





wedding yet, they were not satisfied. As a result, the daughter of the complainant was subjected to harassment and cruelty. On 30.06.2021, at around 7 PM, the sister-in-law of the deceased called one of the relatives of the complainant and asked him to reach their residence immediately. Upon reaching the matrimonial house of the deceased, the relative learnt that the daughter of the complainant was dead. The complainant was apprised of this unfortunate incident. Subsequently, the complainant along with his relatives reached the residence of the accused and saw that his daughter was hanging from a ceiling fan. The complainant alleges that his daughter had been killed by her husband, Shubham Modgill and his family members including the petitioner, namely Gautam Sharma, who is the brother-in-law of the deceased.

3. During investigation, it was found that the petitioner is innocent and that his name was wrongly added in the FIR, bearing No. 0149, dated 01.07.2021. Consequently, a report was prepared by the police officials declaring the petitioner to be innocent (Annexure P-4). However, the learned Additional Sessions Judge, Faridkot observed the following in the impugned order, vide which the petitioner was summoned as an additional accused:

"In the police report under Section 173 CrPC, no reason has been assigned by the investigating agency as to on which ground said Gautam Sharma was found innocent or as to how the allegations of complainant against said Gautam Sharma were found false. After careful perusal of the police report under Section 173 CrPC and annexed documents, there appears to be prima facie case against said Gautam Sharma for having committed an offence punishable under Section 304-B/34/201 IPC. While exercising my power under Section 193 CrPC, said Gautam Sharma son of Late Rajesh Kumar, resident of Lajpat Nagar, Kotkapura, now resident of Street no.5, Heera Singh Nagar, Kotkapura is summoned as additional accused to face joint trial with the present accused.



Let, the non-bailable arrest warrants of said Gautam Sharma be issued for 03.01.2022."

Hence the present revision petition challenging the summoning of the petitioner as an additional accused.

CONTENTIONS

4. Learned counsel for the petitioners argued that that the learned Court below has acted in a completely mechanical manner, without applying its judicial mind and as such, has committed material irregularity in passing the impugned order. Firstly, the learned Additional Sessions Court, Faridkot erroneously used the power granted to it under Section 193 Cr.P.C. on committal of the case in order to summon the petitioner as an accused. Since the power of summoning an additional accused, if it at all had to be exercised in the present case, ought to have been exercised under Section 319 Cr.P.C. As per the Final Report, dated 22.09.2021 (Annexure P-4), filed under Section 173 of Cr.P.C., the petitioner has been explicitly declared to be innocent on the basis of the investigation conducted by the police officials, however, the learned trial Court has completely overlooked this fact and has summoned the petitioner as an additional accused without affording any reasons or justification. Such an order, completely subverts and erodes the very purpose of conducting an investigation. Moreover, even if the summoning of the petitioner under Section 193 Cr.P.C. is held to be good in law and legally sound, the learned trial Court has not passed any finding regarding as to what constitutes the 'material on record' which *prima facie* establishes the complicity of the petitioner. The said standards have to be satisfied by the Court while exercising power under Section 193 CrPC against a person who is in Column No. 2 of the Final Report, as per the ratio laid down in ***Balveer Singh and Ors. V. State of Rajasthan and***



Ors. AIR 2016 SC 2266 and Dharam Pal and Ors. V. State of Haryana and Anr. AIR 2013 SC 3018.

5. Learned counsel for the petitioner moreover avers that the police officials also prepared a Report vide letter No. 5738/5A dated 20.08.2021, holding the petitioner to be innocent. The said Report has been prepared on the basis of the statements recorded by the police of reputed persons of the society, during the investigation. The following persons have given statements in favour of the petitioner and have stated that the petitioner was only 16/17 years of age, who had cordial relations with his deceased sister-in-law-complainant. The statements of following persons were recorded and examined by the Police Officials:

- i. Joint Statement of Shri Amarnath Sharma; Shri Rajender Kumar; Shri Onkar; Shri Rachhpal Singh; Shri Rajinder Kumar Deora, Municipal Counselor; Shri Rudramani Sharma and Shri Surinderpal Kaur Brar, Municipal Counselor Ward No.2. (Annexure P-5).
- ii. Joint Statement of Shri Vijay Kumar Sharma, President Shri Brahman Sabha; Municipal Councilor Kotkapura; Shri Roshan Lal Bansal; Municipal Councilor Kotkapura; Kailash Sharma, Vice President of Shri Brahman Sabha; Municipal Councilor; Sarpanch, Kotkapura; Lal Chand Municipal Councilor, Kotkapura; Jaswinder Singh (Annexure P-6.)
- iii. Statement of Rama Walia, tuition teacher of the Petitioner (Annexure P-7).
- iv. Statement of Pooja Grover, MC of Ward No. 2. (Annexure P-8).
- v. Statement of Sanjeev Sachdeva, neighbor of the petitioner. (Annexure P-9).
- vi. Statement of Harpreet Singh Marak, neighbor of the petitioner (Annexure P-10).
- vii. Statement of Shri Ankush Grover, ex MC (Annexure P-11).

6. It was further submitted that the Final Report clearly mentions that the petitioner is a minor. By ordering a joint trial with other co-accused, while



ignoring the age of the petitioner, only fortifies the fact that there has been complete non application of judicial mind. Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter 'JJ Act' for brevity) provides that no joint proceedings can be initiated against a child alleged to be in conflict with law with the person who is not a child. Furthermore, without the procedure, as laid down under Section 15 and 18 of the JJ Act, having been followed, the learned trial Court erred in having ordered a joint trial. Reliance in this regard was placed on *Thirumoorthy vs. State Represented by the Inspector of Police (Arising out of SLP(Crl.) No. 1936 of 2023)*, judgment dated 22.03.2024 passed by the Hon'ble Apex Court and *Sadhu Singh vs. State of Punjab and Ors. (CRM-M-8601-2022)* decision dated 06.07.2022. Lastly, the counsel submits that all the co-accused, including the husband of the victim have been acquitted by the learned Sessions Judge, Faridkot vide judgment dated 17.07.2023.

OBSERVATIONS AND ANALYSIS

7. I have heard the learned counsel for the parties and perused the record of the case with their able assistance. Before dealing with the contentions put forth by the counsel, it would be beneficial to reproduce Section 193 of the Cr.P.C. under which the petitioner was summoned to face trial:

“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.”

8. The primary legal query that requires consideration for disposal of the present petition is as follows:



'Upon the case being committed to the Court of Sessions, could it issue summons under Section 193 Cr.P.C., regardless of whether the accused has been declared innocent by the investigating agency or not, or would the Court have to wait till the initiation of trial and the stage of recording of evidence in order to take recourse to Section 319 Cr.P.C.?'

9. In order to comprehensively settle the aforementioned point, it would be profitable to cite the judgment rendered by a two Judge Bench of the Hon'ble Supreme Court in ***Kishun Singh vs. State of Bihar, 1993(1) SCC 16***, where, speaking through Justice Aziz Mushabber Ahmadi, the following was observed:

*"16. We have already indicated earlier from the ratio of this Court's decisions in the cases of **Raghubans Dubey** and **Hariram** 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."*

There was a divergence of opinion in this regard between the aforecited judgment and the judgment delivered by a three Judge Bench of the Hon'ble Supreme Court in ***Ranjit Singh vs. State of Punjab, (1998) 7 SCC***



149. However, the controversy was settled by a Constitution bench of the Hon'ble Supreme Court in ***Dharam Pal and others vs. State of Haryana and another (2014) 13 SCC 9*** wherein the ratio of ***Kishun Singh (supra)*** was affirmed. Speaking through the then Chief Justice of India, Altamas Kabir, the following was 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.

*40. In that view of the matter, we have no hesitation in agreeing with the views expressed in ***Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]*** that the Sessions Court 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 Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.*

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*42. The reference to the effect as to whether the decision in ***Ranjit Singh case [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554]*** was correct or not in ***Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]***, is answered by holding that the decision in ***Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]*** was the correct decision and the learned Sessions Judge, acting as a court of original jurisdiction, could issue summons under Section 193 on the basis*



of the records transmitted to him as a result of the committal order passed by the learned Magistrate.

10. A study of the above mentioned judgments clearly explicates that the Court of Sessions can issue process to summon anyone as an accused on being satisfied that a case is made out to proceed against that person, regardless of whether he has been declared innocent in the Final Report filed under Section 173(3) of Cr.P.C. It is settled law that the stage of recording of evidence is reached only after the charges are framed. It is only at this stage that the trial Court can exercise the power devolved to it by Section 319 of Cr.P.C. Therefore, the Court can summon a person as an accused under Section 193 of Cr.P.C., between the two stages i.e. taking cognizance by the Court of Sessions and the framing of charges and proceeding with trial, being the Court of original jurisdiction. In such an event, the Court must be convinced that a *prima facie* case is made out against the said person and their complicity is suspected from the materials available on record. Hence, the argument that the learned Court below ought to have issued process to summon the petitioner as an additional accused by taking recourse to Section 319 Cr.P.C. as advanced by the learned counsel for the petitioner cannot be accepted by this Court.

11. Reverting to the facts of the present case, the petitioner was summoned by the learned Additional Sessions Judge, Faridkot under Section 193 Cr.P.C., however, a perusal of the FIR (supra) and the Final Report filed under Section 173 of Cr.P.C. manifestly shows that there was no inculpatory material available which justified the summoning of the petitioner. Considering the vague and generic nature of the allegations levelled against the petitioner coupled with the fact that the Final Report lacked any incriminating material



against him, it is clear that the learned Court below has failed to refer to all the relevant material filed by the investigating agency while passing the impugned order. The Hon'ble Supreme Court in ***Brijendra Singh vs. State of Rajasthan, 2017 (3) R.C.R. (Criminal) 374*** has held that if a person is found to be innocent in view of the evidence gathered during investigation and sufficient reasons have been accorded by the investigating agency to substantiate such finding, the trial Court cannot summon that person as an accused in the absence of any fresh inculpatory material brought on record. Moreover, in the case at hand, neither any overt act or specific role has been attributed to him nor any particular date or time of the alleged acts of cruelty have been specified.

12. Furthermore, a review of the Final Report reveals that during investigation, the SHO, Police Station City Kotakpura, obtained the statements of various reputed persons, all of whom observed that the petitioner played no part in the alleged offence and that his name has been wrongly added in the FIR. A Report to this effect was prepared by the SHO and forwarded to DSP, Kotakpura as well as the SSP, Faridkot, who duly accepted the same. Additionally, a review of the impugned order would reflect that the learned Court below has failed to make any remarks challenging this Report or indicate any reasons to justify summoning of the petitioner. As such, this Court is of the considered opinion that the learned Court below has fallen into error by passing the impugned order in a casual manner as it is evident that no *prima facie* case is made out against the petitioner on the basis of material available on record.

CONCLUSION

13. As an upshot of the above discussion, the following conclusion is drawn with regard to the legal query framed above:



The Court of Sessions can summon a person as an accused under Section 193 of Cr.P.C., between the two stages i.e. taking cognizance by the Court of Sessions and the framing of charges and proceeding with trial, being the Court of original jurisdiction. In such an event, the Court must be convinced that a *prima facie* case is made out against the said person and their complicity is suspected from the materials available on record.

14. Accordingly, the revision petition stands allowed and the impugned order dated 02.12.2021, passed by the learned Additional Sessions Judge, Faridkot is set aside. Pending miscellaneous application(s) if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

13.05.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No