

**(1976) 01 PAT CK 0025**  
**In the Patna High Court**  
**Case No : Criminal Rev. No. 2725 of 1971**

Mohammad Yusuf and Others

APPELLANT

Vs

Mohammad Ehsan, Deputy Superintendent of Police,  
Samastipur

RESPONDENT

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**Date of Decision :** 31-01-1976

**Acts Referred:**

Bihar Preservation and Improvement of Animals Act, 1955 — Section 3, 4  
Criminal Procedure Code, 1973 (CrPC) — Section 494(a)

**Citation :** (1976) 9 PLJR 347

**Hon'ble Judges :** R.P. Sinha, J

**Bench :** Single Bench

**Advocate :** Jugal Kishore Prasad and Arun Bihari Mathur, for the Appellant; Sada Nand Roy for the State, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R.P. Sinha, J.—This is an application in revision by the petitioners for setting aside the order dated the 15th September 1971, passed by the Judicial Magistrate, First Class, Samastipur, and to quash the proceeding against them. It appears that on the 23rd of March, 1967 the fardbeyan of one Ramsagar Singh was recorded at village Bishnupur Bathua against the petitioners on the basis of which a case was instituted and after investigation, charge sheet was submitted against them on the 25th March, 1967, under Sections 3 and 4 of the Bihar Preservation and Improvement of Animals Act, 1955. Cognizance was, accordingly, taken on the 22nd January 1968 and the case was transferred to Magistrate, Second Class, who framed charges under Sections 295A and 429 of the Indian Penal Code. The case remained pending for sometime before that Magistrate, but on the objection of the petitioners that he being a Magistrate of the Second Class, was not competent to try the case, it was ultimately transferred to a Magistrate exercising First Class powers. There on the 28th August, 1969, an application was filed by the prosecution that for offences under Sections 3 and 4 of the Bihar Preservation and Improvement of Animals Act,

cognizance could be taken only on a complaint by an officer not below the rank of a Deputy Superintendent of Police, and as such permission was sought for to withdraw the case and to file a fresh complaint by a competent authority. The learned Magistrate, before whom the case was pending, by order dated the 28th August 1969, permitted withdrawal of the case and discharged the petitioners u/s 494 (a) of the Code of Criminal Procedure.

2. It further appears that on the 21st August, 1969, the opposite party filed a fresh complaint on identical facts in the Court of the Subdivisional Magistrate, Samastipur, who by an order passed on the same date took cognizance for the offences under Sections 3 and 4 of the Bihar Preservation and Improvement of Animals Act and transferred the case to the file of a Judicial Magistrate for disposal. While the case was pending before Sri K.N. Sinha, Judicial Magistrate, First Class, Samastipur, an objection was raised on behalf of the petitioners that the order of withdrawal of the previous case operated as a discharge of the petitioners u/s 494 (a) of the Code of Criminal Procedure and that had the effect of acquittal, and as such they could not be put on trial again after taking cognizance on a fresh petition of complaint filed against them. By the impugned order, the learned Magistrate rejected the petition of the petitioners.

3. Learned Counsel appearing on behalf of the petitioners in this Court has assailed the order of the learned Magistrate. He has placed reliance on the decisions in (1) *In re Velayudha Mudali and others* (A.I.R. 1955 Mad 508) and (2) *In Re: Billa Masthan*, . In the former case it has been held that the effect of the withdrawal of the case after the framing of charges amounted to an acquittal of the accused and nothing else and therefore the prosecution was not entitled to file fresh charge-sheets for such of the offences for which charges had already been framed. It was however open to the prosecution to show, on the facts proved and on the facts elicited, an offence exclusively triable by a Court of Session for which no charge had been framed before the withdrawal had been committed. In *re Billa Masthan* (supra), the decision of *In re Velayudha Mudali* (supra) has been followed.

4. In my opinion, the facts and circumstances of the present case are entirely different and the decisions referred to above do not apply to the present case. It was contended on behalf of the petitioners that since charges were framed against the petitioners under Sections 295A and 429 of the Indian Penal Code and subsequently the prosecution sought permission to withdraw the case, which was allowed, and as such the withdrawal of the case against the petitioners amounted to acquittal and so they could not be put on trial again. In my opinion, the contention of the Learned Counsel is not sound. It appears that charges under Sections 295 A and 429 of the Indian Penal Code were framed against the petitioners on the 21st of November 1968, as is stated in paragraph 3 of their revision application filed in this Court, while the case was pending trial in the Court of a Magistrate of the Second Class, who was not competent to try the petitioners for the offences under Sections 295 A and 429 of the Indian Penal

Code. Admittedly, no charge was framed against the petitioners after the case was transferred to a Magistrate who was competent to try the same. Besides that, the petition of complaint that has been filed by the opposite party subsequently against the petitioners is for offences under Sections 3 and 4 of the Bihar Preservation and Improvement of Animals Act, 1955, and cognizance has been taken against them in respect of these offences and they have been put on trial. I do not think that there is any reason to hold that the petitioners cannot be tried for the offences under Sections 3 and 4 of the Bihar Preservation and Improvement of Animals Act, even though charges under Sections 295A and 429 of the Indian Penal Code might have been framed against them by a Magistrate who was not competent to try the case, and naturally, not competent to frame those charges either. For the reasons stated above, I do not think that the impugned order of the learned Magistrate requires any interference by this Court in revision. This application, accordingly, fails and is dismissed.