

CRIMINAL MISCELLANEOUS

Before S. C. Mital, J.

WALAYAM SINGH,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 2905-M of 1977

and

Criminal Misc. No. 3915 of 1977

September 3, 1977.

*Code of Criminal Procedure (2 of 1973)—Sections 193, 195 and 319—Report under section 173—Person not charge sheeted by the Police and not committed by the Magistrate—Whether he be summoned as an accused by the Court of Sessions.*

*Held, that a reading of sections 193 and 319 of the Criminal Procedure Code 1973 clearly establishes that after the Court of Sessions has taken cognizance of a case which has been committed to it, it has the power under section 319 of the Code to summon any person other than the accused who appears to it to have committed any offence for which he could be tried together with the accused.* (Para 3).

*Patanchela China Lingaiah v. The State and another 1977 Cr. L. J. 415—DISSENTED FROM.*

*Application under section 482 of the Code of Criminal Procedure praying that the order of Shri S. K. Jain, Additional Sessions Judge, Ferozepore, dated 25th August, 1977 be quashed as illegal and without jurisdiction.*

*F.I.R. No. 294, dated 21st August, 1976. P. S. Zira.*

*Offences Under Section 307|325|324|323|148|149. I.P.C.*

*Petition filed on : 5th September, 1977.*

*Criminal Misc. No. 3915 of 1977.*

*Application under Section 482 of the Code of Criminal Procedure, praying that the further proceedings in the trial Court be stayed till the decision of the petition.*

R. S. Ghai, Advocate,—for the Petitioner.

#### JUDGMENT.

(1) In this case, the six accused-persons challaned by the police under sections 307/325/324/323/149 and 148, Indian Penal Code were committed by Judicial Magistrate 1st Class, Zira, to the Court of Session. In the report submitted under section 173 of the Code of Criminal Procedure, Waryam Singh was mentioned in Column No. 2 indicating that according to the police he had not committed the offence complained against. When the case was taken up by the Additional Sessions Judge, Ferozepore, he upon a consideration of the material on record, passed the impugned order summoning Waryam Singh as an accused. Feeling aggrieved, Waryam Singh has filed this petition under section 482 of the Code for quashing the impugned order.

(2) In *Surinder Kumar and others v. The State of Punjab*, (1) I expressed the view that the Magistrate while conducting commitment proceedings in a case exclusively triable by the Court of Session can commit only the accused-persons challaned by the police. The person mentioned in Column No. 2 of the police report under section 173 of the Code could not be committed to the Court of Session by the Magistrate. Whether the Court of Session, in the absence of commitment, would be in a position to proceed against the person mentioned in Column No. 2 of the report above-said, was the question left open by me. In the instant case this question has directly arisen. Reference in this regard may be made to *Daya Singh and another v. The State of Punjab*, (2), decided by R. N. Mittal J. The learned Judge upon an examination of the provisions of sections 193 and 319 of the Code, held that the Court of Session has jurisdiction under section 319 to proceed against the persons not charge-sheeted by the police but mentioned in Column No. 2 of their report.

(3) Learned counsel for Waryam Singh pointed out that in *Patanachala China Lingaiah v. The State and another*, (3) a learned Judge of the Andhra Pradesh High Court expressed

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(1) 1977 P.L.R. 454.

(2) Cr. M. No. 559-M of 1977 decided on 2.3.1977.

(3) 1977 Cr. L. J. 415.

Tejinder Kaur v. Balbir Singh (Tiwana, J.)

a contrary view. This ruling was not cited before R. N. Mittal J. Section 193 of the Code of Criminal Procedure lays down :—

“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.”

In the above-cited ruling of the Andhra Pradesh High Court, the learned Judge, I may say with due respects, did not give effect to the opening words “Except as otherwise expressly provided by this Code” of Section 193. In Daya Singh’s case (supra), R. N. Mittal J. gave full effect to these words occurring in section 193 and held that the exception was provided by section 319 of the Code. Upon a full examination of the provisions of section 319 of the Code, R. N. Mittal, J. held :—

“A reading of sections 193 and 319 of the Code clearly establishes that after the Court of Session has taken cognizance of a case which has been committed to it, it has the power under section 319 to summon any person other than the accused who appears to it to have committed any offence for which he could be tried together with the accused.”

(4) I am in respectful agreement with the above-quoted observations of R. N. Mittal, J. This petition, therefore, fails and the same is hereby dismissed.

K. T. S.

CRIMINAL MISCELLANEOUS

Before K. S. Tiwana, J.

TEJINDER KAUR,—Petitioner.

versus

BALBIR SINGH.—Respondent.

Criminal Misc. No. 4864-M of 1976

October 6, 1977.

Code of Criminal Procedure (2 of 1974)—Section 125(1) Explanation (b)—Divorced wife—Whether has a right to claim maintenance from her ex-husband—Existence of a Civil Court decree restraining her from proclaiming herself as his wife—Whether affects her right to claim maintenance.

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In the above-cited ruling of the Andhra Pradesh High Court, the learned Judge, I may say with due respects, did not give effect to the opening words “Except as otherwise expressly provided by this Code” of Section 193. In Daya Singh’s case (supra), R. N. Mittal J. gave full effect to these words occurring in section 193 and held that the exception was provided by section 319 of the Code. Upon a full examination of the provisions of section 319 of the Code, R. N. Mittal, J. held :—

“A reading of sections 193 and 319 of the Code clearly establishes that after the Court of Session has taken cognizance of a case which has been committed to it, it has the power under section 319 to summon any person other than the accused who appears to it to have committed any offence for which he could be tried together with the accused.”

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