

# Presentation on Committal Proceedings

Presented by:

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# Committal Proceedings

**A.A. Section 193. Cognizance of offences by Courts of Sessions-** Except as otherwise expressly provided by this Code or by any other law the time being in force, no Court of Session shall take cognizance to any offence as Court of original Jurisdiction unless the case has been committed to it by a Magistrate under this Code.

**B.B. Commitment of case to the Court of Sessions** under Section 209 CrPC, when offence is triable exclusively by it and Commitment of the Case to the Court of Sessions under Section 323 CrPC, when it appears to a Magistrate that the case is one which ought to be tried by the Court of Sessions.

**C.C- Section 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.

**Uttar Pradesh Amendment.**- In its application to the State of Uttar Pradesh, in section 209 of the Code of Criminal Procedure, 1973 (2 of 1974), for clauses (a) and (b), the following clauses shall be substituted and shall be deemed always to have been substituted, namely.-

"(a) as soon as may be after complying with the provisions of section 207, commit the case to the Court of Sessions;

(b) subject to the provisions of the Code relating to bail, remand the accused to the custody until commitment of the case under clause (a) and thereafter during and until the conclusion of the trial."

Uttar Pradesh Act 16 of 1976, S. 6 (w.e.f. 01-05-1976)

**D- Section 323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.**—If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.

**E- Commitment should be made without loss of time.-**

**(1) Uttar Pradesh Amendment.-**Uttar Pradesh Act 16 of 1976, S. 6 (w.e.f. 01-05-1976)

(a) as soon as may be after complying with the provisions of section 207, commit the case to the Court of Session;

(2) **Gurcharan Singh and other Vs. State (Delhi Administration) AIR 1978 SC 179 : (1978) 1 SCC 118** के मामले में विधि व्यवस्था दी गयी है कि “ The narrow inspection hole through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the Police report, appears to show an offence triable solely by the Court of Session. The order of commitment should be made without loss of time after the document referred to in section 207 have been furnished to the accused. ”

#### **F- Distinction Between Sections 209 and 313 of the Code of Criminal Procedure, 1973**

Section 209, Criminal Procedure Code, 1973 lays down that 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 Sessions, he shall commit the case to the Court of Sessions. Section 323, Cr.P.C. on the other hand, lays down that if, in any

inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that case is one which ought to be tried by the Court of Sessions, he shall commit it to that court. Thus Sections 209 and 323, Criminal Procedure Code, 1973 operate in different fields. Section 209 relates to commitment of only those cases to the Court of Sessions which are exclusively triable by that Court. Section 323 on the other hand, relates to the commitment of those cases to the Court of Sessions which to start with are triable by the Magistrate concerned but during the inquiry or trial thereof the Magistrate comes to the conclusion that on account of the peculiar features and circumstances of the case, the same ought to be tried by the Court of Sessions though the offences to which the said case relates were not exclusively triable by the Court of Sessions.

- Section 323 is supplementary to Section 209. Under Section 323 a Magistrate is given in addition to his power under section 209, a power to commit a case which ought to be tried by Court of Sessions.

## **A.Nature of the Committal Proceedings -**

The Stage of Committal is neither an inquiry nor a trial, and is only a pre-trial stage, intended to put the criminal process into motion. This stage can not be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind.

At the pre-trial stage, the magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with section 207 and 208 CrPC, and committing the matter if it is exclusively triable by Sessions Court.

**(Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92, Five Judges Constitution Bench)**

## **A.Can the Case be Committed to the Court of Sessions in the Absence of Accused ?**

**(1) Absconding Accused- an order of commitment should not be passed when the accused is absconding or has never been brought before the court at all ( Onkar Singh Vs. State 1976 CrIJ 1774 (All) .**

- The committal of a case without securing the presence of all the accused persons is not proper (H.M Revnna Vs. State of karnataka, 1997 CrLJ 4627 (Kant.)

1) The case may be committed even if one of the several accused persons in custody has absconded (Ajay Kumar Vs. State of Orisha, 1998 CrLJ 2470 (Ori).

2) Section 209, Code of Criminal Procedure, 1973 does not lay down that the magistrate would not commit the case to the Court of Sessions in the absence of the accused. It means that Section 209 does not lay down any prohibition. This section is in affirmative form. It simply says that when the accused appears before the Magistrate and the Magistrate is of the opinion that the case is exclusively triable by a Court of Sessions he will commit the case. Therefore, if the Magistrate commits the case in the absence of the accused, the defect or breach of the provision of Section 209 does not go to the root of the cases because the case has to be tried by a Court of Sessions . The accused gets full opportunity to meet the case of the prosecution in



the Court of Sessions. There can be certain illegalities or breaches of the provisions of law which go to the root of the case and therefore, vitiate the entire proceedings and trial.

(Kamlesh Kumar Dixit Vs. State, 1981 A.C.C. 238 (246) : 1982 L.L.J. 4 : 1981 Cri.L.J. N.O.C. 92 (All) : 1981 All Cr.R. 337 : 1981 A.W.C. 630 ; Onkar Singh Vs. State of U.P., 1976 A.C.C. 108 : 1976 Cri.L.J. 1774 : 1976 A.W.C. 286)

**(4) Absence of accused at the time of passing committal order who had been earlier been appearing before the committal court-** Where the accused had earlier been appearing before the committal Court, and has received the required documents such as the report under Section 173 Cr.P.C. and the statement of the witnesses of prosecution, the mere physical absence of the accused at the time of passing committal order does not cause any prejudice and material irregularity does not invalidate the committal.

(Bhim Singh Vs. State of Hariyana, 1992 CrLJ 3135(P&H), Lakashmi Brahaman VS. State 1976 CrLJ 118 (All).

### **A.Procedure for recording evidence in case of absconded offenders in session trial cases.**

On perusal of provisions of Section 209 Criminal Procedure Code and 299 Criminal Procedure Code, it would appear that section 209 does not envisage splitting of cases of absconders and appearing accused. In case all accused are absconding committing Magistrate can record evidence in their absence under Section 299 Criminal Procedure Code but in case some accused persons are attending the trial and some of them are absconding then in case of committal of case to the court of sessions under Section 209 Criminal Procedure Code the evidence against such absconded offenders are also be record by the trial court.

**(Gagan Thakur v. State Of Jharkhand, 2004 Cri. L.J. 1910 Jharkhand)**

### **A.Can an accused be discharged by the committing magistrate?**

In a case is offence is triable exclusively by the Court of Session, the committing magistrate has no power to discharge the accused.

Their Lordships of the Supreme Court in Sanjay Gandhi Vs. Union of India, elucidated the legal position in the following language :

Where the offence is triable exclusively by the Court of Sessions, the committing Magistrate in such cases has no power to discharge the accused nor has he power to take oral evidence save where the specific provision like section 306 enjoins. It is also not open to the committal Court to launch on a process of satisfying itself that a Prima facie case has been eliminated now under the present Code. The narrow inspection hold through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case as disclosed by the plice report, 'appears' to the Magistrate to show an offence triable solely by the Court of Sessions. If it is so, the Magistrate has simply to commit for trial before the Court of Sessions. If by error wrong section of the Code is quoted, he may look into that aspect. If made up facts unsupported by any material are reported by the police and Sessions offence is made to 'appear' it is perfectly open to the Sessions Court under Section 227, Code of Criminal Procedure, 1973 to discharge the accused.

(Sanjay Gandhi Vs. Union of India, 1978 Cri,L.J. 642 : A.I.R. 1978 S.C. 514 : 1978 S.C.C. (Cri.) 172 : 1978 Cri. App. R. (S.C.) 107)

**K- Power of committing Magistrate to permit withdrawal of a case under section 321 Crpc triable exclusively by the Court of Sessions.**

It may not be accurate to say that the committing Magistrate has no judicial function to perform under the Code of Criminal Procedure, 1973. The Magistrate has to be satisfied that an offence is prima facie disclosed and the offence so disclosed is triable exclusively by the Court of Sessions. If no offence is disclosed the Magistrate may refuse to take cognizance of the case or if the offence disclosed is one not triable exclusively by the Court of Sessions, he may proceed to deal with it under the other provisions of the Code. To that extent the Court of the committing Magistrate does discharge a judicial function."

Notwithstanding the fact that the offences for which the accused persons were to be tried were

exclusively triable by a Court of Sessions, the committing Magistrate had jurisdiction to give consent to the public prosecutor to withdraw the case from prosecution.

(Rajendra Kumar Jain Vs. State, 1980 Cri.L.J. 1084 : A.I.R. 1980 S.C. 1510 : 1980 S.C.C. (Cri.) 757)

### **L- Committing Magistrate is not empowered to summon a new offender under section 209**

Magistrate at the stage of sec. 207 to 209 Crpc, is Forbidden by express provision of section 319 Crpc, to apply his mind to the merits of the case and to determine as to whether any accused needs to be added or subtracted to face trial before the court of session.

For all other offences court of magistrate is competent to arraign person as accused From and during stage of cognizance itself u/s 190 of Crpc.

A court of session with the aid of section 193 Crpc can proceed to arraign any other person provisions of Sec. 319 Crpc could not be preened in service at the stage of committal.

**(Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92, Five Judges Constitution Bench)**

## **M- Remand of an accused to judicial custody -**

**Uttar Pradesh Amendment.**-Uttar Pradesh Act 16 of 1976, S. 6 (w.e.f. 01-05-1976) In its application to the State of Uttar Pradesh, in section 209 of the Code of Criminal Procedure, 1973 (2 of 1974), for clauses (a) and (b), the following clauses shall be substituted and shall be deemed always to have been substituted, namely.-

"(a) as soon as may be after complying with the provisions of section 207, commit the case to the Court of Session;

(b) subject to the provisions of the Code relating to bail, remand the accused to the custody until commitment of the case under clause (a) and thereafter during and until the conclusion of the trial."

– When a case remanded to custody under section 209 (b), it ensures till the trial is concluded, fresh remand order is not required. (Vimal Kumar Sharma Vs. State State of UP, 1995 CrLJ 2335 (All-DB))

– If an accused is already on bail, he need not be remanded to judicial custody by the arrest.

## **N- Cases/ Illustrations where it's justified and expedient to commit the cases to the Court of Sessions under Section 323 Crpc-**

(1) where there are cross-cases arising out of the same incident, one of which is exclusively triable by a Court of Sessions and the other is triable by a Magistrate, then the Magistrate under section 323 can commit the latter case also to the Court of Sessions.

**(Sudhir Vs. State of MP, AIR 2001 SC 826: (2001) 2 SCC 688**

(2) Offence Under Section 302 or 307 Crpc and the case/ Offence which is related to the weapon which has been used by accused under the Arms Act 1959

(3) Road Accident case under section 304, 279,337,338 IPC and offence under section 185 M.V Act.

(4) Even in a case that has been sent back to the Magistrate under section 228 (1)(a) in the course of the recording of evidence if it appears to the Magistrate that an offence exclusively triable by a Court of Sessions has been committed, he can act under section 323.

**(Bondal Vs. State of MP, 1983 Cri.L.J. 607 (M.P.)**

## **O. Objections against the commitment of a case to the Court of Sessions when offence is triable exclusively by it**

- (1) Further investigation under section 173(8).
- (2) FSL report is not received.
- (3) Copy of electronic/Digital evidence has not been received.

**( P. Gopal Krishan Vs State of Kerala (2020) 9 SCC 161)**

## **P- Supplementary Charge-sheet -**

When a supplementary charge-sheet is filed against an additional accused after the Magistrate has already committed the accused persons to the Court of Sessions, the Magistrate is competent to commit the additional accused at the subsequent stage after the first committal order has been passed.

**(Mahabir Singh Vs. State (1994) CrLJ (NOC) 376 (All.)**

\*Reasons to be given for commitment of a case to Court of Sessions.

\* Submission of Proceedings and forward the accused to the chief Judicial Magistrate by a Magistrate when Magistrate cannot pass sentence sufficiently severe. Section 325



**Thank You**