2025 INSC 930

REPORTABLE

IN THE SUPREME COURT OF INDIA

EXTRAORDINAIRY CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 10010 OF 2025

KALLU NAT ALIAS MAYANK KUMAR NAGAR ...PETITIONER(S)

VERSUS

STATE OF U.P. AND ANR. ...RESPONDENT(S)

J U D G M E N T

J.B. PARDIWALA, J.,

For the convenience of exposition, this judgment is divided in the following parts: -

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1. This petition arises from the order passed by the High Court of judicature at Allahabad dated 03.04.2025 in Criminal Revision No. 6732 of 2024 (for short, the "**Impugned Order**") by which the High Court rejected the revision application filed by the petitioner-herein and thereby affirmed the order passed by the Additional District and Sessions Judge-Fast Track Court (Crime against women) Kanpur Dehat below disposal proposal paper no. 92 of 2019 arising from the First Information Report bearing case crime no. 402 of 2018 lodged with the police station Shivali, District Kanpur Dehat for the offence punishable under Section(s) 302 and 376 of the Indian Penal Code, 1860 (for short, the "**IPC**").

A. FACTUAL MATRIX

2. The respondent No. 2 herein (original first informant) is the husband of the victim (deceased). The victim all of a sudden went missing on 21.11.2018. On 24.11.2018 the dead body of the victim was recovered somewhere from the bushes lying on the outskirts of the village. In such circumstances the first informant i.e. the husband lodged a First Information Report at the concerned police station. In the FIR the first informant named one Ajay as the suspect. The first informant alleged that Ajay had an extra-marital affair with his wife (victim) and was last seen with the victim and accordingly he alleged that Ajay might have been involved in the murder of his wife. In the course of the

investigation, the name of the petitioner-herein surfaced. Some of the witnesses in their police statements recorded under Section 161 of the CrPC stated that the petitioner herein had made an extra judicial confession about his involvement in the alleged crime. Later the investigation came to be transferred to the Crime Branch. The transfer of investigation took place sometime in 2019. The Crime Branch gave a clean chit to the petitioner-herein. On 21.02.2019 chargesheet came to be filed only against Ajay. The name of the present petitioner was dropped from the chargesheet.

3. On 11.03.2019 the case came to be committed under Section 209 of the Code of Criminal Procedure, 1973 (for short, the "**CrPC**") being exclusively triable by the Court of Session. Ajay Kumar (accused) against whom chargesheet was filed was brought before the trial court on 02.04.2019 for the purpose of framing of charge. However, on the same day i.e. 02.04.2019 the respondent No. 2 (husband of the victim) filed an application under Section 193 of the CrPC seeking to summon the petitioner-herein as an accused. It took almost five years for the trial court to decide the application preferred by the respondent No. 2 under Section 193 of the CrPC seeking to summon the petitioner-herein as an accused.

4. The trial court in exercise of powers under Section 193 of the CrPC ordered that the petitioner-herein shall be summoned as an accused in connection with the crime referred to above and be put to trial along with Ajay.

5. The order passed by the trial court reads thus: -

> *"Heard and properly examined the file.*
> *It is clear from the perusal of the file that in the present case, complainant Vijaylal has registered an FIR on 24.11.2018 at Police Station- Shivli, Kanpur Dehat, regarding the murder of his wife/deceased Shivwati between 21.11.2018 and 24.11.2018. The First Information Report was registered against accused Ajay Kumar under Section-302 IPC.*
>
> *On behalf of the complainant, Proforma Paper No. 5B has been presented and it has been stated that till the time of filing the report, the applicant/ complainant was not aware of the name of the proposed opponent. But during the investigation, the name of the accused has come to light and sufficient evidence is also available in the case diary, on the basis of which a request has been made to summon the opponent Mayank Kumar Nagar alias Kallu Nat.*
>
> *The statement in the case diary number-2 states that his wife Shivwati had illicit relations with the cousin" of this witness. On '21,11.2018 at around 7 pm his wife went out on the pretext of defecation and has not returned home since then. On 21.11.2018 at around 8 pm Pushpa Devi, Deepu and Vinod of the village told that they saw his wife Shivwati going towards the forest with his cousin Ajay Kumar. On 24.11.2018, at around 5 pm, when they reached the wasteland while searching, they found the dead body of his wife lying in the bushes. A noose of sal was tied around her neck. His wife was killed by his cousin Ajay Kumar by putting a noose of sal around her neck due to Illicit relations.*
>
> *In the statement of Renu, who is the sister-in-law of the victim/deceased Shivwati, it is mentioned in the case diary number-l0 that her sister-in-law's conduct was not good, she had a love affair with her aunt's son Ajay and Kallu Nat, who had come with Ajay, also had a relationship with her sister-in-law Shivwati.*

On 21.11.2018, Kallu Nat had dropped her sister-in-law home on a motorcycle in the evening. The next day on 22.11.2018, he came home early in the morning on the pretext of buying a buffalo. Whereas Kallu Nat is fully aware that there is no buffalo for sale in this house. His sister-in law stayed with him the whole day on 21/11/2018 from here to the hospital and from the hospital to here. The justification of coming on the morning of 22/11/2018 is doubtful.

In the case diary slip number - 10 itself, the statement of witness Framed Kumar is recorded that his father Sundar was ill, who was admitted in Kiran Hospital, his sister-in-law Mrs. Shivwati came to see his father in Kiran Hospital Kanpur city on 21.11.2018, who was brought by a person on a motorcycle, when she asked, he said that he was her brother-in-law from the village. At that time, this witness's brother-in-law and brother-in-law's son in-law were in the hospital, who knew that person.

Neeraj's statement is mentioned in case diary paper number 10 that his brother-in-law Pramod's father Sundar was admitted in Kiran Hospital Kanpur Nagar. His younger sister Shivwati came on a motorcycle with Kallu Nat of Baghpur on 21/11/2018, whom he already knew, Kallu Nat used to visit his sister Shivwati's house earlier also, that's why he knew her. On the same day at around 4:00 pm, Kallu Nat took his sister from the hospital to Ludhaura. Deepak's statement is mentioned in case diary paper number 10 that Shivwati was his wife's aunt, who was his paternal aunt-in-law. On 21/11/2018, he went to Kiran Hospital Kalyanpur to see the father of his paternal atmt Framod, resident of Kapuipur. Where her aimt-in-law Mrs. Shivwati came to the hospital sitting on Kallu Nat's motorcycle and in the evening Kallu went back to Varshas along the river. This witness has stated in his statements that he recognized Kallu Nat, resident of Bagpur, at Shivwati's house in Luchaura.

The investigating officer has recorded in paper number 11 that CDR of mobile number 7678819303 of deceased Smt. Shivwati has been received, on examination of which it was found that on 21/11/2018 a very long conversation took place from the above mentioned mobile number of the deceased to mobile number 6386602633 at different times from 15-19-18 to 22-55-47 and on 22/11/2018 in the night from 00-30-15 to 03-31-26 seven times at different times, details of which are recorded in the CD and it is

also mentioned on examination of the CDR received from 1/11/2018 to 22/11/2018 that from mobile number 7678819303 of deceased Shivwati to mobile number 17 calls were made to 6386602633 from 21/11/2018 to 22/11/2018 in which the deceased had a long conversation and it was done at inopportune time. On checking the software, the mobile number 6386602633 holder is shown as Shri Mayank Kumar Nagar son of Jeetpal Nagar resident of 194 Bagpur, Maitha Kanpur Dehat.

In case diary paper number- 11, Surjan Singh's statement is recorded that a few days ago at around 4:00 pm, I was sitting on the high platform in front of Bagpur Inter College near Ramptakash Aatishbaaz of Ludhaura village. Kallu Nat of Bagpur came. He told Ramprakash that uncle I want to talk to you and came on the platform and told in front of this witness that on 21/11/2018, he had taken Shivwati on his motorcycle to Kiran Hospital Kalyanpur to see her relative and give him food. He told that Ajay and he had illicit relations with Shivwati and also told that both of them were friends. He told that he had made a plan to elope on the same day. As per the plan, Ajay had taken Shivwati from her home to Raipur in the evening and when Kallu Nat did not reach Raipur as promised, they would talk to each other throughout the night. In the morning when Kallu Nat reached Raipur, Shivwati would get upset and want to go back home and she would insist on elope. And when she did not agree after being explained, he would come to Ludhaura village on the night of 22/28-11-18 to get money and clothes to elope. He also told that he had raped Shivwati one by one in the cover near Ludhaura in the barren land and both of them would kill Shivwati by putting a noose around her neck with a shawl and he was also apologizing. In the case diary's paper number 12A, the doctor who conducted the post mortem of the deceased, Mr. Puneet Kumar Pandey, has stated that it has been confirmed that the deceased was raped and strangled to death and it is also mentioned that the entire investigation revealed that the deceased Shivwati was in a love relationship with Ajay Kumar and Kallu Nat alias Mayank Kumar Nagar. Due to the love affair, the accused Ajay Kumar took Shivwati to Raipur on the instructions of Kallu Nat with the intention of elopement on the evening of 21/11/2018 and Kallu Nat failed in his plan and tried to convince her the next day and made a plan with Ajay to remove the deceased from the way on her insistence and under this plan, Shivwati was lured and taken to the barren land in village Ludhaura and both of them raped her one

by one in the barren land and as per the plan, both of them together killed the deceased by strangulating her by putting a noose around her neck with a sal. On the basis of the above, the name of Mayank Kumar Nagar alias Kallu Nat came to light and Section 376 IPC was added.

It is mentioned in the case diary paper number-13 that I, the in-charge inspector, along with my accompanying staff, vehicle' and driver left from police station to village Bagpur and raided the possible locations of the accused Mayank Kumar Nagar alias Kallu Nat who has come into light recently, but he was not found. He is absconding as usual.

According to the case diary paper number-17, Deep Kumar appeared before the Additional Director General of Police, Kanpur Zone- Kanpur on 13.01.2019 and gave a written application and stated that his younger brother Kallu has no involvement in the murder of Shivwati and the Investigating officer is demanding one lakh rupees through his broker. On the basis of which application, the investigation of the case has been transferred from Chandrashekhar Dubey, Incharge Inspector, Shivli, Kanpur Dehat to Inspector Shri Naveen Kumar, Crime Branch, Kanpur Dehat.

It is clear from all the above evidence/discussion that according to complainant Vijaylal, his wife went to the toilet on 21.11.2018 at around 7 pm. whose dead body was found lying in the bushes on 24.11.2018 at around 5 pm, with a noose of sal around her neck. According to the complainant, Ajay Kumar killed the deceased. It is worth mentioning that the complainant is not an eyewitness to the incident. According to the other witness of the case, Renu, the deceased also had illicit relations with Kallu Nat, who had gone to Kanpur to see her relative on 21.11.2018 with Kallu Nat and on 22.11.2018 also Kallu Nat came home. According to another witness Pramod Kumar, the deceased had come to Kiran Hospital to see her relatives on 21.11.2018 sitting on a person's motorcycle. On being asked, the deceased had said that the person was her brother-in-law from the village, whom the witness' brother-in-law and son-in-law knew. According to witness Neeraj, his younger sister/deceased Shivwati had come to the hospital on 21.11.2018 sitting on Kallu Nat's motorcycle and on the same day at around 4 pm. Kallu Nat had taken his sister from the hospital to Ludhaura. According to witness Deepak, on

21.11.2018, the deceased had come to Kiran Hospital to see her relatives sitting on a motorcycle with Kallu Nat and had returned with Kallu Nat. According to witness Surjan, Kallu Nat had told Ramprakash in front of this witness that Kallu Nat and Ajay Kumar had illicit relations with the deceased Shivwati and had raped Shivwati In turns in the bushes near Ludhaura in the barren land and had killed her by putting a noose around her neck with a shawl.

The doctor who conducted the post-mortem of the deceased. Dr. Puneet Kumar Pandey, has stated in the summary that the deceased was raped and strangulated to death.

The case diary of the case shows that the deceased had a long conversation 17 times from her mobile to another number from 21.11.2018 to 22.11.2018, which other number 6386602633 belongs to Mayank Kumar Nagar son of Jeetpal and the deceased had called the above number several times in the past as well. The case diary also shows that during investigation, it was found that the deceased Shivwati had illicit relations with Ajay Kumar and Kallu Nat alias Mayank Kumar and with the intention of eliminating the deceased, Ajay Kumar and Kallu Nat alias Mayank Kumar, as per the plan, took the deceased Shivwati to the barren village Ludhaura and raped her one by one and killed her by putting a noose around her neck.

On the basis of the application of Deep Kumar, brother of the opponent Kallu Nat alias Mayank Kumar Nagar, the investigation was given to another investigator and a chargesheet has been sent to the court against only accused Ajay Kumar under Section 302, 376 IPC.

All the above evidence, facts, circumstances and investigation show that the opponent Kallu Nat alias Mayank Kumar Nagar had illegal relations with the deceased/victim Shivwati. Who is also a friend of the accused Ajay Kumar in the said opponent case. With the aim of removing the deceased from their path, accused Ajay Kumar and opponent Kallu Nat alias Mayank Kumar-Nagar, as per-the-plan, called-the victim deceased-Shivwati to the-wasteland in Ludhaura village and forcibly raped the victim Shivwati one by one (gang rape) and by tightening the noose of shawl around the neck of the victim Shivwati, killed the victim deceased Shivwati.

Therefore, on the basis of the above facts and circumstances and evidence available on the file, it is justified to summon the opposite accused Kallu Nat alias Mayank Kumar Nagar for trial under Section 376, 302 IPC.

Order

The application presented by complainant case / applicant Vijay Lai under paper number - SB under Section 193 CrPC dated 26.04.2019 is allowed. Accused Kallu Nat alias Mayank Kumar Nagar son of Jeetpal Nagar, resident of 194 Baghpur (Maitha), Police Station- Shivli- District - Kanpur Dehat is taken cognizance under Section 376, 302 IPG. Accordingly, summons should be issued to accused Kallu Nat alias Mayank Kumar Nagar. The case be presented on 07/06/2024 for further action / charge on accused Kallu Nat alias Mayank Kumar Nagar."

6. Thus, it appears from the aforesaid that the application filed by the complainant under Section 193 of the CrPC to summon the petitioner-herein as an accused came to be allowed. Having regard to the materials on record the trial court reached the conclusion that there was *prima facie* material indicating involvement of the petitioner-herein in the alleged crime and he should be asked to face the trial along with the co-accused against whom chargesheet was filed by the Investigating Agency for the offence of rape and murder.

B. IMPUGNED ORDER

7. The order referred to above came to be challenged before the High Court by way of criminal revision application. The High Court rejected the criminal revision application holding as under: -

"5. At the very outset, the learned A.G.A. for State-opposite party-1 has raised a preliminary objection regarding maintainability of present Criminal revision. Learned A-G.A. submits that since applicant has already approached this Court by means of aforementioned application under Section 482 Cr.P.C., therefore, present criminal revision for the same relief is not maintainable. According to the learned A.G.A., no liberty was granted by this Court to the applicant to file a criminal revision nor the aforementioned application was dismissed on the ground of alternative remedy. He therefore submits that in view of law laid down by Apex Court in the case of Sarguja Transport Service Vs. State Transport Appellate tribunal, M.P. Gwalior and others (1987) 1 SCC 5, the present criminal revision shall not be maintainable. Learned A.G.A. has then referred to the judgement of Supreme Court in Prabhu Chawla Vs. State of Rajasthan and another, (2016) 16 SCC 30 wherein the Apex Court has held that an application under Section 482 Cr.P.C. is not liable to be dismissed on the ground of alternative remedy, of filing a revision.

6. On the edifice of aforesaid submissions, the learned A.G.A. submits that the true import of the order dated 07.08.2024 is that the revisionist has been granted liberty to approach the competent court and not to file criminal revision before this Court. As such, present criminal revision is not maintainable and therefore liable to be dismissed.

7. Learned A.G.A. has then submitted that the Court of Sessions in exercise of jurisdiction under Section 193 Cr.P.C. has summoned the present applicant/revisionist. Referring to the five Judges Bench Judgement of Supreme Court in Dharmpal and others Vs. State of Haryana and another, (2014) 3 SCC 306, the learned A.G.A. submits that the order impugned in present criminal revision cannot be said to be illegal for want of jurisdiction. As such, the order impugned cannot be challenged on the ground of jurisdictional error. On the cumulative strength of above submission, the learned A.G.A. submits that present criminal revision is not maintainable and therefore liable to be dismissed.

8. When confronted with above, the learned counsel for revisionist could not overcome the same.

9. Having heard the learned counsel for revisionist, the learned AG.A. for State-opposite party-1 and upon perusal of record that

court finds that the preliminary objection raised by the learned A.G.A in opposition to this criminal revision is clearly borne out from the record and furthermore, the same could not be dislodged by the learned counsel for revisionist with reference to the record at this stage. As such, no good ground now exits to entertain the present criminal revision.

10. In view of above, this criminal revision fails and is liable to be dismissed.

11. It is accordingly dismissed."

8. Thus, the High Court rejected the revision application filed by the petitioner herein and thereby affirmed the order passed by the trial court summoning the petitioner as an accused to face the trial along with the accused named in the charge sheet. The High Court rejected the revision application relying on the Constitution Bench decision of this Court in ***Dharam Pal & Ors. vs. State of Haryana & Anr.*** reported in **(2014) 3 SCC 306**.

9. In such circumstances referred to above the petitioner is here before this Court with the present petition.

C. SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Mr. Vikas Upadhyay, the learned counsel appearing for the petitioner vehemently submitted that the trial court as well as the High Court committed a serious error in summoning the petitioner as an accused to face the trial along with the charge sheeted accused, namely, Ajay Kumar. He would submit that

the petitioner could have been summoned as an accused to face the trial only after the trial court would have started recording oral evidence of the witnesses. In other words, according to the learned counsel it is only if the involvement of the petitioner would have surfaced from the oral evidence of any of the witnesses, then the trial court would have been justified to summon the petitioner to face the trial in exercise of the powers under Section 319 of the CrPC.

11. The learned counsel vehemently submitted that there was no scope for the trial court to summon the petitioner in exercise of the powers under Section 193 of the CrPC as the Magistrate while committing the case to the Court of Session had already taken cognizance of the offence and in such circumstances the trial court by invoking Section 193 of the CrPC could not have taken cognizance for the second time. He would submit that the power under Section 193 CrPC is a stage specific power and in the exact words of the learned counsel; once that stage has crossed it gets exhausted unlike the power under Section 319 of the CrPC which could be exercised multiple times during a particular period when the trial is on and is not bound by any specific stage of trial.

12. Relying on the decision of this Court in ***Balveer Singh & Anr. vs. State of Rajasthan*** reported in **(2016) 6 SCC 680** he would submit that there is nothing

like second cognizance. According to him if a Magistrate has taken cognizance in a case before committing the case, then despite there being power under Section 193 of the CrPC the Sessions court cannot again take cognizance. The learned counsel relying on the Constitution Bench decision in the case of ***Dharam Pal*** (supra) would submit that cognizance of offence can be taken only once i.e. either by the Magistrate or by the Sessions court. According to the learned counsel there is nothing like 'part-cognizance'.

13. In other words, the argument of the learned counsel appearing for the petitioner is that the Constitution Bench decision of this Court in ***Dharam Pal*** (supra) says in so many words that cognizance of a sessions triable offence cannot be taken by a Magistrate but the same has to be taken by a Sessions Judge after committal. According to the learned counsel, cognizance of a police report/chargesheet filed by the police is always taken by the Magistrate irrespective of whether the offences alleged therein are triable by a Court of Sessions or not. He would submit that the ratio of ***Dharam Pal*** (supra) should be understood as conveying that Section 193 does not permit the Sessions Judge to take cognizance of the same offences of which cognizance stood taken by the Magistrate under section 190 of the Code which the Magistrate takes in order to reach the stage of committal under Section 209 of the Code. And if once cognizance is taken by the Magistrate, the same cannot be done by the Sessions Judge. According to the learned counsel ***Dharam Pal*** (supra)

says that cognizance of sessions trial offences can only be taken by the Sessions Judge.

14. In such circumstances referred to above, the learned counsel prayed that there being merit in his petition, the same may be considered accordingly.

D. ISSUE FOR DETERMINATION

15. The seminal issue that falls for our consideration is whether the Court of Session, without itself recording evidence, can summon a person to stand trial in exercise of its powers under Section 193 of the Code of Criminal Procedure (for short, the CrPC) as an accused (along with others committed to it by a Magistrate) on the basis of materials in the form of statements and other documents as contained in the final report of the investigating officer under Section 173 of the Code of Criminal Procedure, 1973 independently of the provisions of Section 319 of the said Code?

E. ANALYSIS

i. What is the import and purport of 'Cognizance' under the scheme of the Code of Criminal Procedure, 1973?

a. Meaning of the expression 'Cognizance' and 'Taking Cognizance' under Chapter XIV of the Code.

16. Mr. Vikas Upadhyay, the learned counsel appearing for the petitioner herein has vehemently canvassed that cognizance of an offence, in law, can be taken

only once. He submitted that in cases involving offences triable exclusively by the Court of Sessions, cognizance of such offence may be taken either by a Magistrate prior to the committal of the case, or, in the absence of such cognizance at the instance of the Magistrate, by the Court of Session alone, to which the case is committed. However, he would submit that, once cognizance of the offence has been taken by either the Magistrate or the Court of Sessions, as the case may be, a second cognizance by the other is impermissible in law. He urged that there cannot be a second cognizance nor can there be any part cognizance or bifurcation of such cognizance by a Magistrate and a Court of Sessions. In support of his contention, reliance was placed on the decisions of ***Dharam Pal*** (supra) and ***Balveer Singh*** (supra).

17. In ***Dharam Pal*** (supra) this Court held that *"cognizance of an offence can only be taken once. In the event, the Magistrate takes cognizance of the offence and then commits the case to the Court of Sessions, the question of taking fresh cognizance of the offence, and thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session."* and that there can be no "*question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge*." Similarly, in ***Balveer Singh*** (supra) it was reiterated that "*cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then*

commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceeding to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session".

18. Before we advert to the submission canvassed by the petitioner herein, and try to understand what has been conveyed in so many words by this Court in the aforesaid decisions of ***Dharam Pal*** (supra) and ***Balveer Singh*** (supra), it would be apposite to first understand what is meant by 'cognizance' under the Code and the legal import and significance of the term "taking cognizance".

19. The term "cognizance" has nowhere been defined under the Code, but the word itself is of indefinite import. The word itself is derived from the Latin word '*cognoscere'*, and the French Word "*conoisance*" which means "*to know"*, "*to become acquainted with"*, or "*to recognize"*. The Black's Law Dictionary defines the term "cognizance" as "*Judicial notice, knowledge or acknowledgement*" or "*the judicial hearing of a cause*".

20. In criminal law, the term "cognizance" has no esoteric or mystic significance, and the same is reflected by the omission of any formulaic definition of the term under the Code. However, over time, the term "cognizance" has come to acquire a special and distinct connotation, through a catena of decisions and

authoritative exegesis rendered by this Court. The expression "cognizance" means to 'become aware of' or 'to take notice of judicially'. The special connotation that has been ascribed to the term denotes or indicates the stage at which a judicial authority such as a Court of Sessions or a Magistrate is said to have taken judicial notice of the commission of an offence, with a view to initiate proceedings against the person or persons alleged to have committed such offence. **[See: *Chief Enforcement Officer* v. *Videocon International Ltd.*, (2008) 2 SCC 492]**.

21. Cognizance is, at its heart, always an act of the court. It entails not merely the receipt of information or the mechanical act of acknowledgement of a particular offence by a judicial authority, but a conscious application of mind by it, to the information disclosed or received, as the case may be, and the subjective element of its satisfaction that **i)** an offence has indeed occurred and **ii)** the circumstances necessitate setting into motion criminal proceedings in respect of the said offence, or at the very least take steps for ascertaining if there is any basis for initiating such proceedings. Cognizance is attended by the assumption of jurisdiction for proceeding further.

22. Having understood the legal import of the term "cognizance", we may now profitably turn towards understanding how cognizance may be taken. Chapter XIV of the Code deals with "Conditions requisite for initiation of

proceedings", and Section(s) 190 to 199 contained thereunder, delineates the methods and the limitations subject to which cognizance of offence may be taken by the various criminal court empowered thereunder.

23. Remarkably, none of the provisions in the aforesaid Chapter prescribe how 'cognizance' is to be taken, and rather only describe the conditions and limitations for the initiation of proceedings under the Code. This is because, taking cognizance, as already stated, is an act of court, and the prosecuting agency or complainant have no control over the same. It is predicated upon application of judicial mind and is not dictated by the complaint or police report, which cannot be construed by any formulaic approach. 'Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a judicial authority applies its mind to the suspected commission of an offence. **[See: R.R. Chari v. State of U.P., AIR 1951 SC 207; *Sarah Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62]**

24. The process of "taking cognizance" is one of variable and inderminate import; it neither carries a uniform or fixed procedural contour nor has it been used in the same sense throughout the scheme of the Code. This is because "taking of cognizance" signifies the setting into motion, the criminal justice machinery, which may be done, under the Code, in different ways, which is why it derives its understanding from the various procedures by which proceedings are initiated under the Code, and as such its import differs, depending upon the

context of the procedure in which it has been used. Hence, there exists no rigid taxonomy or formulaic framework for "taking cognizance", and the act of "taking cognizance" has to be understood from the procedure itself, more particularly, at which stage, it could be said that there has been an application of judicial mind for the purpose of initiating proceedings under the Code or in simple words, cognizance has been taken. **[See: *Darshan Singh Ram Kishan v. State of Maharashtra*, (1971) 2 SCC 654]**

b. Cognizance of offences by Magistrates and the Three Distinct Points of Origin of the Criminal Machinery under the Code.

25. Section 190 of the Code empowers a Magistrate to take cognizance of any offence in three distinct manners. As per the said provision, a Magistrate may take cognizance upon (a) receiving a complaint of facts which constitute such offence; (b) a police report of such facts; or (c) information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. The said provision reads as under: -

> *"**190. Cognizance of offences by Magistrates. –***
> *(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence —*
> *(a) upon receiving a complaint of facts which 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."

26. A bare perusal of the aforesaid, indicates that there are three distinct ways in which the criminal machinery may be set into motion i.e., cognizance of an offence may be taken by the Magistrate. It may take place on the basis of a complaint moved before a Magistrate by any complainant complaining of any offence, or by the police itself on the basis of a police report in terms of Section(s) 2(r) and 173(2) of the Code, or on the basis of the Magistrate's own knowledge about any offence.

I. On the basis of a Complaint.

27. As per Section 190 sub-section (1)(a) the first manner in which a Magistrate may take cognizance of an offence is on the basis of a complaint received by him. Section 2(d) of the Code defines "complaint" to mean any allegation, whether made orally or in writing, by any persons against some other person or persons, whether known or unknown, who is alleged to have committed an offence, that has been made to a Magistrate, with a view that he initiates any action under the Code. Section 2(d) of the Code reads as under: -

*"**2. Definitions. –***

(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

28. This Court in ***Mohd. Yousuf* v. *Afaq Jahan***, reported in (2006) 1 SCC 627, explained thus: -

"15. A faint plea was made by learned counsel for Respondent 1 that the petition filed by the appellant was not a complaint in the strict sense of the term. The plea is clearly untenable. The nomenclature of a petition is inconsequential. [...]

16. There is no particular format of a complaint. A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprits be suitably dealt with, as in the instant case, is a complaint."

(Emphasis supplied)

29. For the purpose of enabling the Magistrate to take cognizance of an offence on the basis of a complaint as defined above, in terms of Section 190 sub-section 1(a), such complaint must contain facts constituting the offence. Once such a complaint is received by a Magistrate, he will apply his mind to the complaint and the facts disclosed therein, and ordinarily proceed further under Chapter XV of the Code, which relates to "Complaints to Magistrates". Section 200 thereof provides for examination of the complainant and the witnesses on oath. Section 201 provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. Section 202 provides for postponement of issue of process.

30. Although, at this stage, the Magistrate is not obliged to proceed further in terms of Section(s) 200 to 203 in Chapter XV of the Code, and he may instead, order the police to investigate or inquire into the offence alleged in the complaint in terms of Section 156 sub-section (3) of the Code.

31. Section 200 of the Code empowers the Magistrate taking cognizance of an offence on a complaint to examine upon oath the complainant and the witnesses present, if any. The section further requires the such examination to be reduced to writing with the signatures of the complainant, witnesses and the Magistrate. The object of examination under Section 200 is to ascertain whether there is a *prima facie* case against the accused in the complaint, and to prevent the issue of process on a complaint which is false or vexatious. In ***S.R. Sukumar* v. *S. Sunaad Raghuram***, reported in **(2015) 9 SCC 609**, this Court summarized the object of Section 200 of the Code: -

> *"8. Section 200 CrPC provides for the procedure for the Magistrate taking cognizance of an offence on complaint. The Magistrate is not bound to take cognizance of an offence merely because a complaint has been filed before him when in fact the complaint does not disclose a cause of action. The language in Section 200 CrPC*
>
> > *"A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any…"*

clearly suggests that for taking cognizance of an offence on complaint, the court shall examine the complainant upon oath. The object of examination of the complainant is to find out whether the complaint is justifiable or is vexatious. Merely because the complainant was examined that does not mean that the Magistrate has taken cognizance of the offence. Taking cognizance of an offence means the Magistrate must have judicially applied the mind to the contents of the complaint and indicates that the Magistrate takes judicial notice of an offence.

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11. Section 200 CrPC contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to the accused or order an inquiry under Section 202 CrPC or dismiss the complaint under Section 203 CrPC. Upon consideration of the statement of the complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process under Section 204 CrPC. Section 202 CrPC contemplates "postponement of issue of process". It provides that the Magistrate on receipt of a complaint of an offence, of which he is authorised to take cognizance may, if he thinks fit, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 CrPC. A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by the complainant by filing the complaint or by the police report about the commission of an offence.

12. "Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some

offence had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section 200 CrPC, when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon the facts and circumstances of the particular case."

(Emphasis supplied)

32. In ***Mona Panwar* v. *High Court of Judicature of Allahabad***, reported in **(2011) 3 SCC 496**, this Court noted that two options would be open to a Magistrate, when presented with a complaint: *one*, to pass an order as per Section 156(3) of the Code, or two, to direct examination as per Section 200. Prior to taking cognizance under Section 190, the Magistrate may order police investigation under Section 156(3). That is to say, the requirements of Section 200 do not put a bar on the powers of the Magistrate under Section 156(3) of the Code. We have produced the relevant paragraphs of ***Mona Panwar*** (*supra*) below:

"18. When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by Section 156(3) of the Code and the second one was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section 200 and proceed further with the matter as provided by Section 202 of the Code. An order made under sub-section (3) of Section 156 of

the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power 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 the final report either under Section 169 or submission of charge-sheet under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156(3) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has been taken and the Magistrate wants any investigation, it will be under Section 202 of the Code.

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23. Normally, an order under Section 200 of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the complainant and his witnesses under Section 200 of the Code would be directed by the Magistrate only when a case is found to be a serious one and not as a matter of routine course. If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 of the Code."

33. It is also true that where the Magistrate exercises his jurisdiction under Section 200, he is required to apply his mind. Exercise of such jurisdiction cannot be in a routine manner. A careful scrutiny of evidence placed on record must be made in order to arrive at the conclusion if any offence is *prima facie* committed by the accused. Such strict requirements to exercise the jurisdiction under Section 200 are founded as cornerstones of criminal jurisprudence that a criminal proceedings must not be initiated lightly and

there must be sufficient grounds to believe that an offence has taken place before the initiation of such proceedings. In ***Maksud Saiyed* v. *State of Gujarat***, reported in **(2008) 5 SCC 668**, this Court explained the following in context of the jurisdiction under Sections 156(3) and Section 200 of the Code:

> *"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.*
> *15. This Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] held as under: (SCC p. 760, para 28)*
>
> > *"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 scrutinise 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 of the accused."*
>
> *The learned Magistrate, in our opinion, shall have kept the said principle in mind."*

34. In ***R.R. Chari*** (supra), this Court had held that "*when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Chapter XV of the Code of Criminal Procedure, he must be held to have taken cognizance of the offence*." On the other hand, in ***Tula Ram v. Kishore Singh*** reported in **(1977) 4 SCC 459**, it was held that when the Magistrate applies his mind not for the purpose of proceeding as abovementioned in ***R.R. Chari*** (supra), but for taking action of some other kind, for instance ordering investigation or issuing a search warrant he cannot be said to have taken cognizance of the offence.

35. For the purpose of taking cognizance of an offence on the basis of a complaint received under Section 190 sub-section (1)(a), a Magistrate is required to examine upon oath, the complainant and any witnesses, and reduce in writing the substance of their examination. This inquiry which is conducted by the Magistrate pursuant to Section 200 of the Code, cannot always mean, that

cognizance of the offence alleged in the complaint has been taken by it, as the Magistrate is still empowered to take recourse to the other provision of Section(s) 201 to 203, whereby he may simply bring the inquiry before it to an end, without an intention of proceeding further in terms of the Code.

36. In the same breath, Section 202 of the Code empowers a Magistrate, who has received a complaint of an offence, to postpone the issue of process against the accused in terms of Section 204, and either (i) inquire into the case himself or direct an investigation by the police or any other person, in the case, for the purpose of deciding whether or not there is sufficient ground for proceeding. The said provision reads as under: -

> ***202. Postponement of issue of process.—***
> *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*
>
> ***Provided that no such direction for investigation shall be made,—***
> *(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*
> *(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*
>
> *(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:*

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

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

37. The provision empowers the Magistrate to find reasons to doubt the truthfulness of the complaint and defer issuing process against the accused. In such a case, the Magistrate may either direct an investigation by the police, or conduct an inquiry to determine whether there is sufficient basis to proceed with the complaint. It is pertinent to underscore that the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156(3), as it is only for assisting the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This Court in ***Kewal Krishan* v. *Suraj Bhan***, reported in **1981 SCC (Cri) 438**, lucidly explained that;

"10. In the instant case, there was prima facie evidence against Suraj Bhan accused which required to be weighed and appreciated by the Court of Session. At the stage of Sections 203 and 204 of the Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202 of the Criminal Procedure Code, there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused. At this stage, the Magistrate is

not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This Court has held in Ramesh Singh case [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018] that even at the stage of framing charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204, if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session."

38. This Court in ***Rameshbhai Pandurao Hedau*** **v.** ***State of Gujarat***, reported in **(2010) 4 SCC 185**, held that a direction for investigation under Section 156(3) is to ascertain whether the Magistrate shall take cognizance. Whereas, an investigation under Section 202 is for ascertaining whether there are sufficient grounds for the Magistrate to proceed further. The relevant observations read thus;

"22. It is now well settled that in ordering an investigation under Section 156(3) of the Code, the Magistrate is not empowered to take cognizance of the offence and such cognizance is taken only on the basis of the complaint of the facts received by him which includes a police report of such facts or information received from any person, other than a police officer, under Section 190 of the Code. Section 200 which falls in Chapter XV, indicates the manner in which the cognizance has to be taken and that the Magistrate may also inquire into the case himself or direct an investigation to be made by a police officer before issuing process.

23. Reference was also made to the decision of this Court in Mohd. Yousuf v. Afaq Jahan [(2006) 1 SCC 627 : (2006) 1 SCC (Cri)

460] where it has been held that when a Magistrate orders investigation under Chapter XII of the Code, he does so before he takes cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. The inquiry contemplated under Section 202(1) or investigation by a police officer or by any other person is only to help the Magistrate to decide whether or not there is sufficient ground for him to proceed further on account of the fact that cognizance had already been taken by him of the offence disclosed in the complaint but issuance of process had been postponed.

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25. The power to direct an investigation to the police authorities is available to the Magistrate both under Section 156(3) CrPC and under Section 202 CrPC. The only difference is the stage at which the said powers may be invoked. As indicated hereinbefore, the power under Section 156(3) CrPC to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under Section 202 is at the post-cognizance stage."

39. In ***Ramdev Food Products Pvt. Ltd.*** **v.** ***State of Gujarat***, reported in **(2015) 6 SCC 439**, three-Judge Bench of this Court underscored the difference in meaning of the term "*investigation*" under Section 156(3) as compared to Section 202 of the Code. The relevant observations read thus:

"21. On the other hand, power under Section 202 is of different nature. Report sought under the said provision has limited purpose of deciding "whether or not there is sufficient ground for proceeding". If this be the object, the procedure under Section 157 or Section 173 is not intended to be followed. Section 157 requires sending of report by the police that the police officer suspected commission of offence from information received by the police and thereafter the police is required to proceed to the spot, investigate the facts and take measures for discovery and arrest. Thereafter, the police has to record statements and report on which the

Magistrate may proceed under Section 190. This procedure is applicable when the police receives information of a cognizable offence, registers a case and forms the requisite opinion and not every case registered by the police.

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22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

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37. In Nagawwa v. Veeranna Shivalingappa Konjalgi [(1976) 3 SCC 736 : 1976 SCC (Cri) 507] , referring to earlier judgments on the scope of Section 202, it was observed : (SCC p. 740, para 3)

> *3. "In Chandra Deo Singh v. Prokash Chandra Bose [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] this Court had after fully considering the matter observed as follows : (AIR p. 1433, para 8)*
>
> > *'8. ... The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or*

> *falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.'*

Indicating the scope, ambit of Section 202 of the Code of Criminal Procedure this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar [AIR 1960 SC 1113 : 1960 Cri LJ 1499] observed as follows : (AIR p. 1116, para 9)

> *'9. ... Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial.'"*

Same view has been taken in Mohinder Singh v. Gulwant Singh [(1992) 2 SCC 213 : 1992 SCC (Cri) 361] , Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel [(2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218] , Raghu Raj Singh Rousha v. Shivam Sundaram Promoters (P) Ltd. [(2009) 2 SCC 363 : (2009)

1 SCC (Cri) 801] and Chandra Deo Singh v. Prokash Chandra Bose [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] .”

40. Undoubtedly, the inquiry under Section 202 of the Code is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against under Section 204, or whether the complaint should be dismissed by resorting to Section 203. As a natural corollary, at the stage of issuing process the Magistrate is only concerned with the allegations in the complaint and the statements of the complainant and the witnesses. The Magistrate is required only to be prima facie satisfied that sufficient grounds exist to proceed against the accused.

41. Therefore, the scope of inquiry under Section 202 is limited to the ascertainment of the truth or falsehood of the allegation made in the complaint – (i) on the materials placed by the complainant before the court; and (ii) for limited purpose of finding out whether a prima facie case for issue of process has been made out. There is no gainsaying that discretion vested in the Magistrate has to be judicially exercised.

42. The proviso to sub-section (2) stipulates that if it appears to the Magistrate that the offence complained of is triable by the Court of Sessions, he must call upon the complainant to produce all his witnesses and examine them on oath.

The intent behind the provision lies in the fact that in a police case, investigation reveals the nature of the crime and its truthfulness as opposed to a case born out of a complaint. Hence, to protect the prospective accused from harassment from false complaints, the duty of the Magistrate to examine the complainant and his witnesses becomes onerous. We must remind that it is imperative on the part of the Magistrate to examine the complainant and his witnesses in a complaint case triable exclusively by Court of Sessions.

43. Although, in practice, there may at times be an overlap or convergence in the procedures envisaged under these three routes, such as where on the basis of a complaint, police investigation is ordered under Section 156 sub-section (3), or where upon receiving a police report under Section 173 sub-section (2), a protest petition filed in lieu thereof is treated as a complaint in terms of Section 200 of the Code, yet the procedural trajectory in which a Magistrate is expected to adopt for the purpose of proceeding in respect of an offence, still retains a certain degree of distinctiveness, based on how the criminal machinery came into motion.

ii. Who takes Cognizance of Offence exclusively triable by Court of Sessions under the Code?

44. To answer the question, whether the summoning of the petitioner herein by the Court of Session amounts to 'second cognizance', we have to try and

understand the decision of this Court in ***Dharam Pal*** (supra), more particularly, its observations that when it comes to offences exclusively triable by the Court of Session, "*if cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session*". In other words, the question that falls for our consideration is that, for offences triable exclusively by the Court of Session, whether cognizance is taken by the Magistrate or by the Court of Session, or either of them as the case may be? To answer the aforesaid, we may, put aside Section 193 of the Code for the time being and first try to understand what role is expected to be played by the Magistrate as-well as the Court of Session under the Code for offences exclusively triable by the Court of Session.

a. Role of the Magistrate where the Offence is exclusively triable by a Court of Session.

45. In the foregoing paragraphs of this judgment, we have already delineated the manner in which a Magistrate, ordinarily takes cognizance of an offence. To sum it up, where a complaint is received disclosing facts which constitute an offence, cognizance is taken after the Magistrate has applied his mind to the complaint and has proceeded under Section 200 and the subsequent provisions of Chapter XV, whereupon such complaint is neither returned in terms of Section 201 nor dismissed under Section 203, and instead there is issuance of process by the Magistrate in terms of Section 204 and other provisions of

Chapter XVI, at which stage it is understood without a shred of doubt, that cognizance of such offence has been taken and proceedings under the Code stand initiated. On the other hand, where a police report is received, proceedings are said to be initiated i.e., cognizance is affirmatively said to be taken after the Magistrate has applied its mind to the contents of the police report, and thereafter he has either issued process to the accused under Section 204 of the Code, on the basis of such report, or where the accused is present before it, either on his own or on being produced by the police, the Magistrate has complied with the requirement envisaged under Section 207 of the Code. In short, while a Magistrate who proceeds under Chapter XV of the Code, may or not be said to have taken cognizance, however, whenever, a Magistrate has proceeded under the provisions of Chapter XVI which deals with "Commencement of Proceedings", cognizance of offence, without an iota of doubt is understood to have been taken.

l. Chapter XVI - Section(s) 207, 208 and 209 of the Code and Committal of Case by a Magistrate to the Court of Sessions.

46. We may now turn to see, how the Magistrate is required under the Code to proceed where the offence is exclusively triable by the Court of Sessions. Where a case is instituted before a Magistrate, in terms of Section 190 of the Code, i.e., either upon a complaint, or a police report, or on the basis of the Magistrate's own knowledge, and it appears to the Magistrate, that the case

pertains to an offence triable exclusively by the Court of Session, then the Magistrate has to commit the said case to the Court of Session. Section 209 of the Code reads as under: -

> *"**209. Commitment of case to Court of Session when offence is triable exclusively by it.—***
> *When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—*
>
> *(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;*
>
> *(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;*
>
> *(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;*
>
> *(d) notify the Public Prosecutor of the commitment of the case to the Court of Session*."

47. A plain and careful reading of the aforesaid provision reveals that, where a case is instituted on a police report or otherwise, that is to say, on the basis of a complaint received or on the basis of information by a Magistrate's own knowledge, and such case involves an offence which is triable exclusively by the Court of Sessions, the Magistrate is placed under a statutory obligation to commit such case to the Court of Sessions in the manner laid down in clauses

(a) to (d) of the said provision. Section 209 of the Code, enjoins a duty upon the Magistrate to comply with four procedural requirements enumerated in clauses (a) to (d), thereto, i.e., the commitment of the case by the Magistrate to the Court of Session, has to take place, strictly in accordance with the four procedural steps provided in the provision, being as under: -

(i) As per clause (a), the Magistrate is required to commit such case to the Court of Session, and further remand the accused to custody, subject to the provisions of bail, until such committal is complete. However, such commitment has to be done after the Magistrate as complied with the provisions of Section 207 or 208 of the Code, as the case may be;

(ii) In terms of clause (b), the Magistrate must also remand the accused to custody for the duration of trial, subject to the provisions relating to bail under the Code;

(iii) Clause (c) enjoins a further duty upon the Magistrate, to forward to the Court of Session, more particularly the Court to which the case is committed, the entire record of the case, along with any documents and articles thereof, that are to be produced or relied upon as evidence;

(iv) Under clause (d), the Magistrate is further required to notify the Public Prosecutor regarding the commitment of the case to the Court of Session.

48. Chapter XVI of the Code which deals with "Commencement of Proceedings before Magistrates" encompasses the aforementioned provision of Section 209 as-well as Section(s) 207 and 208. Both these provisions pertain to the obligation of furnishing to the accused, copies of documents in respect of any case where proceedings have been instituted under the Code, with the former dealing with proceedings instituted upon a police report and the latter pertaining to proceedings instituted otherwise, such as on a complaint or on the basis of information by a Magistrate's own knowledge.

49. Section 207 of the Code stipulates that in every case where proceedings have been instituted on the basis of a police report, the Magistrate, shall supply to the accused, without delay and free of cost, *inter-alia,* a copy of the police report as contemplated under Section 173, a copy of the first information report, recorded under Section 154, if any, the copies of all statements made under Section 161 sub-section (3) by persons, whom the prosecution intends to examine as witness, subject to the first proviso, the copies of any confession or statement recorded under Section 164, as-well as a copy of any other document or relevant extract thereof that was forwarded to the Magistrate by the police. Section 207 of the Code reads as under: -

> ***207. Supply to the accused of copy of police report and other documents.—***
> *In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—*

(i) the police report;
(ii) the first information report recorded under section 154;
(iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;
(iv) the confessions and statements, if any, recorded under section 164;
(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused: Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

50. In the same breadth, Section 208 of the Code, stipulates that in every case where proceedings have been instituted otherwise than on a police report, which when understood in the context of Section 190, means on the basis of a complaint received by a Magistrate or on the basis of information by a Magistrate's own knowledge, and the offence is triable exclusively by the Court of Session, the Magistrate, shall supply to the accused, without delay and free of cost, *inter-alia,* a copy of the statements recorded under Section(s) 200 or 202, of all persons examined by the magistrate, the copies of any

statement or confession recorded under Section(s) 161 or 164, as-well as a copy of any other document produced before the Magistrate, on which the prosecution proposes to rely. Section 208 of the Code reads as under: -

> ***208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.—***
> *Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—*
> *(i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;*
> *(ii) the statements and confessions, if any, recorded under section 161 or section 164;*
> *(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:*
>
> *Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.*

51. The stage at which the provisions of Section(s) 207 and 208 of the Code, respectively spring into action, *de hors* Section 209, can be gleaned from the heading of Chapter XVI wherein these provisions are contained; "Commencement of Proceedings before Magistrates". The said Chapter, deals with the stage, where the accused person is before the Magistrate, either by way of issue of process under Section 204 of the Code, or if such person appears on his own, or is brought before the Magistrate by the police, which as already discussed in the foregoing paragraphs, signifies that the Magistrate has taken cognizance of the offence, and has now proceeded further under the

Code, by initiating proceedings against persons accused of committing such offences. That apart, the documents, copies of which, have to be supplied to the accused, under each of these provisions, are all documents that have become part of the record before the Magistrate, by virtue of him, having already proceeded under the provisions of Section 200 and subsequent sections of Chapter XV in case of complaint case, which again reinforces that at this stage the Magistrate has taken cognizance.

52. It could be argued, that in a case instituted upon a police report, the Magistrate not having proceeded in terms of Chapter XV, as he is no required to in such cases, may not necessarily have taken cognizance of the offence. There may be situations where although police report may have been submitted to a Magistrate under Section 173, but the stage of taking cognizance of an offence on the basis of such report in terms of Section 190 of the Code, may not have reached by the Magistrate. It is particularly in this context, that our discussion in the foregoing paragraphs assumes importance. We have already discussed, how the act of taking cognizance of an offence does not involve any formal action of any kind, and cannot be construed by any rigid formula. Whether cognizance of an offence has been taken, or not taken or yet to be taken, depends in the peculiar context of the case and the stage of proceedings therein, and lodestar for answering the same has to be discerned from the procedure adopted by the Magistrate. Nevertheless, when a Magistrate, upon

receiving a police report, proceeds further, by complying with the procedural requirements laid down in Section 207 of the Code, he is deemed to have taken cognizance of the offence. For there can be no need or question of supplying the documents envisaged under Section 207 to the accused, if cognizance of the offence is not taken, and more importantly, there can be no situation where the accused is compelled to appear before the Magistrate, or made a part of the proceedings in connection with any case instituted, if cognizance of the offence, involved therein is not yet taken. This is because prior to taking cognizance of an offence, the person alleged to be the accused, has no *locus* in the proceedings.

53. It also flows from the cardinal principal of criminal jurisprudence, that unless the court is satisfied, upon application of its mind about the occurrence of an offence, in other words, unless cognizance of an offence is taken, a person even though alleged or suspected to be involved in the commission of such offence, cannot be called upon or compelled to partake in the criminal proceedings, on a mere suspicion, lest it violate the right of dignity of such person as-well as the right of such person against self-incrimination enshrined in Article(s) 20 and 21 of the Constitution and undermine the sanctity of criminal proceedings, the bedrock of which is fairness. The imperative requirement of first taking cognizance of an offence, before any person is arrayed in the proceedings as an accused, is not a mere procedural formality,

it is there to ensure that no person is subjected to the rigours of criminal proceedings on a conjectural suspicions and unverified allegations. To do so, would gravely prejudice and stigmatize the dignity and reputation of such person, or put simply, the right to life of such persons, and more importantly, to ensure that a person suspected of committing an offence, is not compelled to give any information or evidence, in other words, incriminate himself, for the very purpose of then establishing and making out an offence against him or in simple words taking cognizance of an offence against such person.

54. The expression "*the accused appears or is brought before the Magistrate*" used in Section 209 of the Code, which, at the cost of repetition, deals with committal of cases to the Court of Session when offence is triable exclusively by it, have to be understood in the context of the aforesaid paragraphs. Section 209 of the Code, leaves no room for ambiguity. The words used in it are clear as a noon day. There can be no committal of a case by a Magistrate to the Court of Session, unless the accused is before it. It is not difficult to comprehend why; Section 209 insists upon the requirement for the person accused to be before the Magistrate before the committal of the case takes place. The reason is quite simple. There can be no compliance of the requirements envisaged under Section(s) 207 or 208 of the Code, as the case may be, if a person is not yet arrayed as an accused to the case instituted before the Magistrate. As both these provisions mandate the requirement to furnish

the copies of the documents enumerated therein, to the accused, thereby indicating that when the Magistrate proceeds under the provisions of Section(s) 207 or 208 and then 209 of Chapter of XVI of the Code, cognizance of the offence is already taken, and further that the Magistrate has also applied its mind to find out who the offenders really are. **[See: Raghubans Dubey v. State of Bihar, 1967 Cri LJ 1081 (SC)]**.

55. This is further reinforced from clause(s) (b) and (d) of Section 209 of the Code, which talk about the duty of the Magistrate to remand the accused to custody and to notify the Public Prosecutor about the committal of the case to the Court of Session. Section 209(b) stipulates that for the purpose of committal of the case to the Court of Session, the Magistrate, has to remand the accused to custody, subject to the provisions of bail, "*during, and until the conclusion of, the trial*". This itself indicates that, when the accused is being remanded by the Magistrate, it is being done, for the purpose of undergoing trial, which presupposes that, the Magistrate is satisfied that there is enough material for the purpose of sending such accused to trial. On the other hand, the duty to, notify the Public Prosecutor under Section 209(d), as regards the committal of the case, is for the purpose of facilitating the opening of the case by the prosecution before the Court of Session in terms of Section 226 contained in Chapter XVIII, which specifically deals with "Trial before a Court of Session".

56. It is worthwhile to note that Section 190 of the Code, which as already stated deals with Cognizance of offences by Magistrates, specifically employs the words "any offence". Thus, subject to conditions laid down in Chapter XIV, a Magistrate by virtue of Section 190 of the Code has been specifically and consciously empowered to take cognizance of "Any Offence". The use of the expression "Any Offence" is particularly significant, because even-though the Code, in Chapter(s) XV and XVI has qualified the meaning of the term "offences" with the expression "triable exclusively by the Court of Session", wherever necessary, no such expression has been juxtaposed with the term "offences" insofar as Chapter XIV is concerned. This reinforces that the language couched in Section 190 of the Code, more particularly the words "any offence" is of wide import and that a Magistrate is empowered to take cognizance of an offence even if the same is triable exclusively by the Court of Session.

b. Role of the Court of Session after the case is committed to it by the Magistrate under Section 209 of the Code.

57. For a better exposition on the issue of who takes cognizance of offence under which is exclusively triable by a Court of Session, under the Code, it would be apposite to under the procedure that is to be followed after a case where an offence is exclusively triable by a Court of Session, is committed by a

Magistrate to the Court of Session. In this regard, the provisions of Section(s) 226, 227 and 228 of the Code are of significance.

58. Once a case has been committed by the Magistrate to a Court of Session in terms of Section 209, the procedure that follows suit, is provided in Section(s) 225 to 237 in Chapter XVIII of the Code. The heading of Chapter XVIII is also very clear. It reads, "Trial before a Court of Session". Thus, once a case has been committed, the procedure that now has to be adopted by the Court of Sessions is in lieu of commencement of trial.

59. Although, one must be mindful that, mere committal of the case, does not mean that trial has now commenced. Trial in respect of any case instituted under the Code, commences only after the charges have been framed. All stages prior to the framing of charges, are a pre-trial stage, which may also happen to be a stage of inquiry. All that we are trying to emphasize, on the basis of the heading of Chapter XVIII of the Code is that, the procedure that the Court of Session is expected to adopt is towards commencement of trial, and not for the purpose of taking cognizance of an offence, which as discussed in the foregoing paragraphs of this judgment, already stands taken by the Magistrate, who committed the case to the Court of Session. This may be better understood by taking a closer look at few provisions of Chapter XVIII,

and by discerning what the Court of Session is empowered to do, post the committal of the case to it.

60. Section 225 of the Code, although merely explanatory in nature as to how trials are to be conducted before a Court of Session, yet is of some degree of aid, inasmuch as it further indicates that the procedure laid down in Chapter XVIII is for the purpose of facilitating the trial. The provision simplictier states that in every trial before a Court of Session, the prosecution shall be done by a Public Prosecutor. The said provision reads as under: -

> *"**225. Trial to be conducted by Public Prosecutor.—***
> *In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor."*

61. Section 226 of the Code, is the immediate next procedural step after the case has been committed by a Magistrate to the Court of Session in terms of Section 209. The said provision stipulates that, when the accused appears or is brought before the Court of Session *"in pursuance of a commitment of the case under Section 209*" the prosecutor shall first open his case. In doing so, the prosecutor is required to describe the charges brought against the accused and further stating the evidence, he proposes to prove for establishing the guilt of such accused. Section 226 of the Code reads as under: -

> *"**226. Opening case for prosecution.—***
> *When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought*

against the accused and stating by what evidence he proposes to prove the guilt of the accused."

62. A bare perusal of the aforesaid provision, makes it clear that, the first procedural step that is ordinarily contemplated to be undertaken by a Court of Session, under the Code, after the committal of the case by the Magistrate under Section 209, is to be apprise itself as-well as the accused about the charges that are brought against such accused. Section 226 does not contemplate, any procedural step of first satisfying the Court of Session about the occurrence of an offence, such that the Court of Session, in turn, take cognizance of the offence. The procedure contemplated in the said provision, presupposes the cognizance of the offence. This is because, as already discussed by us, in the foregoing parts of the judgment, the Magistrate before committal of the case, is already expected as-well as deemed to have taken cognizance of the offence, sought to be brought to trial before the Court of Session.

63. Section 227 of the Code deals with discharge. Where the Court of Session, upon consideration of the record of the case and documents tendered with it, and after hearing the accused and the prosecution in regards to such material on record, considers that there is no sufficient ground for proceeding against the accused, then the Court of Sessions, shall discharge the accused, by recording reasons for the same. The said provision reads as under: -

> *"**227. Discharge.—***
> *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

64. At this stage, we may address ourselves on one another aspect, with a view to obviate any confusion. It may be argued, that the cognizance of an offence can only be taken by that court who is also empowered to discharge the accused qua such offence. Since, in a case where the offence is exclusively triable by the Court of Session, as is manifest from a reading of Section(s) 209, 226 and 227 of the Code, only a Court of Sessions is empowered to discharge an accused, it must be the one who must take cognizance of the offence, and not the Magistrate, whose role is only confined to committing the case to the Court of Session. Although, such an argument may be seemingly lucrative and appealing, the same is a misunderstanding of the basics of what is meant by "taking cognizance".

65. One another fundamental aspect pertinent to bear in mind is that, cognizance of an offence is taken when the judicial authority who has applied its mind, comes to the finding that it is necessary to initiate proceedings. The act of "taking cognizance" as already discussed, signifies judicial application of mind on the allegations purported to be levelled. Equally important to

remember is that cognizance is of an offence and not the offender. Where, however, there is no offence, there can be no cognizance, as there can be no proceedings initiated. In the course of uncovering, whether there is any offence, whose cognizance is to be taken, the court or the Magistrate, as the case may be, comes to the finding that there is no offence, all proceedings initiated leading upto such conclusion are dropped. In other words, any proceedings that may have been initiated under the Code, for determining, if there an offence has taken place or not, come to an end and are dropped once it is found that no offence had occurred. This is quite distinct from 'discharge', for the reason that discharge does not necessarily, always lead to dropping of proceeding. Discharge is always *qua* the accused person, as opposed to cognizance which is always *qua* the offence itself. Discharge of an accused does not tantamount to the negation or eradication of the necessity to initiate proceedings in the first place. Discharge only signifies that; there isn't sufficient ground to charge the person accused of commission of a particular offence. It has no bearing on the offence itself whose cognizance was taken, as the occurrence of such offence and the correlating necessity for initiation of proceedings still remains. Discharge of an accused does not mean that no offence had occurred in the first place. Take for instance, the Magistrate had taken cognizance of an offence, pursuant to which two persons 'A' and 'B' came to be arrayed as accused. Later, the Court of Sessions, finds that there isn't sufficient material to proceed against 'B'. This does not mean that there

is no necessity for initiation of proceedings in respect of the said offence, as the same may still continue in respect of 'A'. Even if 'A' also comes to be discharge, it does not stand that no offence had taken place, and it would be the bounden duty of the Court to find out the actual offenders. Cognizance is always *qua* an offence and always correlates to initiation of proceedings, whereas, discharge is only *qua* an accused and concerned with if there is sufficient ground to proceed against such accused.

66. If at all, there was a correlation between the power to "discharge" and the act of "taking cognizance", such that only that court empowered to discharge an accused for an offence, could be said to be empowered to also take cognizance of such offence in the first place, then there would have been no need for the Code to contain the provisions pertaining to discharge by a Court of Session and by a Magistrate, in separate distinct Chapters, more particularly Chapter XVIII; Section 227 and Chapter XIX; Section(s) 239 and 245, respectively, which specifically deal with trials before the Court of Session and Magistrates, respectively. The Code would have simpliciter empowered the Court of Session and the Magistrate to discharge an accused under Chapter XIV, which deals with cognizance of offences by Magistrates and Courts of Session. This reinforces that, the power to discharge an accused, is nothing more than a safeguard against any mechanical or capricious framing of charges; a pre-

requisite for commencement of trials, and thus, correlates only to trials, and has nothing to with the act of "taking cognizance" under the Code.

67. Section 228 of the Code is particularly of significance for an insight into the role that a Court of Sessions plays after a case is committed to it by the Magistrate. Section 228 which deals with framing of charges, stipulates that, where after such consideration and hearing as contemplated under Section(s) 226 and 227 of the Code, the Court of Session is of the opinion that there is ground for presuming that the accused has committed an offence, then only two options are available to it: ***first***, where it finds that the offence is not exclusively triable by the Court of Session, then, it may either frame a charge against such accused and thereafter, transfer the case back to the Magistrate mentioned therein, or simply transfer the case back without framing any charge; or ***second,*** where it finds that the offence is indeed exclusively triable by the Court of Session, then it shall proceed to frame a charge against such accused. The said provision reads as under: -

> *"**228. Framing of charge.—***
> *(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*
>
> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the*

Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

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

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

68. It is manifest from a careful reading of the aforesaid provision, that a Court of Session, after a case has been committed, is only required to see, if the offence in the case, is one exclusively triable by it or not. Where, the offence is not exclusively triable by it, the Court of Session will mandatorily transfer the case to the Magistrate as specified in Section 228 sub-section (1) clause (a). Where, however the offence is exclusively triable by it, the Court of Session will mandatorily proceed to frame charges. The only discretion that has been conferred upon the Court of Session, is in the former, where it can decide whether to frame the charge himself or not, before mandatorily transferring the case back to the Magistrate as specified therein.

69. There is no discretion conferred upon the Court of Session, to whom a case has been committed to go into the question, whether any offence has taken place, cognizance of which may be taken. Once the Court of Session is in *seisin* of the case in terms of Section 209 of the Code, it cannot go into the

question whether, the case is fit one for it to take cognizance or to drop the proceedings, for it is assumed that the case has been committed to it by the Magistrate after application of his mind. Section 228, more particularly the words "*there is ground for presuming that the accused has committed an offence*" presupposes the cognizance of offence, or put simply, it means that the Court of Session is already alive to the fact that there has been an offence, which is why it is only required to form an opinion that there is ground for presuming that the accused has committed such offence and thereafter, must decide whether, the offence is one exclusively triable by it or not. Even under Section 228(1)(a), the Court of Session is only empowered to transfer the case back to the Magistrate, with the discretion of framing the charge first, if the offence is not exclusively triable by it. It cannot go into the question, whether there is any offence or not, worth initiating proceedings under the Code. This is further fortified from the expression "*and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report*" in Section 228(1)(a) which indicates that where such case is transferred back to the Magistrate, the Magistrate is mandated to thereafter proceed to try such offence i.e., to commence trial in respect of the same. The Court of Session is not empowered to send back the case to the Magistrate for relooking into whether cognizance should be taken or not.

70. A combined reading of Section(s) 226, 227 and 228, clearly outline, that after the case is committed to the Court of Session, its role is only limited for the purpose of deciding whether the case is a fit one for commencing trial against the accused, and whether such offence should be tried by it or by the Magistrate. After a case is committed to the Court of Session, the first immediate procedural step envisaged by the Code, is under Section 226, whereby the Court apprises itself and through it the accused about the charges. Thereafter, the next course of action available to the Court of Session, is only in terms of Section(s) 227 and 228 of the Code. The expressions "*considers that there is not sufficient ground for proceeding against the accused*" and "*is of opinion that there is ground for presuming that the accused has committed an offence*" used in Section(s) 227 and 228, respectively, to our minds, appear to empower the Court of Session to only decide whether on the basis of the material on record and the submissions of the accused and the prosecution, there is enough material to either commence a trial or discharge the accused. The framework of the provisions of Section(s) 226, 227 and 228 of the Code, to our minds, do not appear to envisage any power of the Court of Session, to decide whether cognizance of the offence should be taken or not, or the question whether the Magistrate should have taken cognizance or not. For offences which are exclusively triable by the Court of Session, the role that the Court of Session is expected to play in terms of Section(s) 226 to 228, after the case has been committed to it, is not only altogether different from the one

that a Magistrate is required to play but also one concerned only with the stage "post-cognizance of offence" in respect of the case committed to it.

71. We say so, because, unlike Section 190 of the Code, which empowers the Magistrate with the discretion to decide whether cognizance of an offence should be taken or not, by application of his mind, there is no provision of the same similitude as Section 190, which empowers the Court of Session to do so, in respect of cases committed to it by the Magistrate. At the same time, there is also no provision, which empowers the Court of Session, to decide whether the committal of the case was correct or not, to such nature and extent, that the Court of Session be said to be empowered to sit in appeal over the committal proceedings and decide or rather re-decide if the cognizance of the offence should be taken or should have been taken in the first place or not. The only limited power that the Court of Session has been armed with over the order of committal passed by the Magistrate, is to ascertain and re-decide if the offence is one exclusively triable by it or not. Unlike a Magistrate, who is empowered in terms of Section 190 of the Code, to drop proceedings where after application of his mind, he comes to the finding that there is no offence for taking cognizance to initiate proceedings in respect of, the Court of Session is not empowered to drop the proceedings in the case committed to it, it is only empowered to either proceed to frame charges against the accused or to discharge the accused or if such offence is not exclusively triable by it, transfer

the case back to the Magistrate, again for the purpose of commencement of trial by such Magistrate. This when seen in light of the expression "Any Offence" used in Section 190 of the Code, clearly indicates that it is the Magistrate who is not only empowered but also indeed does take cognizance of an offence even if the same is triable exclusively by the Court of Session.

c. Object and Purpose underlying Section 193 of the Code.

72. The proposition of law, that where a case is committed by the Magistrate in view of the offence being exclusively triable by the Court of Session, it is only the Magistrate who takes cognizance of the offence and not the Court of Session has to be understood in the context of Section 193 of the Code.

73. The marginal note appended to Section 193 of the Code, reads as "*Cognizance of offences by Courts of Session*". It stipulates that no Court of Session shall be empowered to take cognizance of any offence as a Court of Original Jurisdiction, unless the case has been committed to it by the Magistrate, or where it has been expressly empowered to do so, either under the Code or any other law. Section 193 reads as under: -

> *"**193. Cognizance of offences by Courts of Session.—***
> *Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless*

the case has been committed to it by a Magistrate under this Code."

74. A reading of the aforesaid provision, makes it manifest, that there is a clear embargo cast upon the Court of Session from taking cognizance of any offence, as a Court of original jurisdiction i.e., no cognizance of an offence can be taken by a Court of Session in its original capacity, as a point of initiation of any proceedings under the Code. The expression "*as a Court of original jurisdiction"* warrants a careful interpretation. The said expression cannot be construed to mean that merely because the Court of Session is precluded from taking cognizance of an offence as forum of inception of proceedings under the Code i.e., as an original forum, that it must by necessary implication, be presumed to be empowered to take cognizance of an offence as a forum of superior jurisdiction or as an intermediate procedural forum at a subsequent stage in the proceedings already initiated. To say so, would go against the well-established rule, that cognizance of an offence can only be taken once, as held in ***Dharam Pal*** (supra) and ***Balveer Singh*** (supra). The negative language employed in Section 193 of the Code, more particularly, "*no Court of Session shall take cognizance of any offence"* which has been used in conjunction with "*unless the case has been committed to it*" is not suggestive of the fact that, where a case has been committed to the Court of Session, it has to then mandatorily take cognizance of the offence. To say would, resulting in turning the very tenets of the act of "taking cognizance"

over its head. It would lead to an absurd interpretation, where, although the Magistrate, by way of Section 190 of the Code has the discretion to take cognizance of an offence, no such discretion exists insofar as the Court of Session is concerned.

75. In ***Pradeep S. Wodeyar*** **v.** ***State of Karnataka***, reported in **(2021) 19 SCC 62**, this Court has elaborately noted upon the scope of Section 193 as thus:

> *"23. ... Section 193 stipulates that unless the case has been committed by a Magistrate to the Sessions Court under the Code, no Court of Session shall take cognizance of any offence. But there are two exceptions to this formulation, namely, where:*
>
> > *(i) the CrPC has made an express provision to the contrary; and*
> > *(ii) an express provision to the contrary is contained in "any other law for the time being in force".*
>
> *The bar in Section 193 is to the Sessions Court taking cognizance of an offence, as a court of original jurisdiction unless the case has been committed to it by the Magistrate under the Code.*
>
> *Xxx*
>
> *38. Section 193CrPC states that the Sessions Court shall not take cognizance of an offence as a court of original jurisdiction unless the Magistrate commits the case to it. The only exception is if it is expressly provided otherwise by the Code or the statute. Neither the Code nor the MMDR Act provide that the Special Court could directly take cognizance of the offences. Therefore, the Sessions Court did not have the authority to take cognizance. Section 209CrPC provides the Magistrate the power to commit the case. In Dharam Pal v. State of Haryana [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , a Constitution Bench, while discussing whether the committing court was required under Section 209 to take cognizance of the*

offence before committing the case to the Court of Session, held that the Magistrate could either commit the case before or after taking cognizance. In this case, the Special Court has directly taken cognizance. It now needs to be determined if this irregularity in the cognizance order vitiates the entire proceedings for the order to be quashed and set aside.

Xxx

50. It is a well-settled principle of law that cognizance as envisaged in Section 190CrPC is of the offence and not of the offender. The expression "cognizance of any offence" is consistently used in the provisions of Sections 190, 191, 192 and 193. [As a matter of fact, the expression "cognizance of any offence" is also used in Sections 195, 196, 197, 198, 198-A, 198-B and 199. Chapter XV CrPC which governs complaints of Magistrates also emphasises the principle that cognizance is of an offence. The same principle, as we have seen earlier, is emphasised in Chapter XVI in which Section 204(1) adverts to a Magistrate "taking cognizance of an offence".]

Xxx

56. It is evident from the discussion in Kishun Singh [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] and Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] that in view of the provisions of Section 193CrPC, cognizance is taken of the offence and not the offender. Thus, the Magistrate or the Special Judge does not have the power to take cognizance of the accused. The purpose of taking cognizance of the offence instead of the accused is because the crime is committed against the society at large. Therefore, the grievance of the State is against the commission of the offence and not the offender. The offender as an actor is targeted in the criminal procedure to provide punishments so as to prevent or reduce the crime through different methods such as reformation, retribution and deterrence. Cognizance is thus taken against the offence and not the accused since the legislative intent is to prevent crime. The accused is a means to reach the end of preventing and addressing the commission of crime."

(Emphasis supplied)

76. Likewise in *Nahar Singh* v. *State of U.P.,* reported in **(2022) 5 SCC 295**, this Court made the following observations on ***Kishun Singh*** (*supra*) to comment on the nature of cognizance under Section 197 of the Code:

> *"23. In Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , the scope of jurisdiction of the Court of Session under Section 193 of the Code was explained, relying on an authority dealing with similar provision under the 1898 Code (P.C. Gulati v. Lajya Ram [P.C. Gulati v. Lajya Ram, AIR 1966 SC 595 : 1966 Cri LJ 465 : (1966) 1 SCR 560]). The phrase used to explain the implication of taking cognizance by a Court of Session in the judgment of Kishun Singh [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] was "cognizance in the limited sense".*
>
> *24. In para 8 of the Report (in Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]), it has been held observed : (SCC pp. 24-25)*
>
> > *"8. Section 193 of the old Code placed an embargo on the Court of Session from taking cognizance of any offence as a court of original jurisdiction unless the accused was committed to it by a Magistrate or there was express provision in the Code or any other law to the contrary. In the context of the said provision this Court in P.C. Gulati v. Lajya Ram [P.C. Gulati v. Lajya Ram, AIR 1966 SC 595 : 1966 Cri LJ 465 : (1966) 1 SCR 560] , SCR p. 568, AIR p. 599, Cri LJ p. 469 observed as under : (AIR p. 599, para 21)*
> >
> > > *'21. When a case is committed to the Court of Session, the Court of Session has first to determine whether the commitment of the case is proper. If it be of opinion that the commitment is bad on a point of law, it has to refer the case to the High Court which is competent to quash the proceeding under Section 215 of the Code. It is only when the Sessions Court considers the commitment to be good in law that it proceeds with the trial of the case. It is in this context that the Sessions Court has to take cognizance of the offence as a court of*

original jurisdiction and it is such a cognizance which is referred to in Section 193 of the Code.' ""

(Emphasis supplied)

77. It is well noted in a legion of authorities that the commitment which is talked of under Section 193 of the Code is a commitment of the "case" and not that of the "offender". The purpose of Section 193 is to allow Court of Sessions the limited window to deemed to have taken cognizance on its own motion.

78. The question of law formulated by us calls for our examination in the light of the earlier Section 193 of the old Code and the change brought therein by the Code of 1973. It is, therefore, necessary to juxtapose the two provisions:

Old Code	New Code
"Section 193(1) : Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.	Section 193 : Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

79. From the above, the meaningful and significant change brought about in the Code of 1973 seems manifest. In the earlier provision, the requirement was that the accused must have been committed to the Court of Session by a Magistrate. The legislature made a change by deleting the word 'accused' and

provided instead that the 'case' should have been committed to the Court of Session.

80. The Court of Session takes cognizance of the case or the offence as a whole and, therefore, is entitled to summon anyone who, on the material before it, appears to be guilty of such offence to stand trial before it. To highlight, what is committed to the Court of Session by the Magistrate is the case or the offence for trial and not the individual offender therefor. To hold otherwise would be again relapsing into the fallacy that cognizance is taken against individual accused persons and not of the offence as such. This was the evil which the amendment sought to remedy in express terms.

81. In the aforesaid context, we must look into the following observations made in Joginder Singh vs. State of Punjab reported in 1979 Cri LJ 333 (Para 6) :-

> *"It will be noticed that both under Section 193 and Section 209 the commitment is of 'the case' and not of 'the accused' whereas under the equivalent provision of the old Code, viz., Section 193(1) and Section 207-A it was 'the accused' who was committed and not 'the case'. It is true that there cannot be a committal of the case without there being an accused person before the Court, but this only means that before a case in respect of an offence is committed there must be some accused suspected to be involved in the crime before the Court but once "the case in respect of the offence qua those accused who are before the Court is committed then the cognizance of the offence can be said to have been taken properly by the Sessions Court and the bar of Section 193 would be out of the way and summoning of additional persons who appear to be involved in the crime from the evidence led during the trial and directing them to stand their trial along with those who had already been committed must be regarded as incidental to such cognizance and a part of the normal process that follows it;"* (Emphasis supplied)

82. Therefore, what the law under section 193 seeks to visualise and provide for now is that the whole of the incident constituting the offence is to be taken cognizance of by the Court of Session on commitment and not that every individual offender must be so committed or that in case it is not so done then the Court of Session would be powerless to proceed against persons regarding whom it may be fully convinced at the very threshold of the trial that they are prima facie guilty of the crime as well.

83. In Kishun Singh vs. State of Bihar reported in (1993) 2 SCC 16, the question before the Court was whether the Court of Sessions to which a case has been committed to for trial by the Magistrate, can without recording evidence, summon a person not named in the police report by exercise of its power under Section 319 CrPC. The two judge Bench held that when a case is committed to the Court of Sessions by the Magistrate under Section 209 on the ground that it is exclusively triable by it, the Sessions Court would have the power to take cognizance of the offence. It was thus held that since cognizance is taken of the offence and not the accused, if any material suggests the complicity of other persons in the offence, the Court of Sessions can summon such other persons. The court, by drawing a comparison between Section 193 of the Code of 1973 and the Code of 1898, and on a reading of Section 209 CrPC held that both the committal and cognizance is of the offence and not the

accused/offender. The Court summarized the position in law in the following observations: -

> *"7. […] Section 190 of the Code sets out the different ways in which a Magistrate can take cognizance of an offence, that is to say, take notice of an allegation disclosing commission of a crime with a view to setting the law in motion to bring the offender to book. Under this provision cognizance can be taken in three ways enumerated in clauses (a), (b) and (c) of the offence alleged to have been committed. The object is to ensure the safety of a citizen against the vagaries of the police by giving him the right to approach the Magistrate directly if the police does not take action or he has reason to believe that no such action will be taken by the police. Even though the expression take cognizance is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender.*
> *[…]*
> *It may Immediately be noticed that under the old provision a Court of Session could not take cognizance of an offence as a court of original jurisdiction unless the accused was committed to it whereas under the recast section as it presently stands the expression the accused has been replaced by the words the case. As has been pointed out earlier, under Section 190 cognizance has to be taken for the offence and not the offender; so also under Section 193 the emphasis now is to the committal of the case and no more on the offender. So also Section 209 speaks of committing the case to the Court of Session. On a conjoint reading of these provisions it becomes clear that while under the old Code in view of the language of Section 193 unless an accused was committed to the Court of Session the said court could not take cognizance of an offence as a court of original jurisdiction; now under Section 193 as it presently stands once the case is committed the restriction disappears."*

> *"16…Thus, on a plain reading of Section 193, as it presently stands once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the*

summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record."

(Emphasis supplied)

84. In other words, upon the committal by the Magistrate, the Court of Sessions is empowered to take cognizance of the whole of the incident constituting the offence. The Court of Sessions is thus invested with the complete jurisdiction to summon any individual accused of the crime. The above principles were reiterated in a two judge Bench decision in State of W.B. vs. Mohd. Khalid reported in (1995) 1 SCC 684. Justice S Mohan speaking for the Court observed:

"43.[…] Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word _cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

(Emphasis supplied)

d. How the decision of this Court in Dharam Pal (supra) should be understood.

85. In ***Dharam Pal*** (supra) a Constitution Bench was called upon to answer the following questions:

"7.1 Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?

7.2 If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?

7.3 Having decided to issue summons against the appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?

7.4 Can the Sessions Judge issue summons under Section 193 CrPC as a court of original jurisdiction?

7.5 Upon the case being committed to the Court of Session, could the Sessions Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was reached in order to take recourse thereto?

7.6 Was Ranjit Singh v. State of Punjab, which set aside the decision in Kishun Singh v. State of Bihar, rightly decided or not?"

(Emphasis supplied)

86. Answering the reference, the Constitution Bench held that:-

(i) The Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons dehors the police report. The Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) of the Code. In the

event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused.

(ii) Thereafter, if on being prima facie satisfied that a case had been made out to proceed against the persons named in Column 2 of the report, he may proceed to try the said persons or if he is satisfied that a case had been made out which was triable by the Court of Session, he must commit the case to the Court of Session to proceed further in the matter. Further, if the Magistrate decides to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same is found to be triable by the Sessions Court.

(iii) The Sessions Judge is entitled to issue summons under Section 193 of the Code upon the case being committed to him by the Magistrate. Section 193 speaks of cognizance of offences by the Court of Session. The key words in the section 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 provision of Section 193 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. The submission that the cognizance indicated in Section 193 deals not with cognizance of an offence but of the commitment order passed by the Magistrate, was specifically rejected in view of the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section.

(iv) Cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceeding to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 of the Code will, therefore, have to be understood as the Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part

cognizance being taken by the Magistrate and part cognizance being taken by the Sessions Judge.

87. In the process of coming to the aforesaid conclusions, this Court accepted the view expressed in ***Kishun Singh*** (supra) that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offence which would include the summoning of the person not named as offender but whose complicity in the case would be evident from the materials available on record. It specifically held that upon committal under Section 209 of the Code, the Sessions Judge may summon those persons shown in Column 2 of the police report to stand trial along with those already named therein. (See: ***Balveer Singh*** (supra))

88. At the same time, the Court also held that it would not be correct to hold that on receipt of a police report and seeing that the case is triable by a Court of Session, the Magistrate has no other function but to commit the case trial to the Court of Session and the Sessions Judge has to wait till the stage under Section 319 of the Code is reached before proceeding against the persons against whom a prima facie case is made out from the material contained in the case papers sent by the Magistrate while committing the case to the Court of Session. This is reflected in the following passage:

> *"33. As far as the first question is concerned, we are unable to accept the submissions made by Mr. Chahar and Mr Dave that on receipt of a police report seeing that the case was triable by Court*

of Session, the Magistrate has no other function, but to commit the case for trial to the Court of Session, which could only resort to Section 319 of the Code to array any other person as accused in the trial. In other words, according to Mr Dave, there could be no intermediary stage between taking of cognizance under Section 190(1)(b) and Section 204 of the Code issuing summons to the accused. The effect of such an interpretation would lead to a situation where neither the Committing Magistrate would have any control over the persons named in column 2 of the police report nor the Sessions Judge, till the Section 319 stage was reached in the trial. Furthermore, in the event the Sessions Judge ultimately found material against the persons named in column 2 of the police report, the trial would have to be commenced de novo against such persons which would not only lead to duplication of the trial, but also prolong the same."

(Emphasis supplied)

89. In ***Dharam Pal*** (supra), a Constitution Bench was deciding on whether the Court of Sessions has the power under Section 193 CrPC to take cognizance of the offence and then summon other persons not mentioned as accused in the police report. The issue was referred to a five-judge Bench in view of the conflicting decisions in ***Kishun Singh*** (supra) and ***Ranjit Singh v. State of Punjab*** reported in **(1998) 7 SCC 149**. As discussed above, while in ***Kishun Singh*** (supra), it was held that the Sessions Court has such a power under Section 193 CrPC, it was held in ***Ranjit Singh*** (supra) that from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 CrPC, the Court could not arraign any other person as the accused. The Constitution Bench affirmed the view in ***Kishun Singh*** (supra) on the ground that the Magistrate before whom the final report is submitted has ample powers to disagree with the report filed by the police under Section 173(2) and to proceed against the accused persons de hors the police report. However, if the interpretation in ***Ranjit Singh*** (supra) were to be followed, it would lead to an

anomaly where the Sessions Court would not have this power till the Section 319 stage is reached, which the Magistrate would otherwise have. In that context, the Constitution Bench observed:

> *"35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter."*
>
> (Emphasis supplied)

90. In view of the aforesaid discussion, the position of law is clear that the Court of Session has power under Section 193 CrPC to summon a person as accused to stand trial, even if he has not been charge-sheeted by the police and whose complexity in the crime appears in the evidence available on record. To hold in such a situation, that if the investigating agency blatantly exonerates an accused person and the Magistrate does not consequently commit him, the Court of Session itself would be rendered powerless to put such an offender in the dock at the very opening stage of the trial, would to our mind only hamper the cause of justice rather than advance it. It is to be borne in mind that herein we are construing procedural provisions and it is well-settled that procedure is the hand-maid of justice and is not to be employed as a roadblock

thereto. Therefore on the larger canon of construction there appears to be no logic for narrowly construing the statute so as to denude the Court of Session of the power to summon a person to stand his trial at the outset even when wholly convinced of a prima facie case against him on the basis of materials in the final report which is admittedly adequate for framing a charge against the committed accused under section 228 or discharging him under section 227 of the Code.

91. Our judgment would remain incomplete without referring to one very erudite judgment of this Court rendered in Raghubans Dubey vs. State of Bihar reported in (1967 Cri LJ 1081) (SC). Therein a first information report had been lodged against as many as 15 persons including petitioner Raghubans Dubey. On investigation, the police submitted final form under Section 173 in which Raghubans Dubey was not sent up by the police for trial whilst the remaining accused were. The Sub-divisional Magistrate took cognizance against the fourteen accused persons and expressly discharged Raghubans Dubey and thereafter transferred the case to a Magistrate for commitment. In the course of the trial, the transferee Magistrate noticed that Raghubans Dubey had been named in the first information report and was also named by 5 more witnesses in their statements under Section 161. He, therefore, summoned Raghubans Dubey as an accused to stand his trial along with others. This was challenged on behalf of the petitioner Raghubans Dubey before the High

Court. But the Division Bench of the High Court while upholding the action of the Magistrate in summoning the additional accused person rejected the revision petition. Upholding the High Court's view in an even stronger and more categoric terms, Sikri, J., speaking for the Bench, observed (Para 9 of 1967 Cri LJ 1081):

> *"In our opinion 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."*
>
> (Emphasis supplied)

92. From the above, it inflexibly follows that once a court of competent jurisdiction, be it a Magistrate or the Court of Session, takes cognizance of the offence, it is not only within the court's powers to summon any one who, on the adequate materials, appears to it to be prima facie guilty of the said offence but indeed it is its duty to do so. Raghubans Dubey's case (supra) arose under the old Code of 1898, but it is manifest that the situation is identical under the Code of 1973 too, and the same view has then been expressly reiterated in Hareram Satpathy vs. Tikaram Agarwala, reported in (1978) 4 SCC 58 : AIR 1978 SC 1568 : (1978 Cri LJ 1687) in the context of commitment on a murder charge to the Court of Session by a Magistrate of a person not sent up as an accused by the investigating agency.

93. The larger and universal principle underlying the aforesaid rationale has been enunciated in powerful language by Desai, J., speaking for the Constitution Bench in A.R. Antulay v. Ramdas Sriniwas Nayak, reported in (1984) 2 SCC 500 in the following terms:

> *"Punishment of the offender in the interest of the society being one of the objects behind penal statutes, enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception."*
>
> (Emphasis supplied)

94. We shall now proceed to specifically deal with the contention canvassed by the learned counsel appearing for the petitioner that cognizance of an offence can only be taken once and, if the Magistrate has taken cognizance of an offence and committed it to the Court of Session, then there is no question of taking fresh cognizance of the offence by the Court of Session upon the case being committed to it. There is a basic fallacy in this contention of the learned counsel. With all humility at our command we say that there is a misconception on the part of the learned counsel so far as the position of law on the subject is concerned. It appears that the learned counsel thought to develop such argument relying on some observations made by this Court in Dharam Pal (supra). The observations are:-

> *"27. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, the Magistrate takes cognizance of the offence and then commits the*

case to the Court of Sessions, the question of taking fresh cognizance of the offence, and thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provision of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge."

(Emphasis supplied)

95. The aforesaid observations made by the Constitution Bench of this Court in ***Dharam Pal*** (supra) should be understood to mean that when the investigating officer files charge sheet for the offence exclusively triable by the Court of Session, then the Magistrate has to look into the charge sheet and *prima facie* ascertain from the materials on record whether the case is one exclusively triable by the Court of Session. Once the Magistrate is *prima facie* convinced that the case is exclusively triable by the Court of Session, the next step in the process is to commit the case to the Court of Session under Section 209 of the CrPC. At this stage, the Magistrate takes cognizance of the offence and not the offender. Once the case is committed to the Court of Session and the Court of Session finds from the materials on record that a particular individual, though not charge sheeted, is also *prima facie* involved in the alleged crime, then the Court of Session has the power to take cognizance of the offence for the purpose of summoning that person not named as offender to face the trial. One should try to understand the purport of Section 193 CrPC. What does Section 193 CrPC provide for? Section 193 CrPC removes the legal embargo

for the Court of Session to take cognizance of any offence once the case is committed to it because upon the committal, the Court of Session assumes the character of the Court of original jurisdiction.

96. Let us try to understand the issue that was involved in **Dharam Pal** (supra). The primary issue in **Dharam Pal** (supra) was one regarding the power of the Sessions Court to issue summons against the person who is not named in the police report after commitment of case to it by the Magistrate under Section 209 of the Code. The other question that was considered in **Dharam Pal** (supra) was whether under Section 209 of the Code, the Magistrate was obliged to take cognizance of the offence before committing the case to the Court of Sessions. This moot question was answered by the Constitution Bench as under:

> *"39. This takes us to the next question as to whether under section 209 the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter proceed to issue summon is not in accordance with law. If cognizance is to be taken of the offence it could be taken either by the Magistrate or by the Court of Session. The language of section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with assumption of such jurisdiction. The provisions of section 209 will, therefore have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge."*

97. A bare reading of the observations contained in para 39 of Dharam Pal (supra) referred to above, gives an impression that what the Court wanted to convey was that at the time of committal, the Magistrate does not take cognizance of the offence and plays a very limited and passive role in committing the case to the Court of Sessions. With all humility at our command and with due deference if this is what was in the mind of the learned Judges then we are afraid that is not the correct position of law. The Magistrate does take cognizance of the offence but only for the limited purpose of committing the case to the Court of Sessions, having regard to the nature of the offences.

98. At this stage, we may give one simple illustration as to in what circumstances, it could be said in law that cognizance of offence can only be taken once. In other words, if cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Sessions.

99. Take a case where a private complaint is lodged in the Court of Magistrate for an offence which is exclusively triable by the Court of Sessions and the Magistrate takes cognizance upon the said complaint and issues process under Section 204 of the Code and thereafter commits the case to the Court of Sessions, then in such circumstances, it could be said that there is no question for the Court of Sessions once again to take cognizance of the offence.

100. Once again at the cost of repetition, we state that the Court of Session takes cognizance of the case or the offence as a whole and, therefore, is entitled to summon anyone who on the materials before it appears to be involved in such offence to stand for trial before it. It is very important and necessary to understand that what is committed to the Court of Session by the Magistrate is the "case" or the "offence" for trial and not the "individual offender" thereof.

101. In view of what we have explained as aforestated, we have no hesitation in saying that there is no merit, worth the name, in the contention of the learned counsel appearing for the petitioner. It is absolutely incorrect on the part of the learned counsel to assert that the petitioner could have been summoned as an accused only during the course of trial under the provisions of Section 319 CrPC. Section 319 CrPC stands absolutely on a different footing.

102. The matter may equally be examined from one another angle. For a moment one may leave the procedural provisions altogether apart. On larger principle, one can see no adequate reason to fetter and shackle the power of a superior court like that of the Court of Session from summoning a person as an additional accused to stand trial when, on the materials before it, it is satisfied that there exists a conclusive or, in any case, a prima facie case against him. It is for this reason that in Raghubans Dubey's case (supra), this Court labelled this power as being virtually coupled with the duty of summoning such an

additional accused and such a power is part and parcel of the proceeding initiated by taking cognizance of the offence. The glaring instances necessitating the exercise of such power or duty would be when the investigating agency in its report under Section 173 without any reason or basis whatsoever exonerates a person specifically named in the first information report and fully implicated in the crime. Indeed, such an example is provided pertinently in the present case itself. Herein the Court of Session has come to the categoric conclusion that the petitioner though not named at the earliest in the FIR, yet the investigation revealed his involvement along with the charge sheeted accused.

F. CONCLUSION

103. We summarize our final conclusion as under: -

(i) Both under Sections 209 and 193 respectively of the Code 1973 commitment is of, the "case" and not of the "accused" as distinguished from Section193(3) and Section 207A respectively of the old Code where commitment was of the "accused" and not the "case". For committing a case there must be an offence and involvement of a person who committed the same. Even though the case is committed yet cognizance taken is of the offence and not the offender. Once the case in respect of the offence qua the accused, who are before the Court, is committed and cognizance is taken, the embargo under Section 193 regarding taking cognizance only by

committal goes. Summoning additional persons will then be regarded as incidental to the cognizance already taken on committal and as, a part, of, the normal process that follows. A fresh committal of such person is not necessary.

(ii) Section 319(4)(b) enacts a deeming provision in that behalf dispensing with the formal committal order by providing that the person added will be deemed to have been an accused even when cognizance was taken first. Cognizance is of the offence and not the offender and it is the duty of the court to find out who the offenders are. Proceedings could be instituted and cognizance taken also against persons not known at that time. This is clear if the provisions of Section 190 of the Code are read along with the definition of complaint in Section 2(d) which include allegations against unknown person also. Making the unknown persons known is therefore within the powers of the court. When such persons become known by the evidence during inquiry or trial it is not only the right but also the duty of court to bring them on record and proceed against them in an attempt to bring them to justice. There cannot, therefore, be any dispute regarding the powers of court to bring the person under Section 319(1).

(iii) Once the Court takes cognizance of the offence (not of the offender), it becomes the Court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the Court's

duty to summon them to stand trial along with those already named, since summoning them would only be part of the process of taking cognizance.

104. For all the foregoing reasons we are of the view that no error not to speak of any error of law can be said to have been committed by the High Court in passing the impugned order.

105. In the result, this petition fails and is hereby dismissed.

106. The trial court shall now proceed to frame charge if not yet framed and start recording with the oral evidence of the witnesses. The trial shall be completed within a period of six months from the date of the receipt of the writ of this order.

107. The Registry shall circulate one copy each of this judgment to all the High Courts.

..... J.
(J.B. Pardiwala)

..... J.
(R. Mahadevan)

New Delhi;
5th August, 2025.