

Before Harbans Singh Rai & A. P. Chowdhri, JJ.

OMA ALIAS OM PARKASH,—*Petitioner.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Misc. No. 1371-M of 1990.

30th October, 1990.

Code of Criminal Procedure, 1973 (V of 1908)—Ss. 227, 228 & 319—Court's power to summon persons under Ss. 227 & 228 and under S. 319—Held, provisions are independent of each other and cover different situations and Court has power to summon—For summoning, recording of evidence is not necessary under Ss. 227 & 228 whereas it is necessary under S. 319.

Held, that the Court has powers under Sections 227 & 228 of the Code of Criminal Procedure to summon any person without recording any evidence at the charge stage. 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 anyone who on adequate materials appears to it to be prima facie guilty of the said offence but indeed it is its duty to do so. (Paras 6 & 8)

Held, that after framing of the charge, if some evidence is recorded and then somebody is implicated by the evidence led by the prosecution and the Sessions Judge wants to summon that person he can do so under Section 319 Cr. P. C. Both these provisions i.e., Sections 227, 228 and Section 319 of the Code deal with two different situations. (Para 11)

Lal Chand and another v. State of Haryana, 1983 CrL. L.J. 1394.

Joginder Singh and another v. State of Punjab and another
AIR 1979, S.C. 339. (FOLLOWED)

This case was referred to larger bench by the Hon'ble Mr. Justice J. S. Sekhon, on 26th April, 1990, for decision of an important question of law involved in this case. The Division Bench consisting of Hon'ble Mr. Justice Harbans Singh Rai and Hon'ble Mr. Justice A. P. Chowdhri decided the question of law involved in this case on 30th October, 1990 and remanded the case back to the learned Single Judge for its decision on merits. The parties were directed to appear before the learned Single Judge on 26th January, 1990.

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Criminal Misc. under Section 482 Crl. P.C. praying that the impugned order, dated 5th February, 1990 of learned Sessions Judge Jind be set aside.

It is further prayed that till the disposal of petition further proceedings of the trial against the petitioner be stayed. FIR No. 151 dated 28th July, 1989, U/s 148/149, I.P.C. P. S. Sadar, Jind. H. S. Gill Advocate, for the Petitioner.

Raghubir Chaudhry, Advocate, for State.

R. S. Cheema, Advocate, for the Complainant.

JUDGMENT

Harbans Singh Rai, J.

(1) J. S. Sekhon, J. has made this reference,—*vide* his order dated April 26, 1990 as according to the learned Judge, there is a conflict between the provisions of Sections 227 and 228 of the Code of Criminal Procedure (hereinafter referred to as the Code) as interpreted by a Division Bench of this Court in *Lal Chand and another v. State of Haryana* (1), and the provisions of Section 319 of the Code, as interpreted by the Supreme Court in "*Joginder Singh and another v. State of Punjab and another*" (2). The learned Judge has further stated in the reference that a single Bench of this Court in "*Mithlesh Kumari v. State of Haryana*" (3), had also held that cognizance of the offence against the additional accused can be taken by the trial court only after recording some evidence. As there is some conflict, J. S. Sekhon, J. has referred the matter to a larger Bench.

(2) We have heard the learned counsel for the parties and given our careful consideration to the point of law involved.

(3) To our mind, there is no conflict between the view taken by a Division Bench of this Court and the view taken by the Apex Court in "*Joginder Singh's* case (Supra). Our reasons for reaching this conclusion are as under :—

(4) In Lal Chand's case the incident took place on August 27, 1980 at 8.30 A.M. in the office of the Truck Union, Sonapat. Cross-cases were registered by the Police against the parties. One of the

(1) 1983 Criminal Law Journal 1394

(2) A.I.R. 1979 S.C. 339

(3) 1989 (2) C.L.R. 321

victims of the crime Ram Kumar, however, died on September 2, 1980 and consequently the offence was converted to one under Section 302, Indian Penal Code. After investigation, six accused were challaned by the police for the said offence. Lal Chand, President of the Truck Union, was found to be innocent and the ground for finding him innocent given by the Investigating Agency was that he was in the police station in connection with an application of one Chiranjit Lal, at the time of the occurrence. The committing Magistrate committed the aforesaid six accused challaned by the police for trial to the Court of Sessions but did not commit Lal Chand on the basis of finding of Investigating Agency. Before the Court of Sessions, Bharat Singh complainant made an application for summoning Lal Chand also as an accused person to stand his trial in the case alongwith other co-accused. The learned Additional Sessions Judge Sonapat,—*vide* his order dated August 6, 1981 summoned Lal Chand as an accused in the case to be put in the dock along with the other co-accused. The learned Additional Sessions Judge held that since all the injured eye-witnesses had categorically made statements before the police involving Lal Chand for the commission of the alleged offence a *prime facie* case against him was clearly made out and a plea of *alibi* by him could not conclusively absolve him of the charge. The learned Additional Sessions Judge further stated in his judgment that even though the provisions of Section 319 of the Code were not attracted yet he had the power to summon and frame a charge against Lal Chand petitioner, under Sections 227 and 228 of the Code. It was specifically mentioned in the judgment that it was wholly unnecessary to be drawn into the controversy. It was mentioned in para No. 12 of the judgment as under :—

“From the above, it is evident that there is some conflict of judicial opinion on this point. However, in view of the fact that I have rested myself primarily on the provisions of Sections 227 and 228 of the Code, it is wholly unnecessary to be drawn into this controversy under Section 319 of the Code. I would, therefore, refrain from expressing any opinion on this specific point.”

(5) The view taken in *Lal Chand's case* by the Division Bench of this Court is that there are two powers vested in the Session Court entitling it to deal with two different situations: A person if named in the First Information Report and other relevant documents and if not challaned by the police can be summoned by the Committing

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Magistrate. If the Committing Magistrate does not summon him the Court of Session before framing of the charge can summon him. The second situation is when after framing of the charge, some evidence is recorded which implicates a person not before the Court, the Court can summon that person under Section 319 Cr.P.C. The Division Bench further held that for summoning in the first situation i.e. under Sections 227 and 228 of the Code no evidence is required to be recorded and the Court can certainly summon a person after perusal of the First Information Report, statements recorded under Section 161 of the Code and other papers collected during the investigation and if satisfied can frame a charge against him. This summoning has nothing to do with the powers under Section 319 of the Code and is independent of Section 319 of the Code. The second situation arises when a person is named in the evidence recorded by the trial Court. The trial Court is competent under Section 319 of the Code to summon him as some evidence has appeared against him.

(6) In *Lal Chand's case*, S. S. Sandhawalia, Chief Justice who wrote the judgment had referred the powers under Section 193 of the old and new Code, powers under Sections 239 and 240 of the new Code and the Provisions of Sections 227 and 228 of the present Code and gave detailed reasons to come to the conclusion that the Court has powers under Sections 227 and 228 of the Code to summon any person without recording any evidence at the charge stage. The view of the Division Bench was strengthened by an earlier decision of Division Bench of this Court reported in "*Surat Singh v. The State of Punjab*" (4), where it was held that the Committing Magistrate on the basis of final report under Section 173 of the Code has jurisdiction to differ with the conclusions of the police and direct that the accused person not sent up for trial and mentioned in column No. 2 should also be summoned and committed to the Court of Session under Section 209 thereof. The view taken by the Division Bench in *Surat Singh's case* was rested on the view of the Supreme Court in "*Hareram Satpathy v. Tikaram Agarwala*" (5).

(7) In *Lal Chand's case*, the Division Bench further opined that K. S. Tiwana, J. in "*Amar Singh v. State of Punjab*", Criminal Misc. No. 4220 M of 1977 decided on November 18, 1977 had held :—

“Under the new Code, the power of discharge which was previously exercised by the Magistrate is now exercised by

(4) 1981 Chandigarh Law Reporter 547

(5) A.I.R. 1978 S.C. 1568

the Sessions Judge under Section 227 of the new Code. It is at this stage that the Sessions Judge applies his conscious mind to the records and documents mentioned in Sections 173, 227 and 228 of the new Code for framing a charge against the accused as he is invested with the power of taking cognizance of a 'case' by the new Code. This power now because of Section 209 of the new Code cannot be exercised by the Magistrate. If this power is denied to the Sessions Judge, then it is likely to give unbridled powers to the investigating agency in determining the guilt or innocence of the culprits itself in place of the Courts. If for wrong or extraneous considerations a person accused of an offence is let off by the investigating agency, then there will be no remedy against him. If the argument of Shri Ajmer Singh, learned counsel for the petitioners is accepted except on a complaint filed by the aggrieved party. As referred earlier, the circumstances might be in which there may not be any complainant to file a complaint, or if there is any, he may not like to move the Court. Such a restricted interpretation as has been put by the Andhra Pradesh High Court in 1977 Cri. L.J. 415, cannot be placed on the Court of Session. The new Code invests the Courts with cognizance of 'cases' and not cognizance against an individual. The power of summoning any person as accused in a case is not specifically given to the Court but it flows from the cognizance it takes of the cases involving an offence.

For the foregoing reasons, with due respect to the learned Judge deciding *Patananchala China Lingaiiah's case* (1977 Cri. L.J. 415) (Andh Pra) (supra) I am unable to accept the conclusions arrived at in that case. A Sessions Judge can, in the case committed to his Court, summon any person accused of the offence, let off by the investigating agency, against whom, in his view, there is sufficient material to be proceeded against."

The Division Bench further relied on "*Raghubans Dubey v. State of Bihar*" (6), where it was held :—

"In our opinion once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the

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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."

(8) Taking all these cases into consideration, the Judges in *Lal Chand's case* held that 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 adequate materials appears to it to be prima face guilty of the said offence but, indeed it is its duty to do so.

(9) The view in *Lal Chand's case* was also taken by this Court in number of other cases. In "*Randhir Singh v. Kala Singh and others*" (7), a reference was made by Additional Sessions Judge, Karnal under Section 395 (2) of the Code. One of the questions posed was whether a person accused of an offence, who was not challaned by the police and consequently not committed for trial to the Court of Session can be summoned by the Sessions Judge and joined as an accused with other co-accused at the trial. K. S. Tiwana, J. while dealing with this situation had observed that this question would arise at two stages. The first stage is when the case after commitment comes up for consideration of charge before the Court of Session. Under the old Code the Magistrate taking cognizance of the offence under Section 190 could summon such persons, as accused, against whom chargesheet was not submitted by the police. After the new Code came into force, that duty is now to be performed by the Sessions Judge under Sections 227 and 228 of the Code.

(10) This Court again dealt with this proposition in "*Gian Singh and another v. State of Punjab*" (8), 1989(2) where it was observed: - -

"It is at that stage, that the Court, i.e., the Magistrate prior to commitment, and the Sessions Judge after the commitment for the first time applies his mind to the documents and

(7) (1979) 81 P.L.R. 286

(8) 1989 (2) Recent Criminal Reports 425

material collected during investigation. If as a result of the application of mind, the Sessions Judge comes to the conclusion that there are other persons named in the record of the investigating agency who have not been sent up for trial and finds that there is material on record to indicate that the accusation against such persons is well founded, it is open to him to summon such persons to join the accused who have not been challaned by the police, for trial. _____ The second stage for summoning by the Sessions Judge, however, arises after framing a charge under Section 319 of the Cr.P.C. i.e. after recording evidence appearing for the prosecution".

(11) This Court had been consistently taking the view that if a person not challaned by the Investigating Agency is named in police papers, the Magistrate before commitment and the Sessions Judge before framing of the charge is competent to summon him and direct him to join the trial without recording any evidence. These powers are exercised under section 209 of the Code by the Magistrate and under Sections 227 and 228 of the Code by the Sessions Judge. Section 319 of the Code has not come in the picture at this stage but if after framing of the charge, if some evidence is recorded and then somebody is implicated by the evidence led by the prosecution and the Sessions Judge wants to summon that person he can do so under Section 319 Cr.P.C. Both these provisions i.e. Sections 227, 228 and Section 319 of the Code deal with two different situations.

(12) As *Lal Chand's case* did not deal with the power under Section 319 Cr.P.C. and the Supreme Court did not deal with the powers under Sections 227 and 228 of the Code but dealt with the power under Section 319 of the Code so there is no conflict in the view taken by this Court and the Supreme Court. Mr. H. S. Gill Advocate appearing for the petitioner also could not point out any conflict between the view taken by this Court and the Supreme Court and almost conceded that *Lal Chand's case* and *Joginder Singh's case* deal with two different situations and two different provisions of law.

(13) As we do not find any conflict in the view taken by this court in *Lal Chand's case* and the view taken by the Supreme Court in *Joginder Singh's case*, the reference is returned. The parties are directed to appear before the learned Single Judge on 25th November, 1990.

R.N.R.