pending in the court of learned CJM, Ranchi, are quashed and set aside.

However, the learned Magistrate is at liberty to proceed further in accordance with law.

Before parting with the order, this Court finds that on each and every date, this Court comes across this type of cryptic orders passed by the Magistrates issuing process under Sections 82 and 83 Cr.P.C. The process under Sections 82 and 83 Cr.P.C cannot be issued in a mechanical manner. This Court further feels that perhaps the Judicial Magistrates of the State are unaware of the legal provisions and the requirements, while issuing the process under Sections 82 and 83 Cr.P.C against accused. The processes under Sections 82 and 83 Cr.P.C cannot be issued in mechanical or routine manner.

This is not a routine order. Liberty of a person is involved. An order which curtails the liberty of a person must be passed cautiously, following all the requirements of law. It cannot be cryptic or

mechanical nor can it be a routine order. This Court is burdened with applications challenging these type of cryptic orders. It adds to pendency of the cases for no reasons.

Duty is cast upon Judicial Academy of the State to train the Judicial Officers of the State so that this type of cryptic and mechanical orders are not passed while issuing the process under Sections 82 and 83 Cr.P.C .

Thus, Judicial Academy, Jharkhand, Ranchi, must now come forward to address this issue, and start imparting training to the Judicial Officers, on this primary issue.

Let a copy of this order be communicated through FAX to the Director, Judicial Academy, Ranchi for necessary action.

(ANANDA SEN, J.)

❑❑❑

Points to Ponder

* Can a title appeal be disposed of on merits without giving issue wise finding of facts or of the points arising for determination in the appeal and without complying with the requirement of the provision of law under Order XL, Rule 31 C.P.C. ?

* The judgment passed in Title Appeal referred here after will show that it has not been decided issue wise or by formulating points for determination.

* The evidences have not been discussed by the appellate court.

* There is no indipendent finding of facts.

[redacted]

[redacted] Dated 25th April,2015

Title Appeal no. [redacted]

(This memo of appeal filed against the judgment dated 29.02.1992 & decree dated 29.03.1992 passed by [redacted])

[redacted] .....Appellants / Plaintiffs

Versus

[redacted] .....Respondents / Defendants

For the appellants :- Shri Deoki Ranjan, Advocate
For the respondents :- Shri Bhaiya Uttam Kumar, Advocate

Present: [redacted]

JUDGMENT

1. [redacted] filed on behalf of Mahabir Sao & others, being aggrieved and dissatisfied with the judgment passed on 29.02.1992 and decree signed on 29.03.1992 by [redacted] in Title Suit no.77/1982 dismissing the suit. Therefore, prayed that Title Appeal may be pleased to admit and set aside the impugned judgment and decree passed by the learned Court in T.S. no.77/1982.

2. The appellants' / plaintiffs' case, in brief, is that the lands of khata no.261 of village Kadma no.2 was originally recorded as "Bakast Lagan Panewala" and late Latu Teli, the grandfather of the plaintiffs was the Lagan Panewala who was in possession of the same. After his death, his son late Jodhi Teli and after hid death his sons, the plaintiffs came in possession of the said lands with the knowledge of the whole world. The father and grandfather of defendant nos.4 to 13 were landlords of village, so, Latu Teli

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took the land as Thika from the ex-landlord and was in peaceful cultivating possession over the same. In the year 1935, the father of the defendant nos.1 to 3 late Bal Mukund Sahay filed a T.S. no.74/35 in the Court of Munsif, Hazaribag against the father of the plaintiffs and defendant nos.4 to 13 which was later on withdrawn by the plaintiff with permission to file a suit afresh. Again the said Bal Mukund Sahay filed T.S. no.97/36 against the same defendants for partition of the lands of khata no.261 of village Kadma in which a compromise petition was filed on 22.07.1937 by late Balmukund Sahay, father of defendant nos.1 to 3 and Jodhi Teli, father of the present plaintiffs and other defendants had not joined in the compromise petition. In the said compromise petition, both parties had agreed that

3. ***"Agar mudalay no.1 Jodhi Teli mo.84 chourasi rupya kewal mah august 3 sambat 1994 sal mudai ko adai kar dega tab mudai zameen se nalsi ka dawi wahak mudqlay no.1 chhor dega. Wo agar mudalay no.1, 83 rupya kewal aghan wadi 3 sambat 1994 sal mudai ko adai nahin karega tab zameen hasab plot jot pasil jeth ke under 2/3 hissa ko degree wahak mudai ke degree hogi wo mudai wad commissioner ke batwara kar lenge."***

4. Jodhi Teli paid the compromised amount of Rs.84/- to the plaintiffs of that suit i.e. late Balmukund Sahay who granted a receipt in token of receipt of the amount and after that Jodhi Teli died in the year 1937. As the plaintiffs were minor at the time of their father's death, they had nc knowledge about all these facts. Further case of the plaintiffs is that after the death of Jodhi Teli, in the year 1937, late Balmukund Sahay who was plaintiff in T.S. no.97/36 filed a petition for partitioning the land and for preparation of final decree knowing the fact that Jodhi Teli died and his sons are minors. The plaintiffs still in peaceful possession of the lands, but the defendant nos.1 to 3 in the last year began to create trouble to the present plaintiffs for which a proceeding u/s 144 Cr.P.C. was started in the Court of S.D.J.M., Sadar, which was decided against the plaintiffs on 26.03.1982, but the said order u/s 144 Cr.P.C. is not binding on the plaintiffs as they are in peaceful cultivating possession over the same. The defendants had or have no right, title, interest or possession over the suit property, but they only want to grab the peaceful cultivating possession over the plaintiffs. Hence, this

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suit.

5. On the other hand, defendant nos.1 to 3 appeared and filed their written statement alleging therein that the suit has been filed on false, frivolous and baseless grounds with ulterior and dishonest intention to grab the lands from lawful possession of these defendants. The suit as framed is not maintainable, is bad for non-joinder and mis-joinder of parties, is bad for non-joinder and mis-joinder of causes of actions and multifariousness and is also barred by law of res-judicata. The lands of khata no.261 along-with other were the bakast lands of Maliks of Khewat no.7 belongling to Manmohan Mukherjee, Kishori Mohan Mukherjee, Punya Mohan Mukherjee, having one share and Satyapada Mukherjee one share, Hare Krishna Mukherjee and Hare Ram Mukherjee together one share. During survey and settlement operation 3.91 acres had been given to Lalwa Teli on thika for a period of some years till 1981 sambat, so, these lands were recorded under khata no.261 in the name of Lalwa Teli and he was in possession as thikadar till 1981 sambat only and after the expiry of the thika, the lands were resumed by the landlord Mukherjee brothers. The allegations of the plaintiffs that grandfather of the plaintiffs remained in possession till his life time and after him his son Jodhi Teli and after his death, the plaintiffs came in possession is false. The grandfather of the plaintiffs, i.e. Lalu Teli was in possession for a limited period till 1981 sambat as thikedar and thereafter he had no connection with the lands. On 24.08.1933 Satyadeo Mukherjee settled in raiyat his 1/3rd share and interest of the lands of khata no.261 in favour of Balmukund Sahay through a registered settlement patta and put him in possession. Later on Hare Krishna Mukherjee and Hare Ram Mukherjee also settled their 1/3rd share and interest to the same Balmukund Sahay through a Hukumnama dated 01.07.1934 and Balmukund Sahay executed a registered kabuliyat on 24.07.1934 in accepteance of raiyati settlement and came in possession over the 2/3rd share of khata no.261. Due to disturbance made by the father of the plaintiffs, late Balmukund Sahay filed T.S. no.74/35 which was subsequently withdrawn and a fresh T.S. no.97/36 was filed by late Balmukund Sahay for declaration of his title and partition of his share to the extent of 2/3rd against Jodhi Teli and others. These defendants have admitted that the said T.S. no.97/36 was compromised with a condition that if the defendant no.1 Jodhi Teli would

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pay a sum of Rs.84/- to the plaintiff Balmukund Sahay on or before Aghan Badi 3 sambat 1944 sal (i.e. 21.11.1937), the plaintiff would not press for final decree and if not paid within the stipulated time, the plaintiff was free to proceed for final decree. Due to failure in payment of compromised money the plaintiff of that suit got the final decree prepared and since then he continued in cultivating possession of the lands allotted to his separate share and paid rent to the landlords and got receipts and after vesting to the State of Bihar and got rent receipts from the Government. Balmukund Sahay executed a registered sale deed on 06.07.1964 in their favour and delivered possession of the lands to these defendants. The purchasers are necessary parties to the suit. Further contention of these defendants is that Jodhi Teli did not pay Rs.84/- to late Balmukund Sahay the chit for payment of Rs.84/- as pronounced by the plaintiffs is a total forgery manufactured and formed with ulterior purpose to litigate with these defendants. Plaintiffs were not minor at the time of their father's death as Jodhi Teli died in the year 1957. In the year 1938 Jodhi Teli was alive and had filed a petition after appointment of Pleader Commissioner and a Misc. Case was registered and he made statement in Court in 1938 and in which he never said that he paid the amount of Rs.84/- to Balmukund Sahay nor he uttered about the existence of a chit which now plaintiffs allege to play fraud upon the Court. The allegation of the plaintiffs that they are in cultivating possession till today is not correct rather these defendants along-with other purchasers are in possession. There was a proceeding u/s 144 Cr.P.C. between the parties in which the possession of these defendants were declared. The total area of khata no.261 is 3.91 acres out of 2.58 acres as 2/3rd share were allotted to Balmukund Sahay and rest 1.33 acres as 1/3rd share was left out in separate plot. The plaintiffs are paying rent for 1.33 acres whereas the defendants are paying rent for 2.58 acres. The plaintiffs from 1981 at the instance of the enemies of these defendants are creating trouble after manufacturing forged chit showing false payment of Rs.84/- to Balmukund Sahay. In the year 1981 before the L.R.D.C., Hazaribag, the plaintiffs filed a petition for grant of rent receipts in which the Anchal Adhikari submitted a clear report showing the clear possession of these defendants over their lands and after perusing the report of the Anchal Adhikari, the L.R.D.C. ultimately dropped the case of the plaintiffs. According to these defendants, the suit property has not been rightly valued and the suit shall not proceed unless the suit property is

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properly valued and the plaintiffs pay the proper advalorem Court fee thereon. With these contentions the defendants have prayed for dismissal of this suit.

6. On the basis of pleadings of the parties, following issues have been settled :

I. Have the plaintiffs any cause of action for the suit?
II. Is the suit as framed maintainable?
III. Is the suit barred by limitation?
IV. Is the suit properly valued and Court fee paid sufficient?
V. Is the suit bad for non-joinder of necessary parties?
VI. Is the final decree of Partition Suit no.96/66 legal, valid and binding on the plaintiffs?
VII. Are the plaintiffs entitled to get a decree for declaration of their raiyati title over the suit land?
VIII. To what other relief or reliefs, if any, are the plaintiffs entitled to?

FINDINGS

7. On behalf of appellants / plaintiffs altogether fourteen witnesses have been examined, in which P.W.1 Gopal Ram, P.W.2 Bhawani Sao, P.W.3 Mahavir Sao, P.W.4 Raj Kishore Singh, P.W.5 Duli Sah, P.W.6 Baijnath Singh, P.W.7 Ram Sagar Singh, P.W.8 Chaman Ram, P.W.9 Jageshwar Sao, P.W.10 Sarju Sao, P.W.11 Jagdish Prasad Rana, P.W.12 Chowa Narayan Mahtha, P.W.13 Dhan Kumar Jain and P.W.14 Naresh Prasad.

8. Documentary evidences have also been exhibited by the appellants / plaintiffs, which are as follows :

I. Exts.1 to 1/d : Rent receipts
II. Exts.2 to 2/a : Receipt of irrigation
III. Ext.2/b to 2/i : Receipt of irrigation
IV. Ext.3 : Report

Contd.

V. Ext.1/e to 1/h : Rent receipts

VI. Ext.4 : Chirkut

VII. Exts.5 & 5/a : Parchas

VIII. Ext.6 : Choukidari receipts

IX. Ext.7 : Sale deed

X. Ext.8 : Agreement

XI. Ext.9 : Expert's report

XII. Ext.10 : Sale deed

XIII. Ext.11 : Copy of plaint of T.S. no.97/36

XIV. Ext.12 : Copy of order-sheet

XV. Ext.12/A : Order-sheet of P.S. no.74/35

XVI. Ext.13 : W.S. of T.S. no.77/82

XVII. Ext.14 : Certified copy of deposition of G.R. no.2567/82

XVIII. Ext.15 : Certified copy of khatian

9. On behalf of respondents/defendants, twenty six witnesses have been examined, in which D.W.1 Kedarnath Sahay, D.W.2 Mosahib Lal, D.W.3 Ramjeewan Lal, D.W.4 Jeetan Mian, D.W.5 Anant Prasad, D.W.6 Raghunandan Prasad, D.W.7 Chandra Kishore Prasad, D.W.8 Murlidhar Singh, D.W.9 Birender Singh, D.W.10 Mahavir Sao, D.W.11 Kapildeo Prasad, D.W.12 Mahabir Prasad, D.W.13 Kanhaiya Lal, D.W.14 Matukdhari Lal, D.W.15 Mahadeo Prasad, D.W.16 Ram Jatan Ram, D.W.17 Ram Tahal Ram, D.W.18 Parasnath Sahay, D.W.19 Nishith Kumar Mukherjee, D.W.20 Kishori Mohan Prasad, D.W.21 Mul Chand Ram, D.W.22 Dwarika Nath Poddar, D.W.23 Prakash Chandra Rama & D.W.24 Chandra Shekhan Jaurihar, D.W.25 Sunny Johanes Tigga, D.W.26 Ram Sewak Lal.

10. Documentary evidences have also been exhibited by the respondents / defendants, which are as follows :

I. Exts.A to A/8 : Rent receipts

II. Exts.A/9 & A/10 : Rent receipts

III. Exts.B to B/3 : Parchas

IV. Ext.C : Sale deed

V. Exts.A/11 to A/29 : Rent receipts

Contd.

VI. Exts.C to C/5 : Sale deeds

VII. Ext.A/25 to A/27 : Rent receipts

VIII. Exts.B/4 to B/9 : Parcha

IX. Exts.D to D/2 : Negative

X. Exts.E to E/2 : Negative

XI. Ext.F : Expert report

XII. Ext.G : W.S. of T.S. no.97/36

XIII. Ext.H : Compromise petition

XIV. Ext.I : Entry in suit register

XV. Ext.J : Final Decree

XVI. Ext.K : C.C. of order-sheet

XVII. Ext.L : C.C. of order-sheet

XVIII. Ext.M : C.C. of order-sheet

XIX. Ext.N : C.C. of khewat

11. Heard learned lawyers on behalf of both sides.

12. Learned lawyer on behalf of the appellant submitted that the lower Court wrongly appreciated the oral and documentary evidence and wrongly passed the judgment. Further submitted that the lower Court wrongly decided the suit on 12th April,1988 and dismissed the case. After hearing both sides, set aside the judgment dated 12th April,1988 and ordered that fresh judgment declared after due consideration. Lower Court again committed mistake and dismissed the T.S. no.77/82 on 29.04.1992. Plaintiffs / appellants press Ext.4 chirkut dated 10.07.1937 and submitted that the lower Court has ignored Ext.4 as well as Ext.15, in which the name of plaintiffs' ancestor clearly endorsed. Further submitted that the lower Court submitted that the lower Court on the basis of Commissioner report wrongly prepared final decree and execution is also completed in the absence of plaintiffs and prayed that Title Appeal may be admitted and judgment and decree passed by the lower Court may be set aside.

13. On behalf of respondents / defendants learned lawyer submitted that Ext.4 filed on behalf of the plaintiffs is a forged and fabricated and submitted that Ext.M the order-sheets of T.S. no.97/36 dated 03.01.1938, 06.01.1938 & 08.01.1938 clearly show that extension petition dated

Contd.

03.01.1938 filed by the defendant no.1 destroyed and disposed of vide order-sheet dated 03.01.1938 to 08.01.1938. So, the lower Court rightly passed the order according to law and prayed that T.A. no. [redacted] may be dismissed with cost.

14. After hearing, in detail, on behalf of both sides, Appellate Court perused the records minutely and found that the lower Court properly appreciated the oral and documentary evidences and according to law passed the judgment and the decree. Appellate Court found no illegality in the impugned judgment passed by the lower Court. So, in the ends of justice, there is no need to interference in the passed judgment and decree. In the light of above discussion, following order is passed :

ORDER

15. In the impugned judgment dated 29.02.1992 & decree dated 29.03.1992 passed by [redacted] in Title Suit no. [redacted], there is no need to interference. Accordingly, Title Appeal no. [redacted] is hereby dismissed without cost. Consequently the judgment dated 29.02.1992 & decree dated 29.03.1992 is hereby confirmed.

Dictated &
corrected by me

[redacted]
25.04.2015

[redacted]
District Judge [redacted]
25.04.2015

PART II

COGNIZANCE

1. Meaning

Word cognizance has not been defined under the code, but in legal parlance it is used in the code to indicate the point when the Magistrate or Judge takes judicial notice of an offence. According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance it means taking notice of. It merely means recognition, perception, realization, to become aware of and in reference to code it connotes to take notice judicially. The question is germane because from it flows legal consequences which may lead to legal rights and liabilities. Further, a trial court is invested with specific powers to be exercised at the pre-cognizance and post-cognizance stages. This calls for a conceptual clarity as to what do we mean by the expression ***'cognizance of offence'*** and when can the magistrate be said to have taken cognizance in a particular case.

Cognizance is defined in Wharton's Law Lexicon 14th Edn., at page 209. It reads: *"Cognizance (Judicial), knowledge upon which a judge is bound to act without having it proved in evidence: as the public statutes of the realm, the ancient history of the realm, the order and course of proceedings in Parliament, the privileges of the House of Commons, the existence of war with a foreign State, the several seals of the King, the Supreme Court and its jurisdiction, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries."*

Chapter XIV of the CrPC which begins with section 190 deals with the cognizance of offence by magistrates. Criminal proceedings in the Courts are initiated by taking cognizance of the offences and criminal proceedings strictu sensu are not in fact initiated until the cognizance of the offence is taken. Therefore, mere presentation of a police report under section 173 CrPC or mere presentation of a complaint under section 200 by a private individual does not constitute the institution of criminal proceeding.

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.

Section 190 Cr.P.C. enumerates the specific ways in which a cognizance can be taken. Law is well settled that Magistrate is not bound by the Police report and he may exercise independent discretion in the matter while taking cognizance. Taking cognizance is not the same thing as the initiation of proceeding because cognizance is taken of the offence and not of the persons. It is for the reason that even where the offenders are not known, a magistrate can take cognizance of the offence. The stage at which the cognizance is taken on the basis of a complaint and that on the basis of a police report is different. While in a police case the court has the advantage of the police report which is submitted after investigation along with the case diary, and therefore, on prima facie case being made out there will not be any difficulty in taking cognizance under section 190 (1) (b) after submission of the police report.

Before it can be said that any Magistrate has taken cognizance of any offence under section 190 (1) (a) Cr.P.C. he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of Chapter XV of Cr.P.C. under section 200 and 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this chapter, but for taking actions of some other kind e.g. investigation under section 156(3), for issuing a search warrant for the purpose of the investigation he cannot be said to have taken cognizance in the matter. The power exercised under Section 156(3) is normally exercised at the pre-cognizance stage and can also be exercised at post-cognizance stage for the limited purpose of directing further investigation, as per the ratio of the judgment rendered in Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Another, 2019 SCC OnLine SC 1346, whereas the power under Section 202 Cr.P.C can be exercised only at the post-cognizance stage.

In complaint case, where the complaint petition is laid before the court the Magistrate has to take the decision as to whether he has to get the complaint case instituted as FIR and investigation be conducted by the police under section 156(3), or it has to proceed forward and hold inquiry after recording the statement of the complainant under section 200 Cr.P.C. Once the Magistrate decides to get it instituted as a police case the cognizance can be taken only after conclusion of the investigation and on submission of chargesheet. On the other hand if he decides to proceed with the inquiry it can be said that cognizance has already been taken by him.

In **Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654** it has been held taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as the magistrate applies his mind to the suspected commission of the offence. It means cognizance of an offence and not of an offender. In **Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492** it was held that before it can be said that any magistrate has taken cognizance of an offence under section 190(1)(a) he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter. When, however, the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of the Chapter but for taking action of some other kind as for example ordering investigation under section 156(3) CrPC or for issuing a search warrant for investigation, he cannot be said to have taken cognizance of the matter.

MONA PANWAR V. HIGH COURT OF JUDICATURE OF ALLAHABAD, (2011) 3 SCC 496

"19. The phrase "taking cognizance of" means cognizance of an offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section 190(1)(a) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that section. However, when the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence."

2. WHETHER CLAUSES (A), (B) AND (C) OF SECTION 190 (1) OF THE CRPC ARE MUTUALLY EXCLUSIVE?

GAJENDRA SWAROOP V. BALESHWAR PRASAD, AIR 1988 PAT 15 (FB)

In this case, on the 15th of July, 1978 the complainant opposite party filed a written petition before the Officer-in-charge of Deoghar police station alleging the commission of substantive offences vide annexure 1 to the petition. The police authorities, however, after inquiry, recommended the initiation of proceeding under Section 107 of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as the 'Code') which was initiated against both the parties and ultimately the said proceeding was dropped after the lapse of a period of six months. The complainant opposite party then filed a complaint petition on the 22nd of August, 1976 before the Additional Chief Judicial Magistrate, Deoghar (vide annexure 2) who sent it to the Officer-in-charge of Deoghar Police station for investigation. The police submitted a report (vide annexure 4) on the 31st October, 1978 holding that an offence under Section 500 of the Penal Code, 1860 alone had been made out. The complainant opposite party thereafter filed a protest petition on the 2nd of April, 1979 (Annexure 5) before the Additional Chief Judicial Magistrate praying that the same be treated as a complaint. The court examined the complainant on solemn affirmation on the 21st of May, 1979 and also examined four other witnesses named in the complaint petition. Thereafter, by the impugned order (annexure 6) dated the 28th of July, 1979, the learned Magistrate took cognizance of offences under Sections 307 and 500 of the Penal Code, 1860 and issued process by way of warrant of arrest against the petitioner. The learned Magistrate (vide the impugned order — annexure 6) recorded that he had perused the statement and also affirmation of the complainant and the statement of his four witnesses and by way of further assurance also referred to the statement in writing filed by the complainant in the police station. From the above pieces of evidence, he prima facie found the commission of offence under Sections 307 and 500 of the Penal Code, 1860 and retained the case on his own file.

The Hon'ble Court, for the determination of the issues involved in the case formulated the following questions:-

(i) Whether Clauses (a), (b) and (c) of Sub-section (1) of Section 190 of the Code of Criminal Procedure, 1973 pertaining to the cognizance of offences by the Magistrate under the said Section are mutually exclusive?

(ii) Whether the issue of process against the accused under Section 20A after cognizance by the Magistrate under Section 190 is identical with, and consequently shackled by the specific, requirements mandated by Section 203 of the Code for the dismissal of a complaint ?

The Full Bench of the Patna Court held as follows :-

"11. It is in the light of the above that one has to see the width with which the power to take cognizance of offences by Magistrate has been couched in the three clauses (a), (b) and (c) of Section 190(1). It nowhere follows from the language that these three clauses are mutually exclusive and hermetically sealed from each other. It is perhaps significant to note that the three clauses are not divided by the word "or" from each other. In the well known case of R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 : (AIR 1984 SC 684), their Lordships elaborated the four methods of taking cognizance of an offence. That these, are not mutually exclusive indeed seems manifest both from the language of Section 190 and equally from precedent. There appears no legal mandate whatsoever that cognizance must be taken either under clause (a) or clause (b) or clause (c) separately and that they do not intermingle or overlap each other. Yet again in AIR 1968 SC 117 (Abhinandan Jha v. Dinesh Mishra) their Lordships clearly held that even in the case of a police report under

Section 190(1)(b) although the Magistrate cannot direct the filing of a charge-sheet, he can nevertheless take cognizance under Section 190(1)(c). It is thus plain that on high authority clauses (b) and (c) may overlap and on parity of reasoning there can possibly be no legal bar with regard to clauses (a) and (b) or (a) and (c). It thus seems manifest that at least for the purposes of taking cognizance there is no watertight compartmentalisation of the said clauses under which a Magistrate may choose to issue process. Therefore, any hermetic sealing or compartmentalisation of causes (a), (b) and (c) of sub-section (1) of Section 190 and holding that these are mutually exclusive is neither justified on principle nor on authority. To conclude on this aspect, the answer to question No. (i) framed at the outset is rendered in the negative and it is held that clauses (a), (b) and (c) of sub-section (1) of Section 190 of the Code of Criminal Procedure, 1973 pertaining to cognizance of offences by the Magistrate under the said section are in no way mutually exclusive."

3. COGNIZANCE ON A COMPLAINT AND POWER TO ORDER INVESTIGATION

TULA RAM V. KISHORE SINGH, (1977) 4 SCC 459

"**2.** Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above."

Power of the Magistrate under Section 156(3) CrPC

ANJU CHAUDHARY V. STATE OF U.P., (2013) 6 SCC 384

"**37.** Investigation into commission of a crime can be commenced by two different modes: first, where the police officer registers an FIR in relation to commission of a cognizable offence and commences investigation in terms of Chapter XII of the Code; the other is when a Magistrate competent to take cognizance in terms of Section 190 may order an investigation into commission of a crime as per the provisions of that Chapter XIV. Section 156 primarily deals with the powers of a police officer to investigate a cognizable case. While dealing with the application or passing an order under Section 156(3), the Magistrate does not take cognizance of an offence. When the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the said purpose, he is not said to have taken cognizance. It is an order in the nature of a pre-emptory reminder or intimation to the police to exercise its primary duty and power of investigation in terms of Section 151 of the Code. Such an investigation embraces the continuity of the process which begins with collection of evidence under Section

156 and ends with the final report either under Section 159 or submission of charge-sheet under Section 173 of the Code. (Refer to Mona Panwar v. High Court of Judicature of Allahabad [(2011) 3 SCC 496 : (2011) 1 SCC (Cri) 1181] .)

38. In Dilawar Singh v. State of Delhi [(2007) 12 SCC 641 : (2008) 3 SCC (Cri) 330 : (2007) 9 SCR 695] , this Court as well stated the principle that investigation beginning in furtherance of an order under Section 156(3) is not anyway different from the kind of investigation commenced in terms of Section 156(1). They both terminate with filing of a report under Section 173 of the Code. The Court signified the point that when a Magistrate orders investigation under Chapter XII he does so before taking cognizance of an offence. The Court in para 18 of the judgment held as under: (SCC p. 647)

"18. … '11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.' [Ed.: As observed in Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627, p. 631, para 11 : (2006) 1 SCC (Cri) 460.] "

39. Caution in this process had been introduced by this Court vide its judgment in Tula Ram v. Kishore Singh [(1977) 4 SCC 459 : 1977 SCC (Cri) 621] (SCC p. 463, para 9) wherein it was held that the Magistrate can order the police to investigate the complaint, but it has no power to compel the police to submit a charge-sheet on a final report being submitted by the police.

SOME INSTANCES WHERE THE POWER UNDER SECTION 156(3) AND SECTION 202 CRPC CAN BE EXERCISED

Once the complaint is filed before the Magistrate, then depending upon the nature of the offence, the Magistrate has the discretion to either proceed with inquiry or to send it for investigation u8nder Section 156(3) of the CrPC to the Police for the registration of FIR and for proceeding with the investigation. The Magistrate does have the power to exercise his discretion to send a case for investigation or to keep the file for inquiry but there is no definite guidelines for the exercise of this discretion. The Magistrate is often caught on the horns of the dilemma when a motivated complaint especially against a public servant. There are instances where false complain cases are filed as a counter-blast to the police complaints. To proceed simply in such matters in such cases, saddles the victim with a criminal case in the form of complaint. What should be the proper approach in such cases?

There is no direct authority on this point but a note of caution has been sounded in several cases by the Hon'ble Supreme Court especially in Priyanka Srivastava and Another v. State of Uttar Pradesh and Others, (2015) 6 SCC 287.

In the light of the above discussion, the following options can be considered by the Court:-

- Where a Complaint Case been filed as a counter-blast to a Police Case, normally it should also be sent to the Police.
- In heinous offences which are triable by Sessions Court, like Sections 302, 307, 376, which require Police Investigation, or medical evidences, they should be referred for investigation by the Police

- In cases where, the accusations are made partially or wholly against the Police, they should normally be not referred for investigation by the Police. The Magistrate may, in appropriate cases, after entering into an inquiry may ask the District Magistrate or an Executive Magistrate or any other Public Servant to inquire and report in relation to a particular matter in issue in such cases. Such provision is available under the provisions contained in Section 202 of the CrPC.

WHETHER RECORDING OF REASONS IN ORDERS DIRECTING FOR INVESTIGATION UNDER SECTION 156 (3) IS NECESSARY?

Priyanka Srivastava and Another v. State of Uttar Pradesh and Others, (2015) 6 SCC 287

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

WHETHER APPLICATION FOR AN ORDER UNDER SECTION 156(3) NEEDS TO BE SUPPORTED BY AN AFFIDAVIT?

It was held in the same judgment in the following terms:-

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

WHETHER THE APPLICANT NEEDS TO EXHAUST HIS REMEDIES UNDER SECTION 154(1) AND 154(3) BEFORE FILING AN APPLICATION FOR AN ORDER UNDER SECTION 156 (3)?

The court held further in the same judgment :-

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/ family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

WHAT IS THE DIFFERENCE BETWEEN AN ORDER FOR INVESTIGATION UNDER SECTION 156(3) AND AN ORDER FOR INVESTIGATION UNDER SECTION 202 OF THE CRPC?

D. Lakshminarayana Reddy and Others v. V. Narayana Reddy and Others, (1976) 3 SCC 252

17. Section 156(3) occurs in Chapter XII, under the caption : "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading: "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

WHETHER, AFTER A CHARGE-SHEET IS FILED BY THE POLICE, THE MAGISTRATE HAS THE POWER TO ORDER INVESTIGATION UNDER SECTION 156 (3), AND IF SO, UP TO WHAT STAGE OF A CRIMINAL PROCEEDING?

Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Another, 2019 SCC OnLine SC 1346

The matter came up for discussion before the Hon'ble Supreme Court of India in Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Another, 2019 SCC OnLine SC 1346 and the Court referred to Para 17 of the judgment rendered in Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252 which may be quoted for easy reference

17. Section 156(3) occurs in Chapter XII, under the caption : "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading: "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under subsection (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous

process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him and held that the same cannot be relied upon for the following reason:-

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31. Section 2(h) is not noticed by the aforesaid judgment at all, resulting in the erroneous finding in law that the power under Section 156(3) can only be exercised at the pre-cognizance stage. The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun. For these reasons, the statement of the law contained in paragraph 17 in Devarapalli Lakshminarayana Reddy (supra) cannot be relied upon.

Regarding the power of Magistrate to order investigation under section 156(3) of the CrPC in post-cognizance stage, the Hon'ble Court held as follows :-

16. The statutory scheme contained in the CrPC therefore puts "inquiry" and "trial" in water-tight compartments, as the very definition of "inquiry" demonstrates. "Investigation" is for the purpose of collecting evidence by a police officer, and otherwise by any person authorised by a Magistrate in this behalf, and also pertains to a stage before the trial commences. Investigation which ultimately leads to a police report under the CrPC is an investigation conducted by the police, and may be ordered in an inquiry made by the Magistrate himself in "complaint" cases.

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18. What is interesting to note is that the narrow view of some of the High Courts had placed a hindrance in the way of the investigating agency, which can be very unfair to the prosecution as well as the accused.

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22. With the introduction of Section 173(8) in the CrPC, the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Quite obviously, this power continues until the trial can be said to commence in a criminal case. The vexed question before us is as to whether the Magistrate can order further investigation after a police report has been forwarded to him under Section 173.

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27. It is thus clear that the Magistrate's power under Section 156(3) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the "investigation" referred to in Section 156(1)

of the CrPC would, as per the definition of "investigation" under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC.

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30. Whereas it is true that Section 156(3) remains unchanged even after the 1973 Code has been brought into force, yet the 1973 Code has one very important addition, namely, Section 173(8), which did not exist under the 1898 Code. As we have noticed earlier in this judgment, Section 2(h) of the 1973 Criminal Procedure Code defines "investigation" in the same terms as the earlier definition contained in Section 2(l) of the 1898 Criminal Procedure Code with this difference - that "investigation" after the 1973 Code has come into force will now include all the proceedings under the CrPC for collection of evidence conducted by a police officer. "All" would clearly include proceedings under Section 173(8) as well. Thus, when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h).

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40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct "reinvestigation" or "fresh investigation" (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct "further investigation" after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three-Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue "further investigation" and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."

WHETHER THE MAGISTRATE CAN EXERCISE THE POWER UNDER SECTION 156 (3) SUO MOTU?

The Hon'ble Court overruled the judgments rendered in ***Amrutbhai Shambubhai Patel***

v. Sumanbhai Kantibai Patel[1] *, Athul Rao v. State of Karnataka*[2]*, Bikash Ranjan Rout v. State through the Secretary (Home), Government of NCT of Delhi*[3]*, Randhir Singh Rana v. State (Delhi Administration)*[4]*, and in Reeta Nag v. State of*[5] *West Bengal*[6], and held as follows :-

49. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration), (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal, (2009) 9 SCC 129 also stand overruled.

4. COGNIZANCE ON POLICE REPORT

VISHNU KUMAR TIWARI V. STATE OF UTTAR PRADESH, (2019) 8 SCC 27

Whether the Magistrate is bound by the conclusions drawn by the Police after investigation, particularly when he had ordered an investigation under Section 156(3) on the basis of a complaint?

The Hon'ble Court relied on the judgments rendered in Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117 and in H.S. Bhains v. State (UT of Chandigarh), (1980) 4 SCC 631 and held as follows : -

17. This Court in the course of its judgment in H.S. Bains [H.S. Bains v. State (UT of Chandigarh), (1980) 4 SCC 631 : 1981 SCC (Cri) 93] , held as follows: (SCC pp. 634-35, para 6)

1 (2017) 4 SCC 177.
2 (2018) 14 SCC 298.
3 (2019) 5 SCC 542.
4 (1997) 1 SCC 361 .
5 (2009) 9 SCC 129.

> **"6.** It is seen from the provisions to which we have referred in the preceding paragraphs that 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 for proceeding 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 he 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 investigate 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 straight away 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 conclusions 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. The Magistrate after receiving the police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Section 200, Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Section 156(3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. **Thus, a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."**
>
> **18. Thus, when he proceeds to take action by way of cognizance by disagreeing with the conclusions arrived at in the police report, he would be taking cognizance on the basis of the police report and not on the complaint. And, therefore, the question of examining the complainant or his witnesses under Section 200 of the Code would not arise. This was the view clearly enunciated.** (emphasis supplied)

Whether the Magistrate is bound to treat a protest petition as a complaint for taking cognizance?

42. In the facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section

161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the procedure prescribed under Sections 200 and 202 of the Code if the latter section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the investigating officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

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46. If a protest petition fulfils the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or is liable to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections of the second respondent against the final report.

5. ISSUANCE OF PROCESS ON POLICE REPORT AFTER TALKING COGNIZANCE

STATE OF GUJARAT V. AFROZ MOHAMMED HASANFATTA, 2019 SCC ONLINE SC 132

Whether the Magistrate is required to record reasons before issuing process in cases instituted on Police Report?

24. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 Cr.P.C. is not the same at the time of framing the charge. For issuance of summons under Section 204 Cr.P.C., the expression used is *"there is sufficient ground for proceeding….."*; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is *"there is ground for presuming that the accused has committed an offence….."*. At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 Cr.P.C.

25. In so far as taking cognizance based on the police report, the Magistrate has the advantage of the charge sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating Officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance

with the rules of investigation. Evidence and materials so collected are sifted at the level of the Investigating Officer and thereafter, charge sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1) (b) Cr.P.C., where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge sheet is barred by law or where there is lack of jurisdiction or when the charge sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge sheet and for not taking on file. In the present case, cognizance of the offence has been taken by taking into consideration the charge sheet filed by the police for the offence under Sections 420, 465, 467, 468, 471, 477A and 120B IPC, the order for issuance of process without explicitly recording reasons for its satisfaction for issue of process does not suffer from any illegality.

Whether revision under Section 397(2) Cr.P.C. against order of issue of process is maintainable?

The Hon'ble Court referred to the judgments rendered in ***Urmila Devi v. Yudhvir Singh***, (2013) 15 SCC 624 and in ***K.K. Patel v. State of Gujarat***, (2000) 6 SCC 195 and held in affarmative as follows :-

28. After referring to various judgments, in Urmila Devi, this Court summarised the conclusion as under:—

> **"21.** Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in *Rajendra Kumar Sitaram Pande v. Uttam Singh*, (1999) 3 SCC 134 as well as the decision in *K.K. Patel v. State of Gujarat*, (2000) 6 SCC 195, it will be in order to state and declare the legal position as under:
>
> **21.1.** The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 CrPC would be an order of intermediatory or quasi-final in nature and not interlocutory in nature.
>
> **21.2.** Since the said position viz. such an order is intermediatory order or quasi-final order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party.
>
> **21.3.** Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Sections 200 to 204 CrPC, can always be subject-matter of challenge under the inherent jurisdiction of the High Court under Section 482 CrPC.
>
> ……..
>
> **23.** Therefore, the position has now come to rest to the effect that the revisional jurisdiction under Section 397 CrPC is available to the aggrieved party in challenging the order of the Magistrate, directing issuance of summons."

Whether a Magistrate after accepting a negative final report submitted by the Police can take action on the basis of the protest petition filed by the complainant/ first informant?

6. If we are to go back to trace the genesis of the views expressed by this Court in Gopal Vijay Verma [Gopal Vijay Verma v. Bhuneshwar Prasad Sinha, (1982) 3 SCC 510 : 1983 SCC (Cri) 110] , notice must be had of the decision of this Court in H.S. Bains v. State (UT of Chandigarh) [(1980) 4 SCC 631 : 1981 SCC (Cri) 93 : 1980 Cri LJ 1308] wherein it was held that after receipt of the police report under Section 173, the Magistrate has three options: (H.S. Bains case [(1980) 4 SCC 631 : 1981 SCC (Cri) 93 : 1980 Cri LJ 1308], SCC p. 635, para 6)

> "**6.** … (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

The second and third options available to the Magistrate as laid down in H.S. Bains [(1980) 4 SCC 631 : 1981 SCC (Cri) 93 : 1980 Cri LJ 1308] have been referred to and relied upon in subsequent decisions of this Court to approve the action of the Magistrate in accepting the final report and at the same time in proceeding to treat either the police report or the initial complaint as the basis for further action/enquiry in the matter of the allegations levelled therein. Reference in this regard may be made to the decision of this Court in Gangadhar Janardan Mhatre v. State of Maharashtra [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] . The following view may be specifically noted: (SCC pp. 773-74, para 9)

> "**9.** … The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132 : 1989 SCC (Cri) 306] (SCC p. 140, para 16).]"

7. The view expressed by this Court in Gopal Vijay Verma [Gopal Vijay Verma v. Bhuneshwar Prasad Sinha, (1982) 3 SCC 510 : 1983 SCC (Cri) 110] has been followed in Mahesh Chand v. B. Janardhan Reddy [(2003) 1 SCC 734 : 2003 SCC (Cri) 425] and also in a somewhat recent pronouncement in Kishore Kumar Gyanchandani v. G.D. Mehrotra [(2011) 15 SCC 513 : (2012) 4 SCC (Cri) 633] . The clear exposition of law in para 12 of Mahesh Chand [(2003) 1 SCC 734 : 2003 SCC (Cri) 425] which is extracted below would leave no manner of doubt that the answer to the question posed by the High Court is correct.

> "**12.** There cannot be any doubt or dispute that only because the Magistrate has accepted a final report, the same by itself would not stand in his way to take cognizance of the offence on a protest/complaint petition; but the question which is required to be posed and answered would be as to under what circumstances the said power can be exercised."

8. In the present case, the contention advanced on behalf of the accused pertained to the question of jurisdiction alone; it was urged that having accepted the final report the learned Magistrate

had become "functus officio" and was denuded of all power to proceed in the matter. The above stand taken and the answer provided by the High Court would not require us to consider the circumstances in which the exercise of power was made.

6. HOW DOES TAKING OF COGNIZANCE' BY A MAGISTRATE ON THE BASIS OF A 'COMPLAINT' DIFFER FROM TAKING OF 'COGNIZANCE' ON THE BASIS OF A 'POLICE REPORT'?

JAMES SEBASTIAN V. STATE OF ASSAM, 2008 SCC ONLINE GAU 80

Relying on the judgments[7] of the Hon'ble Supreme Court, the Hon'ble Gauhati High Court summarized the position in James Sebastian v. State of Assam, 2008 SCC OnLine Gau 80 as follows :-

41. What surfaces from the above discussion is that the process of taking of 'cognizance' under clause (a) of section 190, (i.e., upon receipt of a complaint of facts, which constitute such offence) is distinct and different form the manner in which 'cognizance' is taken under clause (b) of sub-section (1) of section 190, i.e., upon a police report of such facts. Taking of cognizance in the case of a 'complaint, implies application of mind by a Magistrate to the contents of the 'complaint' in order to decide as to whether the 'complaint' discloses, commission of offence(s) and whether he shall proceed to examine the complainant and his witnesses, if any, present and, upon such consideration, when he examines the complainant, he can be safely held to have taken 'cognizance', for, he could not have examined the complainant, under section 200, without taking 'cognizance'. On the other hand, taking of cognizance', on the basis of a 'police report' submitted under section 173(2), implies application of mind by a Magistrate to the contents of such a 'police report' to determine if there are materials reflecting commission of offence(s), which he is competent to try or commit, for trial, and, upon such consideration, when he decides to issue process, he can be safely held to have taken 'cognizance', for, he could not have issued process without taking 'cognizance. It is for this reason that in Tula Ram v. Kishore Singh, 1978 Cri. LJ 8 (SC), the Apex Court has held that when a Magistrate initially applies his mind to the contents of a complaint, becomes conscious and aware of the allegations made therein and decide to examine the validity of the said complaint by examining the complainant, he can be said to have taken 'cognizance'.

7. ORDER TAKING COGNIZANCE AND ORDER FOR THE ISSUANCE OF PROCESS

STATE OF KARNATAKA V. PASTOR P. RAJU, (2006) 6 SCC 728

Whether taking cognizance of an offence is the same thing as issuance of process?

13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.

SUNIL BHARTI MITTAL V. CENTRAL BUREAU OF INVESTIGATION, (2015) 4 SCC 609

Difference between "cognizance of an offence" and "prosecution of an offender" in light of Section 190 and Section 204 of the CrPC

7 R.R. Chari v. The State of Uttar Pradesh, (1951) SCR 312; Devarapalli Lakshminarayana Redely v. Narayana Reddy, (1976) 3 SCC 252; Tula Ram v. Kishore Singh, 1978 Cri. LJ 8 (SC).

48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

49. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

50. Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (see SWIL Ltd. v. State of Delhi [(2001) 6 SCC 670 : 2001 SCC (Cri) 1205]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (see Union of India v. Prakash P. Hinduja [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

AMRESH KUMAR DHIRAJ AND OTHERS V. STATE OF JHARKHAND AND ANOTHER (CRMP NO. 2744/2013) – JHARKHAND HIGH COURT

In this case, the Hon'ble High Court differentiated between order taking cognizance and an order for the issuance of process and discussed the considerations that have to be kept in mind by the Magistrates while passing the two orders.

Order taking Cognizance

11. Thus, the word "cognizance" means taking note of the facts, by the Magistrate, which constitute an offence. In the aforesaid judgment the Hon'ble Supreme Court has also held that taking cognizance is thus a sine qua non or condition precedent for holding a valid trial. When a cognizance order is sought to be quashed, the Hon'ble Supreme Court has held that when from bare perusal of the FIR or the complaint an offence is made out then the order taking cognizance

cannot be quashed. This means that the court has to take cognizance of an offence after perusal of the FIR, police papers and charge sheet, if an offence is made out. In a complaint case, if from bare perusal of the complaint an offence is made out, the court has to take cognizance. Thus, it can be said that the court has to apply its mind and come to a conclusion that an offence is made out. If the offence is made out, he has to take cognizance of the offence. Thus, the Hon'ble Supreme Court in the case of "S.K.Sinha, Chief Enforcement Officer" (supra) has held that the cognizance is taken of an offence and not of an offender. It is settled that, cognizance is always taken against offence and not against offender. The offence herein means "any offence." It is not limited to the penal provision mentioned in the FIR or in the complaint only. Since cognizance is taken not against the offender but against offence, it can be said that the order taking cognizance is "offence centric" and not "person centric". Against a person summons/warrants are issued, cognizance is not taken.

12. At the stage of taking cognizance it is only to be seen as to -4- whether any offence is made out or not. At this stage the court is not to go into the merit of the case made out by the police in the charge sheet or in the complaint. Nor at this stage the success of the case is to be weighed by a detail order. The duty of the Magistrate is limited at this stage. It is clear that it is not necessary to pass a detail order giving detail reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind. If the Magistrate after going through the complaint petition and the statements of the other witnesses or after going through the FIR, case diary and charge sheet or the complaint, as the case may be comes to a conclusion that the offence is made out, he is bound to take cognizance of the offence. The order should reflect application of judicial mind to the extent that from the FIR, the case diary or complaint, offence is made out.

Order for the Issuance of Process

13. After taking cognizance the next step which the court has to take is to decide whether to issue process under Section 204 of the Code of Criminal Procedure or not…….

14. Sub-section (1) of Section 204 provides that if in the opinion of a Magistrate, who is taking cognizance, there are sufficient ground for proceeding, then he has to issue summons or warrant in the appropriate case, as envisaged in Section 204(1)(a)(b). Two important phrase in this subsection (1) of Section 204 is (i) "in the opinion of a Magistrate" and (ii) "there is sufficient ground for proceeding". From the reading of the aforesaid section, it is quite clear that if there exists sufficient ground to proceed against the accused, the Magistrate has to form an opinion to that effect and proceed. Proceeding in this contest means issuing summons or warrant in term of sub-section (i)(a) or (i)(b) as the case may be. This proceeding is against a person, i.e. the accused. Thus, this provision of law, i.e. Section 204 Cr.P.C. is a person centric clause, whereas Section 190 Cr.P.C., i.e. taking cognizance, as discussed above, is offence centric.

15. The question is, when can a process under Section 204 Cr.P.C be issued? It does not mean that if cognizance of an offence is taken, the Magistrate has to issue summon against all the named accused persons in the complaint or FIR. This is not what Section 204 Cr.P.C. envisages. As per the provision of Section 204 Cr.P.C. only if there is sufficient ground to proceed, then only the Magistrate has to proceed. As the proceeding is against a person/accused, the Magistrate has to form an opinion that there are sufficient materials against the accused to proceed. There may be situation when from the records it would be evident that there are no sufficient materials to proceed against some of the accused persons, though in general an offence is made out. If this would be the situation, then summons cannot be issued against all the accused, rather it should be issued only against those accused persons against whom there are sufficient materials to proceed.

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22. The order taking cognizance under Section 190 Cr.P.C. and order issuing process under Section 204 Cr.P.C., can very well a composite order but as observed, the application of mind would be different in both cases. This application of mind must be reflected in the order itself. The order should not be mechanical. Magistrate has to mention at least that there are sufficient materials to proceed against the persons and what are the primafacie materials to proceed against them. He need not pass a detail judgment evaluating the materials, which are before him. The detail reasons as to why he is taking cognizance or issuing process are not to be mentioned but at least what are the bare minimum prima-facie materials against the accused petitioners should be mentioned in the order issuing summon and prima facie what offence is alleged, in the order taking cognizance.

SANCTION

The word Sanction finds its origin in sanctio a Latin word . In the civil law it means that part of a law by which a penalty was ordained against those who should violate it. According to Blacks La dictionary in the original sense of the word, a "sanction" is a penalty or punishment provided as a means of enforcing obedience to law. In jurisprudence, a law is said to have a sanction when there is a state which will intervene if it is disobeyed or disregarded. Therefore international law has no legal sanction. In a more general sense, a "sanction" has been defined as a conditional evil annexed to a law to produce obedience to that law; and, in a still wilder sense, a "sanction" means simply an authorization of anything. Sanctions, in law and legal definition, are penalties or other means of enforcement used to provide incentives for obedience with the law, or with rules and regulations. The word may be used to imply "approve of," especially in an official sense. "The law sanctions such behavior" would imply that the behavior spoken of enjoys the specific approval of law. A sanction may be either a permission or a restriction, depending upon context, as the word is an **auto-antonym.**

Criminal laws in India by way of "sanctions" allow for protective discrimination in favour of public officials. Under various laws, sanctions are required to investigate and prosecute public officials. Over the past several years these provisions of law have been revisited by the judiciary and the legislature. Recently the Supreme Court in the Subramanian Swamy Case has suggested the concept of a deemed sanction. We look at the history of the requirement of sanction under criminal laws. Requirement of sanction to *investigate* certain public servants of the union government was introduced through a government notification. The Criminal Procedure Code 1973 and the Prevention of Corruption Act 1988 provide that to *prosecute* a public servant, permission or sanction has to be secured from the government (central or state) for which the official works. Arguments that are often advanced in favour of such sanctions are that these ensure that (a) frivolous and vexatious cases are not filed, (b) public officials are not harassed, and (c) the efficacy of administrative machinery is not tampered with. Further, the requirement of sanction to investigate was also defended by the government before the Supreme Court in certain cases. In Vineet Narain vs. Union of India, (AIR 1998 SC 889) the government had argued that the CBI may not have the requisite expertise to determine whether the evidence was sufficient for filing a *prima facie* case.

It was also argued that the Act instituting the CBI, Delhi Special Police Establishment Act 1946 (DSPE Act), granted the power of superintendence, and therefore direction, of the CBI to the central government. The Court in this case struck down the requirement of sanction to investigate. It held that "supervision" by the government could not extend to control over CBI's investigations. As for prosecution, the Court affixed a time frame of three months to grant sanction. However, there was no clarity on what was to be done if sanction was not granted within such time. Following that judgment, the DSPE Act was amended in 2003, specifically requiring the CBI to secure a sanction before it investigated certain public servants. More recently, the Lokpal and Lokayukta Bill, 2011 that is pending before the Rajya Sabha, removed the requirement of sanction to investigate and prosecute public servants in relation to corruption. As per the Supreme Court, judgment in Subramanian Swamy vs. Dr. Manmohan Singh & Anr (2012) 3 SCC 64), request was pending with the department for over 16 months. The Supreme Court held that denial of a timely decision on grant of sanction is a violation of due process of law (Right to equality before law read with Right to life and personal liberty). The Court reiterated the three month time frame for granting sanctions. It suggested that Parliament consider that in case the decision is not taken within three months, sanction would be deemed to be granted. The prosecution would then be responsible for filing the charge sheet within 15 days of the expiry of this period.

Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. (Mohd. Iqbal Ahmed v. State of A.P.) (1979) 4 SCC 172 : AIR 1979 SC

677, Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all revenant facts were considered by the sanctioning authority. (Jaswant Singh v. State of Punjab [AIR 1958 SC 124] and State of Bihar v. P.P. Sharma.) [1992 Supp (1) SCC 222: 1991 Cri LJ 1438]

Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution. [Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 7 SCC 622.

RELEVANT PROVISIONS OF LAW REQUIRING SANCTION

8. CRIMINAL PROCEDURE CODE,1973

SECTION 132. PROTECTION AGAINST PROSECUTION FOR ACTS DONE UNDER PRECEDING SECTIONS.

(1) No prosecution against any person for any act purporting to be done under Section 129, Section 130 or Section 131 shall be instituted in any Criminal Court except—

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

(b) with the sanction of the State Government in any other case.

(2) (a) No Executive Magistrate or police officer acting under any of the said sections in good faith;

(b) no person doing any act in good faith in compliance with a requisition under Section 129 or Section 130;

(c) no officer of the armed forces acting under Section 131 in good faith;

(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey;

shall be deemed to have thereby committed an offence.

(3) In this section and in the preceding sections of this Chapter,—

(a) the expression "armed forces" means the military, naval and air forces, operating as land forces and includes any other Armed Forces of the Union so operating;

(b) "officer", in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant

officer, a petty officer, a non-commissioned officer and a non-gazetted officer;

(c) "member", in relation to the armed forces, means a person in the armed forces other than an officer.

SECTION 188. OFFENCE COMMITTED OUTSIDE INDIA.

When an offence is committed outside India—

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

SECTION 196. PROSECUTION FOR OFFENCES AGAINST THE STATE AND FOR CRIMINAL CONSPIRACY TO COMMIT SUCH OFFENCE.

(1) No Court shall take cognizance of—

(a) any offence punishable under Chapter VI or under Section 153-A, [Section 295-A or sub-section (1) of Section 505] of the Indian Penal Code, 1860 (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in Section 108-A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

(1-A) No Court shall take cognizance of—

(a) any offence punishable under Section 153-B or sub-section (2) or sub-section (3) of Section 505 of the Indian Penal Code, 1860 (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(2) No court shall take cognizance of the offence of any criminal conspiracy punishable under Section 120-B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of Section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (1-A) and the District Magistrate may, before according sanction under sub-section (1-A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of Section 155.

Madan Lal v. State of Punjab, (1967) 3 SCR 439

9. The last contention was that though he was charged under Section 120-B and Section 477-A no sanction under Section 196-A(2) of the Criminal Procedure Code was obtained and, therefore, the entire trial was vitiated. We may observe that the Additional Sessions Judge found

that sanction was not obtained though the appellant and the said Joshi were charged under the aforesaid two sections along with the charge under Section 409. Reliance in this connection was placed on a decision of the Patna High Court in *Abdul Mian v. King* [AIR 1951 Pat 513] where it was held that sanction to prosecute is a condition precedent to the institution of prosecution and that it is the sanction which confers jurisdiction on the court to try the case. The charge-sheet in that case was under Section 295-A of the Penal Code and sanction having not been obtained for prosecution the High Court held that even though the Magistrate trying the accused ultimately convicted him under Section 298 which did not require sanction the trial was vitiated as the Magistrate could not proceed with the charge-sheet without the requisite sanction. The decision in ***Govindram Sunder Das v. Emperor*** [AIR 1942 Sind 63] was also called in aid as it has been observed there that where the offence of conspiracy to commit forgery is charged against a person and the previous consent of the local Government under Section 196-A though required is not obtained, the court cannot take cognizance of the complaint. These decisions however, are in respect of cases where a single charge in respect of an offence requiring sanction was preferred against the accused and previous sanction was not obtained and the court held that in the absence of such sanction the trial court could not take cognizance of the complaint.

10. Section 196-A(2) provides that no court shall take cognizance of the offence of criminal conspiracy punishable under Section 120-B in a case where the object of the conspiracy is to commit any non-cognizable offence or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the State Government has, by order in writing, consented to the initiation of the proceedings. It is clear that the court cannot take cognizance without the necessary consent in the case of a charge of criminal conspiracy under Section 120-B of which the object is as stated therein. The conspiracy to commit an offence is by itself distinct from the offence to do which the conspiracy is entered into. Such an offence, if actually committed, would be the subject-matter of a separate charge. If that offence does not require sanction though the offence of conspiracy does and sanction is not obtained it would appear that the court can proceed with the trial as to the substantive offence as if there was no charge of conspiracy. In *Sukumar Chatterjee v. Mosizuddin Ahmed* [25 CWN 357] where the charge was under Section 404 read with Section 120-B and no sanction was obtained it was held that the case could proceed though only under Section 404. Similarly, in *Syed Yawar Bakht v. Emperor* [44 CWN 474] the accused was charged under Section 120-B read with Section 467 and also under Section 467 read with Section 109 of the Penal Code. No sanction was obtained. It was held that the consequence of not obtaining the sanction was as if the charge under Section 120-B read with Section 467 had never been framed but the accused could be convicted under the other charge viz. under Section 467 read with Section 109 of the Penal Code. The same view has also been taken by the Punjab High Court in *Ram Pat v. State* [(1962) 64 PLR 54] where it was held that where a complaint discloses more offences than one, some of which can be inquired into without sanction and others only after sanction has been obtained, there can be no objection to the inquiry being carried on in respect of the first category of offences. Reference may be made to the decision in *Nibaran Chandra Bhattacharyya v. Emperor* [AIR 1929 CAL 754] . The two petitioners were convicted under Section 120-B. They were also convicted under Section 384 and Section 384 read with Section 114 of the Penal Code respectively. The learned Judge accepted the contention that the trial was vitiated as no sanction was obtained in respect of the charge under Section 120-B and set aside the conviction also under Section 384 and Section 384 read with Section 114 passed against petitioners 1 and 2. But the report of the decision shows that he did so because he felt that by proceeding with the charge under Section 120-B admitting evidence on that charge and that charge resulting in conviction prejudice was caused to the petitioners in the matter of the other charges and that therefore the

trial could not be said to be severable. No such question of prejudice can be said to arise in the present ease in view of the extra-judicial confession of the appellant of having misappropriated Rs 2500 out of Rs 3414 and odd in question.

11. There was in the instant case not only a charge for conspiracy under Section 120-B but also two other separate charges for offences under Sections 409 and 477-A alleged to have been committed in pursuance of the conspiracy. Though the charge under Section 120-B required sanction no such sanction was necessary in respect of the charge under Section 409. At the most, therefore, it can be argued that the Magistrate took illegal cognizance of the charge under Section 120-B as Section 196-A(2) prohibits entertainment of certain kinds of complaints for conspiracy punishable under Section 120-B without the required sanction. The absence of sanction does not prevent the court from proceeding with the trial if the complaint also charges a co-conspirator of the principal offence committed in pursuance of the conspiracy or for abetment by him of any such offence committed by one of the co-conspirators under Section 109 of the Penal Code. (See ***Mohd. Bachal Abdulla v. Emperor*** [AIR 1934 Sind 4] .) In our view, the fact that sanction was not obtained in respect of the complaint under Section 120-B did not vitiate the trial on the substantive charge under Section 409. No prejudice could be said to have resulted in view of the appellant's confession that he had in fact misappropriated Rs 2500 and was prepared to deposit that amount.

SECTION 197. PROSECUTION OF JUDGES AND PUBLIC SERVANTS.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—

(a) in the case of person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, Section 376-A, Section 376-AB, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring

therein, the expression "State Government" were substituted.

(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Director of Inspection & Audit v. C.L. Subramaniam, 1994 Supp (3) SCC 615

"6. If the provisions of Section 197 CrPC are examined, it is manifest that two conditions must be fulfilled before they become applicable; one is that the offence mentioned therein must be committed by a public servant and the other is that the public servant employed in connection with the affairs of the Union or a State is not removable from his office save by or with the sanction of the Central Government or the State Government, as the case may be. The object of the section is to provide guard against vexatious proceedings against judges, magistrates and public servants and to secure the opinion of superior authority whether it is desirable that there should be a prosecution. If on the date of the complaint itself it is incumbent upon the court to take cognizance of such offence only when there is a previous sanction then unless the sanction to prosecute is produced the court cannot take cognizance of the offence. Naturally at that stage, the court taking cognizance has to examine the acts complained of and see whether the provisions of Section 197 CrPC are attracted. If the above two conditions are satisfied then the further enquiry would be whether the alleged offences have been committed by the public servant while acting or purporting to act in discharge of his official duties. If this requirement also is satisfied then no court shall take cognizance of such offences except with the previous sanction. For this purpose the allegations made in the complaint are very much relevant to appreciate whether the acts complained of are directly concerned or reasonably connected with official duties so that if questioned the public servant could claim to have done these acts by virtue of his office, that is to say, there must be a reasonable connection between the act and the discharge of official duties. It is in this context that the words "purporting to act in discharge of official duties" assume importance. The public servant can only be said to act or purporting to act in the discharge of his official duties if his act is such as to lie within the scope of his official duties. In *Hori Ram Singh case [Hori Ram Singh (Dr) v. Emperor,* AIR 1939 FC 43 : 40 Cri LJ 468 : 43 CWN 50 : 1939 FCR 159] , it was observed that:

"There must be something in the nature of the act complained of that attaches it to the

official character of the person doing it."

In *Matajog Dobey v. H.C. Bhari* [(1955) 2 SCR 925 : AIR 1956 SC 44 : 1956 Cri LJ 140] , it was observed as under : (SCR headnote)

"[T]here must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

Approving these principles this Court in Pukhraj v. State of Rajasthan [(1973) 2 SCC 701 : 1973 SCC (Cri) 944] observed as under : (SCC p. 703, para 2)

"The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the 'capacity in which the act is performed', 'cloak of office' and 'professed exercise of the office' may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty."

In *State of Maharashtra v. Dr Budhikota Subbarao* [(1993) 3 SCC 339 : 1993 SCC (Cri) 901 : JT (1993) 3 SC 379] , this Court held as under : (SCC p. 345, para 5)

"So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete."

These principles are laid down in many cases and it may not be necessary to refer to all of them. Applying the abovesaid principles to the facts of this case, we find that the counter-affidavit was filed only as a defence to the allegations made in the writ petition particularly in connection with the transfer of the respondent and on what grounds it was made. The paragraphs as extracted in the complaint would also show that averments therein were made only in respect of the action taken in transferring the respondent. Therefore the said reference with respect to the character

and integrity, which according to the complainant-respondent amounted to defamation, cannot in any manner be said to be unconnected or not reasonably connected with the official duties. These statements in the counter-affidavit were made by the appellants definitely while acting or at least purporting to act in discharge of the official duties namely filing the same in their defence to the allegations made in the writ petition which they had to do."

P.K. Choudhury v. Commander, 48 Brtf (Gref), (2008) 13 SCC 229

16. Section 197 of the Code unlike the provisions of the Prevention of Corruption Act postulates obtaining of an order of sanction even in a case where public servant has ceased to hold office. The requirements to obtain a valid order of sanction have been highlighted by this Court in a large number of cases. In *S.K. Zutshi v. Bimal Debnath* (2004) 8 SCC 31, this Court held:

"11. The correct legal position, therefore, is that an accused facing prosecution for offences under the old Act or the new Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. *But the position is different in cases where Section 197 of the Code has application.*"

State of Orissa v. Ganesh Chandra Jew,(2004) 8 SCC 40.

Raghunath Anant Govilkar v. State of Maharashtra, (2008) 11 SCC 289

"5. The pivotal issue i.e. applicability of Section 197 of the Code needs careful consideration. In Bakhshish Singh Brar v. Gurmej Kaur [(1987) 4 SCC 663 : 1988 SCC (Cri) 29] this Court while emphasising on the balance between protection to the officers and the protection to the citizens observed as follows: (SCC p. 667, para 6)

'6. … It is necessary to protect the public servants in the discharge of their duties. … In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 (sic 197) states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence.'

6. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. **This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act.** If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must

be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, **because the official act can be performed both in the discharge of the official duty as well as in dereliction of it.** The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

7. At this juncture, we may refer to ***P. Arulswami v. State of Madras*** [AIR 1967 SC 776 : (1967) 1 SCR 201] wherein this Court held as under: (AIR p. 778, para 6)

> ***'6. … It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.'***

8. It would be appropriate to examine the nature of power exercised by the court under Section 197 of the Code and the extent of protection it affords to public servants, who, apart from various hazards in discharge of their duties, in the absence of a provision like the one mentioned, may be exposed to vexatious prosecutions. Sections 197(1) and (2) of the Code read as under:

> **'197.** ***Prosecution of Judges and public servants.—***(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction—
>
> **(a)** in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> **(b)** in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:
>
> ***
>
> **(2)** No court shall take cognizance of any offence alleged to have been committed by any member of the armed forces of the Union while acting or purporting to act in the discharge

of his official duty, except with the previous sanction of the Central Government.'

9. The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Session under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or unless the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionarythe word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during the discharge of his official duty.

10. Such being the nature of the provision the question is how should the expression 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' be understood? What does it mean? "Official" according to the dictionary, means pertaining to an office, and "official act" or "official duty" means an act or duty done by an officer in his official capacity. In *B. Saha v. M.S. Kochar* [(1979) 4 SCC 177 : 1979 SCC (Cri) 939] it was held: (SCC pp. 184-85, para 17)

> **'17.** The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, *directly and reasonably* connected with his official duty will require sanction for prosecution under the said provision.' (emphasis supplied)

11. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

12. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty; that is, under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that an act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in the discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in the discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in the discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobey v. H.C. Bhari* [AIR 1956 SC 44 : (1955) 2 SCR 925] thus: (AIR p. 49, paras 17 & 19)

> **'17.** … The offence alleged to have been committed [by the accused] must have something to do, or must be related in some manner, with the discharge of official duty. …
>
> ***
>
> **19.** … There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable [claim], but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.'

13. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

14. In *S.A. Venkataraman v. State* [AIR 1958 SC 107 : 1958 SCR 1040] … this Court has held that: (AIR p. 111, para 14)

> **'14.** … There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed.'

15. The above position was illuminatingly highlighted in *State of Maharashtra v. Dr. Budhikota Subbarao* [(1993) 3 SCC 339 : 1993 SCC (Cri) 901] .

16. When the newly worded section appeared in the Code (Section 197) with the words 'when any person who is or was a Judge or Magistrate or a public servant' (as against the truncated expression in the corresponding provision of the old Code of Criminal Procedure, 1898) a contention was raised before this Court in *Kalicharan Mahapatra v. State of Orissa* [(1998) 6 SCC 411 : 1998 SCC (Cri) 1455] that the legal position must be treated as changed even in regard to offences under the old Act and new Act also. The said contention was, however, repelled by this Court wherein a two-Judge Bench has held thus: (SCC p. 416, para 14)

'14. … A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction.'

17. The correct legal position, therefore, is that an accused facing prosecution for offences under the old Act or new Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application.

18. Section 197(1) provides that when any person who is or was a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government, and (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, or the State Government.

19. We may mention that the Law Commission in its 41st Report in Para 15.123 while dealing with Section 197, as it then stood, observed:

'15. 123. … It appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant.'

It was in pursuance of this observation that the expression 'was' came to be employed after the expression 'is' to make the (sic need for) sanction applicable even in cases where a retired public servant is sought to be prosecuted."

The above position was highlighted in *Rakesh Kumar Mishra v. State of Bihar* [(2006) 1 SCC 557 : (2006) 1 SCC (Cri) 432] , SCC pp. 560-66, paras 5-19, *R. Balakrishna Pillai v. State of Kerala* [(1996) 1 SCC 478 : 1996 SCC (Cri) 128] , *State of H.P. v. M.P. Gupta*[(2004) 2 SCC 349 : 2004 SCC (Cri) 539] , *State of Orissa v. Ganesh Chandra Jew* [(2004) 8 SCC 40 : 2004 SCC (Cri) 2104] and *S.K. Zutshi v. Bimal Debnath* [(2004) 8 SCC 31 : 2004 SCC (Cri) 2096] .

SECTION 216. COURT MAY ALTER CHARGE.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

Food Inspector, Ernakulam v. P.S. Sreenivasa Shenoy, (2000) 6 SCC 348

26. What is intended is that a prosecution, which requires previous sanction, cannot be started without such sanction even by way of amending the charge midway the trial. If the amended charge includes a new offence for which previous sanction is necessary then prosecution for such new offence cannot be started without such sanction. However, the second limb of the sub-section makes it clear that if sanction was already obtained for prosecution on the same facts as those on which the new or altered charge is founded then no fresh sanction is necessary.

27. The facts on which prosecution is founded under the Act were broadly that the accused had sold adulterated toor dal to the Food Inspector on 15-4-1996. Variation regarding the reasons or the data by which two different analysts had reached the conclusion that the sample is adulterated is not sufficient to hold that the basic facts on which the prosecution is founded, have been altered. Hence Section 216(5) of the Code would not improve the position of the accused for the purpose of obtaining fresh consent on the facts of this case.

High Court of Karnataka Represented by The Registrar General Bangalore v. Syed Mohammed Ibrahim S/o Late Syed Mohammed Ismail, 2014 SCC OnLine Kar 11451

156. It was contended that, the trial Court, after hearing the arguments of the parties, framed additional charges for the offences under Section 121 and 121A IPC. Before the accused could be prosecuted for the said offences, prior sanction of the Government under Section 196 of the Cr.P.C is a must. No fresh sanction having been obtained, the conviction of the accused under Section 121 and 121A IPC is vitiated and is liable to be set aside.

157. In this regard, it is useful to see what Section 216 of the Cr.P.C. provides for

216. Court may alter charge.

(1) *Any Court may alter or add to any charge at any time before judgment is pronounced.*

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) *If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.*

(5) *If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.*"

158. Sub-section (5) of Section 216 provides that, if the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained. Therefore, it is clear that the Court has the power to alter or add any charge at any time before judgment is pronounced. If for the offences which are the subject matter of such additional charge sanction is required, until such sanction is obtained the Court shall not take cognizance of such offence and proceed with the matter.

159. However, the above provision carries an exception to this general rule. The exception is, if sanction had already been obtained for a prosecution, on the same facts as those on which the altered or added charge is founded, then no fresh sanction is required for prosecuting the accused for the offences which is the subject matter of the additional charge.

160. In the instant case, after the framing of additional charges for the offences under Section 121 and 121-A IPC on 12.12.2007, they were read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. The learned State Prosecutor submitted a memo stating that he had no additional, oral or documentary evidence to prove the additional charges framed and that the evidence already led is sufficient to prove the additional charges.

161. The learned defence counsel also did not choose to lead any evidence on the additional charges, but sought for recalling of PWs 36, 42, 43, 54 and 64 and the said request was granted. After those witnesses were recalled, they were cross-examined in the context of the additional charges. From this, it is clear the additional charges were framed on the same facts on which charges has been framed earlier. Since sanction had already been obtained for prosecution on the same facts as those on which the additional charges were also founded, no separate sanction was necessary in law and therefore, we do not find any substance in the said contention of the counsel for the appellants.

SECTION 308. TRIAL OF PERSON NOT COMPLYING WITH CONDITIONS OF PARDON.

(1) Where, in regard to a person who has accepted a tender of pardon made under Section 306 or Section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in Section 195 or Section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under Section 164 or by a Court under sub-section (4) of Section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall—

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

(b) if it is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Code, pass judgment of acquittal

Section 465. Finding or sentence when reversible by reason of error, omission or irregularity.

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

SECTION 470. EXCLUSION OF TIME IN CERTAIN CASES.

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender—

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

9. ARMS ACT,1959

SECTION 39. PREVIOUS SANCTION OF THE DISTRICT MAGISTRATE NECESSARY IN CERTAIN CASES.

No prosecution shall be instituted against any person in respect of any offence under Section 3 without the previous sanction of the District Magistrate.

Gunwantlal v. State of M.P., (1972) 2 SCC 194

Under the Arms Act all that is required for sanction under Section 39 is, that the person to be prosecuted was found to be in possession of the firearm, the date or dates on which he was so found in possession and the possession of the firearm was without a valid licence. As all the elements are contained in the sanction in this case, it is not an illegal sanction nor can it be said that the charge travels beyond that sanction.

10. EXPLOSIVE SUBSTANCES ACT,1908

SECTION 7. RESTRICTION ON TRIAL OF OFFENCES.

No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate.

Deepak Khinchi v. State of Rajasthan, (2012) 5 SCC 284

16. As stated hereinabove, on 1-4-2008 sanction was issued by the District Magistrate, Chittorgarh, but the application made by the prosecution for framing the charge against the appellant under the said Act was rejected by the learned Sessions Judge. We are prima facie satisfied that the letter of the District Magistrate, Chittorgarh issued on 1-4-2008 gave good and valid consent as envisaged under Section 7 of the Act for trial of the appellant for the offences under the said Act and the learned Sessions Judge was in error in rejecting the consent letter by his order dated 15-5-2010.

17. The proper course for the prosecution was to challenge that order and have it set aside by the High Court. Instead of taking that course, a fresh sanction was issued by the District Magistrate, Chittorgarh on 1-6-2008. The prosecution then filed an application under Section 311 of the Code. It was prayed that sanction issued under Section 7 of the said Act by the District Magistrate be taken on record and the appellant be tried for offences under Sections 3, 4, 5 and 6 of the said Act. The learned Sessions Judge while granting the said application, relied on the judgment of the Rajasthan High Court, Jaipur Bench in Ramjani v. State of Rajasthan [1993 Cri LR 179 (Raj)] wherein it was held that where sanction under Section 7 of the said Act is not obtained, the prosecution will have to be quashed but it would be open to the prosecution to start the prosecution afresh after obtaining sanction from the competent authority. The High Court upheld this order.

26. The offence in this case is equally grave. At no stage, was sanction refused by the competent authority. It is not the case of the appellant that sanction is granted by the authority, which is not competent. It is true that the proceedings are sought to be initiated under the said Act against the appellant after three years. But, in the facts of this case, where 14 innocent persons lost their lives and several persons were severely injured due to the blast which took place in the appellant's shop, three years' period cannot be termed as delay. It is also the duty of the court to see that the perpetrators of crime are tried and convicted if offences are proved against them.

27. We are not inclined to accept the specious argument advanced by the learned counsel for the appellant that the lapse of three years has caused prejudice to the accused. The case will be conducted in accordance with the law and the appellant will have enough opportunity to prove his innocence. Besides, equally dear to us are the victims' rights.

28. It is true that the learned Sessions Judge has, by his order dated 13-9-2007 discharged the appellant of the charges under Sections 3, 4, 5 and 6 of the said Act because there was no sanction. But, the prosecution has now obtained sanction. The Sessions Judge has accepted the sanction and has directed that the trial should be started against the appellant for the offences under Sections 3, 4, 5 and 6 of the said Act, as well. The order of the Sessions Judge is affirmed by the impugned order passed by the High Court.

11. THE UNLAWFUL ACTIVITIES (PREVENTION) ACT,1967

SECTION 45. COGNIZANCE OF OFFENCES.

(1) No court shall take cognizance of any offence—

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and 4[if] such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation, within such time as may be prescribed, to the Central Government or, as the case may be, the State Government.

THE UNLAWFUL ACTIVITIES (PREVENTION)(RECOMMENDATION AND SANCTION OF PROSECUTION) RULES,2008

3. Time limit for making a recommendation by the Authority-The Authority shall, under sub-section (2) of section 45 of the Act, make its report containing the recommendations to the Central Government or, as the case may be, the State Government within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.

4. Time Limit for sanction of prosecution –

The Central Government or, as the case may be, the State Government shall, under sub-section (2)of section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the recommendations of the Authority.

WHEN THE CHARGESHEET CONTAINS OFFENCES UNDER TWO ACTS OUT OF WHICH ONE REQUIRE SANCTION FOR COGNIZANCE AND WHICH HAS NOT BEEN TAKEN, CAN THE COURT TAKE COGNIZANCE OF OFFENCES UNDER THE OTHER ACT WHICH DOES NOT REQUIRE SANCTION?

Ashish Sharma v. The State of Jharkhand, 2009 SCC OnLine Jhar 1818

On completion of the investigation, the police submitted charge-sheet on the basis of which learned Chief Judicial Magistrate, Ranchi by its order dated 17.9.2009 took cognizance of the offences under Section 13(2) of the Unlawful Activities (Prevention) Act, 1967 as well as under Section 17 of the C.L.A. Act against the petitioner and other accused persons.

Being aggrieved with the said order, this writ application has been filed, wherein the order taking cognizance has been challenged to be bad, as according to the learned counsel for the petitioner, learned Chief Judicial Magistrate, Ranchi took cognizance of the offences under Section 13(2) of the Unlawful Activities (Prevention) Act, 1967 as well as under Section 17 of the C.L.A. Act without there being any sanction by the competent authority, whereas sanction from the competent authority is a condition precedent for taking cognizance of offences under the Unlawful Activities (Prevention) Act, 1967.

It does appear that the police after investigating the case found the allegations, levelled in the FIR, to be true and hence, submitted charge-sheet upon which, cognizance of the offence was taken by learned Chief Judicial Magistrate, Ranchi under Section 13(2) of the Unlawful Activities (Prevention) Act, 1967 as well as under Section 17 of the C.L.A. Act, but admittedly, sanction required for the prosecution of the persons for the offence relating to Unlawful Activities (Prevention) Act was not there before the court taking cognizance, though the same in terms of the provisions, as contained in Section 45 of the Unlawful Activities (Prevention) Act, was a condition precedent for taking cognizance of the offence under the said Act. Therefore, order taking cognizance under Section 13(2) of the Unlawful Activities (Prevention) Act, 1967 is quite bad.

However, I do not find any illegality in the order taking cognizance so far as the offence under Section 17 of the C.L.A. is concerned, as the act, allegedly done by the petitioner, is fully covered under Section 17 of the C.L.A. Act, which reads as follows:-

"Penalties.— (1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) An offence under sub-section (1) shall be cognizable by the police, and notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) shall be nonbailable.

On going through the FIR, I do find that the co-accused has confessed before the police that this petitioner was knowing fully well that the materials, which he had received, had been brought for the use of the members associated with the extremist group and as such, I do not find any illegality in the order, under which cognizance of the offence has been taken under Section 17 of the C.L.A. Act.

Accordingly, only part of the order dated 17.09.2009, under which cognizance of the offence has been taken under Section 13(2) of the Unlawful Activities (Prevention) Act, being found bad, is hereby set aside.

12. PREVENTION OF CORRUPTION ACT, 1988

SECTION 19. PREVIOUS SANCTION NECESSARY FOR PROSECUTION.—

(1) *No court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)—*

(a) *in the case of a person 3 [who is employed, or as the case may be, was at the time of*

commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person 3 [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office:

Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) *such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and*

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression "public servant" includes such person—

(a) *who has ceased to hold the office during which the offence is alleged to have been committed; or*

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.

(2) *Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.*

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) *no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;*

(b) *no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;*

(c) *no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.*

(4) *In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.*

Explanation.—For the purposes of this section,—

(a) *error includes competency of the authority to grant sanction;*

(b) *a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.*

SANCTION : A PRE-REQUISITE FOR TAKING COGNIZANCE

The policy underlying the provisions for sanction is that there should not be unnecessary harassment of public servant. A valid sanction is a prerequisite to the taking cognizance of the offences under the P.C. Act. Provisions contained in Section 19 of the Act are mandatory in nature. In the case of ***A.R. Antulay v. R.S.Nayak***[8], the Hon'ble Supreme Court though referring to the old P.C. Act, held regarding the requirement of sanction for prosecution of cases under the P.C. Act that a trial without a valid sanction where one is necessary under the P.C. Act is a trial without jurisdiction by the Court.

State of Goa v. Babu Thomas, (2005) 8 SCC 130

In this case, the first sanction order was issued by incompetent authority and, therefore, a second sanction order was passed retrospectively after the cognizance had been taken and this order too was passed by incompetent authority. Under such circumstances, the Hon'ble Supreme Court held that on the date of taking cognizance, there was no valid sanction, which is a fundamental error invalidating cognizance and therefore the Special Judge did not have jurisdiction to take cognizance of the offences under the P.C. Act. The Hon'ble Court gave the following reason for its order:-

"11. *……. The present is not the case where there has been mere irregularity, error or omission in the order of sanction as required under sub-section (1) of Section 19 of the Act. It goes to the root of the prosecution case. Sub-section (1) of Section 19 clearly prohibits that the Court shall not take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction as stated in clauses (a), (b) and (c).*"

Dilawar Singh v. Parvinder Singh, (2005) 12 SCC 709

Whether sanction given against one accused fulfills the requirement for sanction against co-accused

8 AIR 1984 SC 684.

also under Section 19 of the P.C. Act especially with respect to Section 319 of the CrPC?[9]

The Hon'ble Court, on this question, held as follows :-

"4. ……. *This section creates a complete bar on the power of the court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this sub-section. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant. It is not possible to read the section in the manner suggested by the learned counsel for the respondent that if sanction for prosecution has been granted qua one accused, any other public servant for whose prosecution no sanction has been granted, can also be summoned to face prosecution.*

** * * *

6. In Jaswant Singh v. State of Punjab [1958 SCR 762 : AIR 1958 SC 124 : 1958 Cri LJ 265] sanction had been granted for prosecution of the accused for an offence under Section 5(1)(d) of the Prevention of Corruption Act, 1947, but no sanction had been granted for his prosecution under Section 5(1)(a) of the said Act. It was held that no cognizance could be taken for prosecution of the accused under Section 5(1)(a) of the Prevention of Corruption Act, 1947, as no sanction had been granted with regard to the said offence, but the accused could be tried under Section 5(1)(d) of the said Act as there was a valid sanction for prosecution under the aforesaid provision.

** * * *

8. ***The contention raised by learned counsel for the respondent that a court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence under Section 190 CrPC.*** *The observations made by this Court in Raghubans Dubey v. State of Bihar [(1967) 2 SCR 423 : AIR 1967 SC 1167 : 1967 Cri LJ 1081] were also made in that context. The Prevention of Corruption Act is a special statute and as the preamble shows, this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim generalia specialibus non derogant would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See Godde Venkateswara Rao v. Govt. of A.P. [(1966) 2 SCR 172 : AIR 1966 SC 828] , State of Bihar v. Dr. Yogendra Singh [(1982) 1 SCC 664 : 1982 SCC (L&S) 142 : AIR 1982 SC 882] and Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27 : AIR 1984 SC 1543] .)* ***Therefore, the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 CrPC. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 CrPC if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person."***

(Emphasis supplied)

State of Karnataka through CBI v. C. Nagarajaswamy, AIR 2005 SC 4308

In this case, the Court had discharged the accused on the ground that there was no valid sanction at the time the charge-sheet was filed. Subsequently, when a second charge-sheet was filed after obtaining a proper valid sanction, the Court took cognizance of the offence. It was contended that the cognizance order was bad in the eyes of law as being hit by the bar contained in Section

9 See also, Surinderjit Singh Mand and Another v. State of Punjab and Another, (2016) 8 SCC 722.

300 of the CrPC. The Hon'ble Supreme Court after referring to several judgments[10] held that for the bar under section 300 to apply, the first trial should have been before a court competent to hear and determine the case and to record a verdict of conviction or acquittal; if the court was not so competent, as for example where the required sanction for the prosecution was not obtained, it was irrelevant that it was competent to try other cases of the same class or indeed the case against the particular accused in different circumstances, for example if a sanction had been obtained. The Hon'ble Court also observed as follows :-

"26. *In view of the aforementioned authoritative pronouncements, it is not possible to agree with the decision of the High Court that the Trial Court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Code as even then, it would be held to have been rendered illegally and without jurisdiction."*

EFFECT OF ERRORS IN SANCTION

The basic jurisdiction is with the trial court to decide the question regarding sanction and if the trial court is satisfied about the competency of the authority to grant sanction then on the question of the absence of, or any error, omission or irregularity should not provide a foundation in favour of the accused to ask for an acquittal. The Special Court while taking cognizance of an offence under the P.C. Act has to keep in mind that there must be a valid sanction order for the offences under the P.C. Act against the accused. For a sanction order to be valid, it must be given by the competent authority.

State by Police Inspector v. T. Venkatesh Murthy, (2004) 7 SCC 763

The Hon'ble Referred to the provisions contained in Section 19 of the P.C. Act and also those contained in Sections 462 and 465 of the CrPC and held as follows :-

"7. *A combined reading of sub-sections (3) and (4) makes the position clear that notwithstanding anything contained in the Code no finding, sentence and order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court a failure of justice has in fact been occasioned thereby.*

8. Clause (b) of sub-section (3) is also relevant. It shows that no court shall stay the proceedings under the Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.

9. Sub-section (4) postulates that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in the sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

10. Explanation appended to the section is also of significance. It provides, that for the purpose of Section 19, error includes competency of the authority to grant sanction.

11. The expression "failure of justice" is too pliable or facile an expression, which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of Environment [(1977) 1 All ER 813 : 1978 AC 359 : (1977) 2 WLR 450 (HL)]). The criminal court, particularly the superior court, should make a close examination to ascertain

10 Baij Nath Prasad Tripathi v. the State of Bhopal, (1957) SCR 650, Mohammad Safi v. The State of West Bengal, AIR 1966 SC 69

whether there was really a failure of justice or it is only a camouflage. (See Shamnsaheb M. Multtaniv. State of Karnataka [(2001) 2 SCC 577 : 2001 SCC (Cri) 358] .)

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13. *In State of M.P. v. Bhooraji [(2001) 7 SCC 679 : 2001 SCC (Cri) 1373] the true essence of the expression "failure of justice" was highlighted. Section 465 of the Code in fact deals with "finding or sentences when reversible by reason of error, omission or irregularity", in sanction.*

14. In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding "failure of justice". Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. The same logic also applies to the appellate or revisional court. The requirement of sub-section (4) about raising the issue at the earliest stage has not been also considered. Unfortunately, the High Court by a practically non-reasoned order, confirmed the order passed by the learned trial Judge. The orders are, therefore, indefensible. We set aside the said orders. It would be appropriate to require the trial court to record findings in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19."

Priya Ranjan Kumar Mehta v. State of Bihar, (2012) 2 PLJR 205

" After going through the provisions contained in Section 19(1)(c) of the P.C. Act, 1988, as referred above, it is evident that prosecution sanction can be granted by an authority competent to remove the concerned public servant. It hardly matters as to who is the appointing authority. Nor while considering the prosecution sanction it is required to record finding on the point of appointing authority. ***The requirement is to see as to under Section 19(1)(c) of the P.C. Act, 1988, who is the competent authority to remove him from his Office."*** [11] (Emphasis supplied)

Ram Krishan Prajapati v. State of U.P., (2000) 10 SCC 43

It was held in this case that for the purposes of sanction, the competent authority is the one who is competent to remove the person against whom the sanction order is passed. In this case, the competent authority to remove the accused was the authority which had appointed him. In this regard, the Hon'ble Supreme Court held as follows :-

"8. *The position is now clear that even though the District Magistrate was also an appointing authority, as the appellant was in fact appointed by the Commissioner, who is admittedly a higher authority than the District Magistrate, the Commissioner is the appointing authority so far as the appellant is concerned.*

9. If that be so, the appellant is entitled to contend that the sanction to prosecute him in this case should have been passed by the Commissioner and not by the District Magistrate. The sanction issued by the District Magistrate is not a sanction in the eye of the law as the said authority was incompetent to accord sanction for prosecution under the Act concerning the appellant."

Section 19 (3) of the P.C. Act is similar to Section 465 of the CrPC and puts similar bar on the Appellate Courts and Revisional Courts at the time of considering the effect of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1) of Section 19.

Central Bureau of Investigation v. V.K. Sehgal, (1999) 8 SCC 501

11 See also, State of M.P. v. Pradeep Kumar Gupta, (2011) 6 SCC 389.

11. In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal Procedure.

State of Orissa v. Mrutunjaya Panda, (1998) 2 SCC 414

2. On perusal of the impugned judgment we find that the High Court's attention was not drawn to the provisions of Section 465 of the Code of Criminal Procedure which expressly lays down, inter alia, that any error or irregularity in any sanction for the prosecution shall not be a ground for reversing an order of conviction by the appellate court unless in the opinion of that court a failure of justice has in fact been occasioned thereby. The section further lays down that in determining whether any error or irregularity in any sanction for the prosecution has occasioned a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at an earlier stage of the proceedings. In view of the above provisions the High Court was required to decide, after recording a finding that there was some error or irregularity in the sanction, whether such error or irregularity occasioned a failure of justice and further whether such objection regarding the validity of the sanction was raised in the trial court. Admittedly, the above point was not raised in the trial court nor do we find anything on record from which it can be said that the error or irregularity in the sanction (even if we assume that the finding of the High Court in this regard is correct) did occasion any failure of justice. In that view of the matter it must be said that the High Court was not at all justified in acquitting the respondent on the ground that there was no valid sanction to prosecute him. Since on facts, the concurrent findings of the courts below are based on proper appreciation of evidence and supported by cogent reasons the judgment of the High Court has got to be reversed. (Emphasis supplied)

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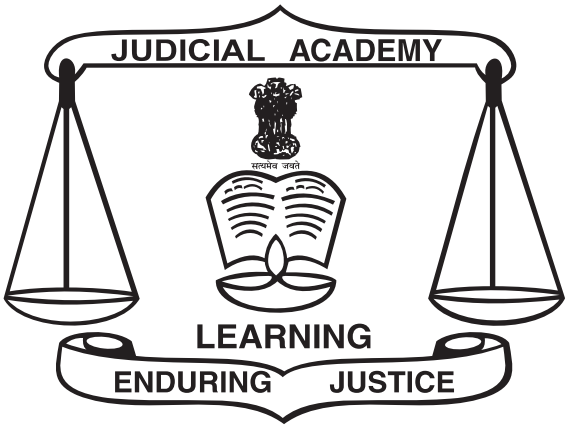

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