A R. N. AGARWAL

v.

R. C. BANSAL & ORS.

(Criminal Appeal No. 2199-2201 of 2014)

B OCTOBER 14, 2014

[M. Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

Code of Criminal Procedure, 1973 – ss. 319, 5, 209 and 193 – Power to proceed against other persons appearing C *to be guilty of offence – Charge-sheet filed by CBI before Special Judge against six persons, as regards offence of conspiracy – Order of summoning of six persons – Thereafter, application by accused before Special Judge for summoning of three more persons as accused, who had been cited by* D *CBI as witnesses – Special Judge passed an order of summoning the prosecution witnesses as also directed CBI to register case against Investigating Officer for letting off these persons – Said order quashed by the High Court – Sustainability of – Held: In terms of s. 5, the Special Judge* E *may take cognizance of the offence without the accused being committed to him for trial – On facts, the Special Judge issued summons against the witnesses after considering in detail the material brought on record during investigation – Thus, the order passed by the High Court quashing issuance of* F *summons by the Special Judge against the witnesses not sustainable – However, it was not necessary for the Special Judge to issue directions to CBI to register a case against the investigating officer.*

Allowing the appeals, the Court

G **HELD: 1.1 After completion of investigation, CBI filed charge-sheet in the Court of Special Judge to deal with the cases in the Prevention of Corruption Act, 1947 as also under the Penal Code. The procedure and the powers of the Special Judge have been prescribed in** H **Section 5 of the said Act. A bare reading of the provision**

would show that the Special Judge may take cognizance of the offence without the accused being committed to him for trial and the court of Special Judge shall be deemed to be a court of session. The Special Judge in trying the accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial of warrant cases by the Magistrate. Indisputably, a person holding the post of either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge is appointed as Special Judge and shall follow the procedure prescribed in the Code for trial of warrant cases. [Para 22, 23][1141-D-E; 1142-G-H; 1143-A]

1.2. The order passed by the Special Judge would show that while issuing summons against the respondents, the Court had considered in detail the material brought on record during investigation. [Para 29][1147-B-C]

1.3 While passing the impugned order, the High Court reversed the order passed by the Special Judge. Prima facie, therefore, the impugned order passed by the High Court quashing issuance of summons by the Special Judge against the respondents is erroneous in law and cannot be sustained. However, at this stage it was not necessary for the Special Judge to issue directions to CBI to get a case registered against the guilty officers who have investigated the case. [Para 31][1150-B-C]

Anirudh Sen v. State **(2006) 3 JCC 2081 (Delhi);** *Raj Kishore Prasad v. State of Bihar* **1996 (2) Suppl. SCR 125 : (1996) 4 SCC 495 ;** *Dharam Pal v. State of Haryana* **(2014) 3 SCC 306 ;** *Hardeep Singh v. State of Punjab* **2014 (2) SCR 1 : (2014) 3 SCC 92 ;** *A.R. Antuley v. Ramdas Srinivas Nayak* **1984 (2) SCR 914 : (1984) 2 SCC 500 ;** *Kishun Singh and Others v.*

A *State of Bihar* **1993 (1) SCR 31 : (1993) 2 SCC 16** ; *Ranjit Singh v. State of Punjab* **1998 (2) Suppl. SCR 8 : (1998) 7 SCC 149** ; *Harshad S. Mehta v. State of Maharashtra* **2001 (2) Suppl. SCR 577 : (2001) 8 SCC 257**; *State of T.N. v. V.*
B *Krishnaswami Naidu* **1979 (3) SCR 928 : (1979) 4 SCC 5** ; *Raghubans Dubey v. State of Bihar* **1967 SCR 423 : AIR 1967 SC 1167** ; *M/s Swill Ltd. v. State of Delhi and Anr.* **2001 (1) Suppl. SCR 527 : (2001) 6 SCC 670** ; *Nisar and Another*
C *v. State of U.P.* **1994 (5) Suppl. SCR 368 : (1995) 2 SCC 23 ; 1995 Crl LJ 2118** ; *Raghubans Dubey v. State of Bihar* **(1967) 2 SCR 423 – referred to.**

CASE LAW REFERENCE

D	**(2006) 3 JCC 2081**	**referred to**	**Para 8, 9, 14, 31**
	1996 (2) Suppl. SCR 125	**referred to**	**Para 9, 14, 15**
	(2014) 3 SCC 306	**referred to**	**Para 9, 18**
	2014 (2) SCR 1	**referred to**	**Para 9, 20**
E	**1984 (2) SCR 914**	**referred to**	**Para 11, 24**
	1993 (1) SCR 31	**referred to**	**Para 16, 28**
	1998 (2) Suppl. SCR 8	**referred to**	**Para 17**
	2001 (2) Suppl. SCR 577	**referred to**	**Para 25**
F	**1979 (3) SCR 928**	**referred to**	**Para 26**
	1967 SCR 423	**referred to**	**Para 27**
	2001 (1) Suppl. SCR 527	**referred to**	**Para 30**
	1994 (5) Suppl. SCR 368	**referred to**	**Para 30**
G	**(1967) 2 SCR 423**	**referred to**	**Para 30.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2199-2201 of 2014.

From the Judgment and Order dated 02.02.2011 in CRLMC No. 2955/2009, 575/2009 and 3779/2009 passed
H by the High Court of Delhi at N. Delhi.

Ajit Kumar Sinha, Sr. Adv., Anoop Kr. Srivastav, Gaurav Dhama, Rana Pratap Singh and Ms. Saakshi, Advs. for the Appellant.

Atul Yeshwant Chitale, Sr. Adv., Basava Prabhu S. Patil, Annam D. N. Rao, Ms. Neelam Jain, Ms. Vaishali R., Pradip Kr. Ghosh, Mangal Jit Mukherjee, Sanjai Kumar Pathak, Rajiv Nanda, Ms. Vaishnavi Rao, B.V. Balram Das, Arvind Kumar Sharma, Mrs. Priya Puri and Ranjay Dubey, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. Y. EQBAL, J. 1. Leave granted.

2. These appeals are directed against the judgment and order dated 2.2.2011 passed by the High Court of Delhi in Crl.M.C. Nos.2955 and 3779 of 2009 and Crl.Rev.No. 575 of 2009, whereby the High Court of Delhi while quashing the order dated 10th July, 2009 of the Special Judge, CBI Court Rohini, allowed aforesaid Section 482 criminal petitions filed by the alleged culprits and Section 397 criminal revision of the Investigating Officer.

3. The brief facts of the case are that in the year 1983, a Society named Maharani Avanti Bai Co-operative Society was formed and from time to time members were enrolled by its Managing Committee. Upto the year 1989 there were 90 members of the Society and thereafter further enrolment of members was stopped. However, no land was allotted to the Society for many years and in the meantime its members became disinterested in the running of the Society as the cost of the flats to be constructed had gone very high and beyond their reach. The society thus became dormant.

4. Some persons who were not members of the Society but were far-sighted and clever minded became interested to take over its management and got the land allotted from Delhi Development Authority (in short, 'DDA') to be utilized for the benefits of their own persons. They forged certain records of

A the Society to show that many of the original members of the Society had resigned and a new Managing Committee had been constituted. By forged resignation letters of the original members of the Society, new members were shown to have been enrolled and the forged records were submitted in the B office of the Registrar of Co-operative Societies after entering into some kind of criminal understanding with the officials in that office. It is alleged that based on the forged documents, which included minutes purporting to be of the illegally constituted Managing Committee of the Society comprising C of all new members and also of General Body Meetings which were never held, DDA was approached for allotment of land with the assistance rendered by the Registrar of Co-operative Societies by certifying that all the meetings were duly held and a list of new members of the Society was forwarded to DDA. D Accepting the same, DDA allotted a plot measuring 600 sq. meters to the Society in Dwarka for the benefit of the 90 members of the Society in the year 1998. All these facts emerged during the investigation by CBI.

5. On completion of the investigation, the CBI filed a E charge-sheet in the Court of Special Judge against six persons, out of whom two were public servants while other four were the members of the bogus Managing Committee of the Society, who had taken over the dormant Society by resorting to forgery etc.

F 6. The Special Judge, CBI vide order dated 23rd July, 2008, after perusing the material submitted by the CBI, took cognizance of the offences punishable under Section 120-B, 420, 468 and 471 of the Indian Penal Code (in short, 'IPC') as well as Section 13(1)(d) of the Prevention of Corruption Act, G and ordered summoning of six persons who had been named by the CBI in its charge-sheet as accused persons alleged to have committed the offences in conspiracy with each other. After all the accused persons entered appearance, the Special Judge furnished them copies of all the documents as per the H requirement of Section 207 of the Code of Criminal Procedure

and, thereafter, the matter was adjourned to 9th March, 2009. However, before the next date of hearing, accused R.N. Aggarwal moved an application under Section 190 read with Section 193 Cr.P.C. before the Special Judge for summoning three more persons, namely, Madan Sharma (PW-21), Ms. Sujata Chauhan (PW-23) and R.C. Bansal (PW-30) as accused, who had been cited by the CBI as its witnesses. The learned Special Judge kept that application for consideration on 9th March, 2009. However, on that day the matter was adjourned to 5th May, 2009 for arguments on charge without mentioning anything about the application which had been moved by the accused R.N. Aggarwal. Special Judge heard arguments on that application on 5th June, 2009 and then by order dated 10th July, 2009 allowed that application and summoned the prosecution witnesses Madan Sharma, Sujata Chauhan and R.C. Bansal and also directed the Director of CBI to get a case registered against the Investigating Officer of the case under Section 217, IPC for letting off these three persons.

7. Aggrieved by order dated 10th July, 2009, prosecution witnesses Sujata Chauhan and R.C. Bansal (respondents herein) approached the High Court by filing separate petitions under Section 482, Cr.P.C. read with Article 227 of the Constitution of India. CBI, feeling aggrieved by the direction given by the Special Judge in the impugned order for registration of a criminal case against the investigating officer, also approached the High Court by way of a revision petition.

8. Learned Single Judge of the High Court, while considering the order passed by the Special Judge, held that the case is squarely covered by the decision of the Delhi High Court in the case of ***Anirudh Sen vs. State***, (2006) 3 JCC 2081 (Delhi), and consequently quashed the order passed by the Special Judge.

9. Mr. Ajit Kumar Sinha, learned senior counsel appearing for the appellant assailed the impugned order

A passed by the High Court as being illegal and wholly without jurisdiction. Learned counsel submitted that the learned single Judge of the High Court relied upon the decision of Delhi High Court in **Anirudh Sen's** case (supra), which followed the ratio decided by this Court in ***Raj Kishore Prasad vs. State of***
B ***Bihar,*** (1996) 4 SCC 495, and held that the Magistrate has no jurisdiction to summon the persons shown in column 4 of the charge-sheet. Mr. Sinha, learned counsel further submitted that a Constitution Bench of this Court in the case of ***Dharam Pal vs. State of Haryana***, (2014) 3 SCC 306, after
C considering various judgments overruled the decision rendered in Raj Kishore Prasad's case (supra). Learned counsel submitted that the Magistrate is empowered to summon other accused persons even before the examination of witnesses. Mr. Sinha also relied upon another Constitution Bench decision
D of this Court in ***Hardeep Singh vs. State of Punjab***, (2014) 3 SCC 92, and submitted that the Constitution Bench agreed with the view taken in Dahram Pal's case (supra).

10. Mr. Basava Prabhu Patil, learned senior counsel appearing for the respondent, on the other hand submitted that
E once cognizance was taken by the Magistrate, it has no jurisdiction to summon the persons shown in column 4 of the charge-sheet. Learned counsel submitted that the ratio decided by the Constitution Bench in Dharam Pal's case is not applicable in the facts of the present case.

F 11. Mr. Pradeep K. Ghose, learned counsel appearing for the respondent no.8, relied on the decision rendered in ***A.R.Antuley vs. Ramdas Srinivas Nayak,*** (1984) 2 SCC 500, and submitted that in the case pending before the Special Judge, Section 193 of the Code will not be attracted and it
G has no role to play.

12. Mr. Atul Chitley, learned senior counsel appearing for C.B.I., contended that the CBI has acted in a *bona fide* manner and, therefore, the observations made by the Special Judge and directions issued to register the case against the
H officers does not arise.

13. We have considered the submissions made by the learned counsel appearing for the parties. A

14. In Anirudh Singh's case (supra), charge-sheet was filed showing the petitioner in column 2 as there was no material available against the petitioner. The Magistrate summoned only those accused shown in column 4 of the charge-sheet. B The successor Magistrate, however, later on summoned persons, including petitioner, who were shown in column 2 of the charge-sheet. The High Court fully relied upon the decision of this Court in *Raj Kishore Prasad case* (supra) and held that the Magistrate had no jurisdiction to summon the petitioner of C that case since no new material/evidence had been collected in the course of trial.

15. In Raj Kishore Prasad's case, this Court came to the conclusion that power under Section 209, Cr.P.C. to summon a new offender was not vested with the Magistrate on the plain D reading of its text as well as proceedings before him not being an 'inquiry' and the material before him not being 'evidence'. The question considered by this Court was whether the undertaking under Section 209, Cr.P.C. of a case triable by a Court of Sessions, associate another person as an accused E in exercise of power under Section 319 of the Code or any other provision of Cr.P.C. Answering the question this Court held as under:-

> "16. Thus we come to hold that the power under Section F 209 CrPC to summon a new offender was not vested with a Magistrate on the plain reading of its text as well as proceedings before him not being an 'inquiry' and material before him not being 'evidence'. When such power was not so vested, his refusal to exercise it cannot G be corrected by a Court of Revision, which may be the Court of Session itself awaiting the case on commitment, merely on the specious ground that the Court of Session can, in any event, summon the accused to stand trial, along with the accused meant to be committed for trial H

before it. Presently it is plain that the stage for employment of Section 319 CrPC has not arrived. The order of the Court of Session requiring the Magistrate to arrest and logically commit the appellant along with the accused proposed to be committed to stand trial before it, is patently illegal and beyond jurisdiction. Since the Magistrate has no such power to add a person as accused under Section 319 CrPC when handling a matter under Section 209 CrPC, the Court of Session, in purported exercise of revisional powers cannot obligate it to do so. The question posed at the outset is answered accordingly in this light. When the case comes after commitment to the Court of Session and evidence is recorded, it may then in exercise of its powers under Section 319 CrPC on the basis of the evidence recorded by it, if circumstances warranting, proceed against the appellant, summon him for the purpose, to stand trial along with the accused committed, providing him the necessary safeguards envisaged under sub-section (4) of Section 319. Such course is all the more necessary in the instant case when expressions on merit have extensively been made in the orders of the Magistrate, the Court of Session and that of the High Court. Any other course would cause serious prejudice to the appellant. We order accordingly."

16. In the case of ***Kishun Singh and Others vs. State of Bihar***, (1993) 2 SCC 16, a Division Bench of this Court was considering the question as to whether a Court of Sessions, to which a case is committed for trial by a Magistrate, without itself recording evidence, summon a person not named in the police report presented under Section 173 Cr.P.C. to stand trial along with those already named therein, in exercise of power conferred by Section 319 of the Code. While answering the question this Court considered various provisions of the Code and came to the following conclusion:-

"13. The question then is whether de hors Section 319 of the Code, can similar power be traced to any other provision in the Code or can such power be implied from the scheme of the Code? We have already pointed out earlier the two alternative modes in which the Criminal Law can be set in motion; by the filing of information with the police under Section 154 of the Code or upon receipt of a complaint or information by a Magistrate. The former would lead to investigation by the police and may culminate in a police report under Section 173 of the Code on the basis whereof cognizance may be taken by the Magistrate under Section 190(1)(*b*) of the Code. In the latter case, the Magistrate may either order investigation by the police under Section 156(3) of the Code or himself hold an inquiry under Section 202 before taking cognizance of the offence under Section 190(1)(*a*) or (*c*), as the case may be, read with Section 204 of the Code. Once the Magistrate takes cognizance of the offence he may proceed to try the offender (except where the case is transferred under Section 191) or commit him for trial under Section 209 of the Code if the offence is triable exclusively by a Court of Session. As pointed out earlier cognizance is taken of the offence and not the offender. This Court in *Raghubans Dubey* v. *State of Bihar* stated that once cognizance of an offence is taken it becomes the Court's duty 'to find out who the offenders really are' and if the Court finds 'that apart from the persons sent up by the police some other persons are involved, it is its duty to proceed against those persons' by summoning them because 'the summoning of the additional accused is part of the proceeding initiated by its taking cognizance of an offence'. Even after the present Code came into force, the legal position has not undergone a change; on the contrary the ratio of *Dubey case* was affirmed in *Hareram Satpathy* v. *Tikaram Agarwala*. Thus far there is no difficulty.

A 14. We have now reached the crucial point in our journey. After cognizance is taken under Section 190(1) of the Code, in warrant-cases the Court is required to frame a charge containing particulars as to the time and place of the alleged offence and the person (if any) against whom, B or the thing (if any) in respect of which, it was committed. But before framing the charge Section 227 of the Code provides that if, upon a consideration of the record of the case and the documents submitted therewith, the Sessions Judge considers that there is not sufficient C ground for proceeding against the accused, he shall, for reasons to be recorded, discharge the accused. It is only when the Judge is of opinion that there is ground for presuming that the accused has committed an offence that he will proceed to frame a charge and record the D plea of the accused (vide Section 228). It becomes immediately clear that for the limited purpose of deciding whether or not to frame a charge against the accused, the Judge would be required to examine the record of the case and the documents submitted therewith, which E would comprise the police report, the statements of witnesses recorded under Section 161 of the Code, the seizure-memoranda, etc., etc. If, on application of mind for this limited purpose, the Judge finds that besides the accused arraigned before him the complicity or F involvement of others in the commission of the crime prima facie surfaces from the material placed before him, what course of action should he adopt?

16. We have already indicated earlier from the ratio of this Court's decisions in the cases of *Raghubans Dubey* G 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 H 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 *Sk. Lutfur Rahman* 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

A 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 any individual accused of the crime."

B We are in respectful agreement with the distinction brought out between the old Section 193 and the provision as it now stands."

17. The ratio laid down in Kishun Singh's case (supra) and Raj Kishore's Prasad's case (supra) came for consideration before a three Judge Bench of this Court in the C case of ***Ranjit Singh vs. State of Punjab***, (1998) 7 SCC 149. Disapproving the judgment in Kishun Singh's case (supra), the Full Bench of this Court relied upon Raj Kishore Prasad's case (supra), and held :-

D "19. So from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 of the Code, that court can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person E to the array of the accused.

20. Thus, once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching F evidence collection when powers under Section 319 of the Code can be invoked. We are unable to find any other power for the Sessions Court to permit addition of new person or persons to the array of the accused. Of course it is not necessary for the court to wait until the entire G evidence is collected for exercising the said powers.

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24. For the foregoing reasons, we find it difficult to support the observations in *Kishun Singh case* that powers of the Sessions Court under Section 193 of the Code to H take cognizance of the offence would include the

summoning of the person or persons whose complicity in the commission of the trial can prima facie be gathered from the materials available on record." A

18. A similar matter came for consideration before a three Judge Bench of this Court in **Dharam Pal Singh's** case (supra) since the conflicting view expressed by this Court in **Ranjit Singh'** case and **Kishun Singh's** case, the matter was referred to the Constitution Bench of this Court. The question has now been finally set at rest by the Constitution Bench in ***Dharam Pal Singh's case,*** (2014) 3 SCC 306. B

19. The Constitution Bench has overruled the ratio decided in Ranjit Singh's case (supra) and Raj Kishore Prasad's case and held that the ratio laid down in Kishun Singh's case (supra) has been correctly decided. The Constitution Bench held as under:- C

"34. The view expressed in *Kishun Singh case*, in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons dehors the police report, which power the Sessions Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(2) of the Code, he was helpless in taking recourse to such a course of action while the Sessions Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused. D E F G

35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him H

A under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if
B on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case
C to the Court of Session to proceed further in the matter.

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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
D 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,
E 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
F 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
G 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.

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40. In that view of the matter, we have no hesitation in agreeing with the views expressed in *Kishun Singh case* 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."

20. In another Constitution Bench judgment in ***Hardeep Singh vs. State of Punjab***, (2014) 3 SCC 92, this Court while discussing the powers of the Court concurred with the view taken in Dharam Pal's case and observed as under:-

"53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 CrPC cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in *Dharam Pal (CB)*. The dispute therein was resolved visualising a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 CrPC is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 CrPC confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material

collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC."

21. The Constitution Bench further answered the question as under:-

"117.1. In *Dharam Pal case*, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 Cr.PC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 Cr.PC, significantly, uses two expressions that have to be taken note of i.e. (*1*) inquiry (*2*) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 Cr.PC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court

after the trial commences, for the exercise of power under Section 319 Cr.PC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination."

22. As noticed above, after completion of investigation, CBI filed charge-sheet in the Court of Special Judge to deal with the cases in the Prevention of Corruption Act, as also under the Indian Penal Code. The procedure and the powers of the Special Judge have been prescribed in Section 5 of the said Act. For better appreciation, Section 5 of the Act is reproduced hereinbelow:-

"5. Procedure and powers of special Judge.—

(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the

A commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

B (3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for purposes of the said provisions, the Court C of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of D the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall E be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

F (6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944)."

23. A bare reading of the provision would show that the G special judge may take cognizance of the offence without the accused being committed to him for trial and the court of special judge shall be deemed to be a court of session. The special judge in trying the accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the H trial of warrant cases by the Magistrate. Indisputably, a person

holding the post of either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge is appointed as Special Judge and shall follow the procedure prescribed in the Code for trial of warrant cases. A

24. The constitution Bench in the case of ***A.R. Antuley*** (supra), was of the view that the special judge appointed under the Prevention of Corruption Act, enjoys all powers conferred on the Court of original jurisdiction functioning under the High Court except those specifically conferred under the Act. The Bench observed :- B

"27.....While setting up a Court of a Special Judge keeping in view the fact that the high dignitaries in public life are likely to be tried by such a court, the qualification prescribed was that the person to be appointed as Special Judge has to be either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge. These three dignitaries are above the level of a Magistrate. After prescribing the qualification, the Legislature proceeded to confer power upon a Special Judge to take cognizance of offences for the trial of which a special court with exclusive jurisdiction was being set up. If a Special Judge has to take cognizance of offences, ipso facto the procedure for trial of such offences has to be prescribed. Now the Code prescribes different procedures for trial of cases by different courts. Procedure for trial of a case before a Court of Session is set out in Chapter XVIII; trial of warrant cases by Magistrates is set out in Chapter XIX and the provisions therein included catered to both the types of cases coming before the Magistrate, namely, upon police report or otherwise than on a police report. Chapter XX prescribes the procedure for trial of summons cases by Magistrates and Chapter XXI prescribes the procedure for summary trial. Now that a new criminal court was being set up, the Legislature took the first step of providing its comparative position in the hierarchy of courts under C D E F G H

A Section 6 CrPC by bringing it on level more or less comparable to the Court of Session, but in order to avoid any confusion arising out of comparison by level, it was made explicit in Section 8(1) itself that it is not a Court of Session because it can take cognizance of offences
B without commitment as contemplated by Section 193 CrPC. Undoubtedly in Section 8(3) it was clearly laid down that subject to the provisions of sub-sections (1) and (2) of Section 8, the Court of Special Judge shall be deemed to be a Court of Session trying cases without a jury or
C without the aid of assessors."

25. In the case of ***Harshad S. Mehta vs. State of Maharashtra***, *(2001) 8 SCC 257*, the Bench while dealing with the case under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 observed that special
D court is a Court of exclusive jurisdiction in respect of offences under Section 3(2) of the Act, like special court under Prevention of Corruption Act it has original criminal jurisdiction. The special court *per se* is not a Magistrate and also it is not a court to which the commitment of a case is made.

E 26. In the case of ***State of T.N. vs. V. Krishnaswami Naidu,*** *(1979) 4 SCC 5,* this Court while answering a question, as to whether the special judge under the Criminal Law (Amendment) Act, 1952 can exercise the power conferred on a Magistrate under Section 167 Cr.P.C. to authorise the
F detention of the accused in the custody of police; held that a special judge is empowered to take cognizance of the offence without the accused being committed to him for trial. Their Lordship observed:-

G "5. It may be noted that the Special Judge is not a Sessions Judge, Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure though no person can be appointed as a Special Judge unless he is or has been either a Sessions Judge or an Additional Sessions Judge or an Assistant
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Sessions Judge. The Special Judge is empowered to take cognizance of the offences without the accused being committed to him for trial. The jurisdiction to try the offence by a Sessions Judge is only after committal to him. Further the Sessions Judge does not follow the procedure for the trial of warrant cases by Magistrates. The Special Judge is deemed to be a Court of Session only for certain purposes as mentioned in Section 8(3) of the Act while the first part of sub-section 3 provides that except as provided in sub-sections (1) and (2) of Section 8 the provisions of the Code of Criminal Procedure, 1898 shall, so far as they are not inconsistent with this Act, apply to the proceedings before the Special Judge."

27. In the case of ***Raghubans Dubey vs. State of Bihar,*** AIR 1967 SC 1167, this Court while dealing with the similar matter held that once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders and once he comes to the conclusion that apart from the persons sent 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.

28. In the case of ***Kishun Singh vs. State of Bihar*** (supra), the scope and power of a Court under Sections 193, 209 and 319 observed as:-

"16. 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 *Sk. Lutfur Rahman* 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 any individual accused of the crime." A

We are in respectful agreement with the distinction brought out between the old Section 193 and the provision as it now stands." B

29. The order passed by the Special Judge would show that while issuing summons against the respondents the Court has considered in detail the material brought on record during investigation. We would like to refer some of the paragraphs, which are quoted hereinbelow:- C

"14. During investigation. It was also revealed that Sh. Ram Narain Aggarwal got procured the various false documents in order to regularize the society fraudulently, which was submitted to the office of the RCS. The details of the documents are as follows:- D

Proceedings of general body meetings dated 15-11-1998 and 23-01-2000.

Proceedings register having proceedings with effect from 22-11-1998. E

Membership register having members numbers 101 onwards.

15. Proceedings of General Body Meeting (GBM) dated 15-11-1998 which shown to be held in the office of the society at 303. 3rd Floor, C-50, Vasant Tower Community Centre, Janak Puri where the approval of resignation of 46 members and enrollment of 35 new members during the period of 1996-97 by the managing committee was falsely shown. Similarly, proceeding of GBM dated 23-01-2000 falsely show approval of regisnation of 10 promoter members by the managing committee. In that GBM, false election of managing committee was shown to be conducted, in which, Sh. OP Aggarwal- the President, Sh. Anil Kumar Sharma- Vice President and F G H

A all other members of the managing committee of the society, whose name are Sh. R.N. Aggarwal, Ms. Sujata Chauhan, Sh. Sudhir Aggarwal, Sh. CL Bansal and Ms. Janak are shown to be elected by showing conducting false elections of the management committee. The B signature of Sh. Sudhir Aggarwal is forged on these proceedings of GBM dated 15-11-1998, 23-1-2000 which are written by Ms. Sujata on the instance of Sh. RN Aggarwal.

16. It was also revealed that Sh. MIshri Lal Lodhi and Sh. C Bhupinder Kumar, the then president and secretary of the society respectively had never approved the resignation of the promoter members and enrollment of new members during the year 1996-97 as shown in GBM dated 15-11-1998.

D 17. After obtaining demand letter dated 21-9-1998 from DDA, a post letter dated 2-11-1998 under the signature of SH. Bhupinder Kumar, Secretary of the society was submitted fraudulently to the commissioner (Housing), DDA, New Delhi, whereby more time was sought for E making payment.

18. Investigation further revealed that Sh. RN Aggarwal in pursuance of criminal consipray with Sh. Bhim Singh Mahur fraduently obtained a letter dated 15-11-1998 F signed by Sh. Mishri Lal (President), Sh. Bhupinder Kumar (Secretary) and Smt. Kela Devi (Treasurer) and sent the same to the Manager, Delhi State Cooperative Bank Ltd., Dariya Ganj, New Delhi falsely stated therein that Sh. Anil Kumar Sharma, Sh. RN Aggarwal and Sh. G Om Prakash Aggarwal have been elected as President, Secretary and Treasurer respectively in the new Managing Committee of the said society and the said office bearer have been authorized to operate the bank accounts of the said society and this way all the above

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named accused had fraudulently taken over control of the operation of the bank account of the said society.

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20. Investigation further revealed that Sh. Ganesh Jha, a promoter member of the society lodged complaints dated 26.6.2000 and 5.10.2000 to the office of RCS, New Delhi alleging therein that the society had not intimated him for allotment of land by DDA nor demanded his share of contribution towards costs of land and he suspected that the Secretary fraudulently manipulated the membership register. The society has secretly shifted the registered office without holding any meeting of the members, nor called him to attend any meeting of the society with some ulterior motive.

21. It is also revealed in the investigation that Sh. Leela Krishan Seth appointed Sh. Jafar Iqbal for conducting verification on the allotments made in the complaints who gave a false verification report at the behest of Sh. R.N. Aggarwal in which he fraudulently certified that election were satisfactorily held by society on 15.11.98 and facilitated dishonestly the accused persons by giving them clean chit to the society.

22. Investigation also disclosed that person to the aforesaid criminal conspiracy Leela Krishna Seth the then Assistant Registrar, Sh. Jafar Iqbal, the then Inspector Grade-III by abusing their official position by entering into criminal conspiracy with sh. R. N. Aggarwal and Sh. O.P. Aggarwal with the intention to cheat DDA got allotment and possession of land from DDA in favour of the society."

30. The Special Judge considering all those materials brought on record during investigation and relying upon the decisions of this Court in the case of ***M/s Swill Ltd. vs. State of Delhi and Anr.,*** (2001) 6 SCC 670; ***Nisar and Another vs. State of U.P.***, (1995) 2 SCC 23;1995 Crl LJ 2118; ***Kishan Singh vs. State of Bihar*** (supra); ***Raghubans Dubey vs.***

A ***State of Bihar***, (1967) 2 SCR 423, came to the conclusion that the respondents are involved in the commission of offence and consequently summons were issued against them.

31. While passing the impugned order the High Court instead of relying on the decisions of this Court reversed the B order passed by the Special Judge by following the decision of the Single Judge of the Delhi High Court in Anirudh Sen's Case (supra). Prima facie, therefore, the impugned order passed by the High Court quashing issuance of summons by the Special Judge against the respondents is erroneous in C law and cannot be sustained. However, at this stage it was not necessary for the Special Judge to issue directions to CBI to get a case registered against the guilty officers who have investigated the case.

32. For the reasons aforesaid, we allow these appeals D and quash the order passed by the High Court and restore the order passed by the Special Judge except the direction issued to the CBI as indicated above.

Nidhi Jain Appeals allowed.