

State of Haryana v. Harbhajan Singh and another (B. S. Dhillon, J.)

(13) The Secretary of the Punjab Government is required to sign the order only in the event of he himself passing the order, if so empowered specially by the State Government but in that case the order would not be of the State Government, it would be an order of the Secretary of the State Government specially authorised by the State Government.

(14) The learned counsel for the petitioners brought to our notice besides the order of Gurnam Singh, J., another decision of this Court rendered by Dhillon, J., in *Jaswant Rai v. The State of Punjab & others* (2). In fact, Gurnam Singh, J., had followed the ratio of the aforesaid decision rendered by Dhillon, J. The facts of those two cases were entirely different. Impugned detention orders are not produced in either of the judgments but from the discussion it appears that those orders were passed by the Home Secretary in his personal capacity specially authorised as delegate of the State Government and not as an officer authenticating the orders of the State Government in terms of rule 9(1) of the Rules. The ratio of the aforesaid two decisions cannot be taken to be that the Deputy Secretary of the State Government, cannot authenticate an order passed by the State Government. The ratio of those decisions has to be taken and so it appears from the observation quoted from one of the judgments that where the order is passed by an official of the State as a delegate of the State Government by virtue of being specially authorised on that behalf then the official not below the rank of Secretary alone could pass such an order.

(15) For the reasons aforesaid the question formulated by the Referring Judge is answered in the negative. The writ petitions are remanded to the Single Judge to decide the same on merits in accordance with our aforesaid observations. The office is directed to list these petitions before the learned Single Judge next week.

N.K.S.

Before B. S. Dhillon, J.

STATE OF HARYANA—Petitioner.

versus

HARBHAJAN SINGH and another—Respondents.

Criminal Revision No. 3-R of 1978.

December 8, 1978.

*Code of Criminal Procedure (2 of 1974)—Sections 209 and 323—
Cross-cases arising out of the same incident—One set of accused*

(2) Cr. W. No. 27 of 1978, decided on 24th May, 1978.

charged with offences triable exclusively by a Court of Session—Other set of accused charged with offences triable by a Magistrate—Magistrate committing both sets of accused to the Court of Session—Commitment of the latter set of accused—Whether legal—Sections 209 and 323—Scope of.

Held, that a reading of sections 209 and 323 of the Code of Criminal Procedure 1973 makes it abundantly clear that the two provisions are to operate in different situations. Section 209 of the Code will operate at the stage when the case is instituted by a police report or otherwise and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, whereas section 323 of the Code will come into operation at a later stage and even upto the stage before the judgment is delivered by the Magistrate and if at any stage it appears to the Magistrate that the case "ought to be tried by the Court of Session", he shall commit the case to that Court in accordance with the provisions of the Code which only refers to the procedural part of section 209 and not the substantive part. The words "ought to be tried by the Court of Session" are significant and the Legislature designedly used these words so as to cover those cases which are not exclusively triable by the Court of Session". Every word used by the Legislature has to be given its true meaning keeping in view the background under which the said words have been used. This interpretation will further the cause of justice, as in a given case a particular incident may give rise to the commission of offence for which both the parties participating in the crime may be separately charged. One set of offences against one party may happen to be exclusively triable by a Magistrate and the other set of offences may happen to be exclusively triable by the Court of Session. It would be a perversity of justice if the same incident which resulted into two different sets of offences against the parties participating in the assault is to be determined by two separate Courts and separately. However, a Magistrate exercising his powers under section 323 of the Code shall have to pass a reasoned order justifying that the offences with which the accused are charged ought to be tried by the Court of Session and if the reasons are germane to the object to be achieved in that case, the said order of the Magistrate will be clearly within jurisdiction. (Para 5).

Case reported under Sub-section (2) of Section 395 of the Criminal Procedure Code for an authoritative pronouncement on the point whether under section 323 of the Criminal Procedure Code a Magistrate can commit a case to the Court of Session involving an offence which is not exclusively triable by the Court of Session.

K. S. Kundu, Advocate for A. G. Haryana, for the Petitioner.

C. B. Goel, Advocate, for the Respondents.

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B. S. Dhillon, J (Oral)

(1) This reference has been made by the Additional Sessions Judge, Karnal,—*vide* his order dated 18th May, 1978, under sub-section (2) of section 395 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the New Code).

(2) Briefly stated, the facts giving rise to this reference are that the police filed a challan under sections 324 and 323 of the Indian Penal Code against the respondents. In a cross-case, which resulted from the same incident, the other side was charged with an offence under section 302 of the Indian Penal Code in addition to the other offence. Consequently, the cross-case being exclusively triable by the Court of Session, was committed to the Court of Session. When the challan was presented before the Sub-Divisional Judicial Magistrate, Panipat, in which the respondents are the accused, he,—*vide* his order dated 24th March, 1978, committed this case to the Court of Session on the ground that the cross-case which resulted out of one and the same occurrence, was being tried by the Court of Session as the same was exclusively triable by the Court of Session. The learned Additional Sessions Judge has made a reference to this Court recommending that the order of commitment be quashed on the ground that the offences for which the respondents were being charged were not exclusively triable by the Court of Session. The learned Additional Sessions Judge has made reference to a Single Bench decision of the Lahore High Court in *Emperor v. Karam Singh*, (1), and a Single Bench decision of this Court in *State of Punjab v. Gurmukh Singh and another* (2), for coming to the conclusion that under the provisions of section 323 of the New Code the words "ought to be tried" should be construed to be exclusively triable. I have carefully gone through the provisions of the New Code and find that it is not possible to give such an interpretation. The provisions of section 209 of the New Code are as follows:—

"209. 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 the case to the Court of Session;

(1) A.I.R. 1930 Lahore 312.

(2) 1973 G.L.R. 59.

- (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."

(3) The provisions of section 323 of the New Code are as under:—

"323. If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions herein before contained."

(4) As regards the provisions in the Code of Criminal Procedure, 1898 (hereinafter referred to as the Old Code), it is quite significant that the procedure for commitment proceedings was different and, therefore, elaborate procedure was provided in Chapter XVIII of the Old Code. Sections 205 and 207 of the Old Code were in the following terms—

"206 (1) Any Chief Judicial Magistrate or a Judicial Magistrate of the first class or any Judicial Magistrate of the second class empowered in this behalf by the High Court, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

207. In every inquiry before a Magistrate where the case is triable exclusively by a court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court, the Magistrate shall:—

- (a) in any proceeding instituted on a police report, follow the procedure specified in section 207-A, and

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(b) in any other proceeding, follow the procedure specified in the other provisions of this Chapter."

(5) As is clear under the provisions of section 206 of the Old Code, the Magistrate empowered to order commitment, could order commitment of any person for trial to the Court of Session or High Court for any offence triable by such Court. This would essentially mean that the offences which were exclusively triable by the Court of Session were to be taken into consideration while ordering commitment. Section 207 of the Old Code follows section 206. It has been clearly mentioned in section 207 of the Old Code that in every inquiry before a Magistrate where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court, the Magistrate shall follow the procedure thereafter provided in the Code. The words "ought to be tried by such Court" appearing in section 207 of the Old Code, have to be interpreted in the light of the provisions of section 206 of the Old Code which precedes this section. Moreover, the provisions of section 347 of the Old Code are in the similar words as section 323 of the New Code. In any case, the procedure for commitment of cases to the Court of Session under the old Code has been radically changed in the New Code and the lengthy procedure has been deleted. Therefore, the provisions of the Old Code will not provide any guidance for the interpretation of the provisions of section 299 read with section 323 of the Code. The reading of the provisions of sections 209 and 323 of the New Code Code makes it abundantly clear that the two provisions are to operate in different situations. Sections 209 of the New Code will operate at the stage when the case is instituted by a police report or otherwise and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, whereas section 323 of the New Code will come into operation at the later stage and even upto the stage before the judgment is delivered by the Magistrate as if at any stage it appears to the Magistrate that the case "ought to be tried by the Court of Session", he shall commit the case to the Court of Session, under the provisions contained in the Code, which only refers to the procedural part of section 209 and not the substantive part. The words "ought to be tried by the Court of Session", are significant. The Legislature designedly used these words so as to cover those cases which are not exclusively triable by the Court of Session but which otherwise

“ought to be tried by the Court of Session.” Every word used by the Legislature has to be given its true meaning keeping in view the background under which the said words have been used. This interpretation, in my view, will further the cause of justice. In a given case, a particular incident may give rise to the commission of offences for which both the parties participating in the crime may be separately charged. One set of offences against one party may happen to be exclusively triable by a Magistrate and the other set of offences may happen to be exclusively triable by the Court of Session. It would be perversity of justice if the same incident which resulted into two different sets of offences against the parties participating in the assault, is to be determined by two separate Courts and separately. The incident may not be even separable. Such an interpretation may result into miscarriage of justice. The Code has been enacted to further the cause of justice and, to give fair chance to the culprits to bring forth their view point before the Court. Any interpretation which results in anomalies, as has been mentioned above and which may result in a grave injustice to a given set of accused persons, has to be avoided. It is of course true that there is tendency among the Magistrates to commit the cases to the Court of Session without there being a good reason for doing so. That tendency has to be deprecated. It is, therefore, desirable to lay down that a Magistrate exercising the powers under section 323 of the New Code shall have to pass a reasoned order justifying that the offences with which the accused are charged, ought to be tried by the Court of Session. If the reasons are germane to the object to be achieved, in that case, the said order of the Magistrate will be clearly with jurisdiction, but if the reason for passing the commitment order are not germane to the object, i.e., as to on what ground the Magistrate is of the opinion that the case ought to be tried by the Court of Session, in that case, the order will be without jurisdiction.

(6) As regards the decision of the Lahore High Court in *Karam Singh's case (supra)*, I do not think that the said decision lays down the proposition as has been understood by the learned Additional Sessions Judge. In the same judgment, it has been clearly held that in committing a case not exclusively triable by the Court of Session, the Magistrate should exercise a proper discretion and give adequate reasons for committing the case to the Court of Session. This clearly visualises that there may be a case, which may not be exclusively triable by a Court of Session, even in such a case the Magistrate can commit the case to the Court of Session but he has to give

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good reasons for passing the committing order. In fact that was a case on the facts and circumstances of which the commitment order was not found to be justified and the reference made by the Additional Sessions Judge was accepted by Chief Justice Shadi Lal by accepting the reasons given in the reference order. Similarly, the Single Bench decision of this Court in *Gurmukh Singh's case (supra)*, is a decision on the facts and circumstances of that case. It is clear from the reference order in that case that the learned Sessions Judge, who made the reference found that no good reasons had been given by the Magistrate to pass an order of commitment. Moreover, the said case was a case under the provisions of the Old Code. As I have already observed, the commitment proceedings under the Old Code were quite different than the ones contained in the New Code.

(7) For the reasons recorded above, the reference made by the learned Additional Sessions Judge, Karnal is declined. The learned Additional Sessions Judge is directed to proceed with the decision of this case and the cross-case forthwith. The parties have been directed through their counsel to appear before the learned Additional Sessions Judge, Karnal, on 22nd December, 1978.

H. S. B.

Before P. C. Jain and J. M. Tandon, JJ.

JAGMOHAN LAL VERMA—*Petitioner.*

versus

TEXTILE COMMISSIONER and others—*Respondents.*

Civil Writ Petition No. 2498 of 1973.

December 15, 1978.

Essential Commodities Act (X of 1955)—Section 3—Woollen Textile (Production and Distribution) Control Order, 1962—Clauses 2(d), (f) and 3—Central Excise Rules 1944—Rule 174—Constitution of India 1950—Articles 14 and 19(1)(g)—Installation of unauthorised cotton converted spindles capable of manufacturing worsted yarn—Press note laying down conditions for providing regularisation of unauthorised worsted spindles—Unauthorised cotton converted