



## **CASE COMMENT: KALLU NAT @ MAYANK KUMAR NAGAR V. STATE OF U.P.: REAFFIRMING COGNIZANCE OF THE OFFENCE**

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### **INTRODUCTION**

The concept of 'Cognisance' is the point of ignition in the criminal justice system. It signifies the moment a judicial authority applies its mind to the facts of a suspected offence to initiate proceedings. A recurring jurisprudential debate in Indian criminal law has been the scope of powers exercised by the Court of Session upon the committal of a case. Specifically, does a Sessions Judge have the power to summon an accused not named in the charge sheet at the very threshold of the trial under Section 193 of the Code of Criminal Procedure, 1973 (CrPC), or must they wait for evidence to be recorded to exercise power under Section 319 CrPC?

The Supreme Court's decision in *Kallu Nat Alias Mayank Kumar Nagar v. State of U.P.*<sup>1</sup> is a significant pronouncement clarifying the limits of Sections 193 and 319 of the Code of Criminal Procedure, 1973 (CrPC), which address the powers of a Sessions Court to summon an accused who was not charge-sheeted.

This conflict lies at the intersection of three doctrinal strands:

1. The principle that cognisance is taken of the “offence” and not the “offender”,
2. The scope of the original jurisdiction conferred upon the Sessions Court through Section 193 CrPC, and
3. The limitations and safeguards attached to the extraordinary power of summoning additional accused under Section 319 CrPC.

The case revisits the long-standing debate over whether the Sessions Court can summon a person as an accused before the recording of evidence and how the concept of “taking cognisance” operates after a case is committed under Section 209 CrPC. The Court’s analysis,

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<sup>1</sup> *Kallu Nat @ Mayank Kumar Nagar v. State of U.P.*, 2025 INSC 930.

while grounded in precedent such as *Dharam Pal v. State of Haryana*<sup>2</sup> and *Raghubans Dubey v. State of Bihar*,<sup>3</sup> also highlights the procedural complexities that arise when investigating agencies drop individuals from the final report despite incriminating material. The case serves as a crucial clarification on this procedural quandary. It reaffirms the cardinal principle that cognisance is taken of the 'offence' and not the 'offender,' thereby empowering the Sessions Court to rectify errors made by investigating agencies immediately upon committal, rather than being a mute spectator until the trial commences.

## FACTS

The case concerns the murder and alleged sexual assault of Shivwati, who went missing on 21.11.2018 and whose body was discovered in bushes on 24.11.2018 with a noose around her neck. The FIR initially named Ajay Kumar, the deceased's cousin, as the sole suspect. During the investigation, however, the name of the petitioner, Kallu Nat alias Mayank Kumar Nagar, surfaced through multiple witness statements recorded under Section 161 CrPC, as well as alleged extra-judicial confessions which spoke of the petitioner's alleged illicit relationship with the deceased. Witnesses, including Renu, Neeraj, Pramod, and Deepak, claimed to have seen the petitioner with the deceased earlier that day at a hospital. Some witnesses also referred to alleged extra-judicial disclosures made by the petitioner, suggesting his involvement.

Call detail record (CDR) analysis further indicated continuous and frequent telephonic interaction between the deceased and the petitioner from 21 to 22 November 2018. Such records, while not conclusive on their own, typically act as corroborative indicators of close contact and possible involvement.

Despite this evidence, when the investigation was transferred to the Crime Branch in 2019, the Petitioner was given a 'clean chit,' and a charge sheet was filed solely against Ajay Kumar. The case was committed to the Court of Session, being exclusively triable by it. Crucially, before the charges were framed, the Complainant (the victim's husband) filed an application under Section 193 CrPC seeking to summon the Petitioner based on the material already on record. The Trial Court allowed this application, summoning the Petitioner to face trial. This order was upheld by the High Court of Allahabad. The Petitioner approached the Supreme Court, arguing

<sup>2</sup> *Dharam Pal v. State of Haryana*, (2014) 3 SCC 306.

<sup>3</sup> *Raghubans Dubey v. State of Bihar*, 1967 Cri LJ 1081 (SC).

that since the Magistrate had already taken cognisance before committal, the Sessions Court could not take a "second cognisance" and summon him without recording new evidence.

## JUDGEMENT AND RATIO DECIDENDI

The Supreme Court dismissed the SLP and upheld the power of the Sessions Court to summon the petitioner under Section 193 CrPC upon committal of the case. The Court reiterated that the Sessions Court, once a case is committed, takes cognisance of the offence and not merely of the accused forwarded by the police. Recognising that the Magistrate has already applied judicial mind while committing the case, the Sessions Court inherits the authority to proceed against any person who appears *prima facie* implicated in the crime, even if the investigating agency has not charge-sheeted them.

Relying on the Constitutional Bench decision in Dharam Pal, the Court reiterated that the Sessions Court has the authority to summon additional accused even before recording evidence, distinguishing this power from that under Section 319 CrPC, which applies at a later stage of the trial. The Court emphasised that the purpose of committal is to vest the Sessions Court with the full jurisdiction necessary for a fair and complete adjudication.

## REASON FOR THE JUDGEMENT

**Cognisance is of the Offence, not the Offender:** The Court reiterated the established principle that under Section 190 of the Code, cognisance is taken of the "offence" and not the "offender". Once the court takes cognisance of the offence, it is its duty to identify the real offenders. If the court concludes that persons other than those sent up by the police are involved, it is duty-bound to summon them.

**Distinction from Section 319 CrPC:** The petitioner argued that summoning is permissible only under Section 319, after the trial begins and fresh evidence emerges. The Court rejected this argument, noting that Section 193 operates at an earlier stage and is designed precisely to enable summoning before evidence is recorded. Section 319 is "supplementary"—not exhaustive.

**Interpretation of Dharam Pal:** The Petitioner relied on the Constitution Bench decision in Dharam Pal, arguing it prohibited fresh cognisance. The Supreme Court clarified that Dharam Pal must be understood to mean that while the Magistrate takes cognisance for commitment,

the Sessions Court assumes original jurisdiction upon committal. The Court rejected the argument that the Sessions Judge must wait for the stage of Section 319 CrPC (during the trial) to act against a suspect named in the police report but exonerated by the police.

**The Shift from Accused to Case:** The judgment highlighted the legislative shift from the old Code of 1898 to the 1973 Code. Under Section 193 of the new Code, the commitment is of the case and not just the accused. Once the case is committed, the restriction on the Sessions Court disappears, investing it with complete jurisdiction to summon any person whose complicity is evident from the record.

**Material justified summoning:** The Court found ample *prima facie* material indicating proximity, interaction, and potential involvement of the petitioner: witness statements, presence at the hospital, and telephonic contact. At the summoning stage, the standard is not proof beyond a reasonable doubt but a sufficient connection warranting trial.

**A Restrictive Interpretation Would Obstruct Justice:** The Court observed that denying such power to the Sessions Court would make criminal procedure "a barrier rather than a facilitator of justice," especially where the police fail to charge individuals despite substantive material.

## CRITICAL ANALYSIS

The judgment provides much-needed clarity on the scope of Section 193 CrPC and reinforces the principle that courts must play an active role in ensuring that the real perpetrators of crime face trial. It correctly underscores that investigative lapses or subjective police conclusions cannot prevent a court from summoning individuals against whom credible material exists. The Court's reasoning strengthens the structural safeguards within criminal procedure by ensuring that judicial scrutiny complements investigation, especially in grave offences such as murder and sexual assault, where investigations may be influenced by local pressures or oversight. The judgment acts as:

**A Check on Executive Investigation:** This judgment acts as a vital check on the executive's investigative power. In the Indian legal landscape, investigations can sometimes be compromised or perfunctory, leading to the arbitrary exoneration of suspects—often referred to as a "clean chit." By empowering the Sessions Court to look beyond the final police report immediately upon committal, the Judiciary ensures that the police do not have the final say on who faces trial.

**Clarifies Judicial Duty vs. Passive Spectatorship difference:** The ruling reinforces that a Magistrate or Sessions Judge is not a "passive" player. The Court explicitly noted that the summoning of additional accused is part of the proceeding initiated by taking cognisance. It underscores that the judicial role involves an active pursuit of truth, ensuring that the *prima facie* guilty do not escape the clutches of the law merely due to investigative oversight or bias.

**Aligning Procedure with Substantive Justice:** By enabling the Sessions Court to act early, the Court ensures that individuals who appear *prima facie* involved are not allowed to escape trial due to investigative inadequacies. This aligns criminal procedure with its ultimate purpose: to discover the truth and dispense justice.

**Harmonising Sections 193 and 319 CrPC:** One of the most enduring contributions of this judgment is its clarification of the relationship between Section 193 and Section 319. Earlier judicial confusion centred on whether the court must wait for evidence to emerge during the trial before summoning additional accused. This judgment resolves the ambiguity:

- Section 193 operates before trial using police-report material.
- Section 319 operates during trial based on evidence on record.

This harmony ensures procedural coherence and prevents interpretational conflicts.

**Impact on Prosecutorial Discretion:** While Indian criminal procedure does not adopt a strict "prosecutorial autonomy" model, the police's role in framing charges is significant. This judgment reaffirms that prosecutorial discretion is not absolute and remains subject to judicial scrutiny. This enhances accountability within the criminal justice system.

However, the expanded discretion granted to the Sessions Courts is not free from concerns. The threshold of "prima facie satisfaction" based solely on investigative material without the benefit of cross-examination may lead to over-inclusion of individuals in sensitive cases. Such summoning orders can significantly impact the lives of those implicated, particularly given the stigma and hardships associated with criminal trials.

The judgment aligns with a balanced approach; it preserves the rights of the accused by requiring a judicial assessment of material, while also safeguarding the victim's right to a complete and fair trial. Importantly, the Court does not endorse mechanical summoning; it stresses the necessity of reasoned satisfaction, anchored in the material before the court.

## CONCLUSION

The Supreme Court's ruling in *Kallu Nat @ Mayank Kumar Nagar v. State of U.P.* represents a robust affirmation of judicial independence in criminal proceedings. It strengthens the independent authority of the Sessions Court. It settles the confusion regarding "second cognisance" by clarifying that summoning additional accused upon committal is incidental to the cognisance already taken of the offence. By holding that the Sessions Court may summon individuals not named in the chargesheet at the pre-trial stage under Section 193 CrPC, the Court ensures that the justice system remains responsive, comprehensive, and equitable.

The judgment serves as a powerful reminder that the courtroom is not merely a venue to process police reports but a chamber of justice where the truth must be pursued actively. By refusing to let the Sessions Court be fettered by the conclusions of the investigating agency, the Supreme Court has reinforced the judiciary's role as the ultimate arbiter of who must stand trial. It ensures that the "long arm of the law" reaches all perpetrators, regardless of whether the police choose to charge them or not.

This judgment is likely to serve as an important reference point in future cases concerning the interplay between judicial cognisance, investigative authority, and procedural justice. It enhances victim participation, fortifies the court's duty to ensure a complete trial, and clarifies doctrinal ambiguities that have persisted for decades. Ultimately, the decision contributes meaningfully to the evolving jurisprudence on fair trial rights and the courts' duty to uphold justice beyond procedural technicalities.