

PETITIONER:
P. C. GULATI

Vs.

RESPONDENT:
LAJYA RAM KAPUR AND OTHERS

DATE OF JUDGMENT:
19/08/1965

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
SARKAR, A.K.
RAMASWAMI, V.

CITATION:
1966 AIR 595 1966 SCR (1) 560

ACT:
Code of Criminal Procedure, 1898 (5 of 1898), s. 526 (ii)-
Transfer of case from Magistrate's court to Sessions-Power
of High Court.

HEADNOTE:

When s. 193 of the Code of Criminal Procedure prohibits the Court of Session, from taking "cognizance of any offence as a court of original jurisdiction" unless the accused is committed to it by a Magistrate or there is any other express provision of the Code, on the question whether the High Court is competent under s. 526(1)(ii) of the Code to transfer a case from the Court of a Magistrate to the Court of a Sessions Judge,

HELD : (Per Sarkar & Dayal, JJ.) The High Court is competent.

Cognizance of an offence as a court of original jurisdiction means the initiation of proceedings for the first time in a court and not in a subsequent inquiry or trial necessary for the disposal of the case. When a case is committed to the Court of Sessions, it proceeds with the trial of the case only when it considers the commitment good in law. It is in this context that Sessions Court has to take 'cognizance' of the offence as a court of original jurisdiction and it is such cognizance that is referred to in s. 193. The provisions of the various sections in Part B of Chapter XV of the Code dealing with initiation of proceedings also make out the difference between the taking of cognizance of a case and the subsequent inquiry and trial of the offences of which cognizance has been LA-en. 1567 B, C, D; 568 A1

There are no reasons which could have induced the legislature to contemplate the limiting of cl. (ii), of sub-s. (1) of s. 526 to the transfer of cases from the court of a Magistrate to the court of any other Magistrate of equal or superior jurisdiction. Further, when under the Code the High Court is competent to transfer a case from the court of a Magistrate to itself and try it would be incongruous to hold that the High Court is not competent to transfer a case to the Court of Sessions. [568 D-E]

The omission to provide specifically the procedure to be followed in the trial of a case transferred to the Court of

Sessions by the High Court in the exercise of its powers under s. 526 of the Code will not make the transfer illegal, when the language of cl. (ii) of sub-s. (1) confers the power on the High Court of transferring a case from the Court of a Magistrate to a Court of superior jurisdiction. There is no difficulty in the Court of Sessions trying the case transferred to it in accordance with the provision of Ch. XXIII which deals with the procedure of trial before the High Courts and Courts of Sessions. The Court of Session.-, has to follow the procedure laid down in this Chapter so far as that be applicable to the cases to be tried by it. The special procedure laid down for particular type of cases and proceedings will be followed in those cases as special provisions over-ride general Provisions of Chapter XXIII. [563 F; 564 C--E]

Section 193, therefore, does not bar further proceedings by the Court of Sessions in a case transferred to it by the High Court. [568 C]

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Per Ramaswami, J. (Dissenting) : The High Court has no power to transfer a case from the Court of a Magistrate to the Court of Sessions without a proper commitment having been made. [573 C-D]

While s. 526(2) is an express provision with regard to the trial of the case transferred by the High Court to itself from any other criminal court other than the court of a Presidency Magistrate, section 526 does not expressly provide for the procedure to be followed by a Sessions Judge it, a case transferred to it by the High Court. it follows, therefore, that the legislature has not enacted any express provision to the control within the meaning of s. 193(1). [571 E-F]

The language of s. 526(1) (ii) cannot be read in isolation and cannot be given effect to without regard to the mandatory provisions of s. 193. The powers of transfer given to the High Court under s. 526(1)(ii) must be interpreted as not to conflict with the language of s. 193. [578 A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 86 and 88 of 1965.

Appeals by special leave from the judgment and order dated March 13, 1964 of the Punjab High Court (Circuit Bench) at Delhi in Criminal Revision No. 30-D of 1964 and Criminal Misc.No. 63-D of 1964.

S.N. Andley, Rameshwar Nath and Mahinder Narain, for the appellants (in all the appeals).

Ram Lal Anand, and J. B. Dadachanji, for respondents Nos. 1 and 2 (in all the appeals).

R.N. Sachthey, for respondent No. 3. (in all the appeals).

The Judgment of Sarkar and Raghubar Dayal, JJ. was delivered by Dayal J. Ramaswami, J. delivered a dissenting Opinion.

Ragubhar Dayal, J. The sole question which determines these appeals is whether the High Court can transfer a case pending in the Court of a Magistrate to the Court of the Additional Session Judge.

It is urged for the appellant, who had actually moved for the transfer of the case, that the High Court has no such power. The respondents contend that the High Court has such power.

Chapter XLIV of the Code of Criminal Procedure, hereinafter

called the Code. deals with transfer of criminal cases. Section 526, in that Chapter, empowers the High Court to pass the following orders whenever it is made to appear to the High Court that the requirements of either of clauses (a) to (e) of sub-s. (1) hereof exists

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"(i) that any offence be inquired into or tried by any Court not empowered under ss. 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence; (ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; (iii) that any particular case or appeal be transferred to and...tried before itself; or (iv) that an accused person be committed for trial to itself or to a Court of Session."

The language of clause (ii) is wide enough to provide for an order transferring a case from the Court of a Magistrate to a Court of Session as both the Courts, are subordinate to the High Court and the Court of Session is a Court superior in jurisdiction to that of a Magistrate.

Reference may be made to s. 6 which reads

"Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be, five classes of Criminal Courts in India, namely --

I.-Courts of Session;

II.-Presidency Magistrates;

III.-Magistrates of the first class;

IV.-Magistrates of the second class;

V.-Magistrates of the third class;

It is clear that the Courts are mentioned in the order of their superiority in respect of jurisdiction. It is not urged for the appellant that the language of cl. (ii) of sub-s. (1) of s. 526 does not give power to the High Court to transfer the case from a Court of a Magistrate to that of a Sessions Judge. What is urged for the appellant is that the provisions of sub-cl. (ii) should be so construed as to limit its provisions to the transfer of cases from the Court of a Magistrate to another Court of a Magistrate, as otherwise there would be difficulties in the trial of the case by the Sessions Court when it is transferred to it from the Court of a Magistrate.

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The first difficulty urged is that s. 193 of the Code inter alia provides that except as otherwise expressly provided by the Code or by other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf; that there is no express provision in the Code which empowers the Court of Session to take cognizance of the case as a Court of original jurisdiction when it be transferred to it by a High Court and that therefore the Court of Session is incompetent to take cognizance of such a case and try it.

Another difficulty suggested is that neither s. 526 nor any other provision of the Code provides for the procedure to be followed by the Sessions Judge in the trial of the case

transferred to it by a High Court and that the procedure laid down for the trial of a case by the Court of Session will not be suitable for the trial of the transferred case as s. 271 of the Code requires the Court of Session to commence the trial by reading the charge, a charge which according to other provisions of the Code is to be framed by the Magistrate who commits the case.

We do not consider any of these contemplated difficulties in the trial of the transferred, case by the Court of Session to be of any significance.

We may deal with the second contention first. The omission to provide specifically the procedure to be followed in the trial of a case transferred to the Court of Session by the High Court in, the exercise of its powers under s. 526 of the Code will not make the transfer illegal, when the language of cl. (ii) of sub-s. (1) confers the power on the High Court of transferring a case from the Court of a Magistrate to the Court of superior jurisdiction, which a Court of Session is. Support for this contention was sought, for the appellant, from sub-s. (2) of s. 526 which provides that when the High Court withdraws for trial before itself any case from any Court other than a Court of a Presidency Magistrate, it shall, except as provided for in s. 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn. If the withdrawal of the case is equivalent to the transfer of a case in exercise of powers conferred by cl. (iii) which empowers the High Court to order any particular case to be transferred to and tried before itself, the provision of sub-s. (2), though providing for the procedure to be followed by the High Court in the trial of cases withdrawn from

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the Court of a Magistrate other than a Presidency Magistrate does not provide for the procedure to be followed by the High Court when it withdraws the case from the Court of a Presidency Magistrate. It is clear therefore that the mere omission of the procedure to try a case withdrawn from the Court of a Presidency Magistrate does not mean that the High Court cannot withdraw a case from his Court in view of the clear words of cl. (iii).

There is no difficulty in our opinion in the Court of Session trying the case transferred to it in accordance with the provisions of Chapter XXIII which deals with the procedure of trials before High Courts and Courts of Session. The Court of Session has to follow the procedure laid down in this Chapter so far as that be applicable to the cases to be tried by it. This is clear not only from the heading of the Chapter but also from the provisions of s. 268 which require all trials before, a Court of Session to be either by jury or by the Judge himself, and of s. 270 which require the Public Prosecutor to conduct the prosecution in every trial before a Court of Session. Of course, special procedure laid down for particular type of cases and proceedings will be, followed in those cases as special provisions over-ride general provisions, of Chapter XXIII. Such special provisions are to be found in ss. 198B(5), 481. and 485A of the Code.

Section 271 provides that when the Court. is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, ,or claims to be tried. It does not say that the charge to be read must be the charge framed by the Magistrate who commit,; the case. It is the Sessions

Judge who is to read out the charge, on which the accused is to be tried by him. It may be that in the cases committed to the Court of Session, the Sessions Judge mostly reads the same charge which has been framed by the Magistrate. It is however open to him to reframe the charge and read out the charge as framed by him. In Practice the Session Court does amend and add to the charge before proceeding with such cases and it is the charge as amended by him which is read out to the accused, the whole object of the charge being that the accused should know what offences he has to meet at the trial. The Sessions Judge can follow a similar procedure when a case is transferred to his Court after the Magistrate has framed the charge. When the Magistrate has not framed a charge, the Sessions Judge can do so on the basis of the prosecution allegations.

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The other procedure for the trial of the accused is what is to be normally followed in the trial of warrant cases, and is laid down in ss. 286 to 292 and ss. 309 to 311. In certain cases the provisions of s. 287 and 288 cannot however be complied with in the trial of cases transferred to the Court of Session by the High Court if the accused has not been examined by the Committing Magistrate and if no evidence is recorded by him. Such a contingency can arise in the trial of cases committed by a Magistrate in pursuance of the provisions of s. 207A as it is not incumbent on him to examine any witness or the accused before committing him to the Court of Session : *Shri Ram v. State of Maharashtra* (1).

The provisions of s. 291 which refer to the summoning of witnesses for the accused may create a difficulty inasmuch as the accused is not given the right to have any witness summoned except as provided in ss. 207A, 211 and 231. The difficulty would be more theoretical than practical, as no Court will think of not affording an opportunity to the accused to summon defence evidence when in view of the transfer of the case by the High Court the accused could not comply with such provisions which require him in commitment proceedings to give a list of witnesses in the Court of the Committing Magistrate.

We therefore do not consider that there arises any difficulty in the trial of the accused by the Court of Session in a case transferred to it by the High Court from the Court of a Magistrate.

We may now deal with the first objection which is really the main objection of the appellant about the trial of the case by a Sessions Judge on its being transferred to him by the High Court. Section 193 of the Code prohibits the Court of Session to take cognizance of any offence as a Court of original jurisdiction unless the accused is committed to it by a Magistrate or there is any other express provision in the Act. Such express provisions, according to the appellant, are to be found in a few sections of the Code. Section 198B empowers the Court of Session to take cognizance of an offence under s. 500 I.P.C. on a complaint of the Public Prosecutor without the case being committed to it for trial.

Section 480 empowers any Civil, Criminal or Revenue Court to take cognizance of the offences mentioned in that section and s. 485A empowers a Criminal Court to take cognizance of the offence committed by a witness on account of his non-attendance in obedience to a summons. It is to be noticed that ss. 408 and 485A

(1) A. I. R. 1961 S. C. 674.

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do not specifically mention the Court of Session, but these provisions can be availed of by that Court in view of the expression 'criminal Court' being wide enough to include a Court of Session.

Reference was also made to ss. 437 and 478, but they speak of commitment of the accused to the Court of Session in certain circumstances.

Section 193 and the other sections of the Code refer to the taking of cognizance of an offence by the Court of Session. The question is what amounts to the taking of cognizance of an offence by a Court and whether the Court of Session's proceeding with a case transferred to it by the High Court, amounts to its taking cognizance of the offence under trial in the case.

Chapter XV of the Code deals with jurisdiction of criminal Courts in inquiries and trials. Part A consisting of ss. 177 to 189 deals with the place of inquiry or trial. These sections deal with the territorial jurisdiction of various Courts to enquire into, or try offences. Part B deals with the conditions requisite for initiation of proceedings and therefore with the conditions governing the power of a Court to commence, for the first time, proceedings in connection with offences about which the party aggrieved or the State desires to take action. Part B of Chapter XV consists of ss. 190 to 199B.

In *R. R. Chari v. The State of Uttar Pradesh* (1) this Court approved of the following observations of Das Gupta J., in *Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Bannerjee* (2) :

"What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence under section 190(1) (a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter-proceeding under section 200 and thereafter sending it for inquiry and report under section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g.,

(1) [1951] S.C.R. 312.

(2) A. 1. R. 1950 Cal. 437.

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ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

When the Sessions Court receives a case on transfer by the High Court it is not to consider whether it should proceed or not with the case. It has to proceed with the case as it has been transferred to it by the High Court. 'Mere is therefore no occasion for the Court of Session to take cognizance of the offence in the sense that it has to determine whether the proceeding should be initiated in connection with the offence or not. The proceedings have been already initiated by the Magistrate and have been simply transferred to it. It has simply to proceed with the inquiry or trial as the case may be as the case has been

made over to it by the High Court.

A consideration of the provisions of the various sections in Part B of Chapter XV of the Code dealing with initiation of proceedings also makes out the difference between the taking of cognizance of a case and the subsequent inquiry and trial of the offences of which cognizance has been taken. Section 190 provides that Magistrates can take cognizance of a case in either of the three ways mentioned in sub-s. (1). Section 191 provides for the transfer or commitment of the case in which the Magistrate has taken cognizance of the offence under sub-s. (1) (c) of s. 190, i.e., on information received from any person other than a police officer or upon his own knowledge or suspicion that an offence has been committed, if the accused objects to being tried by that Magistrate. The provisions of this section make a distinction between the taking of cognizance of an offence and its subsequent trial by that Magistrate or by another Court. Similarly, s. 192 provides for the transfer of a case, of which the Magistrates mentioned in the section have taken cognizance for inquiry or trial, to another Magistrate subordinate to the particular Magistrate. The language indicates that the Magistrate to whom the case is to be transferred has not to take cognizance of the case afresh but has simply to proceed with the inquiry or trial of the case. Section 193 is the section which we have considered and, in the context of the various sections, the taking of cognizance of an offence as a Court of original jurisdiction must amount to the initiation of the proceedings for the first time in a Court and not in the subsequent enquiry or trial necessary for the disposal of the case. The other sections in this Part simply provide restrictions for the taking of cognizance of offences in certain circumstances.

L7Sup./ 65-8

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When a case is committed to the Court of Session, the Court of Session has first to determine whether the commitment of the case is proper. If it be of opinion that the commitment is bad on a point of law, it has to refer the case to the High Court which is competent to quash the proceeding under s. 215 of the Code. It is only when the Sessions Court considers the commitment to be good in law that it proceeds with the trial of the case. It is in this context that the Sessions Court has to take cognizance of the offence as a Court of original jurisdiction and it is such a cognizance which is referred to in s. 193.

We are therefore of opinion that the further proceedings by the Court of Session in a case transferred to it by the High Court are not barred by S. 193 of the Code.

Further it would be incongruous if the High Court be competent to transfer a case from the Court of a Magistrate to itself and try it but it be not competent to transfer a case to the Court of Session. There does not appear to be any reason which would have induced the legislature to contemplate the application of cl. (ii) of sub-s. (1) of S. 526 to the transfer of cases from the Court of a Magistrate to the Court of any other Magistrate of equal or superior jurisdiction and not to the Court of Session. Clause (iv) expressly mentions the power of the High Court to order commitment of an accused person for trial to itself or to a Court of Session. Such an order can however be passed only when the proceedings in the Court of the Magistrate have reached that stage when it be possible for the High Court to direct the committal of the accused to the Court of Session or to itself. An order for the commitment of the accused cannot be passed at any earlier stage while the transfer of

a case can be made at any stage at which the case may be when transfer is sought.

Lastly, reference may be made to s. 527 of the Code which empowers the Supreme Court to direct that any particular case or appeal be transferred from one High Court to another High Court or from a criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. The language of the section empowers this Court to transfer a case from the Court of a Magistrate under one High Court to a Court of another Magistrate of equal or superior jurisdiction, or to a Court of Session, subordinate to another High Court. This Court actually transferred one case from the Court of a Magistrate to the Court of an Additional Sessions Judge as is clear from the judgment of 569

this Court in Harbajan Singh v. State⁽¹⁾. It may also be mentioned that there is nothing in s. 527 about the procedure which the transferee Court has to adopt for the further progress of the case. Sub-s. (3) of s. 527 simply gives an option to the transferee Court to act on the evidence already recorded or partly so recorded and partly recorded by itself or to resummon witnesses and recommence the inquiry or trial.

We are therefore of opinion that the High Court is competent under s. 526 (1) (ii) of the Code to transfer a case from the Court of a Magistrate to the Court of the Sessions Judge.

The order under appeal in Cr. A. 88 of 1965 dated March 13, 1964, transferring the case to the Court of the Additional Sessions Judge is therefore correct. We therefore dismiss this appeal. Cr. A. 86 of 1965 is also against the order of the High Court dated March 13, 1964 allowing the revision against the order of the Sessions Judge refusing to transfer the case from the Court of the Magistrate. That order being correct, we dismiss Cr. A. 86 of 1965.

Cr. A. 87 of 1965 is against the order of the High Court refusing to review its order of transfer dated March 13, 1964. That appeal is therefore dismissed as infructuous.

Ramaswami, J. I regret that I do not agree to the judgment pronounced by my learned brother Dayal, J.

The appellant, P. C. Gulati filed a criminal complaint under s. 500, Indian Penal Code against the respondents Lajya Ram Kapur and Diwan Chand Kapur in the Court of the Sub Divisional Magistrate, New Delhi. Later on, the appellant made an application under s. 528, Criminal Procedure Code to the Sessions Judge praying for the transfer of the case from the Court of the Sub Divisional Magistrate to another Court of competent jurisdiction, but the application was dismissed. The appellant thereafter filed a Revision Petition, Criminal Revision no. 30-D/64 in the Circuit Bench of the Punjab High Court against the order of the Sessions Judge refusing transfer of the case. The appellant also filed an application, Criminal Miscellaneous 63-D of 1964 under s. 526, of the Criminal Procedure Code in the Circuit Bench of the Punjab, High Court for transfer of the case. On March 13, 1964 the learned Chief Justice of the High Court allowed the Revision Petition and also the application under s. 526 of the Criminal Procedure Code and transferred the Criminal case to the Court of Sri

(1) [1965] 3 S.C.R. 535.

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P. N. Thukral, Additional Sessions Judge, Delhi for disposal. The appellant then realised that the Additional Sessions Judge, Delhi had no jurisdiction to try and dispose

of the Criminal Petition in view of the provisions of s. 193 (1) of the Criminal Procedure Code and therefore applied to the Punjab High Court under s. 561-A of the Criminal Procedure Code praying that the Criminal complaint may be transferred to a Magistrate of competent jurisdiction. This application was dismissed by the learned Chief Justice of the Punjab High Court on March 12, 1965 on the ground that the High Court had no power to review its previous order. Criminal Appeals 86 & 88 of 1965 are brought, by special leave, against the order of the learned Chief Justice, Punjab High Court dated March 13, 1964 in Criminal Revision no. 30-D/64 and Criminal Miscellaneous 63-D of 1964 transferring the complaint to the Court of the Additional Sessions Judge, Delhi for disposal. Criminal appeal no. 87 of 1965 is brought, by special leave, against the order of the learned Chief Justice, Punjab High Court dated March 12, 1965 refusing to review his previous order dated March 13, 1964.

The first question arising for determination in this case is -whether the Additional Sessions Judge, Delhi has jurisdiction to try the Criminal case filed by the appellant without any order of commitment of the respondents by a competent Magistrate. Section 193(1) of the Criminal Procedure Code states :

"193. (1) 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 of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf."

Section 526 of the Criminal Procedure Code states

"526. (1) Whenever it is made to appear to the High Court :-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(e) that such an order is expedient for the ends of justice, or is required by any provision of this Code; it may order-

(i).....
(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordi-

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nate to its authority to any other such Criminal Court of equal or superior jurisdiction;

On behalf of the respondents it was submitted by Mr. Anand that the Additional Sessions Judge has jurisdiction to proceed with the trial of the Criminal case in view of the order of transfer made by the High Court and the procedure to be followed should be that of a warrant case as contemplated by s. 526(2) of the Criminal Procedure Code which states :

"526. (2) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn."

It was conceded by the learned Counsel that the provision of s. 526 (2) applies only to a case which has been withdrawn

by the High Court for trial before itself from any other Criminal Court subordinate to it but it was contended that the principle of that sub-section should apply also to a criminal case transferred by the High Court to the Additional Sessions Judge from the Court of a Magistrate. In my opinion, there is no warrant for this argument. It is manifest that s. 526 of the Criminal Procedure Code does not expressly provide for the procedure to be followed by the Additional Sessions Judge in a case of this description. It follows, therefore, that for the trial of a case of this description the legislature has not enacted any express provision to the contrary within the meaning of s. 193 (1), Criminal Procedure Code. This view is supported by reference to s. 526 (2), Criminal Procedure Code which is an express provision with regard to the trial of a case transferred by the High Court to itself from any other Criminal Court other than the Court of a Presidency Magistrate. Reference should also be made to s. 198B of the Criminal Procedure Code which states :

"98B.(1) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (Act XLV of 1860). (other than the offence of defamation by spoken words) is alleged to have been committed against the President, or the Vice-President, or the Governor or Rajpramukh of a State, or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his

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public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.,

(2)Every such complaint shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him

(3).....

(4)No Court of Session shall take cognizance of an offence under sub-section (1), unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(5)When the Court of Session takes cognizance of an offence under sub-section (1), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial by Magistrates of warrant cases instituted otherwise than on a police report and the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded otherwise directs, be examined as a witness for the prosecution.

.....
There is no provision in the Criminal Procedure Code similar to S. 198B or s. 526(2) with respect to the mode of trial of the Criminal cases which are transferred direct from the

Court of the Magistrate to the Court of Additional Sessions Judge without an order of commitment being made. In the absence of any express provision it must be held that the Court of Additional Sessions Judge has no jurisdiction to proceed with the trial of a Criminal case which has been transferred to it by the High Court.

If this view is right it follows that the High Court is not competent to transfer the Criminal case from the file of the Sub Divisional Magistrate's Court to that of the Additional Sessions Judge, Delhi under the provisions of s. 526 (1) (ii) of the Criminal Procedure Code. The argument was stressed by Mr. Anand on behalf of the respondents that the language of S. 526, Criminal Procedure Code contained no limitation and that it was open

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to the High Court "to transfer any particular case from a Criminal Court subordinate to its authority to any other Criminal Court of equal or superior jurisdiction". I do not consider that there is any justification for this argument. The language of s. 526(1) (ii) cannot be read in isolation and cannot be given effect to without regard to the mandatory provision of s. 193 of the Criminal Procedure Code. On the contrary, the power of transfer given to the High Court under s. 526(1) (ii) must be so interpreted as not to conflict with the language of s. 193, Criminal Procedure Code. In other words, the language of s. 526(1)(ii) must be restricted so as to be consistent with and be harmonious with the requirements of s. 193 of the Criminal Procedure Code, I am accordingly of the opinion that the High Court had no power to transfer the criminal proceedings in the present case from the Court of the Sub Divisional Magistrate to the Court of the Additional Sessions Judge without a proper order of commitment being made. The order of the learned Chief Justice of the Punjab High Court dated March 13, 1964 is erroneous in law and must be accordingly set aside.

For the reasons expressed I set aside the order of the learned Chief Justice of the Punjab High Court dated March 13, 1964 and in its place I direct that the Criminal case filed by the appellant should be transferred to the Court of any other 1st Class Magistrate stationed at Delhi to be selected by the learned Chief Justice of the Punjab High Court under s. 526(1)(iv) of the Criminal Procedure Code. Criminal appeals nos. 86 and 88 of 1965 are accordingly allowed

In view of this order Criminal Appeal no. 87 of 1965 has become infructuous and is accordingly dismissed.

ORDER

In accordance with the majority judgment the appeals are dismissed.

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