# Why the Constitution Bench decision of the Hon'ble Supreme Court in Dharam Pal & Ors. vs. State of Haryana ought to be ignored and reconsidered?[1]

- MR. ANIRBAN BHATTACHARYA

*The author most humbly contends that the Constitution Bench decision of the Hon'ble Supreme Court of India in Dharam Pal and other earlier judgments of the Apex Court appear to be incorrect in their interpretation of section 193 and section 319 of the Code of Criminal Procedure,1973. The Dharam Pal decision states that cognizance of a sessions triable offence can no longer be taken by magistrates but must be taken by Sessions Judge(s) after committal. The Dharam Pal judgment lays down a process which is alien to the Code. Consequently, the law and practice of criminal law in India has been adversely affected and requires an immediate correction. Till such time the said decision is overruled by a larger bench, the same may be ignored as binding law.*

## BACKDROP OF THE CONSTITUTION BENCH REFERENCE

In view of the conflict of opinion in the decisions of two Two-Judge Benches in the cases of Kishori Singh and Others Vs. State of Bihar and Others2, Rajender Prasad Vs. Bashir and Others3 and SWIL Limited Vs. State of Delhi and Others4, the matter was taken up for consideration by a Three-Judge Bench whose attention was attracted to two other decisions having a direct bearing on the question sought to be determined. The first was the case of Kishun Singh Vs. State of Bihar5 and the other a Three-Judge Bench in the

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[2] (2004) 13 SCC 11

[3] (2001) 8 SCC 522

[4] (2001) 6 SCC 670

[5] (1993) 2 SCC 16,

case of Ranjit Singh Vs. State of Punjab6. The Three-Judge Bench in Ranjit Singh' case disapproved the observations made in Kishun Singh's case, which was to the effect that the Session Court has power under Section 193 of the Code of Criminal Procedure, 1973, hereinafter referred to as "the Code", to take cognizance of an offence and summon other persons whose complicity in the commission of the trial could prima facie be gathered from the materials available on record.

Before the analyses of the issues as decided by the Constitution Bench, it would be worth a while to understand the factual backdrop of the cases mentioned above, especially in view of the fact that the Constitution Bench does not dwell upon these at all.

### KISHORI SINGH AND OTHERS VS. STATE OF BIHAR AND OTHERS

In Kishori Singh and Others Vs. State of Bihar and Others, the appellants were not named in the Police Report/Charge-sheet filed by the Police before the Magistrate. However, the Magistrate took cognizance of the offences alleged in the Police Report/Charge-sheet and summoned them. It was contended that since the offences concerned were sessions triable , Section 319 of the Code was the only recourse and the appellants could not be summoned at a stage prior thereto.The Court therein relied upon Ranjit Singh (supra) and Raj Kishore Prasad7 to set aside the summoning order.

### RAJENDER PRASAD VS. BASHIR AND OTHERS

In Rajender Prasad Vs. Bashir and Others, 4 persons were not named in the charge-cheet and section 395 IPC was not invoked by the Police. Informant filed protest petition and Magistrate took cognizance of Section 395

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[6] (1998) 7 SCC 149

[7] (1996) 4 SCC495

IPC and summoned the appellants. The Court relied upon the judgments of Raghubans Dubey8 and SWIL Limited Vs. State of Delhi and Others9.

**SWIL LIMITED VS. STATE OF DELHI**

In SWIL, the key issue was whether Magistrate could summon offenders not named in the Charge-sheet after having taken cognizance of the offence. The Court held that it could relying upon Raghubans Dubey (supra). The Supreme Court also held that Section 319 was of no consequence in those circumstances.

It is pertinent to note, for the discuss later on, that in the all the cases mentioned above , the Court was dealing with the power of the Magistrate to summon offenders not named in the Charge-sheet after the Magistrate hafd taken cognizance of the offences.

In Kishun Singh, one Umakant Thakur, younger brother of the informant, was attacked by twenty persons including the two appellants with sticks, etc. A FIR was lodged on the same day in which all the twenty persons were named as the assailants. The injured Umakant Thakur died in the hospital the next day. In the course of investigation statements of the informant as well as others came to be recorded and a charge-sheet was forwarded to the Magistrate wherein eighteen persons other than the two appellants were shown as the offenders. The names of the appellants were not included in the said report as in the opinion of the investigating officer their involvement in the commission of the crime was not established. A final report to that effect was submitted to the Chief Judicial Magistrate on which no orders were passed. The concerned Magistrate committed the eighteen persons named in the report to the Court of Session, Dharbanga, under Section 209 of the Code to stand trial. When the matter came up before the learned Sessions Judge, Dharbanga, an application was presented under Section 319 of the Code. The question which arose for resolution was whether

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8 AIR 1967 SC 1167

9 (2001) 6 SCC 670

a Court of Session to which a case is committed for trial by a Magistrate can, without itself recording evidence, summon a person not named in the Police Report presented under Section 173 of the CrPC, 1973 ('The Code' for short) to stand trial along with those already named therein in exercise of power conferred by Section 319 of the Code? Indisputably this was done before any evidence was recorded i.e. before the commencement of the actual trial.

The Court held that the Section 319 could not be invoked at that stage by the Sessions Judge but went further to find out whether any other provision in the Code permitted the same. The Court concluded that under Section 193 of the Code as it presently stands, once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction get lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record.

**RANJIT SINGH V.STATE OF PUNJAB**

In Ranjit Singh, an FIR was lodged at Rajkot Police Station (Punjab) alleging that eight persons (including the present appellant) formed themselves into an unlawful assembly and on the exhortation of the appellant one of the members of the unlawful assembly snatched away the rifle of a gunman and fired at Chamkaur Singh who succumbed to the gunshot injuries later. In the rioting some other persons also sustained injuries. Police took up investigation and on completion thereof a final report was laid before the Magistrate concerned Under Section 173 of the Code against a number of persons, but in that report appellant Ranjit Singh was completely exonerated by the police. After the case was committed to the Court of Session, the de facto complainant (Darshan Singh who furnished the first information) filed a petition before the Sessions Judge praying that appellant also be arraigned as an accused since his exoneration by investigating agency was improper. Learned Sessions Judge allowed the said petition and appellant was

summoned as an accused in the case. The issue which arose was whether Sessions Court can add a new person to the array of accused in a case pending before it at a stage prior to collecting any evidence? The Sessions Judge before whom the said issue was first raised in this case held that he could do so on the strength of the decision of a Two Judge Bench of this Court in Kishun Singh v. State of Bihar (supra). The appellant, who was the accused so added challenged the order in revision before the High Court of Punjab and Haryana and a learned Single Judge who heard it, dismissed the revision following the ratio in Kishun Singh (supra) which was re-affirmed by the Supreme Court in Nissar v. State of U.P., 1995 Cri L J 211. While considering the question whether a committing Magistrate can exercise power under Section 319 of the Code, a Two Judge Bench of the Supreme Court in Raj Kishore Prasad v. State of Bihar (supra) expressed reservation about the legal position propounded in Kishun Singh's case. The said conflict was sought to be resolved by a larger (Three Judge) Bench. Ranjit Singh overruled Kishun Singh. The entire issue was therefore settled by Ranjit Singh's case that the Sessions Judge had no power to array and thus summon a new accused till the state of Section 319 of the Code was reached.

According to the decision in Kishun Singh's case (supra), the Session Court did not have the power under Section 319 of the Code but had such power under Section 193 of the Code. Ranjit Singh's case (supra), held that from the stage of committal till the Session Court reached the stage indicated in Section 230 of the Code, that Court could deal only with the accused referred to in Section 209 of the Code and there was/is no intermediary stage till then enabling the Session Court to add any other person to the array of the accused. The Three-Judge Bench took note of the fact that the effect of such a conclusion is that the accused named in column 2 of the charge-sheet (and not put up for trial) could not be tried by exercise of power by the Session Judge under Section 193 read with Section 228 of the Code. Even if the Session Court applied its mind at the time of framing of charge and came to the conclusion from the materials available on record that, in fact, an offence is made out against even those who are shown in column 2, it has no power to proceed against them and has to wait till the stage under Section 319 of the Code is reached to include such persons as accused in the trial if from the evidence

adduced, their complicity was also established. In Dharam Pal versus of State of Haryana, the three Judge Bench disagreed with Ranjit Singh. In view of the above, the matter was placed before the Constitution Bench for consideration.

### THE FACTS OF *DHARAM PAL* IN BRIEF.

The facts of the Dharam Pal as stated by the Constitution Bench are as under:

"... that except for one Nafe Singh, who was shown as an accused, the Appellants Dharam Pal and others were included in column 2 of the police report[10], despite the fact that they too had been named as accused in the First Information Report. After going through the police report, the learned Judicial Magistrate First Class, Hansi, summoned the Appellant and three others, who were not included as accused in the charge-sheet for the purpose of facing trial along with Nafe Singh."

### THE QUESTIONS OF LAW *IN DHARAM PAL*:

The questions which required the consideration of the Constitution Bench are as follows:

(i) Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the Police Report that the case was triable by the Court of Session?

(ii) If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?

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[10] Persons named in the chargesheet but not sent up for trial

The Constitution Bench's findings with respect to the aforesaid questions were as under:

> *"In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter."*

The third question:

Having decided to issue summons against the Appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?

The Court held that in such an event, if the Magistrate decided to proceed against the persons accused, *he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Session Court.*

The next question which the Bench framed answered was can the Session Judge issue summons under Section 193 Cr.P.C. as a Court of original jurisdiction?

The Constitution Bench's interpretation of Section 193 of the Code was as under:

> *A case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session* ***take cognizance of the offence*** *exercising original jurisdiction.*

The last question was whether upon the case being committed to the Court of Session, could the Session Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was reached in order to take recourse thereto?

The Court held as under:

> *"It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police."*

The Constitution Bench finally agreed with the view taken in Kishun Singh's Case and overruled Ranjit Singh's case.

Therefore two provisions are of significance herein:
Section 193[11] and 319[12] of the Code.

Section 193 remained untouched by the 41st Law Commission Report and the 1973 Code carried it as it is from the previous one.

However, Section 319, as it presently stands, is the recast version of Section 351 of the old Code based on the recommendations made by the Law Commission in its 41st Report as under:

> *"It happens sometimes, though not very often, that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. It is only proper that the Magistrate should "have the power to call and join him in the proceedings". Section 351 provides for such 251 a*

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[11] Section 193 - Cognizance of offences by Courts of Session

> 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 case has been committed to it by a Magistrate under this Code.

[12] Section 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.
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> (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.
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> (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.
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> (4) Where the Court proceeds against any person under sub-section (1) then—
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> (a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;
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> (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**.

*situation, but only if that person happens to be attending the Court. He can then be detained and proceeded against. There is no express provision in Section 351 for summoning such a person if he is not present in Court. Such a provision would make Section 351 fairly comprehensive, and we think it proper to expressly provide for the situation (para 24.80) About the true position under the existing law, there has been difference of opinion, and we think it should be made clear. It seems to us that the main purpose of this particular provision is, that the whole case against all known suspects should be proceeded with expeditiously, and convenience requires* ***that cognizance against the newly added accused*** *should be taken in the same manner as against the other accused. We, therefore, propose to re-cast Section 351 making it comprehensive and providing that there will be no difference in the mode of taking cognizance if a new person is added as an accused during the proceedings. (para 24.81)"*

The Court in Kishun Singh (supra) also pointed out as under:

"It will be seen from the above paragraphs that the Law Commission suggested that Section 351 should be recast with a view to

(i) empowering the court to summon a person not present in court to stand trial along with the named accused and

(ii) (ii) enabling the court **to take cognizance against the newly added accused** by making it explicit that there will be no difference in the mode of taking cognizance against the added accused. Pursuant to the said recommendations made by the Law"

The Court in Kishun Singh (supra) relied upon an earlier decision of the Supreme Court in P.C. Gulati v. L.R. Kapur[13] wherein the Supreme Court had observed as under:

> *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 Section 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 Section 193 of the Code.***
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> *It will thus appear clear that under Section 193 read with Section 209 of the code when a case is committed to the Court of Session in respect of an offence the Court of Session takes cognizance of the offence and not of the accused and once the Sessions Court is properly seized of the case as a result of the committal order against some accused the power under Section 319(1) can come into play and such Court can add any person, not an accused before it, as an accused and direct him to be tried along with the other accused for the offence which such added accused appears to have committed from the evidence recorded at the trial".*

This view came to be reiterated in Sohan Lal and Ors. v.State of Rajasthan.[14]

**CRITIQUE:**

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[13] AIR 1966 SC 595. This is pre 1973 position. Please note that S. 193 remained intact unlike Ss. 209 or 319.

[14] ( 1990 ) 4 SCC 580

The long established fundamental principles of criminal procedural law on which this piece is based are as under:

- Cognizance is taken of the offence and not of the offender.[15]

- Cognizance of a Police Report/ Charge-sheet filed by the Police under Section 173(2) or of complaint (within the meaning of Section 2(d) of the Code) is **ALWAYS** taken by the Magistrate under Section 190 of the Code, irrespective of whether the offences alleged therein (Police Report/ Charge-sheet or Complaint) are triable by a Court of Session or not.

- Once the Magistrate takes cognizance, he would commence proceedings before him by issuance of process under chapter XVI.

- After the accused persons submit to his jurisdiction, whether voluntarily or otherwise, the said Magistrate would complete the ministerial acts as specified in Section 207 and 208 (as the case maybe) and if the offence(s) are triable by a Court of Session, commit the case, to the Sessions Judge for conducting the trial.

- The substitution of the word "accused" by word "case" in the Code is simply for the reason that in the pre 1973 regime, the Magistrate used to frame charges and also discharge accused against whom he did not find sufficient evidence to frame charge. Therefore, only the accused against whom the charges were framed by the Magistrate were sent up (committed) for trial to the Court of Sessions.

- This lengthy commitment process was done way by the Code as it stands today, on the recommendations of the 41st Law Commission.

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[15] (2005)7SCC467; (2012)6SCC228; Raghubans Dubey(supra) and a catena of decisions. The said point is reiterated in Dharam Pal as well.

- Now, under the Code of 1973, once the "case" is committed after complying with Section 209 (which in return mandates compliance of Section 207 or 208, as the case maybe) hearing of arguments on charge, discharge(in warrant cases) and framing of charge are all undertaken by the Sessions Judge and not by the Magistrate.

With the deepest respect, it is submitted that both the Law Commission as well as the Honb'le Supreme Court in Kishun Singh by having used the words "**take cognizance against the newly added accused" were oblivious of the well established principle that *cognizance is taken of the offence and not of the offender*[16], whether old or newly added.**

**The Court's understanding of the Section 319 of the Code, with the deepest respect, is equally fallacious. It is important to note that Section 319(4)** expressly states that the case against the added accused may proceed **as if such person had been an accused person when the court took cognizance of the offence**. In other words it is made clear that cognizance against the added person **would be deemed to have been taken as originally against the other co-accused**. It is thus clear that the difficulty in regard to taking of cognizance which would have been experienced by the Court has been done away with. Therefore the cognizance contemplate here is that under section 190 and while the deeming fiction is under operation, there is no scope of Section 193 operating at all. when a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain as to for what purpose and between which persons such a statutory fiction is to be resorted to and thereafter, **the courts have to give full effect to such a statutory fiction and it has to be carried to its logical conclusion**..[17]

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[16] supra

[17] Observations made by Lord Justice James in Ex Parte Walton, In re, Levy 1881 (17) Ch D 746::Lord Asquith, in East end Dwellings Company Ltd. v. Finsbury Borough Council 1952 AC 109:The Bengal Immunity Company Ltd. v. State of Bihar and Ors., AIR 1955 SC 661, where the majority in the Constitution Bench have opined that legal fictions are created

Therefore, it is most respectfully submitted that the deeming fiction in Section 319(4), if given its fullest effect are carried to its logical conclusion suggests only one thing, i.e. the cognizance of the newly accused person would be as per Section 190 of the Code and not under Section 193 of the Code, irrespective of whether such newly accused person is summoned by the Magistrate or the Sessions Judge.

Therefore when the Supreme Court states that "*it will thus appear clear that under Section 193 read with Section 209 of the Code when a case is committed to the Court of Sessions in respect of an offence the Court of Sessions takes cognizance of the offence and not of the accused and once the Sessions Court is properly seized of the case as a result of the committal order against some accused the power under Section 319(1) can come into play and such Court can add any person, not an accused before it, as an accused and direct him to be tried along with the other accused for the offence which such added accused appears to have committed from the evidence recorded at the trial*", it is most humbly submitted that the said observation is not apposite.

The Sessions Judge does not take fresh cognizance of the offences which the Magistrate has already taken. It is most respectfully submitted the Code, as it exists does not contemplate the Sessions Judge re-taking cognizance or recognizance under Section 193 upon committal.

The Constitution Bench judgment in Dharam Pal is correct to the extent that "*it is well settled that* cognizance *of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh*

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only for some definite purpose.Also see Hira H. Advani Etc. v. State of Maharashtra, AIR 1971 SC 44, State of Tamil Nadu v. Arooran Sugars Ltd., AIR 1997 SC 1815, the Constitution Bench, while dealing with the deeming provision in a statute, ruled that the role of a provision in a statute creating legal fiction is well settled. Reference was made to The Chief Inspector of Mines and Anr. v. Lala Karam Chand Thapar Etc., AIR 1961 SC 838, J.K. Cotton Spinning and Weaving Mills Ltd. and Anr. v. Union of India and Ors., AIR 1988 SC 191, M. Venugopal v. Divisional Manager, Life Insurance Corporation of India , (1994) 2 SCC 323 and Harish Tandon v. Addl. District Magistrate, Allahabad, (1995) 1 SCC 537

*cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law.*"

However, it errs to the extent it states that *"If cognizance is to be taken of the offence, it could be* taken *either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police.*"

If cognizance is to be taken of the offence, it could be taken by the Magistrate "and" not "or" by the Court of Session. Police Reports/Charge-Sheets or complaints containing allegations are not filed before the Court of Session. They are filed before the Magistrates. The Magistrate takes cognizance of all offences under Section 190 of the Code, irrespective of the nature of the offences. The "passive" committal mentioned by the Constitution bench in Dharam Pal is, with the greatest respect, misconceived. The word 'passive' is only relevant in the context of the old Code wherein the committal process was detailed and lengthy and involved application of mind by the Magistrate. But even then as much as it is not, it was pursuant to the Magistrate having taken cognizance under Section 190 of the Code. Committal under section 209 of the Code is possible ONLY after complying with Section 207 and/or Section 208, as the case maybe. The compliance of Section 207/208 of the Code is not permissible and/ or comprehendible in the absence of the accused persons. The proceedings commence before a Magistrate by securing the presence of the accused by summoning them under section 204/205 of the Code. A Magistrate cannot summon under Section 204/205 without having taken cognizance of the offence(s) which such accused persons have been charged with by the Police/Complainant. Suggesting any other route would be a complete departure from the procedure as laid down in the Code. If the Magistrate commits without having taken cognizance, every provision of chapter XVI (S.204-210) except Section 209

would be rendered useless, this, with the deepest respect, does not appear to be the scheme of the Code at all. Section 193 does not permit the Sessions Judge to take cognizance of the same offences of which cognizance stood taken by the Magistrate under section 190 of the Code, which he must have done in order to reach the stage of committal under Section 209 of the Code. The Sessions Judge is permitted to take cognizance

It is most respectfully stated that the question which arose in Kishun Singh and others did not deal with the question of anew offence having been discovered post committal but always new offenders. The question in Kishun Singh's case stood squarely answered by the Court when it stated that S. 319 was not applicable without evidence recorded during inquiry/trial. The said reasoning finds resonance in the latest Constitution Bench decision in Hardeep v State of Punjab decided by the Honble Supreme Court on 10.01.2014 which has categorically laid down the following:

- 'Trial' commences only on charges being framed.
- The power under Section 319 Code of Criminal Procedure can be exercised only on the basis of the evidence adduced before the court during a trial.
- The court can exercise the power under Section 319 Code of Criminal Procedure only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained herein above.
- The unveiling of facts other than the material collected during investigation before the magistrate or court before trial actually commences is part of the process of inquiry. Such facts when recorded during trial are evidence. It is evidence only on the basis whereof trial can be held
- The 'evidence' is thus, limited to the evidence recorded during trial.

A necessary inference being that in police report cases, there is no provision or scope of an inquiry as opposed to complaint cases, where such inquiry has been attributed to Section 200, 201 and 202 of the Code.[18]

## CONCLUSION

It is most respectfully submitted that the judgment in Dharampal v State of Haryana[19] requires re-consideration and till that time, it must be ignored as a 'binding' law of the land. Equally, several decisions in the past starting from P. C. Gulati v. Lajya Ram Kapur And Others[20]; Joginder Singh[21] Sohan Lal and others v. State of Rajasthan[22], , are *per incuriam* and require to be declared as such. The judgment of the Constitution Bench in Hardeep versus State[23] to the extent it lends support to the correctness of the Constitution Bench decision in Dharam Pal,in view of the discussion above, most respectfully,does not appear to be apposite even when the remaining decision in *Hardeep* is an excellent enunciation on the scope of Section 319 of the Code and the other questions answered therein. The consequence of the Dharam Pal's judgment has started to be felt already. A Magistrate's order taking cognizance of a Police Report/Charge-Sheet alleging sessions triable offences therein are being quashed by the High Court as without jurisdiction in view the Constitution Bench decision in Dharam Pal. Apparently, the Sessions Judge had to take cognizance of the same and that too after committal. But the question remains: how does such a case reach the stage of Section 209 without a cognizance order by the Magistrate under Section 190 and without following Chapter XVI, i.e. Section 204 till 209 of the Code?

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[18] It is debatable whether Section 200 and 201 is inquiry or not.

[19] supra

[20] supra

[21] supra

[22] supra

[23] supra