JASWANT & ANR. A

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 1013 of 2009)

MAY 13, 2009 B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973 – s.193 – Cognizance of offence by Court of Sessions – Order taking cognizance against accused named in FIR – Said accused absconding and investigation pending against them – Sustainability of – Held: Unless investigation is completed or evidences are brought on record, Court of Sessions cannot exercise jurisdiction either u/s. 193 or s. 319 – Investigation against accused was pending and was not completed – As such police report could not be said to have been filed – It has proceeded on the basis that no charge sheet was filed against accused – Thus, order of framing charges against accused is set aside – However, since accused have appeared, investigating officer to submit a final form on the basis of material collected. C D E

FIR was lodged against the appellants and others for commission of offence under the Penal Code. Investigating officer filed charge sheet. Appellants were shown as absconding and investigation was pending against them. Cognizance of offence was taken, though no cognizance of offence was taken against the appellant. Magistrate committed the case to the Court of Sessions in terms of s. 209 Cr.P.C. Sessions judge framed charges against all the accused named in the FIR including the appellants. Appellant challenged the order taking cognizance against them. Sessions Judge rejected the application. High Court also rejected the F G

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A revision application. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. A cognizance is taken of an offence and not against the offender. Section 193 Cr.P.C., however, B bars a Court of Sessions to take cognizance as a court of original jurisdiction although a court of Magistrate has that power. When a police report is filed, it is only the Magistrate concerned who is empowered to take cognizance of an offence. A police report cannot be said C to have been filed before a competent court when investigation in respect of some of the accused although named in the First Information Report remain pending. Section 173(2) subject to the provisions of sub-section (8) thereof envisages that a final report can be filed only D when an investigation is completed and not prior thereto. [Paras 12 and 14] [712-A-C]

Raghubans Dubey v. State of Bihar AIR 1967 SC 1167, referred to.

E 1.2. In absence of any power to take cognizance of an offence, the Sessions Judge, therefore, could have taken recourse only to the provisions contained in s. 319 CrPC. For the purpose of attracting the said provision, keeping in view the extraordinary power conferred F thereunder upon a Sessions Court, orders summoning additional accused could have been passed only on the basis of some evidences brought before the Court during the trial. Such a power, therefore, can be exercised only when such a case is made out. Proper application of G mind on the part of Sessions Judge in that behalf is imperative in character. [Paras 15 and 16] [712-D-G]

Ranjit Singh v. State of Punjab (1998) 7 SCC 149; *Guriya @ Tabassum Taquir & Ors. v. State of Bihar* (2007) 8

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SCC 227 and *Gangula Ashok v. State of AP* (2000) 2 SCC 504, relied on. A

1.3. The Sessions Judge appears to have issued a direction that the charge sheet be filed before a competent court. Even such a direction, indisputably, is illegal. A court of sessions, apart from the legal hurdle that it cannot take cognizance of an offence in exercise of its original jurisdiction, even otherwise was not empowered to direct the investigating officer to submit a charge sheet. [Para 17] [713-G-H; 714-A] B C

1.4. The power to take cognizance of an offence vested in a court is circumscribed by the provisions contained in s. 190 Cr.P.C. It could have exercised its power only upon its satisfaction that one or the other clause contained therein is attracted. In a case of this nature, admittedly, the power to take cognizance emanates from clause (b) of sub-section (1) of s. 190. [Para 18] [714-A-B] D

1.5. Investigation against the appellants was pending. It was not completed. If it was not completed, the statutory requirements contained in sub-section (2) of section 173 Cr.PC. were not satisfied. It is not a case where the court could have taken cognizance of the offence in exercise of its power under clauses (a) and (c) of section 190 Cr.PC. Therefore, it has to be proceeded on the basis that no charge sheet was filed against the appellants. [Para 19] [714-C-E] E F

Abhinandan Jha & Ors. v. Dinesh Mishra (1967) 3 SCR 668, referred to. G

1.6. The power of an investigating officer to complete the investigation is a statutory power. The Magistrate may have a duty that a fair investigation is conducted as has been observed (correctness whereof may be open to H

A **question). But even then, the Magistrate would not have any jurisdiction to direct the investigating officer to file a charge-sheet. [Para 20] [716-B-D]**

Nisar & Anr. v. State of U.P. **(1995) 2 SCC 23, Held** B **inapplicable.**

Sakiri Vasu v. state of Uttar Pradesh & Ors. **(2008) 2 SCC 409; [***Emperor v. Nazir Ahmad* **AIR 1945 PC 18;** *RN Chatterjee v. Havildar Kner Singh* **(1970) 1 SCC 496;** *MC Abraham v. State of Maharashtra* **(2003) 2 SCC 649;** *Kishun* C *Singh v. State of Bihar* **(1993) 2 SCC 16 and** *Dharam Pal & Ors. v. State of Haryana & Anr.* **(2004) 13 SCC 9, referred to.**

1.7. So long as the investigation is not completed or D **evidences are not brought on record, the Sessions Judge could not have exercised his jurisdiction either under s.193 Cr.P.C. or s.319 Cr.P.C. Therefore, the impugned order of framing charges against the appellants for the reasons mentioned, is liable to be set aside. However,** E **since the appellants have already appeared and are no longer absconding, the investigating officer is directed to submit a final form on basis of the materials collected during investigation. The Sessions Judge may exercise his jurisdiction u/s. 319 Cr.P.C. so far as the appellants** F **are concerned in which event, the procedure laid down must be resorted to. [Paras 22 and 23] [718-D-G]**

Case Law Reference:

AIR 1967 SC 1167	**Referred to.**	**Para 12**
G **(1998) 7 SCC 149**	**Relied on.**	**Para 15**
(2007) 8 SCC 227	**Relied on.**	**Para 15**
(2000) 2 SCC 504	**Relied on.**	**Para 16**

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(1967) 3 SCR 668	**Referred to.**	**Para 19**
(2008) 2 SCC 409	**Referred to.**	**Para 20**
(AIR 1945 PC 18	**Referred to.**	**Para 20**
(1970) 1 SCC 496	**Referred to.**	**Para 20**
(2003) 2 SCC 649	**Referred to.**	**Para 20**
(1993) 2 SCC 16	**referred to.**	**Para 20**
(1995) 2 SCC 23	**Held inapplicable.**	**Para 20**
(2004) 13 SCC 9	**Referred to.**	**Para 21**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1013 of 2009.

From the Judgment & Order dated 12.4.2007 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur, in S.B. Criminal Revision Petition No. 863 of 2002.

Sushil Kumar Jain, Puneet Jain (for Pratibha Jain) for the Appellant.

Prashant Bhagwati (for Ansar Ahmad Chaudhary) for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. As to whether a trial of a sessions case could have commenced and completed although no cognizance of it could have been taken against the appellants is the question that arises for consideration herein.

3. Before, however, adverting to the said question, we may notice the undisputed fact of the matter.

A Appellants were named in a First Information Report for commission of offences under Section 302, 147, 302/149, 324, 326 and 323 of the Indian Penal Code. Subsequently, a charge sheet was submitted on 12.2.1993 wherein they were shown to be absconding. It, however, stands admitted that the B investigation against them was not completed. Cognizance of the offence, however, was taken. The case was also committed to the Court of Sessions in terms of Section 209 of the Code of Criminal Procedure. Although no cognizance was taken as against the appellants pursuant to or in furtherance of the C charge sheet submitted by the Investigating Officer, relying on or on the basis of the order dated 28.4.1993, committing the case to the Sessions Judge, charges were framed against all the five accused named in the First Information Report including the appellants.

D Appellants filed an application on or about 30.7.2002 that no charge be framed against them, inter alia, contending that as the court of sessions had no original jurisdiction to take cognizance of any offence for trial without commitment of the case by a Magistrate in terms of Section 193 of the Code of E Criminal Procedure, the purported order taking cognizance against them was illegal.

4. However, by an order dated 12.8.2002, the learned Sessions Judge rejected the said application despite opining F stating that although the Sessions Court had no original jurisdiction for taking cognizance of an accused and proceed to put them to trial on the ground that purported circumstances demand the same. The said alleged circumstances are:

G "1. On 12.2.1993, the police has filed charge sheet against the accused persons showing them absconding.

2. When the court of Magistrate had committed this case to the Sessions Court at that time the

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applicants/accused persons had been released on anticipatory bail. A

3. On 22.5.1993, the applicants/accused persons had been present before the court of Additional District and Sessions Judge, Kishangarhbas and prayed for marking their attendance. B

4. The court had not paid attention erroneously that supplementary charge sheet was not produced against the accused persons. The accused persons are also liable to certain extent for this lapse. C Because, firstly, they had been present before the court themselves for marking their attendance. Secondly, they had not drawn the attention of the court till completion of trial of the case regarding not producing supplementary charge sheet. D

5. There had been no deficiency in the case of trial of the applicants/accused persons. Charge had been framed against the accused persons and evidence is recorded as per the rules. The learned advocate E has cross- examined the witnesses during evidence. Thus, the defence of the accused persons is not prejudiced.

6. This is correct that the court of Magistrate has to comply with the provisions of Section 207 Criminal F Procedure Code before committing the case to the Sessions Court. Under these provisions, the copy of the charge sheet is given to the defense and the remaining provisions are procedural. In the present case, the copy of the charge sheet is not given to G the applicants/accused persons. But it is evident from the pleadings of the defence that the copy of prosecution case is present with them."

It was held : H

A "In the present case, murder of two persons is committed. In such case, it shall not be justified to close the proceedings against the accused persons merely on the ground of a technical defect. The accused persons have undergone their complete trial.

B In view of the above special circumstances, in my opinion, it shall not be justified to close the proceedings against the applicants/accused persons. Whereas it shall be appropriate to give directions to the prosecution for producing charge- sheet immediately before the C competent court. The competent court is directed for committing the supplementary charge sheet as per the rules. It is clarified that after receipt of the supplementary charge sheet, there is no necessity of re-trial of the applicants/accused persons. The case shall be decided, D accepting the fact that on 22.5.1993, the applicants/ accused persons had been present before the court of Additional District and Sessions Judge, Kishangarhbas after production of the supplementary charge sheet."

E 5. The revision application filed thereagainst has been dismissed by the High Court by reason of the impugned judgment.

6. Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the appellant, would submit that the Sessions Court F having no original jurisdiction to take cognizance of an offence having regard to the provisions contained in Section 193 of the Code of Criminal Procedure, the impugned order is wholly unsustainable. Even the learned Chief Judicial Magistrate could not have taken cognizance against the appellant as in the G charge sheet investigation had been shown to be pending against them and the appellants were shown to be absconding.

The learned Sessions Judge, in the fact situation obtaining therein, could have merely taken recourse to Section 319 of the H Code of Criminal procedure and in that view of the matter the

order dated 12.02.2008 must be held to be wholly illegal and without jurisdiction. A

7. Mr. Prashant Bhagwati, learned counsel appearing on behalf of the respondent, on the other hand, would contend that in view of the fact that the cognizance is taken in respect of an offence and an order of committal is passed in relation to a case and not as against the offenders, the impugned judgment does not warrant any interference. B

8. Before adverting to the aforementioned question, we may notice the relevant provisions of the Code of Criminal Procedure, namely, Sections 190, 193 and 209 thereof which read as under : C

> *"190.Cognizance of offences by Magistrates.*– (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence- D
>
> (a) upon receiving a complaint of facts which constitute such offence; E
>
> (b) upon a police report of such facts;
>
> (c) upon information received from any person other than a police officer, or upon hi s own knowledge, that such offence has been committed. F
>
> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within hi s competence to inquire into or try. G
>
> *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 H

A of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

209.Commitment of case to Court of Session when offence is triable exclusively by it.--When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

9. Indisputably, in the charge sheet, name of five persons, namely, (1) Ram Narayan; (2) Jaswant Singh; (3) Chand Singh; (4) Nahar Singh; and (5) Smt. Mishri Devi have been specified whereas the names of Jaswant Singh and Chand Singh (appellants herein) were shown as absconders. By an order dated 17.4.1993, cognizance of the offence had been taken only against Shri Ram Narayan, Mishri Devi and Nahar Singh.

10. Neither any order taking cognizance was passed against the appellants nor their names figured in the order committing the case to the Court of Sessions.

11. We have noticed hereinbefore the purported special circumstances which have been enumerated by the learned Sessions Judge to arrive at the conclusion that the defect, if any, is merely technical one. A

The sole question, therefore, which arises for consideration is as to whether in the peculiar facts and circumstances of the case, the trial of the appellant is wholly illegal or merely irregular. B

12. There cannot be any doubt or dispute whatsoever that a cognizance is taken of an offence and not against the offender. C

In *Raghubans Dubey v. State of Bihar* [AIR 1967 SC 1167], whereupon reliance has been placed by Mr. Bhagwati, this Court has held as under :

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

13. The aforementioned observations evidently had been made in the matter of exercise of the Court's power under Section 251A of the Old Code of Criminal Procedure equivalent to Section 319 of the new Code. The said observations were made in the context of taking cognizance against an additional accused who was held to be a part of the proceedings initiated by the Magistrate upon taking cognizance of an offence on the basis of a complaint petition. F G

14. Section 193 of the Code of Criminal Procedure, however, bars a Court of Sessions to take cognizance as a court of original jurisdiction although a Court of Magistrate has H

A that power.

In *Raghubans Dubey* (supra) cognizance was taken in terms of clause (a) and (c) of Section 190 of the Code whereas in this case clause (b) thereof is attracted. When a police report is filed, it is only the Magistrate concerned who is empowered to take cognizance of an offence. A Police report cannot be said to have been filed before a competent court when investigation in respect of some of the accused although named in the First Information Report remain pending. Sub-section (2) of Section 173 of the Code subject to the provisions of sub-section (8) thereof envisages that a final report can be filed only when an investigation is completed and not prior thereto.

15. In absence of any power to take cognizance of an offence, the Sessions Judge, therefore, could have taken recourse only to the provisions contained in Section 319 of the Code of Criminal Procedure. For the purpose of attracting the said provision, keeping in view the extraordinary power conferred thereunder upon a Sessions Court, orders summoning additional accused could have been passed only on the basis of some evidences brought before the court during the trial. [See *Ranjit Singh v. State of Punjab* [(1998) 7 SCC 149] and *Guriya @ Tabassum Taquir & Ors. v. State of Bihar* [(2007) 8 SCC 227]

16. Such a power, therefore, can be exercised only when such a case is made out. Proper application of mind on the part of learned Sessions Judge in that behalf is imperative in character.

In *Gangula Ashok v. State of A.P.* [(2000) 2 SCC 504], this court held:

"10. Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take

cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate.

11. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session."

17. The learned Sessions Judge appears to have issued a direction that the charge sheet be filed before a competent court. Even such a direction, indisputably, is illegal. A court of sessions, apart from the legal hurdle that it cannot take cognizance of an offence in exercise of its original jurisdiction,

A even otherwise was not empowered to direct the investigating officer to submit a charge sheet.

18. The power to take cognizance of an offence vested in a court is circumscribed by the provisions contained in Section 190 of the Code of Criminal Procedure. It could have exercised B its power only upon its satisfaction that one or the other clause contained therein is attracted. In a case of this nature, admittedly, the power to take cognizance emanates from clause (b) of sub-section (1) of Section 190.

C 19. We have noticed hereinbefore that investigation against the appellants was pending. It was not completed. If it was not completed, the statutory requirements contained in sub-section (2) of Section 173 of the Code of Criminal Procedure were not satisfied. It is not a case where the court could have D taken cognizance of the offence in exercise of its power under clauses (a) and (c) of Section 190 of the Code. We, therefore, have to proceed on the basis that no charge-sheet was filed against the appellants. Even if a final form was filed, the court had three options as has been noticed by this Court in E *Abhinandan Jha & Ors. v. Dinesh Mishra* [(1967) 3 SCR 668] as under :

"We have to approach the question, arising for consideration in this case, in the light of the circumstances pointed out above. We have already referred to the F scheme of Chapter XIV, as well as the observations of this Court in *Rishbud* and *Inder Singh* case that the formation of the opinion as to whether or not there is a case to place the accused on trial before a Magistrate, is left to the officer in-charge of the police station. There is no express power, G so far as we can see, which gives jurisdiction to pass an order of the nature under attack nor can any such powers be implied. There is certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those H circumstances, if he still suspects that an offence has been

committed, he is entitled, notwithstanding the opinion of the police, to take cognizance, under Section 190(1)(c) of the Code. That provision, in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under Section 190(1)(c), on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be under Section 170, being a `charge- sheet', or under Section 169, `a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because, the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and

A compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either under Section 169, or under Section 170, depending upon the nature of the decision. Such a function has been left to the police under the Code."

B 20. The power of an investigating officer to complete the investigation is a statutory power. The learned Magistrate may have a duty that a fair investigation is conducted as has been observed (correctness whereof may be open to question) in *Sakiri Vasu v. State of Uttar Pradesh & Ors.* [(2008 (2) SCC C 409].

But even then, the learned Magistrate would not have any jurisdiction to direct the investigating Officer to file a charge-sheet. This legal position is categorically stated in *Emperor v. Nazir Ahmad* [AIR 1945 PC 18]. D

Yet again in *R.N. Chatterjee v. Havildar Kner Singh* [(1970) (1) SCC 496, this Court held :

"11. It has been emphasised in several decisions that it is of the utmost importance that the judiciary should not E interfere with the police in matters which are within their province and into which the law imposes on them the duty of enquiry. (See *Emperor v. Nazi Ahmed*)."

In *M.C. Abraham v. State of Maharashtra* [(2003) 2 SCC F 649], it was held :

"17. The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations G substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate H cannot direct the investigating agency to submit a report

that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation." A B

In *Kishun Singh v. State of Bihar* [(1993) 2 SCC 16], this Court observed: C

"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." D E

The above decision was followed by this Court in *Nisar & Anr. v. State of U.P.* [(1995) 2 SCC 23] on which strong reliance has been placed by Mr. Bhagwati. In that case itself, it was held: F

"8. As regards the second contention of the appellants it must be said that in view of the plain and unambiguous language of Section 319 of the Code, the earlier quoted reason which weighed with the High Court in sustaining the order of the learned Judge is patently incorrect. *The power under Section 319(1) can be exercised only in those cases where involvement of persons other than those arraigned in the charge-sheet comes to light in the course of evidence recorded during the enquiry or trial.* As that G H

A stage has not yet reached the appellants could not have been summoned invoking Section 319 of the Code."

Nisar (supra) also is not applicable in the instant case in view of the fact that the learned Sessions Judge even did not exercise the said power. As indicated hereinbefore, it directed B the investigating officer to file a charge- sheet which is against law.

21. We may furthermore notice that the question as to whether *Kishun Singh* has been correctly decided or not, having regard to the decision in *Dharam Pal & Ors. State of* C *Haryana & Anr.* [(2004) 13 SCC 9] is pending consideration before a Constitution Bench of this Court.

22. Despite the same, we have proceeded to dispose of the matter, assuming that the decision rendered by this Court D in Kishun Singh as correct. So long as the investigation is not completed or evidences are not brought on record, the learned Sessions Judge could not have exercised his jurisdiction either under Section 193 of the Code of Criminal Procedure or Section 319 of the Code of Criminal Procedure. The impugned order framing charges against the appellants for the reasons E mentioned hereinbefore, therefore, is liable to be set aside. We direct accordingly. We, however, keeping in view the fact that the appellants have already appeared and are no longer absconding, direct the investigating officer to submit a final form on the basis of the materials collected during investigation.

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23. We may, having regard to the peculiar facts and circumstances of this case, would also observe that learned Sessions Judge, if it may so desire, may exercise his jurisdiction under Section 319 of the Code of Criminal Procedure so far as the appellants are concerned in which G event, the procedure laid down therein must be resorted to.

24. The appeal is allowed with the aforementioned observations and direction. No costs.

H N.J. Appeal allowed.