

In the High Court of Punjab and Haryana at Chandigarh

CRR No. 1075 of 2017 (O&M)
Date of Decision: 24.11.2021

Varinder Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Sunpreet Singh, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. A.K.Walia, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J.

1. FIR bearing No. 51 of 13.5.2016, lodged at Police Station Amargarh, constituted therein offences embodied under Sections 306/34 IPC. In FIR (supra), the petitioner herein, herein along with other(s), is alleged to abet, through insulting and threatening to eliminate deceased Dharminder Singh, the latter to commit suicide.

2. After completion of investigation into the offences (supra), by the investigating officer concerned, a report under Section 173 Cr.P.C., was filed before the learned Committal Court concerned. The relevant portion of the report, as appertaining to the petitioner herein, namely, Varinder Singh, is extracted hereinafter:-

“Thereafter on 23.5.2016 accused Varinder Singh son of Gurmail Singh and accused Santokh Singh son of Karnail Singh caste Jatt resident of Village Manvi along with

Pushpinder Singh son of Karnail Dass caste Mahant and Lakhvir Singh son of Hardev Singh caste Jatt resident of village Manvi came present before me in my office in the police station. Aforesaid accused Varinder Singh produced one order No. 394 dated 21.5.2016 and accused Santokh Singh produced one order No.395 dated 21.5.2016 regarding interim bail and joining investigation passed by the court of Hon'ble Sh. K.K. Singla, Additional Sessions Judge, Sangrur before me Inspector SHO. On this, after investigating the aforesaid accused Varinder Singh and Santokh Singh they were arrested in the present case and were released on bail in terms of the order of the Hon'ble Court. During the investigation, aforesaid accused Varinder Singh told that on 10.03.2016, he along with his maternal (Aunt) (Massi) Harbajhan Kaur had gone to PGI Chandigarh in his car for taking medicine. In this regard, he produced one ticket (Parchi) regarding parking of his car in PGI Chandigarh at 6:30 AM, bill regarding purchase of medicine from Royal Medical Store PGI, Chandigarh and the CD prepared from the footage of CCTV camera's installed at the same medical store, in which aforesaid accused Varinder Singh is being seen, Photostat list of the OPD patients of PGI Chandigarh and the Photostat record of the lower location of mobile No.98144-27773 of the aforesaid accused Varinder Singh. In order to prove this record, Head Constable Gurdip Singh 2409 was sent to PGI Chandigarh on 24.05.2016. He in order to prove this record, recorded the statement of servant Sagandeep Singh son of Iqbal Singh Caste Mazabi, resident of Village Mullanpur, Garibdass PS Mullanpur, District Mohali, working at the parking of PGI Chandigarh and that of Sahil owner of aforesaid Royal Medical Store, attested copy of which are attached. Beside this, I Inspector SHO also conducted a separate and open inquiry to prove the record produced by above said accused Varinder Singh. Aforesaid accused Varinder Singh has not been found present in village Manvi after 4:30 AM on 10.05.2016. He along with his natural

Aunt (Massi) Harbhajan Kaur has been found to have gone to PGI Chandigarh to take medicine for himself and for his Massi Harbhajan Kaur in this regard I Inspector SHO has sent a report No.1396-5-A dated 2.6.2016 with regard to the innocence of aforesaid accused Varinder Singh to the DSP Malerkotla. He on the basis of this report, prepared his report and sent the same to SP Malerkotla through No.1874-5-A/R/DSP/AMR dated 6.6.2016. The SP Malerkotla after making his endorsement on this report, sent the same further to S.S.P. Sangrur through No.361/A/SP/MNK dated 6.6.2016. On this report, the SSP has written, Approved. Sd/- Pritpal Singh Thind, Senior Superintendent of Police, Sangrur dated 7.6.2016.”

3. Bearing in mind the, exculpatory echoings (supra), made by the investigating officer concerned, in his report filed under Section 173 Cr.P.C., before the learned Committal Court concerned, the latter proceeded to commit for trial to the learned Sessions Judge concerned, all accused except the petitioner herein, namely Varinder Singh.

4. However, the learned Public Prosecutor concerned, moved an application under Section 193 Cr.P.C. before the learned Additional Sessions Judge, Sangrur, claiming therein the relief, for summoning of the petitioner herein, given his along with the other co-accused, who rather become committed for trial therebefore by a committal order, made by the learned Magistrate concerned, hence holding an inculpatory role in the offences (supra).

5. The learned Additional Sessions Judge, Sangrur made an affirmative order thereon. The petitioner herein, one Varinder Singh, becomes aggrieved, and, is led to challenge it, through his filing the instant criminal revision petition before this Court.

whereof, become hereinafter, extracted, prescribe that in respect of the offences exclusively triable by the Court of Session, hence the latter though is conferred original jurisdiction, for making trials thereon, however, only when prior thereto a valid order of committal for trial thereto, is made, by a validly empowered Magistrate concerned.

“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.”

7. Though, it is fairly stated at the bar by all the learned counsels, that in respect of the petitioner, there is no validly made order of committal by the learned Committal Court/Magistrate concerned, to the learned Sessions Court, for hence the petitioner being put to trial, by the learned Sessions Court concerned, hence, for validly enabling the latter, to obviously assume valid jurisdiction to take cognizance even qua him, of the offences carried in the FIR (supra).

8. Moreover, though for the assumption of valid jurisdiction for takings of cognizance vis-a-vis cases exclusively triable by the Court of Session, there is an imperative statutory necessity, of a valid statutory committal thereof, being made to the Court of Session, by the Magistrate concerned.

9. Be that as it may, since the petitioner as stated (supra) was not committed, for trial hence to the Sessions Court concerned, by a valid order of committal, being made by a validly empowered Judicial Magistrate, for ensuring hence that the Sessions Court assumes valid jurisdictional cognizance thereon(s). Nonetheless, the afore lack of a valid order of

committal, being made by the Committal Magistrate concerned, would not *per se* disempower the learned Additional Sessions Judge concerned, to make the impugned order, as, the Hon'ble Apex Court in a judgment rendered in Criminal Appeal No. 148 of 2003 along with Criminal Appeal Nos. 865 of 2004, 1334 of 2005 and 537 of 2006, in case titled as ***Dharam Pal and others versus State of Haryana and another***, has in paragraphs 27, 28 and 29 thereof, paragraphs whereof stand extracted hereinafter (i) rather cast an expostulation of law, that the statutory provision, embodied in Section 193 Cr.P.C., can be recoured, even with respect to an accused qua whom no order of committal, is made by the learned Committal Court or by the Magisterial Court concerned.

“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, 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 Session Judge.

28. *In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under [Section 209](#), the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.*

29. *We are also unable to accept Mr. Dave's submission that the Session Court would have no alternative, but to wait till the stage under [Section 319 Cr.P.C.](#) was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session."*

10. However, the statutory empowerment (supra) vested in the learned Sessions Court concerned to take recourse to Section 193 Cr.P.C., is subject to the evident complicity of the person(s) concerned, in the offence alleged, rather, along with the other accused. The evident apposite complicity being comprised in the occurrence of the name of the persons concerned, in the FIR concerned, or in the report filed under Section 173 Cr.P.C. by the investigating officer concerned, before the Committal Magistrate concerned. Reiteratedly, the afore evident complicity is to make its surfacing, from the materials (supra) available on record.

11. The learned counsel for the respondent-complainant, would succeed, in his making an address before this Court, that the impugned order, does not suffer from any illegality, and, that it is not amenable, for being quashed, upon his, making this Court traverse through materials, on

record, hence making a candid evident display, with respect to the evident complicity of the petitioner along with the other co-accused in respect whereof alone, the Magistrate concerned or the Committal Court concerned, chose to, and, to the exclusion of the petitioner herein, make an order of committal for their trial, to/by the learned Session Court concerned, despite the name of the petitioner occurring in the FIR, as, an accused. In case the afore materials exists, on record, thereupon, dehors no valid order of committal being passed by the learned Committal Court concerned, vis-a-vis, the petitioner herein, thereupon too, the exercise of jurisdiction by the learned Additional Sessions Judge concerned, through his recouring the mandate carried in Section 193 Cr.P.C., would be a validly recoured endeavour.

12. However, for the reasons, to be assigned hereinafter, the afore made submission, before this Court by the learned counsel for the respondent-complainant, is bereft of vigour. Firstly and primarily, for the reason, that though, the petitioner herein became named, as an accused in the FIR concerned. However, after investigation into the FIR, being completed by the investigating officer concerned, the latter, has in the relevant portion of his report prepared, under Section 173 Cr.P.C., rather made exculpatory echoings (supra) qua the petitioner herein. The consequence thereof is that, the naming of the petitioner in the FIR, as an accused, does gets subsumed within the realm of the afore extracted relevant portion of the exculpatory report, prepared qua him under Section 173 Cr.P.C., and, as became filed by the investigating officer concerned, before the learned Committal Court concerned. Therefore, there was no legal error on the part of the Committal Court to omit to commit the petitioner herein,

for his trial being entered into by the learned Sessions Judge concerned. Moreover, when at the stage of committal, there is no material suggestive that prior to the making of the order of committal, the petitioner through a protest petition, made a proven valid protest against the order of committal by the Committal Court, excluding therein the name of the petitioner herein. Furthermore, hence within the ambit of the afore extracted paragraphs, carried in Dharam Pal's verdict, it was not validly befitting for the learned Additional Sessions Judge concerned, to de hors no valid order of committal, being made, to the learned Sessions Court concerned, by the Committal Court vis-a-vis the petitioner herein, hence to recourse the mandate of Section 193 of the Cr.P.C. Contrarily, the only recourse open to the learned prosecutor concerned, and, thereafter for the learned Additional Sessions Judge concerned, was to after cogent best scientific evidence being adduced rather for belittling the afore extracted portion of the exculpatory report qua the petitioner being filed, under Section 173 Cr.P.C., to avail the procedure enshrined in Section 319 Cr.P.C.

13. In aftermath, the impugned order does not warrant its being validated, rather, it is liable to be quashed, and, set aside.

14. However, upon emergence of tangible evidence in display of the afore extracted exculpatory echoings made, vis-a-vis the petitioner, in the report, filed under Section 173 Cr.P.C., rather becoming denuded of their evidentiary worth and vigour, upon adduction of best scientific evidence, thereupon, it is open to the public prosecutor concerned, to institute an application under Section 319 Cr.P.C., hence for arraying the petitioner herein, as an accused along with the other co-accused, who are facing trial in respect of the FIR (supra).

15. The petition stands disposed of.

(SURESHWAR THAKUR)
JUDGE

November 24, 2021
Gurpreet/DK Kamra

Whether speaking/reasoned : Yes
Whether reportable : Yes