

**CRR-2096-2019(O&M)
and connected case**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRR-2096-2019(O&M)

Anupam Kumar alias Pompy

.....Petitioner

Versus

State of Punjab and another

.....Respondents

2. CRR-2220-2019(O&M)

Pardeep Sharma @ Kala

.....Petitioner

Versus

State of Punjab and another

.....Respondents

Date of decision: 06.11.2019

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. J.S.Bedi, Sr. Advocate with
Mr. L.S.Chahal, Advocate for the petitioner
in CRR no.2096 of 2019

Mr. G.S.Nahel, Advocate for petitioner
in CRR No. 2220 of 2019

Mr. S.P.S.Tinna, Addl. AG, Punjab

Mr. P.S.Ahluwalia, Advocate for complainant

ANIL KSHETARPAL, J.

By this order, two criminal revision petitions nos. CRR-2096

and 2220 of 2019 shall stand disposed of.

Challenge is to the correctness of the order passed by learned Additional Sessions Judge, Sangrur allowing application under Section 193 Cr.P.C (hereinafter referred to as 'Code') for summoning the petitioners (one each in both petitions) as accused to face criminal trial arising from a double murder.

Some facts are required to be noticed.

As per the case of the prosecution, petitioners alongwith two other accused had murdered husband and wife (brother and sister-in-law of the first informant) on 2.9.2018. It has been stated that petitioners alongwith other accused have wrongly restrained and encircled deceased Charanjit Singh @ Chiri and his wife Pooja with the intention to kill them while all the accused were armed with weapons. Hence, a desperate call was given by the deceased-Charanjit Singh to the first informant (his own brother) to immediately come at the place of occurrence in order to save them when the first informant reached in front of Street no.4 of Sadar Basti, he noticed the car of his brother and found his brother- Charanjit Singh @ Chiri and his wife Pooja had been murdered. Thus, application was moved to the police stating that he has strong belief that his brother and sister-in-law have been murdered by petitioners alongwith their two other co-accused named in the application. Police after investigation absolved the petitioners and submitted police report under Section 173 of the Code against Rajesh Kumar @ Jassi and Jaidev @ Jajju. First informant filed an application under Section 190 of the Code for summoning the petitioners. Learned Chief Judicial Magistrate dismissed the application by observing as under:-

“After hearing the arguments of learned

counsel for the complainant on the present application moved by him under Section 190 Cr.P.C for summoning of accused Anupam Kumar and Pardeep Sharma, this Court is convinced with the argument of learned counsel for the complainant that as per judgment of Hon'le Supreme Court of India titled as **Dharam Pal and others (supra)** Magistrate has power to summon the person named in column no.2 of police report and commit the case to the Court of Session under Section 190 Cr.P.C in case, Magistrate is convinced on the basis of police report that prima facie case was made out against the accused and even he has ample power to disagree with police report and summon the accused without holding an inquiry under Section 190 Cr.P.C However, this Court is of the considered view that admittedly FIR was registered against Jassi, Pardeep Kumar, Anupam and Jajju on 3.9.2018 and accused Pardeep Kumar and Anupam were arrested on 4.9.2018 and were taken on police remand for 5 days i.e till 9.9.2018 and on 5.9.2018 accused Rajesh Kumar alias Jassi had surrendered before the Court of Chief Judicial Magistrate, Patiala and he was sent on transit remand to Sangrur and thereafter was taken on police remand for 3 days and all the accused were sent to judicial custody on 10.9.2018 and during their custody, wives of accused

Anupam Kumar and Pardeep Sharma moved application for proper investigation of the present case to SSP, Sangrur and on said applications, on the orders of SSP, Sangrur, one SIT was constituted headed over by SP(O), Sangrur including DSP (1) and SHO, Police Station City, Sangrur. After thorough investigation, both the accused Anupam Kumar and Pardeep Sharma were found to be innocent and the inquiry report was submitted by SIT to the SSP, Sangrur which was duly approved by SSP, Sangrur and thereafter, application for discharge of both accused, namely, Anupam Kumar and Pardeep Sharma from the custody was moved. However, by way of moving present application, complainant has alleged that he got call from his brother that accused Jassi, Anupam, Pardeep and Jajju had wrongly restrained Charanjit and his wife and were armed with weapons and would kill them and on that complainant had immediately reached the spot and found his brother Charanjit and his wife Pooja murdered and as such the statement of the deceased should be considered as his dying declaration on the basis of judgment titled as **Vishram and others**(supra) relied upon by the complainant as the oral declaration made by the deceased to his father and wife on the basis of which FIR was lodged is dying declaration to his father and wife on the basis of which

FIR was lodged is dying declaration and it could not be said that the deceased having received multiple injuries could not have been in a position to make the dying declaration. Even it is the stand of learned counsel for the complainant that prosecution has ignored the evidence of Lakhpat Rai who claims himself to be eye witness as he had seen all the four accused at the spot of occurrence at the relevant time and had identified accused Anupam and Pardeep Sharma present in Dzire car at the spot.

4. However, the perusal of challan presented by the prosecution against accused Rajesh Kumar and the report of SIT forwarded to SSP, Sangrur which was duly approved by SSP, Sangrur clearly reveals that accused Anupam and Pardeep Sharma were found to be innocent and rightly put in column no.2 while presenting challan against accused Rajesh Kumar on the basis of detailed inquiry. As during inquiry, CCTV footage of spot of occurrence was taken into consideration which had revealed that there was only two persons present at the spot who were involved in the murder at the spot of occurrence and as such, the statement of complainant that all the four accused had committed offence of murder of his brother Charanjit and wife Pooja is not convincing. Furthermore, during the

inquiry, on considering the relevant CCTV footage and call details of accused Anupam and Pardeep Sharma, it had also come on record that they were present in their respective houses and were not present at the spot of occurrence at the relevant point of time.

5. Further, with regard to contentions of learned counsel for the complainant that police officials had ignored the evidence of Lakhpat Rai, it has also come on record that the statement of Lakhpat Rai was recorded by the police on 29.9.2018 wherein he has stated that he saw accused Anupam Kumar and Pardeep Sharma in the car at the time of occurrence while he was passing the spot on his motor cycle. However, no reason was given by him for not giving statement for more than 25 days and after considering CCTV footage of the spot of occurrence and recording the statement of security officials of Mata Kali Devi Mandir and tower location of mobile of Lakhpat Rai, it was found that no such motor cycle was seen passing through that area during the relevant time and the version of Lakhpat Rai was found to be false as he was not found present anywhere around the spot of occurrence at the relevant time. As such, prima facie no case is made out against accused Anupam Kumar and Pardeep Sharma to take cognizance against them and summon them to face trial alongwith accused

Rajesh Kumar and then to commit the case to the Court of Session. Hence, application under Section 190 Cr.P.C moved by complainant stands dismissed.”

Since the offence under Section 302 was exclusively triable by Court of Sessions, hence the case was committed to the Court of Sessions. Before the Court of Sessions, first informant again moved an application under Section 193 of the Code duly forwarded by the Additional Public Prosecutor. A reading of the order shows that Additional Public Prosecutor had assisted the Court and prayed for summoning of the additional accused alongwith counsel representing the first informant. Learned Additional Sessions Judge has recorded following reasons while passing the impugned order:-

“8. Thus as per the above said judgment of Hon'ble Supreme Court of India and the statutory provision of section 193 Cr.P.C Session Court while taking cognizance when the case has been committed to it by a Magistrate under the Code of Criminal Procedure may summon those persons shown in Column No.2 of the police report to stand trial along with those already named therein even without recording the evidence, if the complicity of those persons in the case would be evident from the material available on record. Instant case was registered on the statement of Karamjit Kumar alias Ravi recorded by SHO, P.S.City Sangrur. On 3.9.2018 at 4:00 A.M. Said Karamjit Kumar alias Ravi

had categorically stated in his said statement that on 2.9.2018 at about 10:58 PM, his brother Charanjit alias Chiri informed him on telephone that he alongwith his wife Pooja had gone to Ranbir College Road, Sangrur by their car and they were encircled by Jassi, Pardeep, Pompy and Jajju who were armed with weapons and he has further informed him that they would kill them and requested him to come at the place earliest. He has further stated in his said statement that when he reached there on his motorcycle, he had seen that his brother Charanjit alias Chiri and his sister-in-law Pooja were lying murdered on the road and the above named persons fled away towards Balmiki Chowk by their car of white colour. Karamjit Kumar had also stated in his said statement that his brother Charanjit has money dispute with Jassi and Pardeep Kumar and due to the said grudge, accused persons committed murder of his brother and sister-in-law by hatching a criminal conspiracy. Thus, the name of Anupam Kumar alias Pompy and Pardeep Sharma as well as the role played by them in the commission of the said offence had been categorically mentioned by applicant/complainant in his said statement dated 3.9.2018. The information regarding presence of Anupam Kumar alias Pompi and Pardeep Sharma while carrying weapon along with other accused Jassi and Jajju

at the time of alleged occurrence was given to applicant Karamjit Kumar by deceased Charanjit himself immediately prior to the said occurrence at about 10:58 P.M on 2.9.2018. Hon'le Supreme Court of India in **Vishram's case (supra) and Parbin Ali's case (supra)** has held that oral dying declaration made by deceased is sufficient to hold the accused guilty if it is reliable. The information given by deceased immediately prior to his death about the assailants who caused injuries on his person amounts to dying declaration made by the said deceased.

9. Therefore, as per the ratio of above said judgment the information given to applicant Karamjit Kumar alias Ravi by deceased Charanjit about the presence of Anupam Kumar @ Pompy and Pardeep Sharma along with the other accused and the intention of those persons to kill them immediately prior to their murder can not be ignored at this stage merely on the basis of CCTV footage and their mobile phone location as the CCTV footage recorded in CCTV camera installed at a some distance from the place of occurrence may not cover all the assailants as the said camera can cover only those assailants who are in front of that camera and the persons who are not in front of the said camera, cannot be seen in the said CCTV footage. The inquiry report

submitted by Special Investigation Team on 18.9.2018 on the basis of which Anupam Kumar and Pardeep Sharma were declared innocent cannot be relied at this stage as the said report is yet to be proved and moreover the said report is based upon CCTV footage and the mobile phone location of the said persons. The mobile phone location of Anupam Kumar and Pardeep Sharma were of dated 2.9.2018 upto 21:18:30 and 21:20:47 respectively. The alleged occurrence took place at about 23:00:00. Thus mobile phone location of Anupam Kumar and Pardeep Sharma collected by Special Investigation Team upto 21:18:30 and 21:20:47 respectively itself is not sufficient to presume that they were not present at the place of occurrence at 22:58 on 2.9.2018. Hence, the inquiry report dated 18.9.2018 submitted by SIT is not sufficient to ignore the statement suffered by applicant/complainant on 3.9.2018 as referred to above. No doubt power under Section 193 Cr.P.C is an extra ordinary power which should be used very sparingly and only if compelling reason exists for taking cognizance against persons against whom action has not been taken as held by Hon'ble Rajasthan High Court in **Radhe Shyam's case (supra)** but in the present case compelling reason exists for taking cognizance against Anupam Kumar and Pardeep Sharma against

whom action has not been taken as their presence and role played by them in the commission of the offence has been disclosed by deceased Charanjit alias Chiri himself immediately prior to the said occurrence to his brother Karamjit Kumar and it cannot be believed that brother of deceased to whom deceased gave the information would spare the real assailants and falsely implicate Anupam Kumar and Pardeep Sharma particularly when even as per the inquiry report, there is no enmity of applicant or deceased with those persons.”

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the paper book. Learned Senior counsel for the petitioner in both the petitions has submitted as under:-

i) Once application under Section 190 of the Code was already dismissed by the learned Judicial Magistrate, the learned Additional Sessions Judge had no jurisdiction to pass an order under Section 193 of the Code unless the correctness of order passed under Section 190 of the Code has been challenged and reversed. He submitted that now the petitioners could only be summoned under Section 319 of the Code after appreciating the evidence which has been led.

ii) He submitted that the order passed by the Court is not sustainable as the impugned order is passed without hearing the petitioners. Learned Senior counsel has raised this argument on the assumption that if this Court comes to a conclusion that Court of Sessions was having suo

moto power to exercise revisional jurisdiction under Section 401 of the Code, the order passed by the learned Judicial Magistrate could not be reversed without hearing the petitioners.

On the other hand, learned counsels appearing for the first informant and State have submitted that learned Court of Sessions has correctly passed the order and the Court of Sessions has the jurisdiction under Section 193 of the Code to summon additional accused irrespective of order passed by the Magistrate dismissing the application under Section 190 of the Code after considering the material available on the record.

Learned counsel for the petitioners in support of his contentions has very strongly relied upon the judgment passed by the Hon'ble Supreme Court in the case of **'Balveer Singh and another vs. State of Rajasthan and another'** reported as (2016) 6 SCC 680. Learned senior counsel has submitted that in this case facts are pari-materia as initially application under Section 190 of the Code was dismissed by the Magistrate and thereafter, the Court of Sessions exercised power under Section 193 of the Code and Hon'ble Supreme Court in the aforesaid judgment upheld the order under Section 193 of the Code after taking note of the fact that additional accused sought to be summoned were heard by the Court of Sessions. He placed reliance on para 24 and 25 of the judgment, which are extracted as under:-

“24. Keeping in view the aforesaid legal position, we may now discuss the circumstances under which the cognizance was taken by the Session Judge. Here is a case where the police report which was

submitted to the Magistrate, the Investigating Officer had not included the appellants as accused persons. The complainant had filed application before the learned Magistrate with prayer to take cognizance against the appellants as well. This application was duly considered and rejected by the learned Magistrate. The situation in this case is, thus, not where the investigation report/chargesheet filed under [Section 173\(8\)](#) of the Code implicated the appellants and appellants contended that they are wrongly implicated. On the contrary, the Police itself had mentioned in its final report that case against the appellants had not been made out. This was objected to by the complainant who wanted the Magistrate to summon these appellants as well and for this purpose the application was filed by the complainant under [Section 190](#) of the Code. The appellants had replied to the said application and after hearing the arguments, the application was rejected by the Magistrate. This shows that order of the Magistrate was passed with due application of mind whereby he refused to take cognizance of the alleged offence against the appellants and confined it only to the son of the appellants. This order was not challenged. Normally, in such a case, it cannot be said that the Magistrate had played 'passive role' while committing the case to the

Court of Sessions. He had, thus, taken cognizance after due application of mind and playing an “active role” in the process. The position would have been different if the Magistrate had simply forwarded the application of the complainant to the Court of Sessions while committing the case. In this scenario, we are of the opinion that it would be a case where Magistrate had taken the cognizance of the offence. Notwithstanding the same, the Sessions Court on the similar application made by the complainant before it, took cognizance thereupon. Normally, such a course of action would not be permissible.

25.The next question is as to whether this Court should exercise its powers under [Article 136](#) of the Constitution to interdict such an order. We find that the order of the Magistrate refusing to take cognizance against the appellants is revisable. This power of revision can be exercised by the superior Court, which in this case, will be the Court of Sessions itself, either on the revision petition that can be filed by the aggrieved party or even suo moto by the revisional Court itself. The Court of Sessions was, thus, not powerless to pass an order in his revisionary jurisdiction. Things would have been different had he passed the impugned order taking cognizance of the offence against the appellants, without

affording any opportunity to them, since with the order that was passed by the learned Magistrate a valuable right had accrued in favour of these appellants. However, in the instant case, we find that a proper opportunity was given to the appellants herein who had filed reply to the application of the complainant and the Sessions Court had also heard their arguments. For this reason, we are not inclined to interfere with the impugned order and dismiss this appeal.”

This Court has carefully gone through the judgment passed by the Hon'ble Supreme Court in case of Balveer Singh's (supra). In the aforesaid judgment, the Hon'ble Supreme Court was faced with a situation where initially application under Section 190 of the Code was dismissed by the learned Magistrate and committed the case before the Court of Sessions for an offence under Section 306 IPC. Respondent No.2 preferred an application before the Court of Sessions which was allowed by the Court. Aggrieved by the said order, accused approached the High Court. High Court remanded the matter back to the Court of Sessions with a direction to hear the parties and to pass further orders in the light of judgment of the Constitution Bench in the case of **'Dharam Pal and others vs. State of Haryana and another'** reported as 2014 (3) SCC 306. Thereafter, Court of Sessions once again passed a fresh order.

In the facts of the aforesaid case the observations made by the Hon'ble Supreme Court in the case of Balveer Singh (supra) are required to be considered.

It may be noted here that initially Section 193 of the Code came up for consideration before the Hon'ble Supreme Court in the case of **'Kishun Singh vs. State of Bihar'** (1993) 2 SCC 16. The Hon'ble Supreme Court after considering the difference of language between the old Code i.e Criminal Procedure Code of 1898 and Criminal Procedure Code of 1973 held that in view of difference in the phraseology, the Court of Sessions is entitled to take cognizance of any offence as the Court of original jurisdiction. Hence, the Hon'ble Supreme Court went on to hold as under:-

“We have already indicated earlier from the ratio of this Court's decisions in the cases of Raghubans Dubey and Hareram that once the court takes cognizance of the offence (not 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 a part of the process of taking cognizance. We have also pointed out the difference in the language of [Section 193](#) of the two Codes; under the old [Code](#) the Court of Session was precluded from taking cognizance of any offence as a Court of original jurisdiction unless the accused was committed to it whereas under the present [Code](#) the embargo is diluted by the replacement of the words

the accused by the words *the case*. 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. The Full Bench of the High Court of Patna rightly appreciated the shift in [Section 193](#) of the Code from that under the old Code in the case of S.K Lutfur Rahman (*supra*) as under :

"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.

Once the case has been committed, the bar of [Section 193](#) is removed or, to put it in other words, the condition therefore stands satisfied vesting the Court of Session with the fullest jurisdiction to summon and individual accused of the crime."

We are in respectful agreement with the distinction brought out between the old [Section 193](#) and the provision as it now stands."

It would be further pertinent to note that the judgment passed in the case of Kishun Singh (supra) was differed with in the case of '**Ranjit Singh vs. State of Punjab**' reported as (1998) 7 SCC 149. However, the entire matter was re-considered by the Constitution Bench of the Hon'ble Supreme Court in the case of Dharam Pal (supra). The Hon'ble Constitution Bench after considering the various provisions of the Code held that the judgment passed in the case of Kishun Singh (supra) has been correctly decided whereas the judgment passed in the case of Ranjit Singh (supra) is not correct enunciation of law. While answering questions No.(iv) and (v), Hon'ble Constitution Bench has held that the Court of Sessions has a power under Section 193 of the Code.

Keeping in view the aforesaid position of law, this Court is called upon to adjudicate the arguments which have been raised by the

learned counsel for the petitioners.

As regards first submission with regard to lack of power that the Court of Sessions under Section 193 of the Code, the answer has already been given by the Hon'ble Supreme Court in the judgment passed in the case of Kishun Singh (supra) which has been approved by Constitution Bench in the case of Dharam Pal (supra). On careful reading of Section 193 of the Code, it is apparent that the Court of Sessions has been given power to take cognizance of an offence as the Court of original jurisdiction. The cognizance is of the offence and not of the offender(s). Learned senior counsel appearing for the petitioners has submitted that this will amount to second cognizance which is not permissible. He submitted that cognizance was initially taken by the learned Magistrate. He has committed the case to the Court of Sessions. He hence, submitted that second time cognizance is not permissible.

This question has been examined in the case of Kishun Singh (supra) and it has been held that on plain reading of Section 193 of the Code as it presently stands that once the case is committed to the Court of Sessions by Magistrate under the Code, the restriction placed on the power of the Sessions to take cognizance of an offence as a Court of original jurisdiction gets lifted. The Court went on to hold that once the Magistrate has committed the case under Section 209 of the Code to Court of Sessions, the bar under Section 193 of the Code is lifted thereby investing the Court of Sessions 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 be prima facie gathered from the material available on record. The Hon'ble Supreme Court further approved the Full Bench judgment of the Patna High Court.

Second limb of the first argument of the learned senior counsel is that once the Magistrate has dismissed the application under Section 190 of the Code only revision could be filed against the aforesaid order and hence power under Section 193 of the Code could not be exercised.

On careful scrutiny of the aforesaid submission, this Court has come to a conclusion that order passed by the Magistrate does not debar the Court of Sessions to which the case has been committed under Section 209 of the Code to take cognizance because it takes cognizance of any offence as the Court of original jurisdiction. Attention of this Court has not been drawn to any statutory bar to the powers of the Court of Sessions to entertain application under Section 193 of the Code, if an application under Section 190 of the Code has been dismissed. The Court of Sessions being Court of original jurisdiction is entitled to appreciate the material which has come on record. Still further Code of Criminal Procedure is a procedural Code. The procedural Code is required to be interpreted in a manner which helps the Court in better administration of justice.

As regards second argument of learned senior counsel that the order passed by the Court of Sessions is without hearing is to be noticed and rejected. Learned senior counsel could not draw attention of the Court to any statutory provision or requirement of law to hear the person/ persons who are sought to be summoned under Section 193 of the Code. It may be noted here that as per the scheme of the Code while summoning the accused

in a criminal complaint, there is no requirement of giving opportunity of hearing to the accused. Similarly, under Section 190, 193 and Section 319 of the Code, there is no provision of giving hearing to the accused who are sought to be summoned.

Learned senior counsel has once again laid stress on para 24 and 25 of the judgment passed in the case of Balveer Singh (supra) already noticed above. As noted above in the facts of the aforesaid case, Hon'ble Supreme Court has made certain observations. These observations have been made while following the judgments passed in the case of Kishun Singh (supra) and Dharam Pal (supra). The Hon'ble Supreme Court even in the case of Balveer Singh (supra) ultimately dismissed the petition filed by the persons who were summoned under Section 193 of the Code.

Learned senior counsel in the end submitted that in the present case investigating agency has held that petitioners are not visible in the CCTV footage. He further submitted that tower location of the mobile possessed by the petitioners does establish that the petitioners were not present at the place of occurrence.

It may be noted here that CCTV footage is yet to be proved. Still further the Court has found that the investigating agency instead of relying on the statement of independent witness Lakhpatt Rai @ Lakhi has placed reliance on CCTV footage. Still further CCTV footage depends upon the angle on which the camera is installed. As regards phone location, learned Court of Sessions has found that the investigating agency has noticed tower location of Anupam Kumar and Pardeep Sharma upto 21:18:30 and 21:20:47 respectively whereas the alleged occurrence took

place on 23:00:00. Learned Court of Sessions has further noted that additional accused sought to be summoned i.e Anupam Kumar is very influential person being Ex. MLC and as per the information lodged with the police immediately after the occurrence, petitioners have been specifically named.

In view of the above facts, no ground to interfere is made out.
Dismissed.

06.11. 2019
rekha
Whether speaking/reasoned
Whether Reportable

(ANIL KSHETARPAL)
JUDGE
Yes / No
Yes / No