2022 INSC 314

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 443 OF 2022
(Arising out of Petition for Special Leave to Appeal (Crl.) No.8447 OF 2015)

NAHAR SINGH .....APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR. .....RESPONDENT(S)

J U D G M E N T

ANIRUDDHA BOSE, J.

Leave granted.

2. The question which we shall be addressing in this appeal is whether a Magistrate taking cognizance of an offence on the basis of a police report in terms of Section 190 (1)(b) of The Code of Criminal Procedure, 1973 (the Code) can issue summons to any person not arraigned as an accused in the police report and

whose name also does not feature in column (2) of such report. In this case the person concerned, being the appellant, was not named in the First Information Report either. The High Court of Judicature at Allahabad has opined on this question in the affirmative in the judgment delivered on 14th May, 2015. This judgment is under appeal before us. The Chief Judicial Magistrate (CJM), Bulandshahr, Uttar Pradesh had taken cognizance of offences under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (1860 Code) on 8th August, 2012 on the basis of police report. These are offences triable before a Court of Session. The police report had named two individuals as accused-Yogesh and Rupa (the spelling of the name of the latter has been interchangeably used in different proceedings emanating from the First Information Report (F.I.R.) as Roopa and Rupa). The police report was made on the basis of an F.I.R made by the mother of a lady victim (prosecutrix) on 9th May, 2012 in Police Station Chhatari, sub-district Shikarpur in the district of Bulandshahr, Uttar Pradesh. In this F.I.R, she stated that on 4th May, 2012, her minor daughter was enticed away by said Yogesh and his two or three associates. Later on, a

radiologist on the basis of x-ray had found her to be a major, aged about 18 years. But the age-issue of the victim is not in controversy involved in this appeal.

3. The Investigating Officer recovered the prosecutrix on 10th May, 2012. Her statement under Section 161 of the Code was recorded on 10th May itself. In her statement, in substance, she stated that Yogesh had committed rape upon her. The victim was, thereafter, produced before the Additional Chief Judicial Magistrate, Bulandshahr and her statement under Section 164 of the Code was recorded on 14th May, 2012. In that statement, she had disclosed the names of the accused Rupa, Yogesh as also the appellant herein-Nahar Singh, as the persons who had committed rape upon her. Her statement, inter-alia, was recorded in the following terms:-

> "It is an incident of 02.5.2012. It was 12 O'clock in the day. I was standing at the bus stand at that time. Two persons Rupa and Yogesh were standing there. Both of them forcibly took me to Pahasu. Both of them telephoned Nahar Singh there. He came there with a vehicle and all of them made me sit in that four wheeler vehicle and took me from there to Khurja. After closing the vehicle all of them took turns of rape on me. Thereafter, all of them consumed liquor and also forcibly made me drink liquor by putting it in Pepsi. Then again all of them forcibly raped me and threatened me if you may not live as wife of Yogesh we will ruin your family. These people made me unconscious and dressed me in bangles, Bichhia and also filled my Maang

and left me at Kamauna. I want to go with my father and mother."
(quoted verbatim from the copy of the statement as annexed to the paperbook)

4. In her initial statement recorded under Section 161 of the Code, the name of Nahar Singh did not figure. The chargesheet was submitted subsequently, in which Yogesh and Rupa were arraigned as accused persons. On 8th August, 2012, the CJM, Bulandshahr took cognizance of offence under Sections 363, 366 and 376 of the 1860 Code against accused Yogesh and Rupa. The de facto complainant, being mother of the victim thereafter had filed an application before the Court of the CJM in Criminal Case No. 102/2012 praying for an order requiring appearance of the appellant before the Court. In this application, it was inter-alia, stated:-

"Accused Yogesh and Rupa are in judicial custody of the District Jail. Accused Nahar Singh is not arrested. Accused Nahar Singh has threatened the complainant and her family for number of times that they may withdraw the case against him otherwise he will implicate them in any false case. In this regard the complainant has submitted application before the Police Officers for arrest of Nahar Singh and for the safety and security of her family.

Thereafter, the investigation of this case is transferred from PS: Chhattari to PS: Dibai. The Investigating Officer of PS: Dibai didn't conduct impartial investigation. Despite having sufficient evidence against accused Nahar Singh the charge sheet is not submitted and the name of Nahar

> Singh is deleted whereas accused Rupa and Nahar Singh have committed an offence of rape with xxxx against her consent, as is evident from statement recorded under sections 161 and 164 Cr.P.C. There are sufficient grounds in the case diary to summon accused Nahar Singh in the matter. The complainant and her daughter had also given statement before the I.O. of PS: Dibai for commission of offence of rap by Nahar Singh. As per the provisions of Section 190 Cr.P.C. the court takes cognizance for the offence and not for the accused.
>
> Therefore, it is prayed that this Hon'ble Court may pass an order against accused Nahar Singh son of Megh Singh, resident of village Waan, PS: Chhattari to appear before the court. I shall be grateful to you."
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> **(quoted verbatim from the copy of the application as annexed to the paperbook. Name of the victim has been masked with xxxx)**

5. In an order passed on 7th November, 2012, the CJM found that there was no ground to summon the appellant for trial and the said application was dismissed. The file was directed to be presented for commitment on 16th November, 2012. Against this order, the de facto complainant invoked the revisional jurisdiction of the Sessions Judge. Her application was registered as Criminal Revision No.588/2012 and was listed before Additional District and Sessions Judge Court No. 1, Bulandshahr. We find from the order of the Revisional Court passed on 13th January, 2015 that investigation of this case was transferred from the first Investigating Officer of police station

Chhatari to the Inspector in-charge of Police Station, Dibai, Shri Ashok Kumar Yadav. There was thus, change of the police station also. The chargesheet was submitted by the latter on the basis of which cognizance was taken. In the aforesaid order, the sequence of events showing the trajectory of the investigation was recorded by the Revisional Court in the following manner:-

> "After the recovery of the daughter of the complainant the I.O. recorded her statement on 10.5.2012 under Section 161 Cr.P.C. Accused xxxx mentioned the name of accused Yogesh only in her statement whom she has stated to have induced and abducted her. Thereafter, the statement of the abducted was recorded under Section 164 Cr.P.C. on 14.5.2012 before the Magistrate wherein the victim stated that other than Yogesh two more persons being Rupa and Nahar Singh were involved in the offence. While mentioning the aforesaid statement made under section 164 Cr.P.C. on 19.50.2012 in Case Diary the I.O. added section 376(g) I.P.C. as two more persons being Rupa and Nahar Singh were implicated in the offence. Upon adding section 376(g) in the matter the then S.H.O. Harish Vardhan Singh took over the investigation and recorded the statements of the brother of the victim Sonu son of Sh. Ramesh Chand resident of villag Waan and another person Boby son of Babu Lal resident of village Waan on 3.6.2012. Both the witnesses substantiated the occurrence of incident. It appears from the perusal of records that on an application of proposed accused Nahar Singh the Superintendent of Police, Bulandshehar transferred the investigation from Police Station Chhattari to Police Station Dibai on 14.6.2012 and entrusted the investigation to I.O. Ashok Kumar. The aforesaid Ashok Kumar Yadav, the in-charge Inspector of Police Station Dibai, during the investigation, again recorded the statements of victim xxxx, her mother Smt. Kamlesh, complainant under Section 161 Cr.P.C and concluded that Nahar Singh son of Sh. Megh Singh resident of village Waan had no role in the abduction of xxxx nor he

committed any offence like rape with her. He was implicated by complainant and the opposite party of Nahar Singh only due to enmity in the village. As a result, the I.O. filed charge sheet against the nominated accused Yogesh and co-accused Rupa."

(quoted verbatim from the copy of the Revisional Court's judgment as annexed to the paperbook. Name of the victim has been masked with xxxx)

6. The Revisional Court set aside the order passed by the CJM on 7th November, 2012 by which the application of the de facto complainant was rejected. The matter was remanded to the Court of the CJM and the latter was directed to dispose of the said application in view of the observations made in the judgment of the Revisional Court. It was also observed in the order of the Revisional Court that the Magistrate should pass a lawful order to summon the accused, Nahar Singh in the matter. This order was passed on 13th January, 2015.

7. Thereafter, the CJM heard the matter on remand and in an order passed on 5th February 2015, Nahar Singh (the appellant) was directed to be summoned for trial on 21st February, 2015. This order of the CJM was challenged by the appellant by filing a Criminal Revision Petition before the Sessions Judge, Bulandshahr. By a decision delivered on 20th

April, 2015, the revisional application was dismissed. Against this order of dismissal, the appellant approached the High Court of Judicature at Allahabad by filing a Criminal Miscellaneous Writ Petition bearing No. 11538/2015. Before the High Court, apart from other points, it was argued that exercise of jurisdiction by the CJM, under Section 190 (1)(b) of the Code was impermissible in the subject case. The appellant's case was that as he had not been named as accused in the chargesheet, he could only be summoned in exercise of jurisdiction under Section 319 of the Code. Such submissions have been recorded in the judgment under appeal.

Section 190 of the Code reads:-

> **"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."

8. In the judgment under appeal delivered on 14th May, 2015, the High Court reiterated the well established principle of criminal jurisprudence that cognizance taken by the Magistrate is of an offence and not of an offender. The High Court held that it was the duty of the Magistrate to find out with respect to the complicity of any person apart from those who were chargesheeted by sifting the corroborative evidence on record. In case the Magistrate came to the conclusion that there was clinching evidence supporting the allegations made against persons who have not been chargesheeted, it was his duty to proceed against such persons as well by summoning them. It was, inter-alia, held by the High Court in the judgment under appeal:-

> "The summoning of additional accused person is an integral part of the proceedings where allegations of facts constituting an offence is made out for taking cognizance. At the time of taking cognizance, the Magistrate has only to see whether prima facie there are cogent reasons for issuing the process. The Magistrate is fully competent to take cognizance of an offence and there is no bar under section 190 Cr.P.C. that once the process is issued against some of the accused persons, the Magistrate can not issue process to some other person against whom charge sheet was not submitted and against whom there is some material on record. The investigation was transferred at the instance of the accused persons who did not have any locus to direct the investigation to be transferred from one

police station to another police station. Only when the investigation was transferred to another police station on further investigation the witnesses were re-examined under section 161 Cr.P.C pursuant to which the charge sheet was submitted against Yogesh and Roopa. Section 376(g) IPC was also added after recording the statement of the victim recorded under section 164 Cr.P.C which is a public document but the investigating officer did not seriously show or attach any importance to the statement recorded under section 164 Cr.P.C before the court and proceeded to exonerate the applicant which clearly show the manner in which the investigation was done by Sri Harsh Vardhan, the investigating officer on the direction of S.S.P.Bulandshahar. The mere fact that the statement of the victim was subsequently recorded will not overshadow the statement recorded under section 164 Cr.P.C. The victim cannot be treated with suspicion or discredited that she had not disclosed the complicity of the applicant in her statement under section 161 Cr.P.C."

(quoted verbatim from the copy of the impugned judgment as annexed to the paperbook)

9. As regards the point of law with which we are dealing with in this appeal, in the impugned judgment, the High Court had relied on decision of a Coordinate Bench of this Court in the case of **SWIL Ltd. vs. State of Delhi and Another** [(2001) 6 SCC 670]. In this decision, argument was advanced that under Section 190 of the Code, once process is issued against some accused, the Magistrate cannot issue process to any other accused against whom there might be materials on record. Such argument was repelled. It was held by the Coordinate Bench in this case:-

> **"7.** Further, in the present case, there is no question of referring to the provisions of Section 319 CrPC. That provision would come into operation in the course of any enquiry into or trial of an offence. In the present case, neither the Magistrate was holding enquiry as contemplated under Section 2(*g*) CrPC nor had the trial started. He was exercising his jurisdiction under Section 190 of taking cognizance of an offence and issuing process. There is no bar under Section 190 CrPC that once the process is issued against some accused, on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge-sheet."

10. There was divergence of views of different Benches of this Court on this point and ultimately the issue has been settled by a Constitution Bench in the case of **Dharam Pal and Others vs. State of Haryana and Another** [(2014) 3 SCC 306]. Before dealing with the ratio of this decision, we shall narrate the journey of the legal dispute to that stage, which has been recorded in the judgment of **Dharam Pal** (supra) itself by the Constitution Bench:-

> **"1.** This matter was initially directed to be heard by a Bench of three Judges in view of the conflict of opinion in the decisions of two two-Judge Benches, in *Kishori Singh* v. *State of Bihar*, [(2004) 13 SCC 11: (2006) 1 SCC (Cri) 275]; *Rajinder Prasad* v. *Bashir* [(2001) 8 SCC 522: 2002 SCC (Cri) 28] and *SWIL Ltd.* v. *State of Delhi*, [(2001) 6 SCC 670: 2001 SCC (Cri) 1205]. When the matter was taken up for consideration by the three-Judge Bench on 1-12-2004 [*Dharam Pal* v. *State of Haryana*, (2004) 13 SCC 9: (2006) 1 SCC (Cri) 273], it was brought to the notice of the Court that two other decisions had a direct bearing on the question sought to be determined. The first is *Kishun*

Singh v. *State of Bihar*, [(1993) 2 SCC 16: 1993 SCC (Cri) 470], and the other is a decision of a three-Judge Bench in *Ranjit Singh* v. *State of Punjab*, [(1998) 7 SCC 149: 1998 SCC (Cri) 1554].

2. *Ranjit Singh case* [(1998) 7 SCC 149 : 1998 SCC (Cri) 1554] disapproved the observations made in *Kishun Singh case* [(1993) 2 SCC 16 : 1993 SCC (Cri) 470] which was to the effect that the Sessions Court has power under Section 193 of the Code of Criminal Procedure, 1973, hereinafter referred to as "the Code", to take cognizance of an offence and summon other persons whose complicity in the commission of the trial could prima facie be gathered from the materials available on record.

3. According to the decision in *Kishun Singh case* [(1993) 2 SCC 16 : 1993 SCC (Cri) 470], the Sessions Court has such power under Section 193 of the Code. On the other hand, in *Ranjit Singh case* [(1998) 7 SCC 149 : 1998 SCC (Cri) 1554], it was held that from the stage of committal till the Sessions Court reached the stage indicated in Section 230 of the Code, that Court could deal only with the accused referred to in Section 209 of the Code and there is no intermediary stage till then enabling the Sessions Court to add any other person to the array of the accused.

4. The three-Judge Bench [*Dharam Pal* v. *State of Haryana*, (2004) 13 SCC 9 : (2006) 1 SCC (Cri) 273] took note of the fact that the effect of such a conclusion is that the accused named in column 2 of the charge-sheet and not put up for trial could not be tried by exercise of power by the Sessions Judge under Section 193 read with Section 228 of the Code. In other words, even when the Sessions Court applied its mind at the time of framing of charge and came to the conclusion from the materials available on record that, in fact, an offence is made out against even those who are shown in column 2, it has no power to proceed against them and has to wait till the stage under Section 319 of the Code is reached to include such persons as the accused in the trial if from the evidence adduced, their complicity was also established. The further effect as noted by the three-Judge Bench was that in less serious offences triable by the Magistrate, he would have the power to proceed against those mentioned in column 2, in case he disagreed with the police report, but in regard to serious offences triable by the Court of

Session, the Court would have to wait till the stage of Section 319 of the Code was reached.

5. The three-Judge Bench disagreed with the views expressed in *Ranjit Singh case* [(1998) 7 SCC 149 : 1998 SCC (Cri) 1554], but since the contrary view expressed in *Ranjit Singh case* [(1998) 7 SCC 149 : 1998 SCC (Cri) 1554] had been taken by a three-Judge Bench, the three-Judge Bench hearing this matter, by its order dated 1-12-2004 [*Dharam Pal* v. *State of Haryana*, (2004) 13 SCC 9 : (2006) 1 SCC (Cri) 273] , directed the matter to be placed before the Chief Justice for placing the same before a larger Bench."

11. The questions which were formulated for answer by the Constitution Bench in the case of **Dharam Pal** (supra) were:-

"**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 case* [(1998) 7 SCC 149 : 1998 SCC (Cri) 1554], which set aside the decision in *Kishun Singh case* [(1993) 2 SCC 16 : 1993 SCC (Cri) 470] , rightly decided or not?"

12. As regards scope of jurisdiction of the Magistrate in a situation of this nature, it was held by the Constitution Bench in the case of **Dharam Pal** (supra):-

> **"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.
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> **36.** This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided 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 was found to be triable by the Sessions Court."

13. Another Constitution Bench in the case of **Hardeep Singh vs. State of Punjab and Others** [(2014) 3 SCC 92] followed

Dharam Pal (supra). It was opined by the Constitution Bench in the case of **Hardeep Singh** (supra):-

> **"111.** Even the Constitution Bench in *Dharam Pal (CB)* [(2014) 3 SCC 306 : AIR 2013 SC 3018] has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the charge-sheet, once the case had been committed to it. **It means that a person whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 CrPC can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled."**
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> **(emphasis added)**

14. Earlier, a Coordinate Bench in the case of **Raj Kishore Prasad vs. State of Bihar and Another** [(1996) 4 SCC 495] expressed the view that power under Section 209 of the Code to summon a new offender was not vested with a Magistrate. In this decision, the correctness of the view taken in the cases of **Kishun Singh & Others vs. State of Bihar** [(1993) 2 SCC 16] and **Nisar and Another vs. State of U.P.** [(1995) 2 SCC 23] was doubted. The latter decision followed **Kishun Singh** (supra). The Constitution Bench in the case of **Dharam Pal** (supra) affirmed the view taken by this Court in the case of **Kishun Singh** (supra) and overruled **Raj Kishore Prasad** (supra). In fact, again a

Coordinate Bench in the case of **Balveer Singh and Another vs. State of Rajasthan and Another** [(2016) 6 SCC 680] has followed both **Dharam Pal** (supra) and **Kishun Singh** (supra). In the latter authority (i.e., **Kishun Singh**), it was, inter-alia, held:-

> **"13.** The question then is whether de hors Section 319 of the Code, can similar power be traced to any other provision in the Code or can such power be implied from the scheme of the Code? We have already pointed out earlier the two alternative modes in which the Criminal Law can be set in motion; by the filing of information with the police under Section 154 of the Code or upon receipt of a complaint or information by a Magistrate. The former would lead to investigation by the police and may culminate in a police report under Section 173 of the Code on the basis whereof cognizance may be taken by the Magistrate under Section 190(1)(*b*) of the Code. In the latter case, the Magistrate may either order investigation by the police under Section 156(3) of the Code or himself hold an inquiry under Section 202 before taking cognizance of the offence under Section 190(1)(*a*) or (*c*), as the case may be, read with Section 204 of the Code. Once the Magistrate takes cognizance of the offence he may proceed to try the offender (except where the case is transferred under Section 191) or commit him for trial under Section 209 of the Code if the offence is triable exclusively by a Court of Session. As pointed out earlier cognizance is taken of the offence and not the offender. This Court in *Raghubans Dubey* v. *State of Bihar* [(1967) 2 SCR 423 : AIR 1967 SC 1167 : 1967 Cri LJ 1081] stated that once cognizance of an offence is taken it becomes the Court's duty 'to find out who the offenders really are' and if the Court finds 'that apart from the persons sent up by the police some other persons are involved, it is its duty to proceed against those persons' by summoning them because 'the summoning of the additional accused is part of the proceeding initiated by its taking cognizance of an offence'. Even after the present Code came into force, the legal position has not undergone a change; on the contrary the ratio of *Dubey case* [(1967) 2 SCR 423 : AIR 1967 SC 1167 : 1967 Cri LJ 1081] was affirmed in *Hareram*

> *Satpathy* v. *Tikaram Agarwala* [(1978) 4 SCC 58 : 1978 SCC (Cri) 496 : (1979) 1 SCR 349 : AIR 1978 SC 1568]. Thus far there is no difficulty."

15. There is a difference so far as the position of law on which the opinions of the two Constitution Benches were delivered in relation to the facts of the present case. In the cases of **Dharam Pal** (supra) and **Hardeep Singh** (supra), summons were issued against the persons whose names had figured in column (2) of the chargesheet. Both these authorities also dealt with exercise of jurisdiction of the Court of Session under Section 193 of the Code. This provision reads:-

> "**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."

16. It would appear from the Code that the jurisdiction to take cognizance has been vested in the Magistrate (under Section 190 thereof) as also Court of Session under Section 193, which we have quoted above. This question has been examined in the case of **Dharam Pal** (supra) and on this point it has been held:-

> **"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 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, 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 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."
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> **(emphasis added)**

The scope of jurisdiction of the Magistrate in taking cognizance of an offence was earlier examined by a three-judge Bench of this court in the case of **Raghubans Dubey vs. State of Bihar** [AIR 1967 SC 1167]. This authority was relied upon by the Coordinate Bench in the case of **Kishun Singh** (supra). Dealing with broadly similar provisions of the old Code, of 1898, it was observed by this Court:-

> "**8.** .....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. As pointed out by this Court in *Pravin Chandra Mody v. State of Andhra Pradesh* [(1965) 1 SCR 269] the term "complaint" would include allegations made against persons unknown. If a Magistrate takes cognizance under Section 190(1)(a) on the basis of a complaint of facts he would take cognizance and a proceeding would be instituted even though persons who had committed the offence were not known at that time. The same position prevails, in our view, under Section 190(1)(b)."

17. In the case of **Kishun Singh** (supra), 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 vs. Lajya Ram and Others** [AIR 1966 SC 595]). The phrase used to explain the implication of taking cognizance by a Court of Session in the judgment of **Kishun Singh** (supra) was "cognizance in the limited sense." In paragraph 8 of the report (in **Kishun Singh's** case), it has been held observed:-

> **"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. *L.R. Kapur* [(1966) 1 SCR 560, 568 : AIR 1966 SC 595 : 1966 Cri LJ 465] observed as under:
>
> "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."**"**

18. Jurisdiction of the Magistrate to take cognizance of an offence triable by a Court of Session is not in controversy before us. The course open to a Magistrate on submission of a police report has been discussed in the case of **Dharam Pal** (supra). In paragraph 39 of the report in **Dharam Pal's** case, such power or jurisdiction of the Magistrate has been spelt out. We have quoted this passage earlier in this judgment.

19. The other difference so far as this case is concerned in relation to the factual basis on which the decision of the Constitution Bench in **Dharam Pal** (supra) as also the judgment in the case of **Raghubans Dubey** (supra) were delivered is that in both these cases, the names of the persons arraigned as accused had figured in column (2) of the charge sheet. This column, as it appears from the judgment in the case of

Raghubans Dubey (supra), records the name of a person under the heading "not sent up". In that case, the person concerned was named in the F.I.R. But that factor, by itself, in our opinion ought not to be considered as a reason for the Court in not summoning an accused not named in the F.I.R. and whose name also does not feature in chargesheet at all. These judgments were delivered in cases where the names of the persons sought to be arraigned as accused appeared in column (2) of the police report. In our opinion the legal proposition laid down while dealing with this point was not confined to the power to summon those persons only, whose names featured in column (2) of the chargesheet. In the case of **Dharam Pal** (supra), the second point formulated (para 7.2) related to persons named in column (2), but the issue before the Constitution Bench related to that category of persons only. This is the position of law enunciated in the cases of **Hardeep Singh** (supra) and **Raghubans Dubey** (supra). In the latter authority, the duty of the Court taking cognizance of an offence has been held "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". Such duty to proceed against other persons cannot be held to be confined to only those whose names figure in column (2) of the chargesheet. As we have already observed that in the aforesaid authorities, the question of summoning the persons named in column (2) of the chargesheet was involved, in our opinion inclusion in column (2) was not held to be the determinant factor for summoning persons other than those named as accused in the police report or chargesheet. The principle of law enunciated in **Raghubans Dubey** (supra), **Dharam Pal** (supra) and **Hardeep Singh** (supra) does not constrict exercise of such power of the Court taking cognizance in respect of this category of persons (i.e., whose names feature in column (2) of the chargesheet).

20. In the cases of **Raghubans Dubey** (supra), **SWIL Ltd.** (supra) and **Dharam Pal** (supra), the power or jurisdiction of the Court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is

taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the F.I.R. or police report.

21. In the present case, the name of the accused had transpired from the statement made by the victim under Section 164 of the Code. In the case of **Dharam Pal** (supra), it has been laid down in clear terms that in the event the Magistrate

disagrees with the police report, he may act on the basis of a protest petition that may be filed and commit the case to the Court of Session. This power of the Magistrate is not exercisable only in respect of persons whose names appear in column (2) of the chargesheet, apart from those who are arraigned as accused in the police report. In the subject-proceeding, the Magistrate acted on the basis of an independent application filed by the de facto complainant. If there are materials before the Magistrate showing complicity of persons other than those arraigned as accused or named in column 2 of the police report in commission of an offence, the Magistrate at that stage could summon such persons as well upon taking cognizance of the offence. As we have already discussed, this was the view of this Court in the case of **Raghubans Dubey** (supra). Though this judgment dealt with the provisions of the 1898 Code, this authority was followed in the case of **Kishun Singh** (supra). For summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain

confined to the police report, charge sheet or the F.I.R. A statement made under Section 164 of the Code could also be considered for such purpose.

22. Turning to the facts of the present case, we do not find any error in the order of the Magistrate, which was affirmed by the High Court. We accordingly affirm the judgment under appeal.

23. The appeal is dismissed and the interim order passed in this matter shall stand dissolved.

24. Pending application(s), if any, shall stand disposed of.

.....J.
(VINEET SARAN)

.....J.
(ANIRUDDHA BOSE)

NEW DELHI;
16th March, 2022