fixed for 20th January, 1983 and the State Government is desirous of constituting the Trust without loss of time, we order that the meeting of the members of the Municipal Committee, Batala, should take place on 4th May, 1983 at 11.00 A.M. in the office of the Municipal Committee where the meetings are usually held and the agenda for the meeting would be to elect three members of the Municipal Committee for the Trust under section 4(3) of the Act. The President of the Municipal Committee is represented by a counsel and he is directed through his counsel, to issue agenda and serve notices to all the members of the Municipal Committee for the aforesaid meeting. Out of the 25 members, only six are parties to this writ petition, otherwise the formality of issuing notices to the members would also have been dispensed with. It will be the sole duty and responsibility of the President, Municipal Committee, to see that the notices are served on all the members of the Municipal Committee.

N. K. S.

Before S. S. Sandhawalia, C.J. & S. S. Kang, J.

LAL CHAND and another —*Petitioners.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Miscellaneous No. 3837-M of 1981.

April 20, 1983.

Code of Criminal Procedure (II of 1974)—Sections 193, 227 and 228—One of the persons accused of an offence not sent up by the Police for trial—Magistrate committing the other accused for trial by the Court of Session—Sessions Judge—Whether has the power to summon the person left out by the Police and direct his trial without itself recording any evidence—Summoning of an additional accused by the Court of Session—Whether barred by section 193 of the Code.

Held, that a Magistrate trying a warrant case as also a Court of Session having once validly taken cognizance of the offence on the basis of a police report (when considering the materials before it for framing a charge), is not only entitled but indeed duty bound to summon a person as an accused to stand trial before it, if it is fully satisfied of the existence

of a *prima facie* case against an additional accused who may not have been sent up as such. Similar is the position with regard to the commitment of an accused to a Court of Session, even though such person may not have been sent up as an accused by the investigating agency. Once it is so, there seems to be no rationale whatsoever for holding that under identical and in any case similar powers under sections 227 and 228 of the Code of Criminal Procedure, 1973, the Court of Session would be denuded of the right to summon an additional accused who has not been sent up by the investigating agency or not committed by the Magistrate. Indeed, as a superior court, the Sessions Judge would and obviously should have the same, if not wider powers than the Magistrate in a similar situation. It seems wholly anomalous to hold that whilst the Magistrate in a case exclusively triable by the Court of Session can summon a person as an additional accused on the basis of the final report under section 173 of the Code and committing him for trial, yet the superior Court of Session which takes cognizance of the offence and is to try it, would be wholly barred itself from doing so. If at all any distinction arises here, it could perhaps be said that the Court of Session's powers are wider than those of the Magistrate, but to hold in the reverse that in a somewhat identical situation and on the identical materials in the final report, the Sessions Court cannot do what the Committing Magistrate undoubtedly can, seems to be something which is patently untenable. Even *de hors* the procedural provisions, on larger principle also, there is no adequate reason to fetter and shackle the powers of the superior Court of Sessions from summoning a person as an additional accused to stand trial when on the material before it, it is satisfied that there exists a conclusive or in any case a *prima facie* case against him. It is, therefore, held that a Court of Session, without itself recording evidence can summon an additional accused to stand trial along with others already committed to it on the basis of the documents in the final report of the investigating officer under section 173, in view of the provisions of sections 227 and 228 of the Code.

(Paras 5, 6, 7 and 13).

Held, that what is committed to the Court of Session by the Magistrate is the case or the offence for trial and not the individual offenders therefor. What the law under section 193 visualises and provides for now is that the whole of the incident constituting the offence is to be taken cognizance of by the Court of Session on commitment and not that every individual offender must be so committed or that in case it is not so done then the Court of Session would be powerless to proceed against persons regarding whom it may be fully convinced that they are *prima facie* guilty of the crime as well. Once the case has been committed, the bar of section 193 is removed or to put it in other words, the condition therefor stands satisfied vesting the Court of Session with the fullest jurisdiction to summon any individual accused of the crime. It cannot, therefore he said that the summoning of an additional accused by the Court of Session is violative of Article 193 of the Code. (Para 9).

Balwinder Singh and others *vs.* The State of Punjab, 1981 P.L.R. 685.

OVERRULED.

(*Case referred by Hon'ble Mr. Justice S. S. Kang to a Larger Bench on 14th September, 1981 for an authoritative interpretation of sections 193, 227 and 228 of the Criminal Procedure Code, for the guidance of the Courts. The Larger Bench consisting of Hon'ble the Chief Justice S. S. Sandhawalia and Hon'ble Mr. Justice S. S. Kang again sent back the cases to the respective Benches on 20th April, 1983 for decision on merit, after answering the relevant question*).

Petition under Section 482 Cr.P.C. praying that the impugned order passed by the learned Additional Sessions Judge, dated 6th August, 1981 may kindly be quashed.

A. S. Nehra, Advocate, *for the Petitioner.*

B. S. Pawar, A.A.G., *for the State.*

H. S. Hooda, Advocate, *for the complainant.*

JUDGMENT

S. S. Sandhawalia, C. J.

(1) Whether the Court of Session without itself recording evidence, can summon a person to stand trial as an accused (along with others committed to it by a Magistrate) on the basis of documents in the final report of the Investigating Officer under section 173 of the Code of Criminal Procedure is the spinal question in this set of four cases referred for decision by the Division Bench. Equally at issue is some discoadance of Single Bench views within this Court in *Amar Singh, etc.* v. *State of Punjab* (1) *and Randhir Singh* v. *Kala Singh and others,* (2) on the one hand and *Balwinder Singh and others* v. *The state of Punjab,* (3) on the other.

2. As is apparent the issue aforesaid is pristinely legal and the facts would, consequently pale into relative insignificance. Therefore a skeletal background thereof from Criminal Miscellaneous No. 3837 of 1982—*Lal Chand* v. *State of Haryana* would amply suffice. The incident took place on the 27th of August, 1980 at about 8.30 A. M. in the office of the Truck Union, Sonepat. Cross-cases were registered against the parties by the police on the 27th and

(1) Crl. M. 4220 of 1977 decided on 18th November, 1977.

(2) 1972 P. L. R. 286.

(3) 1981 P. L. R. 685.

30th of August, 1980. One of the victims of the crime Ram Kumar, however, succumbed to his injuries later on the 2nd of September, 1980 and consequently the case against the accused persons was converted to one under section 302, Indian Penal Code, along with ancillary offences. After investigation, six accused persons, namely, Satinder Kumar, Sube Singh, Azad Singh, Rajbir, Hukam Chand and Hawa Singh were challaned by the police for the said offence. However, the investigation allegedly found Lal Chand, the President of the Truck Union to be innocent on the ground that at the time of the occurrence he was in the police station in connection with an application of one Chiranji Lal. The Magistrate, having jurisdiction, consequently, committed the aforesaid six accused persons for trial to the Court of Session, excluding Lal Chand on the basis of the findings of the Investigating Agency. Before the Court of Session, Bharat Singh complainant made an application for summoning Lal Chand also as an accused person to stand his trial in the case along with other co-accused. In his detailed order dated the 6th August, 1981, the learned Additional Sessions Judge, Sonepat, *inter alia* summoned Lal Chand as an accused in the case to be put in the dock along with the other co-accused. He held that since all the injured eye-witnesses had categorically made statements before the police involving Lal Chand for the commision of the alleged offence a *prima facie* case against him was clearly made out and a plea of *alibi* by him could not conclusively absolve him of the charge. The learned Judge opined that even though strictly speaking the provisions of section 319 were not attracted yet he had the power to summon and frame a charge against Lal Chand petitioner as well under sections 227 and 228 of the Code of Criminal Procedure. Basic reliance was placed on *Randhir Singh's case* (supra)

3. This case originally was heard by my learned brother S. S. Kang J. Before him the correctness of the view in *Amar Singh's case* and *Randir Singh's case* (supra) was seriously assailed on the basis of subsequent judgments taking divergent views. Noticing the conflict of judicial opinion on the point, my learned brother Kang, J., by his lucid and detailed referring order directed the matter to be placed before a larger Bench for an authoritative decision. The other three connected cases have been referred for indentical reasons.

4. Since the basic stand of the respondent-State on Sections 227 and 228 of the Code of Criminal Procedure, 1973 (hereinafter called 'the Code') pertaining to the power of the Court of Session, to discharge an accused or frame a charge against him, it is apt to quote these provisions at the very out-set. However, as the argument turns considerably on the analogy of these provisions with Sections 239 and 240 of the Code, pertaining to a similar, if not identical power of discharge or the framing of a charge against an accused person, in the trial of a warrant case by a Magistrate, it becomes necessary to juxtapose the corresponding provisions against each other:—

227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228.(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—
(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and by order, transfer the case for trial to the Chief Judicial Magistrate and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases

239. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall *discharge the accused, and record his reason for so doing.

240.(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused and he shall be asked whether

instituted on a police report. (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged of claims to be tried.	he pleads guilty of the offence charged or claims to be tried.

The close similarity, if not the virtual identity of the aforesaid Sections is too obvious to call for any elaboration. This would call for pointed reference somewhat later.

5. Proceeding on the assumption that Section 319 of the Code is not attracted to the situation (entirely for the sake of argument). it was conceded before us that there is no other specific provision empowering the Magistrate in a warrant case or a Court of Session to summon a person for standing his trial before it on the basis of the documents and materials in the report under Section 173 of the Code who has not been specifically sent up as an accused by the investigating agency. Such a power admittedly flows from the factum of the court taking cognizance of the offence and trying the said case for bringing the offenders to book. Whatever doubts in this context may earlier have been raised, these now stand resolved wayback by their Lordships in *Raghubans Dubey* v. *State of Bihar* (4) in the following terms:—

> "— — — In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.—"

(4) A. I. R. 1967 S. C. 1167.

From the above, it inflexibly follows that once a court of competent jurisdiction, be it a Magistrate or the Court of Session, takes cognizance of the offence, it is not only within the court's power to summon any one who on adequate materials appears to it to be *prima facie* guilty of the said offence, but indeed it is its duty to do so. The aforesaid view has then been reiterated in *Hareram Satpathy* v. *Tikaram Agarwala and others*, (5) in the context of a commitment on a murder charge to the Court of Session by the Magistrate, of a person not sent up as an accused, by the investigating agency, and, again in *Joginder Singh and another* v. *State of Punjab and another*, (6). Therefore, it seems to follow that a Magistrate trying a warrant case as also a Court of Session having once validly taken cognizance of the offence on the basis of a police report (when considering the materials before it for framing a charge), is not only entitled but indeed duty bound to summon a person as an accused to stand trial before it, if it is fully satisfied of the existence of a *prima facie* case against an additional accused who may not have been sent up as such.

6. Again, it was the admitted position before us that a Magistrate trying a warrant case when considering the question of the framing of charge under Sections 239 and 240 of the Code, could summon a person as an additional accused, without recording evidence, if he was satisfied on the basis of the report under Section 173 of the Code, that a *prima facie* case was made out against him. Similarly, the position was identical under Section 209 of the Code with regard to the commitment of an accused to a Court of Session, even though such person may not have been sent up as an accused by the investigating agency. Once it is so, there seems to be no rationale what-so-ever for holding that under identical and in any case similar powers under sections 227 and 228 of the Code (as already highlighted earlier), the Court of Session would be denuded of the right to summon an additional accused who has not been so sent up by the investigating agency or not committed by the Magistrate. Indeed, as a superior court, the Sessions Judge would and obviously should have the same, if not wider powers than the Magistrate in a similar situation. Indeed a closer analysis shows that the powers of a Court of Session under Sections 227 and 228 of the Code are closely similar if not identical with those of the

(5) A.I.R. 1978 S. C. 1568.
(6) A.I.R. 1979 S. C. 339.

Magistrate under Sections 239 and 240 of the Code and necessarily the legal position and the result cannot possibly be divergent. This view has been elaborated in *Amar Singh's case* (supra) by K. S. Tiwana, J. in the following terms:—

> "— — — Under the new Code, the power of discharge which was previously exercised by the Magistrate is now exercised by the Sessions Judge under Section 227 of the new Code. It is at this stage that the Sessions Judge applies his conscious mind to the records and documents mentioned in Section 173, 227 and 228 of the new Code for framing a charge against the accused as he is invested with the power of taking cognizance of a 'case' by the new Code. This power now because of Section 209 of the new Code cannnot be exercised by the Magistrate. If this power is denied to the Sessions Judge, then it is likely to give unbridled powers to the investigating agency in determining the guilt or innocence of the culprits itself in place of the Courts. If for wrong or extraneous considerations a person accused of an offence is let off by the investigating agency, then there will be no remedy against him if the argument of Shri Ajmer Singh, learned counsel for the petitioners is accepted, except on a complaint filed by the aggrieved party. As referred earlier, the circumstances might be in which there may not be any complainant to file a complaint, or if there is any, he may not like to move the Court. Such a restricted interpretation as has been put by the Andhra Pradesh High Court in 1977 Criminal Law Journal 415 cannot be placed on the court of Session. The new Code invests the Courts with cognizance of 'cases' and not cognizance against an individual. The power of summoning any person as accused in a case is not specifically given to the Court but it flows from the cognizance it takes of the cases involving an offence.
>
> For the foregoing reasons, with due respect to the learned Judge deciding *Patananchala China Lingaiah's case* (supra), I am unable to accept the conclusions arrived at in that case. A Sessions Judge can, in the case committed to this Court, summon any person accused of the offence, let off by the investigating agency, against whom,

in his view, there is sufficient material to be proceeded against."

The aforesaid view has been reiterated by the learned Judge in the later judgment in *Randhir Singh* v. *Kala Singh and others*, (7).

7. Within this jurisdiction, the matter further calls for examination on the basis of a precedent to which no challenge what-so-ever was laid on behalf of the petitioners. A Division Bench in *Surat Singh* v. *State of Punjab*, (8) has unreservedly held that the committing Magistrate, on the basis of the final report under Section 173 of the Code, has jurisdiction to differ with the conclusion 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 thereof. The aforesaid view was rested on the surer foundation of *Hareram Satpathy's case* (supra) and it was because of this that not the least hint of criticism was levelled against these judgments on behalf of the petitioners. Therefore, procceding on the basic premise in *Surat Singh's case* (supra), it seems wholly anomalous to hold that whilst the Magistrate in a case exclusively triable by the Court of Session can summon a person as an additional accused on the basis of the final report under Section 173 of the Code and commit him for trial, yet the superior Court of Session which takes cognizance of the offence and is to try it, would be wholly barred itself from doing so. If at all any distinction arises here, it could pehaps be said that the Court of Session's powers are wider than those of the Magistrate, but to hold in the reverse that in a somewhat identical situation and on the identical materials in the final report, the Sessions Court can not do what the committing Magistrate undoubtedly can, seems to me as something which is patently untenable. Even *be hors* the procedural provisions, on larger principle also, one sees no adequate reason to fetter and shackle the powers of the superior Court of Session from summoning a person as an additional accused to stand trial when on the material before it, it is satisfied that there exists a conclusive or in any case a *prima facie* case against him. One patent example would be when the investigating officer in its report under Section 173 of the Code without any reason or basis what-so-ever exonerates a person specifically named in the

(7) 1979 P.L.R. 286.
(8) 1981 Chg. L.R. 547.

first information report and by all the eye-witnesses in their statements under Section 161 of the Code. An example is provided pertinently in the present case where the Court of Session has come to the conclusion that Lal Chand accused was named in the first information report as also by the eye-witnesses, yet he had not been sent up as an accused person merely on a plea of *alibi sought* to be set up by him as a defence before the police. Other instances of this nature can be multiplied and have been referred to in *Amar Singh's case* (supra). To hold in such a situation, that if the investigating agency blatantly exonerates an accused person and the Magistrate does not consequently commit him, the Court of Session itself would be rendered powerless to put such an offender in the dock at the very opening stage of the trial, would to my mind only hamper the cause of justice rather than advance it. It is to be borne in mind that herein we are construing procedural provisions and it is well-settled that procedure is the hand-maid of justice and is not to be employed as a roadblock thereto. Therefore on the larger canon of construction there appears to be no logic for narrowly construing the statute so as to denude the Court of Session of the power to summon a person to stand his trial at the outset even when wholly convinced of a *prima facie* case against him on the basis of materials in the final report which is admittedly adequate for framing a charge against the committed accused under section 228 or discharging him under section 227 of the Code.

8. Even when pin-pointed, learned counsel for the petitioners were unable to advance any adequate rationale for canvassing a constricted construction which further appears to lead to somewhat anomalous results noticed above. The sole argument in this context advanced by them was that the Court of Session was prohibited from summoning the additional accused because of the alleged bar under section 193 of the Code.

9. One may, therefore, proceed to examine this stand that the Court of Session is barred from summoning the additional accused under sections 227 and 228 of the Code because of the provisions of section 193 thereof. This aspect pointedly calls for examination in the light of the earlier section 193 of the Code and the change brought therein the new Code. It is, therefore, necessary to

juxtapose the two provisions:—

OLD CODE	NEW CODE
S. 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* Magistrate duly empowered in *has been committed to it by* a that behalf.	S. 193. Except as otherwise expressly provided by this Court 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 case has been committed to it* by a Magistrate under this Code.
(2) * * ° *	

From the above the significant change brought about in the new Code is manifest. In the earlier provisions, the requirement was that the accused must have been committed to the Court of Session by a Magistrate. The legislature designedly made a change by deleting the word 'accused' and providing instead that the 'case' should have been committed to the Court of Session. It seems to be plain that because of the aforesaid change (and it had been earlier so construed as well) the stand on behalf of the petitioners in this context is doubly untenable. As authoritatively interpreted by the final Court in *Raghubans Dubey's case* (supra) and particularly so now in view of the change in section 193 of the Code, the Court of Session takes cognizance of the case of the offence as a whole and is, therefore, entitled to summon anyone who, on materials before it appears to be guilty of such an offence to stand trial before it. To highlight, what is committed to the Court of Session by the Magistrate is the case or the offence for trial and not the individual offenders therefor. To hold otherwise would be again relapsing into the fallacy that cognizance is taken against individual accused persons and not of the offence as such. What the law under section 193 visualises and provides for now is that the whole of the incident constituting the offence is to be taken congnizance of by the Court of Session on commitment and not that every individual offenders must be so committed or that in case it is not so done then the Court of Session would be powerless to proceed against persons regarding whom it may be fully convinced that they are *prima*

facie guilty of the crime as well. Therefore, the argument that the summoning of an additional accused by the Court of Session is violative of section 193 of the Code appears to be totally fallacious. Once the case has been committed, the bar of section 193 is removed or to put it in other words, the condition therefor stands satisfied vesting the Court of Session with the fullest jurisdiction to summon any individual accused of the crime. The contention now pressed on behalf of the petitioners was equally raised in *Amar Singh's and Randhir Singh's cases* (supra) and was categorically repelled. I would entirely endorse the view expressed in these cases. It calls for pointed notice that their Lordships in *Joginder Singh's case* (supra) expressly overruled the Single bench view of the Andhra Pradesh Court in *P. C. Lingaiah* v. *The State* (9), which had earlier struck a discordant note and had been relied upon by some of the other High Courts for taking a contrary view.

10. It now remains to advert to *Balwinder Singh's case* (supra) which had raised the conflict necessitating this reference. A perusal of the judgment therein indicate that the matter was examined only in the limited light of section 319 of the Code. Section 227 and 228 on which, as now discussed the issue basically turns, were even not canvassed before the Bench and consequently their import did not come in for consideration. Counsel for the parties were somewhat remiss in not bringing to the notice of the Bench the earlier judgments of this Court in *Amar Singh's and Randhir Singh's cases* (supra), which directly governed the point. Equally the Supreme Court judgment in *Hareram Satpathy's case* and *Joginder Singh's case* (supra) as also the Division Bench judgments in *Fatta and others* v. *The State* (10), *and Surat Singh's* (supra) having a direct bearing on the point were not cited either. With the greatest respect, it has therefore to be held that *Balwinder Singh's case* (supra) does not lay down the law correctly and is hereby overruled.

11. Before parting with this judgment, it is necessary to notice that in the alternative, reliance by counsel for the complainant was also sought to be placed on section 319 for contending that the additional accused could be summoned under the said provision as well and further that the word 'evidence' employed therein included wihin its sweep the contents of the final report under section 173 as also the statements recorded under sections 161 and 164. This

(9) 1977 Cr. L.J. 415.

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

stand is supported by the decisions in *Ajayab Singh and another* v. *The State of Rajasthan* (11), *Harjiram and others* v. *The State of Rajasthan* (12), *and Chauthmal and others* v. *State of Rajasthan* (13). A contrary view has, however, been taken in *Sheoram Singh and others* v. *State of Rajasthan* (14).

12. From the above, it is evident that there is some conflict of judicial opinion on this point. However, in view of the fact that I have rested myself primarily on the provisions of sections 227 and 228 of the Code it is wholly unnecessary to be drawn into this controversy under section 319 of the Code. I would, therefore, refrain from expressing any opinion on this specific point.

13. To conclude it is held that a Court of Session, without itself recording evidence, can summon an additional accused to stand trial along with others already committed to it on the basis of the documents in the final report of the Investigating Officer under section 173, in view of the provisions of sections 227 and 228 of the Code.

14. The significant common question having been answered as above, all the four cases will now go back for a decision on merit before the respective Benches.

S. S. Kang, J.—I agree.

N.K.S.

FULL BENCH

Before P. C. Jain, Acting C.J., S. P. Goyal & G. C. Mital, JJ.

MANOHAR LAL,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 2903 *of* 1982.

May 26, 1983.

Constitution of India 1950—*Article* 226—*Industrial Disputes Act* (*XIV of* 1947)—*Section* 10(1)—*Services of a workman terminated*—*Workman*

(11) (1978) 28 I.L.R. Raj. 14.
(12) (1979) 29 I.L.R. Raj. 662.
(13) 1982 Cr. L.J. 1403.
(14) 1982 Cr. L.R. Raj. 637.