2026 INSC 660

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(@Special Leave Petition (Criminal) No.776 of 2020)

NEERAJ GUPTA … APPELLANT(S)

Versus

PARDEEP KUMAR BANSAL & ORS. … RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. Leave Granted.

2. This appeal assails the common judgment and order dated 2nd September 2019 passed in CRR-993-2011 (O&M) passed by the High Court of Punjab & Haryana, Chandigarh whereby the

learned Single Judge of the High Court, remanded the matter in dispute to the Judicial Magistrate First Class, Chandigarh to comply with the provisions of Section 244 Code of Criminal Procedure, 1973[1].

3. The facts triggering this appeal are:

3.1 On 12th April 2007, a verbal/physical altercation took place between the appellant-complainant and his father on one side, with the respondents on the other. His father in the course thereof fell down and lost consciousness. Upon being taken to the hospital, he was declared dead. At this point, no first information report was registered. On 16th April, the appellant gave a complaint to the Senior Superintendent of Police, Chandigarh seeking registration of FIR. A second complaint was made on 19th April 2007.

3.2 On 5th February 2008, he sought direction before the Judicial Magistrate First Class, Chandigarh under Section 156(3) CrPC which was accepted *vide* order dated 19th February 2008 and the process as under section 200 CrPC was initiated.

3.3 Certain evidence was recorded on 21st April 2008 and 10th January 2009 before summoning orders were

[1] CrPC

issued on 8th December 2009. The case came to be committed to the jurisdictional Court of Session on 3rd May 2010. All the three respondents went before the High Court seeking quashing of the complaint and summoning order but in the pendency thereof, the learned Sessions Court framed the charges *vide* order dated 5th April 2011, but only against respondent no.2 namely Narinder Bansal.

3.4 Aggrieved by the discharge of respondent no.1 and 3 namely Pardeep Kumar Bansal and Gurmail Singh, the complainant filed a criminal revision (CRR-993-2011 (O&M)) against the said order. It is in this revision petition that the impugned order came to be passed. It may also be noted that the respondent no.2, against whom charges were framed, had challenged the order framing charge as also the summoning order and prayed for quashing of complaint, by filing criminal revision (CRM-M-26058 of 2011) which was also disposed of *vide* the same impugned order.

4. The reasoning adopted by the High Court is that Section 244 CrPC requires that a Magistrate hear all prosecution evidence irrespective of whether or not the offence with which the evidence is concerned is triable by the Magistrate or not. We may reproduce the part thereof:

> "Once the Legislature has provided a specific procedure for recording the pre-charge evidence before framing of charges in a Magisterial trial, it does not appear to prudence that the said requirement was not essential for an offence triable by the Sessions Court, if the case is based upon the complaint. It may be again added here that if the offence is serious, there has to be sufficient material in the shape of some evidence which is to be examined by the Magistrate before passing the Committal Order, the same has to be other than the pre-summoning evidence. Time and again, this Court as well as the Hon'ble Supreme Court have held that the Magistrate while passing the Committal Order is not to act as a mouthpiece of the prosecution, but is supposed to examine the material carefully to arrive at such a conclusion. In cases based upon the police report, the entire evidence collected by the police after investigation is contained in Final report under Section 173(2) Cr.P.C. whereupon an opinion is formed by the Magistrate for Commitment and likewise in the other cases, the Court has to examine pre-charge evidence before passing the Committal Order."

5. Heard learned counsel for the parties.

6. The issue, simply put is whether a Magistrate must record evidence when the offence is strictly triable by the Court of Sessions as in this case, where the allegations were *inter alia* under section 302 Indian Penal Code, 1860[2].

7. The relevant provisions are reproduced below for ready reference:

[2] IPC

7.1 Section 200 CrPC is found in chapter XV titled '*Complaints to Magistrates*', it reads as under:

> "200. Examination of complainant.—A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
>
> Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—
>
> (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
>
> (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:
>
> Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

7.2 Chapter XVI titled '*Commencement of proceedings before Magistrates*' houses Section 209 which provides for commitment of case when offence is exclusively triable by court of session.

> "209. Commitment of case to Court of Session when offence is triable exclusively by it.—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, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the

> provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;
> (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."

7.3 Chapter XIX provides for a procedure to be adopted by a Magistrate in warrant cases. There are two categories therein – ***(i)*** cases instituted on a police report; and ***(ii)*** cases instituted otherwise than on police report. Section 244 finds its place in the latter half and spells out as follows:

> "B.—Cases instituted otherwise than on police report
> 244. Evidence for prosecution.—(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.
> (2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing."

8. Having understood the application of these provisions, let us now examine the reasoning of the High Court. In holding as it did, reliance was placed on primarily three judgments, ***Ajoy***

Kumar Ghose v. State of Jharkhand,[3]; ***Sunil Mehta v. State of Gujarat***[4]; ***Harinarayan G. Bajaj v. State of Maharashtra***[5]

8.1 In ***Ajoy Kumar Ghose (supra)*** the question that concerned the coordinate Bench was the difference between the procedures mentioned in 238 and 239 CrPC on one side and 244 and 245 on the other, in a case arising out of Sections 177, 181, 468, 471 IPC etc. The finding made in this case that it is incumbent upon the Magistrate to record evidence under 244 CrPC is made in the context of offences that are triable by Magistrate as is obvious, in the present case, they are not.

8.2 In ***Harinarayan G. Bajaj supra,*** the interpretation of Section 319 CrPC was the question which engaged the attention of the Court. It was held therein that once additional accused are called before the Court under this Section, they too would have the right to cross-examine witnesses before the framing of charge. The word '*proceedings*' as used in Section 319 would cover not only trial but also inquiry beginning with Section 244 CrPC and ending in Section 246 CrPC. In the present case, however there is no question regarding the right of cross

[3] 2009) 14 SCC 115
[4] (2013) 9 SCC 209
[5] (2010) 11 SCC 520.

examination and neither does anything turn on the understanding of the word '*proceedings*'. Reliance therefore on this judgment appears misplaced.

8.3 In ***Sunil Mehta supra,*** the question was whether the evidence of the complainant recorded under Section 202 CrPC prior to taking cognizance, would constitute evidence to frame charge under Part B of Chapter XIX of the CrPC. It was concluded that it would not count as evidence. It is important to note that the sections involved in this case were 406 read with 114 IPC. The distinguishing factor with the present case is that ambit of the case was squarely within the powers granted to the Magistrate by the CrPC unlike the present one.

9. If the reasoning of the High Court is accepted, a number of witnesses would be required to depose about the same set of facts and circumstances, at least twice. This may not be of any particular use, nor mandate of law.

10. The Constitution Bench in ***Hardeep Singh v. State of Punjab***[6] while dealing with section 319 made following observations which are relevant for our discussion:

> **"47.** .. <u>At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than</u>

[6](2014) 3 SCC 92

> judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session."

11. In ***Supdt. and Remembrancer of Legal Affairs v. Ashutosh Ghosh***[7] it was held that under CrPC, the only requirement from the Magistrate is to see whether the offence is exclusively triable by the Court of Sessions and in doing so, no evidence need be taken.

12. The following two judgments relevant portion thereof extracted herein later, both rendered by a Bench of three judges analysed the difference between the CrPC and its predecessor from the year 1898, to observe that the Legislature has consciously built in this difference of doing away with the hearing and evidence at pre-committal stage. This is what V.R. Krishna Iyer J. in ***Sanjay Gandhi v. Union of India***[8], observed to be frustrating the purpose of the Legislature if the Magistrate goes into the merits of the matter. The power of the Magistrate has been described to be a '*narrow inspection hole*'.

[7] (1979) 4 SCC 381
[8] (1978) 2 SCC 39

12.1 ***State of Orissa v. Debendra Nath Padhi***[9]**:**

> **"8.** What is the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.
>
> **9.** Further, the scheme of the Code when examined in the light of the provisions of the old Code of 1898, makes the position more clear. In the old Code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207-A was fairly lengthy. Section 207, inter alia, provided that the Magistrate, where the case is exclusively triable by a Court of Session in any proceedings instituted on a police report, shall follow the procedure specified in Section 207-A. Under Section

[9] (2005) 1 SCC 568

207-A in any proceeding instituted on a police report the Magistrate was required to hold inquiry in terms provided under sub-section (1), to take evidence as provided in sub-section (4), the accused could cross-examine and the prosecution could re-examine the witnesses as provided in sub-section (5), discharge the accused if in the opinion of the Magistrate the evidence and documents disclosed no grounds for committing him for trial, as provided in sub-section (6) and to commit the accused for trial after framing of charge as provided in sub-section (7), summon the witnesses of the accused to appear before the court to which he has been committed as provided in sub-section (11) and send the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session as provided in sub-section (14). The aforesaid Sections 207 and 207-A have been omitted from the Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the Code with the object of expeditious disposal of cases. Instead of the committal Magistrate framing the charge, it is now to be framed by the Court of Session under Section 228 in case the accused is not discharged under Section 227. This change brought out in the Code is also required to be kept in view while determining the question. Under the Code, the evidence can be taken only after framing of charge."

12.2 ***Rattiram v. State of M.P.***[10]:

"56. Evidently, there is a sea of difference in the proceeding for commitment to the Court of Session under the old Code and under the existing Code. There is nothing in Section 209 of the Code to even remotely suggest that any of the protections as provided under the old Code has been telescoped to the existing one.

57. It is worth noting that under the Code of Criminal Procedure, 1898, a full-fledged Magisterial enquiry was

[10] (2012) 4 SCC 516 (three-judge bench)

postulated in the committal proceeding and the prosecution was then required to examine all the witnesses at this stage itself. In 1955, Parliament by Act 26 of 1955 curtailed the said procedure and brought in Section 207-A to the old Code. Later on, the Law Commission of India in its 41st Report, recommended thus:

> "**18.19.*Abolition of committal proceedings recommended*.**—After a careful consideration we are of the unanimous opinion that committal proceedings are largely a waste of time and effort and do not contribute appreciably to the efficiency of the trial before the Court of Session. While they are obviously time-consuming, they do not serve any essential purpose. There can be no doubt or dispute as to the desirability of every trial, and more particularly of the trial for a grave offence, beginning as soon as practicable after the completion of investigation. Committal proceedings which only serve to delay this step, do not advance the cause of justice. The primary object of protecting the innocent accused from the ordeal of a sessions trial has not been achieved in practice; and the other main object of apprising the accused in sufficient detail of the case he has to meet at the trial could be achieved by other methods without going through a very partial and ineffective trial rehearsal before a Magistrate. We recommend that committal proceedings should be abolished."

We have reproduced the same to accentuate the change that has taken place in the existing Code. True it is, the committal proceedings have not been totally abolished but in the present incarnation, it has really been metamorphosed and the role of the Magistrate has been absolutely constricted.

58. In our considered opinion, because of the restricted role assigned to the Magistrate at the stage of commitment under the new Code, the non-compliance with the same and raising of any objection in that regard

> after conviction attracts the applicability of the principle of "failure of justice" and the convict appellant becomes obliged in law to satisfy the appellate court that he has been prejudiced and deprived of a fair trial or there has been miscarriage of justice. The concept of fair trial and the conception of miscarriage of justice are not in the realm of abstraction. They do not operate in a vacuum. They are to be concretely established on the bedrock of facts and not to be deduced from procedural lapse or an interdict like commitment as enshrined under Section 193 of the Code for taking cognizance under the Act. It should be a manifestation of reflectible and visible reality but not a routine matter which has roots in appearance sans any reality. Tested on the aforesaid premised reasons, it is well-nigh impossible to conceive of any failure of justice or causation of prejudice or miscarriage of justice on such non-compliance. It would be totally inapposite and inappropriate to hold that such non-compliance vitiates the trial."

13. Consequent upon the above discussion, we have no hesitation in holding that the High Court proceeded with an erroneous reading of the law and the impugned judgment cannot be sustained. It is required to be set aside. Ordered accordingly.

14. The main prayer of the appellant before the High Court was that the Court of Sessions that seized the matter had erred in not framing charges against the other two accused persons. In our view, holding that the remand to the Magistrate was incorrect in law, we now ask the High Court to hear the petition of the appellant as well as the one filed by respondent no.2, afresh and decide the same independently. Since the charges against one of the respondents were far framed back in 2011, we request that

both the petitions be decided as expeditiously as possible, and not later than nine months. Parties to appear before the High Court on 16th July 2026.

15. Appeal is allowed. Pending application(s), if any, stand disposed of.

……..……J.
(SANJAY KAROL)

…….J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi;
July 1, 2026