Court to pass the impugned award, Annexure P. 4. As a necessary consequence of this conclusion, the writ petition fails and is dismissed but with no order as to costs.

H. S. B.

Before S. S. Sandhawalia, C.J. and S. P. Goyal, J.

SURAT SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 1101 of 1980.

January 13, 1981.

Code of Criminal Procedure (II of 1974)—Sections 173 and 209—Police report submitted to the Magistrate under section 173 in a case triable exclusively by court of Sessions—One of the accused not sent up for trial and his name mentioned in column No. 2—Magistrate—Whether can differ with the police report and commit such accused for trial.

Held, that a Magistrate has the fullest jurisdiction to differ with the conclusions of the police in its report under section 173 of the Code of Criminal Procedure 1973 and direct that the accused person mentioned in column No. 2 thereof should be summoned and committed to the court of Sessions for trial.

(Para 14)

Surinder Kumar and others vs. *State of Punjab*, Ch. L.R. 459, OVERRULED.

Petition under Section 401 Cr. P.C. for revision of the order of Shri Dalip Singh, Judicial Magistrate, 1st Class, Dasuya, dated 27th August, 1980, directing the authority to produce convicts before Sessions Judge, Hoshiarpur on 9th September 1980, for further directions and also direct the Ahlmad of this Court to send complete file in all respects to the Sessions Court.

J. N. Kaushal, Sr. Advocate with H. S. Bedi, Advocate, *for the Petitioner.*

D. N. Rampal, Advocate *for the State.*

Man Mohan Singh, Advocate with J. B. Singh Gill, *for the complainant.*

JUDGMENT

(1) Whether upon the receipt of a report under Section 173 of the Code of Criminal Procedure, 1973, the Magistrate has jurisdiction to differ with the conclusions of the police and direct that the accused not sent up for trial and mentioned in column No. 2 thereof, should also be summoned and committed to the court of Session under Section 209 of the Code—is the meaningful question, which has necessitated this reference to the Division Bench.

2. The issue aforesaid arises from a Quadruple murder case. According to the allegations laid in the first information report, Surinder Kaur and her first cousin—Satwinder Kaur—were sleeping together on a cot in their house in village Mansurpur. Nearby Smt Dharam Kaur, mother of Surinder Kaur and Gurjinder Pal Singh, a child aged about three years were also lying on a separate cot. Smt. Parkash Kaur with her little baby child of about one month was sleeping close-by on another cot. The men-folk of the house were apparently absent and sleeping at their tubewell in the fields. At about mid-night, there was a knock at the outer door of the house and Surat Singh petitioner, along with his co-accused Swaran Singh demanded that the door be opened and made enquiry whether Prem Singh father of Smt. Surinder Kaur was there—Dharam Kaur replied from her cot that he was not in the house and had gone out. Surat Singh petitioner along with his companions then forcibly pushed open the door. Smt. Surinder Kaur, out of fear arose from her cot and proceeded towards the residential house of Khem Singh, her uncle, where she woke up Sampuran Singh and Roshan Singh. The prosecution case is that Surat Singh petitioner and his co-accused Swaran Singh were armed with guns whilst Simarjit Singh, Amar Singh, Baldev Singh, Mukhtiar Singh and Gurmit Singh were armed with a pistol each. Simarjit Singh raised a *lalkara* that even though Prem Singh was not present in his house, this should not matter and his entire family members should be wiped out. Mukhtiar Singh, Baldev Singh, Amar Singh and Gurmit Singh accused allegedly stood near the outer door. Surat Singh petitioner then fired a shot from his gun at Smt. Dharam Kaur who died at the spot. He fired a second time from his gun at Gurjinder Pal Singh alias Pawan, who also died instantaneously. Swaran Singh co-accused then fired

at Smt. Parkash Kaur the brother's wife of Smt. Surinder Kaur fatally injuring her. Swaran Singh then fired another shot at Satwinder Kaur who also breathed her last at the spot. He again fired at Jangvir Singh twice at his chest as well as his hand. The commotion and the gun shots attracted a large number of inhabitants of the village to the site of the crime, whereupon the assailants made good their escape along with their respective weapons.

3. Besides Surinder Kaur complainant, the incident was also witnessed by her cousins Roshan Singh and Sampuran Singh and her uncle Swaran Singh. Later Surinder Kaur along with her uncle Swaran Singh went to the police station Tanda and on the basis of her statement, a case was registered,—*vide* F.I.R. No. 137, dated May 16, 1980. In the course of the investigation, all the accused persons including the present petitioner, were arrested.

4. On the completion of the police investigation the police report against the accused was presented in the Court of the Judicial Magistrate, 1st Class, Dasuya on August 14, 1980. Therein Surjit Singh, petitioner was shown in column No. 2 thereupon Surat Singh petitioner moved an application, dated August 20, 1980, before the Magistrate claiming to be discharged primarily on the ground that he had been merely shown in column No. 2 of the final police report. By a considered order dated August 27, 1980, the learned Judicial Magistrate rejected this application after adverting to the authorities sought to be relied upon on behalf of the petitioner. By a separate commitment order of the same date, the learned Magistrate then committed Surat Singh, petitioner along with his six co-accused, in custody to the court of Session, for standing their trial under Section 302 of the Indian Penal Code read with Section 149 thereof and other allied offences.

5. Aggrieved by the aforesaid commitment order, Surat Singh, petitioner has preferred this revision petition primarily on the ground that where the police had made a negative report against an accused person and shown his name in column No. 2 thereof, then such a person cannot be committed for trial to the Court of Session by the Magistrate. This case in the first instance came up before Bains, J., who after noticing the conflict of precedent, has referred it for decision by a Larger Bench.

6. It may straight away be noticed that the learned counsel for the petitioner has only agitated the legal question formulated at the very out-set; namely, whether the impugned order of the learned magistrate committing the petitioner (despite the fact of his name being mentioned in column No. 2 of the police report) to stand his trial before the court of Sessions—is within jurisdiction.

7. Now it appears to me that the solitary legal question posed herein is so well covered by binding precedent of the final Court that it would now be wasteful to launch on a long dissertation on principle or the language of the statutory provisions. An identical question arose before their Lordships in *Hareram Satpathy* v. *Tikaram Aggarwal and others* (1), which was noticed in the following terms:—

> "Two main questions arise for determination in this case, namely:—
>
> (1) Whether after submission of the final report by the police stating therein that there was not sufficient evidence to justify the forwarding of the respondents to him, it was open to the Sub-Divisional Magistrate, Balangir to add the respondents as accused in the case and issue process against them.

Holding that the question was not *res integra* and relying on its earlier judgments, the categoric answer to the question was returned as under:—

> "In the instant case the Sub-Divisional Magistrate took cognizance of the offence on the police report, and after taking cognizance of the offence and perusal of the record he appears to have satisfied himself that there were *prima facie* grounds for issuing process against the respondents. In so doing the Magistrate did not in our judgment exceed the power vested in him under law.
>
> 9. The first point is accordingly decided in the affirmative.."

(1) 1978 S.C. 1568.

8. Faced with the in surmountable impediment of a decision of the final Court against him, Mr. Kaushal, learned counsel for the petitioner had vainly attempted to distinguish the same. The only submission made in this context was that in *Hareram Satpathy's case* (supra), apart from the police report, there was also a complaint made by the complainant before the magistrate. It was sought to be submitted that in the present case there was no separate complaint moved by the private complainant, and therefore, the ratio of the case was not applicable.

9. In my view, the only reason for which *Hareram Satpathy's case* (supra) is sought to be distinguished is untenable and seeks to make a distinction without a difference. Indeed a close reading of the judgment would show that process was issued by the magistrate not on the basis of a complaint or any evidence recorded therein, but only on the materials before him along with the police report. This finds distinct mention in the judgment in the following terms:—

> ".. .. .. After going through the statements made under section 161 of the Cr. P.C. by the appellant and Bhibudananda Udgata, Harudanana Nanda and Shankar Tripathy and finding a *prima facie* case under S. 302 of the Indian Penal Code made out against the respondents, the Magistrate directed the issue of non-bailable warrants against them. .. .. ..".

It would be plain from the above that *Hareram Satpathy's case* (supra), is in distinguishable and its ratio would apply on all fours in the present case as well.

10. In view of the above, little also survives but in fairness to Mr. Kaushal, I must notice his attempted reliance on *Sanjay Gandhi* v. *Union of India and others* (2), and *Joginder Singh and another* v. *State of Punjab and another* (3). A reference to both these judgments, however, would make it plain that they do not at all cover the point directly and the analogy, if any, is indeed remote. In this

(2) A.I.R. 1978 S.C. 154.
(3) A.I.R. 1979 S.C. 339.

context, it is apt to recall the dictum of their Lordships in State of *Orissa* v. *Sudhansu Sekhar Misra and others* (4), that a decision is only an authority for what it actually decides and the essence thereof is its ratio and not every observation found therein nor what logically follows from various observations made in it. Further, it was pointed out that it was not a profitable task to extract a sentence here and there from a judgment and to build upon it. I am, therefore, of the view that the cases of *Sanjay Gandhi and Joginder Singh and another* (supra) in no way detract from the direct precedent in *Hareram Satpathy's case* (supra).

11. All that now remains is to advert to some conflict of precedent, which had necessitated this reference. Undoubtedly the learned Single Judge in *Surinder Kumar and others* v. *The State of Punjab* (5), has taken the view that a Magistrate has no jurisdiction to commit a person to the court of Sessions whose name figures only in column No. 2 of the police report, under section 173 of the Criminal Procedure Code, 1973. A close perusal of the said judgment would, however, show that the learned counsel for the parties were remiss in not bringing to the notice of the learned Single Judge the earlier Division Bench authority of this Court in *Fatta and others* v. *The State* (6) holding that the Magistrate was not restricted to issuing process only to the persons challaned by the police. Even otherwise the matter does not appear to have been adequately debated and no other precedent in favour of the view recorded therein seems to have been cited either. The report would further indicate that reliance on behalf of the petitioner was placed on a decision of a learned Single Judge of the Andhra Pradesh High Court reported *in Datanan-chala Coina Lingaiah* v. *The State and another* (7). The judgment has now been expressly overruled by their Lordships in *Joginder Singh and another's case* (supra). Lastly, it is manifest that the ratio of the case is now inhead-long conflict with that in *Hareram Satpathy's case* (supra).

12. For all these reasons, it appears to me that *Surinder Kumar and others' case* (supra), does not lay down the law correctly and is hereby overruled.

(4) A.I.R. 1968 S.C. 647.

(5) 1977 Ch. L.R. 459.

(6) A.I.R. 1964 Punjab 351.

(7) 1977 Cri. L.J. 415.

13. It necessarily calls for notice that Bains, J., in his order of reference as also in an earlier judgment in (*Rajpal Singh* v. *State of Haryana*) (8), had taken the view that it is open to the magistrate to disagree with the police report and issue process against an accused person shown in column No. 2 of the report and commit him to stand his trial. I am entirely in agreement with the observations made in *Rajpal Singh's case* (supra), which is hereby affirmed.

14. In view of the above, the answer to the question formulated at the very opening of the judgment is rendered in the affirmative and it is held that the Magistrate has the fullest jurisdiction to differ with the conclusions of the police in its report under section 173 of the Code of Criminal Procedure, 1973 and direct that the accused person mentioned in column No. 2 thereof should be summoned and committed to the Court of Sessions, for trial. Applying the said rule, the present revision petition is obviously, without merit and has to be necessarily dismissed.

S. P. Goyal, J.— I agree.

H.S.B.

Before S. S. Sandhawalia, C.J. and G. C. Mital, J.

EMPLOYEES STATE INSURANCE CORPORATION AND ANOTHER,—*Appellants*

versus

DHANDA ENGINEERS PRIVATE LIMITED,—*Respondent.*

First Appeal from Order 476 *of* 1978.

January 22, 1981.

Employees State Insurance Act (*XXXIV of* 1948)—*Sections* 3, 4, 5, 85, 85-B *and* 94-*A*—*Employees State Insurance* (*General*) *Regulations* 1950—*Regulations* 3, 26, 29, 31-*A and* 34—*Power of the Corporation to levy damages under section* 85-*B delegated to the*

(8) Cr. M. 5495 of 1978 decided on January 16, 1979.