

CrPC S. 193 - Power under Section 193 of the Code of Criminal Procedure, 1973, to take cognizance of an offence and summon other persons whose complicity in the commission of the trial could prima facie be gathered from the materials available on record

“4.1. Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?

4.2. If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?

4.3. Having decided to issue summons against the appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?

4.4. Can the Sessions Judge issue summons under Section 193 CrPC as a court of original jurisdiction?

4.5. Upon the case being committed to the Court of Session, could the Sessions Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was reached in order to take recourse thereto?

4.6. Was Ranjit Singh case [(1998) 7 SCC 149 : 1998 SCC (Cri) 1554], which set aside the decision in Kishun Singh case [(1993) 2 SCC 16 : 1993 SCC (Cri) 470] , rightly decided or not?”

As regards scope of jurisdiction of the Magistrate in a situation of this nature, it was held:-

“24. 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 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 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 to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report

itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court.”

27. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. **It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session.** The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.”

[2013 PLRonline 0103](#)

[Dharam Pal v. State Of Haryana , 2013 PLRonline 0103](#) , (2014) 3 SCC 306 , (2004) 13 SCC 9 , (2006) 1 SCC (Cri) 273