CASE NO.:
Special Leave Petition (crl.) 2941-2942 of 2002

PETITIONER:
JARNAIL SINGH AND ANR.

RESPONDENT:
STATE OF HARYANA AND ANR.

DATE OF JUDGMENT: 09/04/2003

BENCH:
Y. K. SABHARWAL & H. K. SEMA

JUDGMENT:
JUDGMENT

2003 (3) SCR 460

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J. On an application filed by respondent No. 2 (complainant) under Section 319 of the Code of Criminal Procedure (Code), the petitioners, in terms of the orders passed by Additional Sessions Judge, Karnal, have been summoned to face trial in Sessions Case No. 167 of 1999 for the offence under Section 148, 302, 307 read with Section 149 of the Indian Penal Code (IPC). The order has been upheld by the High Court and the criminal revision petitions have been dismissed. The order of the High Court is under challenge in these petitions.

In nutshell, the case set up by respondent No. 2, son of the deceased, in complaint is that on 8th October, 1998, the accused armed with weapons came to the disputed land and tried to stop him and his brother from ploughing the land by standing in front of their tractor. A shot fired hit the deceased Gurcharan Singh who fell down and died. When respondent No. 2 and his brother went to the Police Station, they found the accused already present with the Police. The Police did not listen to them. They also went to hospital but hospital authorities refused to conduct the medical examination saying that it was a Police case and medical examination could be done at the instance of Police. The medical examination of his brother Baljinder Singh was conducted on 9th October, 1998 after an order was obtained from the Court. The Police instead of registering the case against the accused, with a view to help them, registered a false case against the complainant and others under Sections 302/147/148/149/447 IPC on 9th October, 1998 on the basis of the statement of one Mohabbat Singh-resident of Rame village. However, on 14th October. 1998, a case against the petitioners and three others was registered under Section 302/307 IPC. Since the Police did not challan Mohabbat Singh and Bhira Singh, a complaint was filed by respondent No. 2 on 27th November, 1998 against seven persons including the petitioners and others against whom FIR had been registered on 14th October, 1998 and other two persons who had been left out, namely, Mohabbat Singh and Bhira Singh. The Magistrate directed summoning of Mohabbat Singh and Bhira Singh as respondent No. 2 on 21st July, 1999 stated before the Magistrate that he did not wish to pursue the complaint against the petitioners and three others as they had already been charged by the Police under Section 302 IPC in the case registered against them on 14th October 1998. The complaint case was committed to the Court of Sessions against Mohabbat Singh and Bhira Singh. It is in this case that now the petitioners have been summoned by learned Additional Sessions Judge whose order has been upheld by the High Court.

The question for determination is as to the applicability of Section 319 of the Code, under the aforesaid facts and circumstances, to the petitioners who are already accused in a Police case in respect of the same occurrence.

It cannot be disputed that the version of occurrence in the complaint case that has been committed to Sessions is materially different that the version in Police case. In order to appreciate the rival contentions, it would be useful to reproduce Section 319 of the Code which reads as under:

"319 Power to Proceed Against other Persons Appearing to be Guilty of Offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (l)then.

(a) The proceedings in respect of such person shall be commenced afresh and the witness re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. "

Shri Jaspal Singh, learned senior counsel arguing for the petitioners, has urged three points:

1. Section 319 of the Code is not applicable to a person who is already an accused in respect of the same occurrence but in a different case;

2. Assuming Section 319 applies the proper and legal exercise of the discretion required the learned Sessions Court not to summon the petitioners; and

3. The High Court did not consider the effect of the petitioners being already accused in the Police case in respect of the same occurrence.

We find no substance in the last point. The High Court has noticed as follows:

"The question to be determined is whether the petitioners, who were accused in the police case in respect of the occurrence with regard to which the complainant had instituted a complaint can be summoned as accused in the complaint case by invoking the provisions of Section 319 Cr.P.C. "

The High Court, while examining the aforesaid question and noticing that the Police case and the complaint case are before the trial Court, has observed that both cases must necessarily be decided at the same time. We are, therefore, unable to accept the contention that the effect of petitioners being accused in the Police case was not considered by the High Court. Undoubtedly power under Section 319 of the Code can be resorted to only when a person is not an accused before Court and in the course of any inquiry into, or trial of, an offence, it appears from the evidence that such person has committed any offence for which he can be tried together with the accused. The Court has discretion to proceed against such person for the offence which he appears to have committed. The inquiry into or trial is of 'an offence' and not the offender.

The petitioners are not accused in Sessions Case No. 167 of 1999 wherein an order of summoning under Section 319 has been passed. The plain reading of Section 319 of the Code is that if a person is not before Court as an accused of the offence which from the evidence he appears to have committed, the Court may summon such person to face the trial. Section 319 does not exclude from its purview a person who is not an accused before Court in a case in which order for his summoning is passed despite the fact of such a person being an accused in another case though in respect of same occurrence but with different version. The words "any person not being the accused" in Section 319 would cover any person who is not already before the court in the case in which order under Section 319 is passed. It is the duty of the Court to bring before it any person who appears to have committed an offence and to convict and pass an appropriate order of sentence on proof of such person having committed the offence.

Mr. Jaspal Singh contends that in law there can be one trial and in support, learned counsel relies upon S. S. Khanna v. Chief Secretary, Patna and Anr. [1983] 3 SCC 42 with particular reference to the observations contained in para 8 that there can be in law only one trial in respect of any offence.

The aforesaid observations have been made in the context of the question involved in that case. The question involved in S.S. Khanna's case was that when a Magistrate had declined to issue process against a person at the stage of an inquiry under Section 202 of the Code, can he later on summon him under Section 319 of the Code. While answering that question, observations were made in para 8 that in law there can only be one trial and that a trial can commence only after process is issued to the accused. The observations cannot be relied upon out of context. Para 8 wherein observations relied upon were made reads as under:

"8. An inquiry under Section 202 of the Code is not in the nature of a trial for there can be in law only after process is issued to the accused. The said proceedings are not strictly proceedings between the complainant and the accused. A person against whom a complaint is filed does not become an until it is decided to issue process against him. Even if he participates in the proceedings under Section 202 of the Code, he does so not as an accused but as a member of the public. The object of the inquiry under Section 202 is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need be taken. The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. Such a person cannot even be legally called to participate in the proceedings under Section 202 of the Code. The nature of these proceedings is fully discussed by this Court in two cases Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and Chandra Deo Singh v. Prokash Chandra Bose in which Section 202 of the former Code of Criminal Procedure arose for consideration. The present Section 102, the observations made by this Court on the nature of the proceedings under that section would have to be accepted as governing the proceedings under Section 202 of the Code. "

In Harjinder Singh v. State of Punjab and Ors., [1985] 1 SCC 422 the question that came up for consideration before this Court was as to what was the proper course to be adopted when in respect of the same incident, there were two cases-one on a Police challan and the other on a complaint where the prosecution versions in the Police challan case and the complaint case are-materially different, contradictory and mutually exclusive. The facts involved in Harjinder Singh's case in brief were that an occurrence had taken place in which nine respondents, i. e., respondents 2 to 10 therein were alleged to have committed the murder of five persons belonging to the complainant's party. During the occurrence, the complainant Harjinder Singh also received gunshot injuries. The First Information Report was lodged by a Head Constable. After investigation, the Police put up a challan against Respondents 2, 3 and 4 Karnail Singh, Mohinder Singh

and Gurcharan Singh and they were committed to stand trial in the Court of Session at Barnala for having committed offences punishable under Sections 302, 307, 342 and 440, all read with Sections 149, 148 and 120-B of the Indian Penal Code, 1860 and Sections 25 and 27 of the Arms Act, 1959. The complainant Harjinder Singh, who was appellant before the Supreme Court, after collecting material lodged complaint before the concerned Magistrate against respondents 2 to 10. In the meantime, the learned Additional Sessions, Judge had fixed the case put up by the prosecution, i.e. State v. Karnail Singh for recording of evidence. Apprehending that the complaint case filed by the appellant would not be committed until the trial before the learned Additional Sessions Judge concluded, the appellant moved the High Court under Section 482 of the Code with a prayer that the trial of respondents 2, 3 and 4 Karnail Singh, Mohinder Singh and Gurcharan Singh be stayed till the complaint filed by him against them and six others was processed by the learned Magistrate and they were committed. On the order of the High Court, the commitment proceedings were expedited and ultimately the Magistrate committed all the nine accused to the Court of Additional Sessions Judge, Barnala. An application was filed by the appellant before the Sessions Court that as the prosecution version in the Police challan case and the complaint case was conflicting and the number of accused and the prosecution witnesses were also different, the trial of the two cases may not be held together. While this application was pending, the respondents made an application that the Police challan case and the complaint case be consolidated and clubbed together. The said application was allowed by the learned Additional Sessions Judge who directed that the cases be clubbed with and consolidated and the evidence recorded in one case be read as the evidence recorded in the other case. This order was upheld by the High Court and revision petition filed by the appellant dismissed with the directions that (1) The complainant should in no event be prejudiced by the adoption of such a course and (2) The list of witnesses submitted along with the complaint would have to be exhausted by the Public Prosecutor and it should be vouchsafed that the complainant in that regard does not suffer, i. e., in the matter of leading evidence in the complaint case.

As regards the apprehension of the complainant that the evidence meant to be led in the Police challan case and that meant to be led in the complaint case would be mutually exclusive and would necessarily lead to an acquittal of the accused on account of conflicting versions, the High Court observed that it need not be so as to the Court would have to shift the grain from the chaff, that being its bounden duty.

While challenging the aforesaid order before this Court, it was, inter alia, contended for the appellant that the High Court was wrong in upholding the order of clubbing and consolidating two cases particularly when the prosecution versions in the Police challan case and the complaint case are materially different and the accused persons are also not the same. In these circumstances, the course to be adopted was laid by this Court in para 8 of the report which reads as under:

"8. In the facts and circumstances of this particular case we feel that the proper course in adopt is to direct that the two cases should be tried together by the learned Additional Sessions Judge but not consolidated i.e. the evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other. The learned Additional Sessions Judge should after recording the evidence of the prosecution witnesses in one case, withhold his judgment and then proceed to record the evidence of the prosecution in the other case. Thereafter he shall proceed to simultaneously dispose of the cases by two separate judgments taking care that the judgment in one case is not based on the evidence recorded in the other case. In Kewal Krishan case AIR (1980) SC 1780; 1980 Supp SCC 499; 1981 SCC (Cri) 438, this Court had occasion to deal with a situation as the present, where two cases exclusively triable by the Court of Session, one

instituted on a police report under Section 173 of the Code and the other initiated on a criminal complaint, arose out of the same transaction. The Court observed that to obviate the risk of two courts coming to conflicting findings, it was desirable that the two cases should be tried separately but by the same court. The High Court was largely influenced in upholding the order of the learned Additional Sessions Judge 20(2) of the Constitution and Section 300 of the Code which provides that no person shall be prosecuted and punished for the same offence more than once. If there is no punishment for the offence as a result of the prosecution, sub-clause (2) of Article 20 has no application. The constitutional right guaranteed by Article 20(2) against double jeopardy can still be reserved if the two cases are tried together but not consolidated i.e. the evidence be recorded separately in both cases and they be disposed of simultaneously. Further; the second prosecution must be for the 'same offence'. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable.

It may be that the aforesaid was held to be the proper course to be adopted while dealing with Section 223 of the Code but the principle laid down are squarely applicable to the present case as well. The High Court in principle and in substance has adopted a similar course in the impugned order. The course adopted would not result in causing any prejudice to the accused/petitioners. It is a duty of the Court to gift the grain from the chaff and punish the guilty while, at the same time, ensuring that there is no violation of Article 20(2) of the Constitution of India. The impugned order squarely satisfies all these requirements.

True, the power of summoning under Section 319(1) is required to be sparingly used it being a discretionary power but on facts of the present case, it cannot be held that the discretionary power has not been properly and legally used. The power is to be exercised to achieve criminal justice. As already noticed, though occurrence is the same but there are two versions-one in the Police case and the other in the case in which the petitioners have been directed to be summoned. In case the petitioners are not before the Court as accused in the case in hand, the Court would not be in a position to convict and appropriately sentence them even if the version of the occurrence as given by Respondent No. 2 is accepted and held proved beyond reasonable doubt against the petitioners. We are of the view that there is no merit in points 1 and 2 as well.

In view of the above discussion, we find no substance in the petitions and the same are accordingly dismissed.