

respondent Indra Kumari was a lunatic at the time of the marriage.

For the reasons discussed above, the appeal preferred by Munishwar Dutt Vashist fails and is dismissed.

Munishwar Dutt
Vashist
v.
Indra Kumari
Tek Chand, J.

K. S. K.

REVISIONAL CRIMINAL

Before Tek Chand, J.

AJAIB SINGH,—Petitioner.

versus

CHINDO AND OTHERS,— Respondents.

Criminal Revision No. 1353 of 1962

Code of Criminal Procedure (V of 1898)—S. 204(1-A) and 252—List of witnesses filed under S. 204(1-A)—Supplementary lists filed under section 252—Magistrate—Whether bound to summon all the witnesses mentioned in the supplementary lists.

1963
April, 8th

Held, that section 252 of the Code of Criminal Procedure confers ample discretion on a Magistrate to allow or refuse calling of witnesses whose names have been added later on in the supplementary list. Of course the Magistrate has to carefully weigh the reasons as to why the names of the additional witnesses could not have been added in the earlier list. Section 252 leaves this matter elective and gives an option to the Magistrate to call or decline to summon the additional witnesses.

Case reported under section 438 of the Criminal Procedure Code by Shri Banwari Lal, Additional Sessions Judge, Amritsar, with his No. 7924, dated 5th October, 1962, for revision of the order of Shri Shiv Singh, M.I.C., Amritsar, dated 9th June, 1962; refusing to examine the prosecution witnesses named in second supplementary list.

S. K. SAYAL, ADVOCATE, for the Petitioner.

M. R. CHHIBBER, ADVOCATE, for the Respondent.

ORDER OF THE HIGH COURT

Tek Chand, J.

Tek Chand, J.—The facts giving rise to this case are that Ajaib Singh complainant filed a complaint under sections 494, 497 and 109, Indian Penal Code, against Smt. Chindo and 5 others alleging that Chindo was his legally wedded wife and underwent a form of marriage later on with Harbans Singh accused who is the husband of her deceased sister. Smt. Chindo and Harbans Singh have been living in adultery ever since. Mit Singh and Kartar Kaur accused are parents of Chindo and Arjan Singh and Smt. Harbans Kaur accused are parents of Harbans Singh. The first complaint of Ajaib Singh was dismissed on 22nd December, 1961, and this is the second complaint which was filed on 4th of January, 1962. Along with this complaint a list of two witnesses was given as required by section 204 (1-A) of the Criminal Procedure Code. The list contained names of two witnesses and it was stated that he would bring the remaining witnesses with himself. Later on he filed the second list of prosecution witnesses adding six names. Not content with the two lists he on 22nd May, 1962 filed a third list of witnesses adding names of 9 prosecution witnesses. The third application was also allowed and the complaint was permitted to summon the witnesses mentioned in the list. On 4th June, 1962, the fourth list of witnesses was furnished by the complainant seeking that six more prosecution witnesses may be called. The learned Magistrate by his order dated 9th June 1962, has declined to summon the witnesses mentioned in the fourth list dated 4th June, 1962 as he thought that if this were allowed there would be no finality in the matter. From the order of the learned Magistrate refusing to call witnesses figuring in the fourth list complainant brought criminal revision in the Court

of the Sessions Judge. The matter was taken up by the Additional Sessions Judge, Amritsar, and he has submitted the record to this Court recommending, that the order of the Magistrate dated 9th June, 1962 be set aside, and the Magistrate should be directed to take all evidence as may be produced by the petitioner in support of the prosecution case. The contention of the complainant rests on the interpretation of sections 204 and 252 of the Code of Criminal Procedure. Section 204 (1-A) provides that no summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed. In this particular case this provision is not attracted because the list of prosecution witnesses was filed.

Ajaib Singh
v.
Chindo
and others
—————
Tek Chand, J.

Section 252(1) requires that in cases instituted otherwise than on a police-report when the accused appears or is brought before a Magistrate such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution. Sub-section (2) provides that the Magistrate shall ascertain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and shall summon to give evidence before himself such of them as he thinks necessary.

On the basis of the above provisions the contention sought to be advanced before me is that it is the right of the complainant to furnish list of witnesses from time to time as he may deem fit and it is imperative obligation of the Magistrate to summon such witnesses. In this case, as already pointed out, four lists from time to time have been furnished by the complainant adding names of the

Ajaib Singh
v.
Chindo
and others

Tek Chand, J.

witnesses which he desires to summon. Permission has been granted by the Magistrate with respect to the additional witnesses mentioned in the first three lists. Permission has only been declined with regard to the calling of six witnesses in the fourth and the final supplementary list. The question is whether the Magistrate had a discretion in the matter and he could decline to make available the machinery of the Court for summoning additional witnesses on any ground considered suitable. I find nothing in the provisions of section 252 which makes it incumbent upon the Magistrate to summon witnesses mentioned in the supplementary list if for good reasons he may consider that it is not necessary to do so either because of dilatory tactics on the part of the complainant or because he wants to prolong the trial or for any other reason which he may consider frivolous and not in accord with the requirements of justice.

Learned counsel for the complainant has placed reliance on a number of decisions but which, to my mind, are not helpful for upholding his contention. He cited *K. Somasundaram v. Gopal* (1). It was said that the list filed under section 204 (1-A) can be added to by supplementary lists accompanied by applications to the Court to summon those new witnesses. Such supplementary lists can be addition to all the witnesses in the primary list filed by the private complainant. But when the Magistrate is asked to summon fresh witnesses whose names appear in the supplementary list it is his duty to apply his mind to the application and should consider whether in the circumstances of the case such a permission should be granted. A Magistrate must weed out obviously frivolous names and if he considers that witnesses are unnecessary or the object is merely to

(1) A.I.R. 1958 Mad. 341.

cause harassment he is not bound to summon all witnesses named in the supplementary list. Another decision which was cited at the Bar is *Ishwardas v. Madho Singh Tomar* (2). This decision simply lays down that when a supplementary list of the names of the witnesses is given it is incumbent upon the Magistrate under section 252(2) Criminal Procedure Code, to examine the list newly filed and call for necessary information on this matter from the complainant. In the circumstances of that case it was found that the order passed by the Magistrate closing the prosecution case and refusing to summon witnesses was erroneous. On the facts the decision in *Ishwar Das v. Madho Singh* (1) is distinguishable as the facts and circumstances of the instant case are not parallel. There is ample authority that section 252 in the matter of supplementary list confers wide discretion upon a Magistrate. Section 252 contemplates two stages. The first stage is when evidence is offered on the day when the accused appears or is brought before the Court and the second stage is when the first stage has passed. The hearing of any unsummoned witnesses subsequent to the date is a matter within the Court's discretion. If the list is unduly long or appears to have been filed vexatiously the Magistrate has the power to scrutinise the list and to prevent undue harassment of the accused and an unwarranted prolongation of the trial. Similar view has been expressed in *Govind Sahai and another v. Emperor* (3) and *K. C. Menon v. P. Krishna Nayar* (4).

Ajaib Singh
v.
Chindo
and others

Tek Chand, J.

Mr. M. R. Chhiber, learned counsel for the accused has drawn my attention to *Bijai Raj v. The State* (5). It recognises the principle that a

(2) A.I.R. 1958 M.P. 27.

(3) A.I.R. 1914 All. 430 (2).

(4) A.I.R. 1926 Mad. 989.

(5) A.I.R. 1950 Ajm. 25 (2)

Ajaib Singh
v.
 Chindo
 and others

 Tek Chand, J.

Court is not bound to accept list of witnesses filed by the prosecution from time to time. It should see which of the persons desired to be summoned are necessary witnesses.

In view of what has been stated above, I think that section 252 when correctly construed confers ample discretion on a Magistrate to allow or refuse calling or witnesses whose names have been added later on in the supplementary list. Of course the Magistrate has to carefully weigh the reasons as to why the names of the additional witnesses could not have been added in the earlier list. Section 252 leaves this matter elective and gives an option to the Magistrate to call or decline to summon the additional witnesses. On the facts of this case it appears to me that the judicial discretion vested in the Magistrate has been exercised with care and caution. In the circumstances I can not persuade myself to accept the recommendation of the learned Additional Sessions Judge. In the result the order of the Magistrate dated 9th June 1962 is upheld, the revision fails and is dismissed. The parties are directed to appear before the Magistrate on 6th May, 1963.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

SOWARAN SINGH,—Appellant.

versus

MUNICIPAL COMMITTEE, PATHANKOT AND
 ANOTHER,—Respondents.

First Appeal From Order 66 of 1961

1963

 April, 8th

Arbitration Act (X of 1940)—S. 28 and paragraph 3 of
 the first Schedule—Time for making the award beyond