appellants to agree to the appointment of Shri Kuldip Singh, Executive Magistrate, Patiala, as Arbitrator in place of Shri Bhagwant Singh or Shri L. R. Khosla, who had been named by the State of Punjab as Arbitrators. That would show that the consent given by the Assistant District Attorney to the appointment of Shri Kuldip Singh as Arbitrator was unwarranted and was invalid.

5. It, thus, follows that there is merit in the attack of Shri J. S. Wasu directed against the validity and correctness of the impugned order. So, I find that the impugned order is erroneous and cannot be upheld.

Consequently, I allow this appeal, set aside the impugned order and send the case to the Senior Subordinate Judge, Patiala, with the direction that he would either himself proceed to decide the case or he may entrust the same to any Subordinate Judge competent to deal with it. The costs of the appeal will abide the result. The parties have been advised, through their counsel, to appear in the Court of the Senior Subordinate Judge, Patiala, on February 21, 1975.

B.S.G.

MISCELLANEOUS CRIMINAL

Before B. S. Dhillon, J.

DAROPTI WIFE OF SHRI DAYA RAM,—*Petitioner*

versus

CHANDGI RAM SON OF PHUL CHAND, ETC.,—*Respondents.*

Criminal Misc. No. 3485-M of 1974.

January 31, 1975.

Code of Criminal Procedure (Act No. 2 of 1974)—Section 209—Complaint case for an offence exclusively triable by the Court of Sessions—Magistrate after recording preliminary evidence summoning the accused for trial—Such Magistrate—Whether has no option but to commit the accused for trial to the Court of Sessions without recording prosecution evidence afresh.

Held that section 208 of the Code of Criminal Procedure, 1898, specifically provided a procedure for taking evidence during the commitment proceedings in a case triable by the Court of Session, so that under that Code in a complaint case, the Magistrate had to record an opinion as to whether a *prima facie* case had been made out for summoning the accused. After he had formed such an opinion and the accused had been summoned, the provisions of that Code specifically enjoined upon him to examine whether the accused so summoned were liable to be committed to the Court of Session for the trial of an offence which was exclusively triable by that Court. For determining that, jurisdiction was vested in the Magistrate to record evidence afresh and then to form an opinion and pass commitment order, if, in his opinion, the case was to be committed. But in the Code of Criminal Procedure, 1973, this procedure has been completely eliminated. The language of section 209 of the new Code clearly excludes the possibility of re-recording the evidence if the accused have been summoned in a complaint case. When the Magistrate has already formed a *prima facie* opinion that the accused persons are liable to be tried for an offence triable by the Court of Sessions on the same material he cannot be again allowed to form an opinion which may, in some cases, be contrary to the one already formed by him. Hence in a complaint case where the accused have been summoned for being tried for an offence triable by the Court of Session, the Magistrate has no option but to commit the accused for being tried by the Court of Session under section 209 of the new Code without recording prosecution evidence afresh.

Application under section 482 of the Code of Criminal Procedure, 1973 praying that the order of the Chief Judicial Magistrate, Amritsar, dated September 27, 1974 be set aside and the accused-respondents be directed for commitment to the Sessions Court.

Y. P. Gandhi, Advocate, *for the petitioner.*

H. S. Gyani, Advocate, *for respondents Nos.* 1 to 3 Mr. V. P. Prasher, Assistant Advocate-General, Punjab.

Dhillon, J.—Smt. Daropti filed a complaint against the respondents Nos. 1 to 3, under sections 427/436/34 of the Indian Penal Code, complaining that respondents Nos. 1 to 3 set on fire her Jhuggi on June 5, 1974, at about 9.30 p.m. It has been alleged that since the local police was helping the accused persons, therefore, the case was not registered. The motive for the alleged crime as stated in the complaint, is that Chandgi accused, who was arrayed as a respondent, wanted to marry Smt. Kamla daughter of the complainant to his son but the complainant refused saying that the accused was not from her brotherhood. Therefore, they started

harassing the complainant and her family members. On the preliminary evidence having been recorded, the learned trial Magistrate *vide* his order dated 20th July, 1974, found sufficient grounds for prosecuting the accused under sections 427/436/34 of the Indian Penal Code and summoned the accused for August 17, 1974. He again summoned the evidence of the complainant for October 24, 1974 *vide* his order dated September 27, 1974. The petitioner challenged this order of the learned Magistrate summoning the evidence afresh on the ground that he has no jurisdiction to go into this question again, he having *prima facie* found that the respondents are liable to be prosecuted for offences under sections 427/436/34 of the Indian Penal Code, he has no option but to commit the respondents to the Court of Session for the Sessions trial as the offence under section 436 of the Indian Penal Code is an offence which is exclusively triable by the Court of Session. It is on this law point that this petition was admitted.

Shri Y. P. Gandhi, the learned counsel for the petitioner, vehemently contends that there is no jurisdiction vested in the Magistrate to record evidence of the prosecution witnesses in the complaint afresh and then to come to an independent conclusion whether the accused should be committed to the Court of Session or not. This proposition of law is in fact conceded by Shri Harrinder Singh, Advocate, the learned counsel for the respondents. The relevant provisions of the Code of Criminal Procedure may be referred to.

Chapter XV of the Code of Criminal Procedure, 1973, deals with the subject of complaints to Magistrate. Section 200 provides that 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.

Under section 203, the Magistrate is empowered to dismiss the complaint after considering the statement on oath of the complainant or of any other witnesses produced by him, if in his opinion, there is no sufficient grounds for proceeding with the complaint.

Under section 204, if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be summons-case, he is to

issue summons for the attendance of the accused, and if the case is a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before him.

The next relevant section is section 209 of the Code of Criminal Procedure, 1973, which is as follows :—

> "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 the case to the Court of Session;
>
> (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."

The contention of the learned counsel for the petitioner is that the provisions in the repealed Code wherein the commitment proceedings in challan cases and so also in the complaint cases were to be conducted by a Magistrate before the case triable by the Court of Session could be committed for trial to the Court of Session, does not figure in the New Code and, therefore, the intention of the Legislature is quite clear that the Magistrate has no jurisdiction to record the evidence of the complainant for the second time and to come to a different conclusion than the one to which he came after recording the preliminary evidence produced by the complainant under section 202 of the New Code.

I find force in the contention of the learned counsel for the petitioner. Section 208 of the repealed Code specifically provided a procedure for taking evidence during the commitment proceedings

in a case triable by the Court of Session, so that under the repealed Code in a complaint case, the Magistrate had to record the evidence as produced by the complainant and then to form an opinion whether a *prima facie* case has been made out for summoning the accused and after he had formed such an opinion and the accused had been summoned, the provisions of the old Code of Criminal Procedure specifically enjoined upon him to examine whether the accused so summoned are liable to be committed to the Court of Session for a trial of an offence which offence is exclusively triable by the Court of Session and while determining that jurisdiction was vested in the Magistrate to record evidence afresh and then to form an opinion and pass the commitment order, if, in his opinion, the case was to be committed. But in the new Code, this procedure has been completely eliminated. The language of section 209 of the New Code clearly excludes the possibility of re-recording the evidence if the accused have been summoned in a complaint case. If that is so, it is difficult to contend that when the Magistrate has already formed a *prima facie* opinion that the accused persons are liable to be tried for an offence triable by the Court of Session on the same material, he may be again allowed to form an opinion which may, in some cases, be contrary to the one already formed by him. This interpretation is not in keeping with the spirit of the provisions of section 209 of the New Code and, therefore, cannot be given. It, therefore, appears that in a complaint case where the accused have been summoned for being tried for an offence triable by the Court of Session, the Magistrate has no option but to commit the accused for being tried by the Court of Session under section 209 of the New Code which section deals with the challan cases as well as the complaint cases.

It has been contended by Shri V. P. Prashar, the learned counsel for the State, that the words "and it appears to the Magistrate" used in section 209, would entitle the Magistrate to form opinion otherwise than the one formed by him while summoning the accused on the same material. It is difficult to give this interpretation to the words "and it appears to the Magistrate" as is being given by the learned Assistant Advocate-General, Punjab, Shri V. P. Prashar. If on the same material, a Magistrate has already expressed his opinion, it is difficult to hold that on the same material on which the presence of the accused has been procured and they have been heard, he can form a contrary opinion.

For the reasons recorded above, this petition is accepted. The order of the learned Magistrate dated September 27, 1974, ordering the complainant to produce evidence is quashed. The learned Magistrate will proceed further in accordance with the provisions of section 209 of the New Code of Criminal Procedure. The parties have been directed through their counsel to appear before the learned Magistrate on February 17, 1975.

B. S. G.

APPELLATE CIVIL

Before Ajit Singh Bains, J.

RISAL SINGH, SON OF RAM CHAND,—*Plaintiff-Appellant*

versus

GRAM SABHA VILLAGE SAIDPUR, TEHSIL SONEPAT AND OTHERS,—*Defendants-Respondents.*

Civil Regular Second Appeal No. 1116 of 1971.

January 31, 1975.

Punjab Gram Panchayat Act (IV of 1953)—Sections 104(2) and 105—Financial loss caused to a Gram Panchayat by negligence or misconduct of Sarpanch—Such loss assessed by Panchayat Officer under section 105 of the Act after giving opportunity of being heard to the Sarpanch—Suit filed by the Sarpanch to challenge such assessment—Whether triable by Civil Courts—Code of Civil Procedure (Act V of 1908)—Section 9—Jurisdiction of a Civil Court—when barred to try a suit.

Held, that under section 104(2) of the Punjab Gram Panchayat Act, 1953, no suit or other legal proceedings in a Civil or Criminal Court lie against any gram Panchayat in respect of any act done in good faith under this Act. Where financial loss is caused to a Gram Panchayat by the negligence or mis-conduct of a Sarpanch and this loss is assessed by the Panchayat Officer under section 105(2) of the Act, after giving full opportunity of being heard to the Sarpanch, the assessment order is conclusive proof of the amount due from a Sarpanch for the loss. The assessment order becomes final and cannot be gone into by a Civil Court which has no jurisdiction to try a suit challenging the assessment.