
(1953) 04 PAT CK 0002

In the Patna High Court

Case No : Criminal Revision No. 125 of 1952

Jogendra Narain Chaudhry

APPELLANT

Vs

Ganga Prasad Sah and Others

RESPONDENT

Date of Decision : 14-04-1953

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 344, 439, 494, 526

Citation : AIR 1954 Patna 150 : (1953) 1 BLJR 434

Hon'ble Judges : Reuben, C.J;Misra, J

Bench : Division Bench

Advocate : Devendra Prasad, Govt. Pleader, for the Appellant; Ragho Saran Lall, for the Respondent

Judgement

Reuben, C.J.—This petition is directed against an order of Mr. I. C. Pandey, a Magistrate of the second class, allowing a petition u/s 494, Criminal P. C. and acquitting the accused persons, opposite party, in case No. G. R. 58 of 1951 of the Sitamarhi Court.

2. The occurrence to which the case relates is said to have taken place about 16-1-1951, when the petitioner Jogendra Narain Choudhry was detained in jail custody in connection with a proceeding u/s 107, Criminal P. C. He was released from jail custody on 29-1-1951, and on 31st January lodged the first information report on which a case u/s 379/411, I. P. C. was instituted against the opposite party. The charge-sheet in the case was submitted by the Sub-Inspector of Police on 8-2-1951, and the case was transferred to Mr. R. K. P. Sinha, a first class Magistrate, for trial. Mr. Sinha being out of the station, an order was recorded directing the prosecution witnesses to be summoned for 10-3-1951. On that date in the presence of the accused persons six prosecution witnesses were examined and three tendered and on this evidence the Magistrate framed charges u/s 411/379, I. P. C.

The accused persons having pleaded not guilty, 31-3-1951 was fixed for cross-examination after charge. On that date, however, only the complainant and the

accused persons were present. The case was, therefore, adjourned to 23-4-1951, and the Magistrate passed proper orders for enforcing the attendance of the absent prosecution witnesses. He also directed summons to issue for certain other witnesses whom the prosecution wished to examine. On 23rd April one more witness was examined and his cross-examination after charge was declined. The cross-examination of the tendered witnesses after charge was also declined. These witnesses were, therefore, discharged and 24-4-1951 was fixed for further cross-examination. On that date an adjournment was granted on the ground that the lawyer for the accused was ill and the case was fixed for further evidence and cross-examination on 23-5-1951, and 24-5-1951.

On 14-5-1951, however, the case was recalled to the general file by the Sub-Divisional Magistrate and transferred to Mr. D. Prasad, another Magistrate of the first class. No reason was given in the order of the Sub-Divisional Magistrate for the transfer from the file of Mr. R. K. P. Sinha -- a fact which was commented upon in the petition for revision. Although this comment seems to have been intended to convey a reflection on the public authorities and to support the petitioners' case that there was something improper in the steps taken for Securing the order of withdrawal, no attempt was made by the District Magistrate to furnish an explanation on the point. We have, therefore, been at great pains to discover the reason, and owing to the industry of the Government Pleader who appeared before us on behalf of the State, have discovered from the Civil Lists of that time that case was probably taken from the file of Mr. Sinha and given to another Magistrate because Mr. Sinha was transferred from Sitamarhi. Had the District Magistrate given the necessary explanation much time of this Court would have been saved.

3. The case was put up before Mr. D. Prasad on 23-5-1951 on which day the accused persons intimated that they did not wish for a "de novo" trial. Instead of proceeding to take further evidence and to allow the accused persons to cross-examine the witnesses already examined, as has been provided for by the order of 24th April, Mr. Prasad adjourned the case to 20th June. No reason is given why the case was not taken up for trial on 23rd and 24th May. On 20th June six prosecution witnesses were present, five of them already examined and one not. On this date Jogendra Choudhry was recalled and proved certain papers. Also the sixth witness who had not yet been examined was examined and his cross-examination was declined. A further adjournment was then given to the accused persons for the cross-examination of the remaining prosecution witnesses on the ground that new documentary evidence had been put in and the defence had not come prepared to cross-examine the witnesses on the new facts thus introduced.

It is not necessary to make any comment as to whether the adjournment was justified or not. On 19th July, which was the next date fixed for the case the hearing was not taken up on the ground that the Magistrate was busy with a "namukammal" charge-sheet. The case was directed to be put up the next day,

but again the hearing could not be taken up, this time because "no fresh prosecution witness has come." It is difficult to understand why the absence of fresh prosecution witnesses prevented the taking up of the cross-examination of the witnesses who had already been examined in chief. The next dates fixed in the case were the 9th and the 10th August. On 9th August the following order is recorded :

"Accused present. Junior Court Sub-Inspector files a petition that Senior Court Sub-Inspector is out today and that he has taken steps for the withdrawal of the case. Informant files petition that the case should proceed and should be decided on merits.

As I was otherwise engaged in the treasury and in other cases, I have no time to take up the case today The evidence of the fresh P. Ws. could not be taken up as the Court Sub-Inspector conducting the case is not present today.

Put up on 28-8-51 for further evidence and X-examination."

Evidently the Court Sub-Inspector took it for granted that he would get the time asked for and so he absented himself from the Court. I say this because the Magistrate attributes his omission to record the evidence of the fresh prosecution witnesses to the fact that the Court Sub-Inspector was not present. This indicates that the Court Sub-Inspector had made no arrangement for the case to proceed in the event of the Magistrate refusing an adjournment. This was very improper on his part and should not have been tolerated by the Magistrate. If cases are not to be prolonged unnecessarily and parties are not to be harassed by the dragging out of cases the Magistrate trying the case must keep control of the proceedings.

4. On 14-8-1951, Jogendra Choudhry filed another petition supplementing the petition he had already filed on 9th August. It has been described in the order-sheet of that day "as a petition that the case should be allowed to proceed", that is to say, a repetition of the petition filed on 9th August. It was, however, something more than this, namely a petition asking the Magistrate to exercise his powers u/s 495, Sub-section (1), Criminal P. C. by appointing an Assistant Public Prosecutor to conduct the case instead of the Court Sub-Inspector, or if he thought proper, to permit the petitioner Jogendra Choudhry to conduct the case at his own cost. The fact that the petition has been incorrectly described indicates how little thought was given, to this matter by the Magistrate concerned.

5. On 28th August, the Magistrate was busy with other work and the case was adjourned to 12-9-1951 for further evidence and cross-examination. The next order is of the same date and runs :

"Later. District Magistrate desires the record, of the case to be sent to him. The telegram does not contain the purpose for which the record is required. However, Bench Clerk to send the record to District Magistrate as desired by him through

telegram dated 25-8-51."

For some reason the telegram is not forthcoming although the Magistrate's record consisting of both Files A and B is before us. I shall have occasion later to refer to the matter of the calling for the record by the District Magistrate. I will merely remark here that the telegram and the despatch of the record in obedience to it had the effect of preventing the taking up of the case on the date fixed, that is to say, the 12th September.

In the meantime, on 8th September. Jogendra Choudhry filed a petition u/s 526 before the Magistrate to the following effect :

"That the accused persons with a view to get opportunity to influence the C. S. I. have been taking time on erroneous grounds since last 31-3-51 and have now succeeded in their attempts for which your petitioner filed two different petitions before your honour (I) requesting to proceed with the case and (II) requesting to exercise your honour's power u/s 495(1), Cr. P. C. and decide the case on its merit on 9-8-51 and 14-8-51 respectively.

That your honour did never give attention towards the petitioner's prayers and any suitable order on the above mentioned petitions was never passed which was necessary for the ends of justice.

That on 20-7-51 the accused persons without showing any reason or having permission of the Court absented themselves and your honour did not pass order whatever it was required according to law.

That your honour's order of adjournment for 10-8-51 dated 9-8-51 throws serious doubts upon the petitioner's mind and the petitioner is bound to believe that fair and impartial trial cannot be had from your honour's Court.

That moreover the petitioner has come to know that the District Magistrate, Muzaffarpur, has passed such an order on the petition of the accused persons for withdrawal of the case which is quite against the law and damaging the interest of the poor petitioner.

Under the circumstances mentioned above the petitioner apprehends that fair and impartial trial cannot be done by a Court subordinate to the District Magistrate, Muzaffarpur and hence the petitioner intends to move the matter to the H. H. Court for transfer of the case to any other District which is necessary for the ends of justice. It is therefore prayed that your honour would be pleased to stop proceeding in anticipation of suitable order passed by H. H. Court and for this the petitioner shall ever pray."

At that time the record of the case was not with the Magistrate and he endorsed on the petition itself the following order :

"This is a case in which the prosecution is being conducted on behalf of the State through the local Court Sub-Inspector. The applicant is merely an informant. In view of the conflict between this informant and the Public Prosecutor the latter's

say will prevail.

C. S. I. will please report whether he agrees to the move made (by) the applicant for the transfer of the case from this Court and whether he assents to the transfer petition being moved by the informant."

The reply of the Court Sub-Inspector was also endorsed on the petition as follows :

"The grounds given by the petitioner appear no doubt an afterthought to delay the expected withdrawal of the case by the C. S. I. for which correspondence is going on departmentally. As a matter of fact adjournments were given for absence of P. Ws. Once the P. R. of the P, Ws. was also forfeited. I do not agree for the transfer of the case -- so far the legal aspect of the case is concerned. I draw your honour's attention to the annotated edition of the Code of Criminal Procedure by B. B. Mitra, published 1937 --at page 1438 serial 1385."

On receipt of this reply the Magistrate directed that the necessary orders would be passed on the return of the record from the District Magistrate. I do not like the manner in which the petition of Jogendra Choudhry was dealt with by the Magistrate. The Court Sub-Inspector as representing the State was one of the parties in the case and should not have been invited by the Magistrate to make his comments in writing on Jogendra Choudhry's petition which, on being filed, became a part of the re-cord of the Court. The Magistrate should have heard the matter in the presence of the parties and himself recorded such order as he thought proper. If any party, be it the State or some other person, is accorded special treatment, the effect must be to create an uncertainty in the minds of the other parties as regards the impartiality of the Court.

6. On 27th September when the record had come back from the District Magistrate three petitions were filed before the Magistrate. In one the Court Sub-Inspector asked for permission to withdraw from the prosecution. In on-other Jogendra Choudhry opoosed the grant of the permission sought. In the third Jogendra, stating that his petition u/s 526, Criminal P. C. had been filed "due to ignorance of law", asked the Court to treat the petition as withdrawn and to proceed with the case. The Magistrate, however, felt that the petition u/s 526 indicated distrust in him and that, in accordance with the principle that the impartiality of a Court must be above suspicion, he ought not to try the case. He, therefore, requested the Sub-divisional Magistrate to withdraw the case from his file and to transfer it to some other Court. Before coming to what happened after this I must, however, refer to the petition for withdrawal which is :

"I have the honour to state that I beg to withdraw from the prosecution of the case as the case was subsequently tested by the Circle Inspector and has been considered by the superior officers to be a fit case for withdrawal to save unnecessary expenditure and time."

In other words, the Court is asked to consent to the withdrawal on the ground

that there has been a subsequent test by an Inspector of Police and "superior officers" consider the case to be a fit one for withdrawal. This is an invitation to the Court to surrender to these "superior officers" the discretion which has been vested in it by Section 494, Criminal P. C. to permit withdrawal. I need say no more about this petition as the order which is challenged was passed on a later petition.

7. Mr. D. Prasad recorded on 27th September his order requesting the Sub-divisional Magistrate to withdraw the case from his file and to transfer it to another Magistrate. The next order on the record is as follows :

"28-9-51/24-10-51 Seen report of the Trying Magistrate above. Case recalled to General file. Transferred to the file of Mr. I. C. Pandey, Magistrate, II Class, for disposal.

Sd. S. N. Prasad, 23-10-51."

The first portion of the order is in one handwriting, apparently the same handwriting as that in which the date "28-9-51" is written. The latter portion of the order beginning from the word "transferred" Seems to be in the handwriting of Mr. S. N. Prasad as also the date "23-10-51" which appears after his initial. It would appear that somebody, probably his Peshkar, wrote the first portion of the order and Mr. S. N. Prasad wrote the rest. From the date which appears to be in Mr. Prasad's handwriting we may take it that he wrote his order on 23rd October. There is nothing to explain why there was about a month's delay between 28th September and 23rd October. There is also no explanation for the date "24-10-51" which appears to be in another handwriting and in an ink different from that used in writing both portions of the order in question. The petition in revision has drawn attention to the peculiarity of the order bearing three different dates, but again the District Magistrate has not thought it necessary to explain what is the reason for the peculiarity.

8. I come at last to the order which is challenged. It was passed on 25th October on the very first day when the case was put up before Mr. Pandey. I reproduce the whole order-sheet of 25th October, which is as follows:

"25-10-51. Accused do not claim "de novo" trial. C. S. I., files a petition u/s 494, Cr. P. C. for withdrawal of the same. Allowed withdrawal. Accused persons are acquitted of the charges levelled against them u/s 494, Cr. P. C.

Sd. I. C. Pandey.

Later : A petition filed by the complainant Jogendra Choudhry who has no "locus standi" under the circumstances. Moreover, there is no substance in his grounds put forth in this petition.

Sd. I. C. Pandey."

It is evident that there was no date fixed in the case. In spite of that Jogendra Choudhry seems to have been vigilant enough to be present when the case was

taken up by Mr. Pandey. It would appear from the order-sheet, however, that he was just too late to be heard in the matter of the withdrawal. The petition in revision gives a different picture. It says : "9. That on 25-10-51 the Court Sub-Inspector again filed a petition u/s 494, Cr. P. C. for withdrawal of the case and the petitioner also filed a petition opposing any order for withdrawal. The learned Magistrate in spite of the fact that the petition of the petitioner was filed immediately after the petition of the Court Sub-Inspector, ordered for withdrawal of the case and acquitted the accused without assigning any reason whatsoever, and thereafter attempted to consider the petition of the petitioner and held that the petitioner had no "locus standi" in the matter." This was a very serious allegation. But nevertheless, the District Magistrate did not consider it necessary to contradict it. In fact no step was taken on behalf of the State to oppose the present petition, and it was only on the insistence of this Court that the Government Pleader appeared on behalf of the State. But, by now, it is too late to ascertain the facts, and the report which has been obtained by the Government Pleader from the District Magistrate merely says :

"The trying Magistrate was questioned, but he remembers nothing about the case and would obviously require to refer to the record to refresh his memory."

This is an extremely unsatisfactory state of affairs. When this petition in revision was admitted a notice was sent to the District Magistrate informing him that

"the 28th March, 1952 has been fixed for the further hearing of the application in this Court when the Court will consider any cause which may be shown by you why it should not be granted."

A copy of the petition was sent to the District Magistrate along with this notice. It was his duty to have perused this petition either himself or through some officer specially appointed for the purpose and to have done what lay in his power to assist this Court in the performance of its duties. It was certainly his duty to protect his subordinate Magistrates from serious aspersions on their honesty.

The prayer in the petition filed by Jogendra Choudhry,

"It is therefore prayed that no permission for withdrawal u/s 494, Criminal P. C., be given in the case",

certainly supports his present allegation that when the petition was filed permission had not yet been given.

9. I come now to the petition for withdrawal that was filed on 25th October. The Court Sub-Inspector says:

"I have the honour to request that the case may kindly be allowed to be withdrawn as instructed by the higher authorities. The whole correspondence with papers and orders of my higher authorities to me in this connection are attached herewith."

The impropriety of placing before the Court the administrative instructions given

by the District Magistrate to the Public Prosecutor regarding the withdrawal has already been commented on by this Court in -- *The King Vs. K.N. Chachan*, , in which Das J. observed:

"The person who may withdraw from the prosecution with the consent of the Court is the Public Prosecutor. The Public Prosecutor may, however, act under instructions from, the District Magistrate or the Provincial Government e.g., such instructions as are contained in the Practice and Procedure Manual. They are, however, executive instructions, and this Court should not ordinarily be concerned with them."

In this connection Das J. cited with approval the observations of Dunkley J. in -- "*The King v. Ba Khin*" AIR 1940 Rang 189 (B), which observations I may usefully repeat, since the observations of this Court made on that occasion and also in an earlier case reported in -- *The King Vs. Parmanand and Others*, , seem to have already been forgotten :

"I have not Seen the orders of the District Magistrate of Pegu which were referred to by the Magistrate, but presumably these orders were instructions to the Public Prosecutor to apply to the Court u/s 494 for the withdrawal of the cases, and if so, they were perfectly proper instructions for the District Magistrate to give to the Public Prosecutor. But the Public Prosecutor acted with grave impropriety in showing his instructions to the trial Magistrate and the Magistrate acted with equal impropriety in looking at them. The fact that the District Magistrate has instructed the Public Prosecutor to sp-ply for withdrawal is no reason for a Magistrate giving his consent to such withdrawal. The Magistrate must not surrender his authority to the District Magistrate but must act judicially and come to his own independent conclusion as to whether withdrawal ought to be permitted or not upon a consideration of all the relevant circumstances."

Much stress has been laid before us on the reported decisions in which it has been held that the discretion to allow an application u/s 494 is vested in the Court below which the application is made and that it is not necessary for that Court when giving its consent under that section to record its reasons.

I shall not discuss these decisions because I take the same view, a view which was laid down for this Court in -- *Gulli Bhagat Vs. Narain Singh*, . As explained by Agarwala C. J. and Das J. in -- *The King Vs. K.N. Chachan*, , however, the case of *Gulli Bhagat* is not inconsistent with the view that where it appears on the face of the record that there has been no exercise of discretion or that the exercise has been arbitrary this Court can interfere. The fact of the consent having been obtained on inadmissible material would also be a ground for interference.

In the present case, as I have shown, there has throughout been a considerable amount of delay in the progress of the case. On the one side there seems to have been an attempt to delay the proceedings, apparently with a view to the withdrawal of the case as soon as orders could be obtained from the District Magistrate, On the other side there has been a repeated attempt on the part of

Jogendra Choudhry to bring the case to trial and several petitions were filed by Jogendra Choudhry requesting the Magistrate not to agree to a withdrawal. One of these petitions, as I have shown, has not even been read correctly by the Magistrate and the order by which consent was finally given does not merely omit to give reasons, but does not show any awareness that the withdrawal that was prayed for was opposed by anybody.

It has been suggested before us that in a criminal case the prosecution is in the hands of the State and that Jogendra Choudhry, although he was the first informant, had no "locus standi" to oppose the withdrawal. I find it difficult to accept the contention that Jogendra Choudhry who was vitally concerned with the Success or failure of the case had no right to be heard. Personally, it has always been my view that a person who can be reasonably regarded as having an interest in the result of a case ought to be given a chance to be heard in a matter of this kind. It is not only that the interest of Such a person must be protected, but persons likely to be aggrieved by the order which the Court is about to pass must feel that the Court has been impartial and has given them an opportunity of representing their side of the case.

Also, such a procedure protects the Court from passing an irrevocable order on insufficient material. It may be that matters are intentionally or unintentionally concealed from the Court which, if a party who is interested is given a chance, will be brought to the notice of the Court and will be very relevant in deciding whether the consent asked for should be given or not. The order that was passed by the Magistrate shows that he did not look into the record and did not consider any of the many objections filed by Jogendra Choudhry. Apparently all that he considered was the petition of withdrawal and presumably the papers that were filed with it. These papers were, as I have said, inadmissible, but having been filed, this Court is entitled to peruse them : -- The King Vs. K.N. Chachan, .

10. The papers concerned include a petition filed on behalf of the accused persons to the Superintendent of Police praying him to reconsider the question of proceeding with the prosecution of the case. The petition contains several irrelevant statements, apparently intended to create a prejudice against Jogendra Choudhry; for instance, that he is a socialist by creed, that he has "several convictions to his credit" and so on. It mentions among other things that subsequent to the submission of the charge-sheet at the instance of the accused the Superintendent of Police directed the Circle Inspector to make an enquiry and submit a test note, and that in this test note the Inspector reported the prosecution case to be highly doubtful and expressed the opinion that there was no chance of conviction. The ground upon which the opinion was based is not mentioned, but from para 13 of the petition would seem to be "the enmity and the late reporting of the case". The petition appears to have been filed on 17-8-1951. The Superintendent of Police having looked at the police papers in connection with the case endorsed the petition to the District Magistrate as follows:

"Perused connected papers, Circle Inspector's and Court Sub-Inspector's opinion including the test note of Circle Inspeqtor and reconsidered the last order of mine" passed on recommendation of Deputy Superintendent of Police, Sadar. The case may be withdrawn."

The next endorsement is :

"Seen S. P.'s note. He recommends withdrawal. Public Prosecutor will please withdraw from prosecution with the Court's Permission on proper application. 4-9-51."

The illegible initials on this order, we are told are the initials of the District Magistrate Mr. S. P. Shahi. His direction to the Public Prosecutor has been properly framed having regard to Section 494 of the Code.

But a perusal of the dates of the endorsements on this petition indicates the purpose for which the District Magistrate called for the record from the Court of the trying Magistrate. The endorsement made by the Superintendent of Police is dated the 21st August. The District Magistrate's endorsement is dated the 4th September. The record was called for by telegram dated the 25th August and was returned by the 29th September. There is nothing to indicate that the record was called for by Mr. S P. Shahi for any of the purposes enumerated in Section 435, Sub-section (1) of the Code. The conclusion is unavoidable that the record was called for by Mr. S. P. Shahi in order that he might make up his mind whether he should direct a withdrawal or not. As explained by Das J. in the remarks which I have cited above, Mr. Shahi in this matter was acting merely as an executive officer and he had no power under the Code to call for these records.

The position of the executive authorities with respect to the custody of Criminal Court records was explained by my learned predecessor Agarwala C. J. in -- The King Vs. Parmanand and Others, . These observations were referred to by Das J. in -- The King Vs. K.N. Chachan, , a case in which the conduct of this very District Magistrate was commented on in severe term's. It is to be regretted that so soon after this decision Mr. Shahi has forgotten the observations of this Court and it has become necessary once more to remind District Magistrates about their limited powers in this respect.

11. To come back to the petition filed by the accused persons before the Superintendent of Police and the endorsements thereon, the only reasons which appear from this petition I for the proposed withdrawal are that the Circle Inspector "had grave doubt about the success, of the case in view of the enmity and late re-reporting of the case". Enmity is a defence in practically every criminal case that comes to trial in the Courts of this country and is a fact which it is the duty of the Court to investigate on the evidence adduced in the case. As regards "late reporting", admittedly Jogendra Choudhry was in jail custody at the time when the alleged occurrence took place and the first information report was filed by him within two days of his release. As in the case of enmity the matter of the

delay was one for investigation by the Court on the evidence adduced. Both these matters were apparent to the trying Magistrate Mr. R. K. P. Sinha who recorded the evidence of six witnesses and before whom three more witnesses were tendered. He considered that the evidence recorded by him justified the framing of charges under Sections 379 and 411, I. P. C. When the Court which was in seisin of the case had expressed its view of the evidence by framing charges in this manner it is doubtful whether it was open to the police authorities to investigate the case and express a contrary opinion to be brought to the notice of the Court.

A strong view on this point was expressed by Mukerji J. in -- Giribala Dasi Vs. Mader Gazi and Another, . He held that even a concurrence of opinion between the Sessions Judge and the Public Prosecutor that the evidence on which the case had been committed to the Court of Session was insufficient to support a conviction was insufficient to justify the Public Prosecutor in applying for withdrawal and the Judge in consenting thereto. It is necessary for me to go as far as this in the present case. Nor do I propose to attempt to lay down any hard and fast rule in a matter in which the Legislature has not thought fit to define the limits of the discretion vested in the Court. I shall deal with the case strictly on its facts.

The order which is challenged is based on inadmissible material. It shows that the Magistrate was unaware of important facts bearing on the request for permission to withdraw. The record discloses that Jogendra Choudhry had applied several times opposing the proposed withdrawal. Nevertheless, he was given no opportunity to be heard. The suggestion on behalf of the petitioner is that on the day when the order was passed Jogendra Choudhry was present and actually filed yet another petition opposing the proposed withdrawal before the order was passed. This suggestion is unchallenged but in the circumstances which I have mentioned I do not wish to take it as proved. It would not be fair to Mr. I. C. Pandey to come to any such conclusion when his superior officer, the District Magistrate, has not cared to take steps in time to bring the correct facts to the notice of this Court. Even if the facts be that the petition of Jogendra Choudhry was filed after the passing of the order that is challenged here, that will not excuse the Magistrate. A glance at the record would have shown him that the request for withdrawal was strongly opposed and he ought not to have disposed of the matter without fixing a date for hearing. As he omitted to fix a date for hearing; there is no force in the contention that Jogendra Choudhry appeared before him too late to oppose the proposed withdrawal. In these circumstances, it is manifest that there has not been a judicial exercise of discretion and the order passed by Mr. I. C. Pandey cannot be supported. Looking into the material which was placed before the Court it is evident that it is insufficient to justify the granting of the consent asked for, as no new matter which was not before the Court at the time of the framing of the charges is now placed before it.

12. For the reasons stated by me I would allow the petition, set aside the order of the Magistrate and direct that the case against the opposite party be proceeded with according to law. In passing this order I express no opinion on the merits of the case. In the circumstances set cut above it has not been necessary for me to consider this point, and the decision on the merits, as is always the case, is a matter for the Court which is in seisin.

13. The rehearing of the case will be by a Munsif-Magistrate of the first class at Sitamarhi to be selected by the District Magistrate. There has been a considerable amount of delay in the trial of the case. The hearing should, therefore, be expedited as far as is consistent with justice.

Misra, J.

14. I agree.