any compensation under the above-said section and consequently the claim of the Corporation would also become untenable.

(23) This appeal accordingly fails and is dismissed. There will be no order as to costs.

P. C. Pandit, J.—I agree.

K. S. K.

APPELLATE CRIMINAL.

Before Gurdev Singh and B. S. Dhillon, JJ.

JAIPAL SINGH,—*Appellant*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Appeal No. 341 of 1970.

Murder Reference No. 22 of 1970.

September 1, 1970.

Code of Criminal Procedure (Act V of 1898)—Sections 526(8) *and* 526(9)— *Provisions of section* 526(8)—*Whether* mandatory—*Respective jurisdictions of magistrates and Sessions Judge to adjourn a pending case on being notified of the intention of a party to move for transfer—Stated—Application for adjournment—Whether can be rejected by a Sessions Judge on the ground of the allegations for transfer being baseless.*

Held, that the provisions of sub-section (8) of section 526 of the Code of Criminal Procedure are mandatory and have to be complied with. Any proceedings taken after the refusal of adjournment are not justified in law and such an irregularity cannot be condoned under the provisions of section 537 of the Code. To hold otherwise would not only violate the plain language of sub-section (8) but it would also cut at the root of the basic principle of jurisprudence wherein it is required that the Courts should not only administer justice without fear or favour but also appear to do so. It is of paramount importance that the parties arrayed before the Courts should have confidence in the impartiality of the Courts.

(Paras 13, 17, & 19)

Held, that as far as the jurisdiction of a magistrate under section 528(8) of the Code is concerned, he has no option but to adjourn the case the moment intention is notified by the parties to the porceedings before him for

moving the transfer application. He is duty bound to afford sufficient time to the party concerned to make a transfer application and to obtain an order thereon. If the case is covered by the proviso to sub-section (8) of section 526 of the Code, it is only in that exigency that subsequent prayer for adjournment can be refused. The power of the Presiding Judge of Sessions Court in this regard is somewhat different. Sub-section (9) of section 526 provides only one contingency, that is, if the Judge presiding over the Court of Session is of the opinion that the person notifying intention of making application under this section has had a reasonable opportunity of making such an application and he had failed, without sufficient cause, to take advantage of it, it can only be in that circumstance that the adjournment can be refused. (Para 13)

Held, that a Sessions Judge has absolutely no jurisdiction to reject an application for adjournment on the ground that the allegations levelled in application for the transfer of a case from his court are baseless. It is for the High Court to see, if the accused is given time for making an application for transfer, whether the allegations made in the application are correct or not, or whether any ground for the transfer of the case from the court of Sessions Judge is made out or not. It is not for the Sessions Judge himself to become judge of the merits of the allegations made in the application for transfer.

Appeal from the order of the Court of Shri R. L. Garg, Additional Sessions Judge, Rohtak, dated 20th March, 1970, convicting the appellant.

U. D. GAUR, ADVOCATE, for the appellant.

J. S. MALIK, ADVOCATE FOR ADVOCATE-GENERAL, HARYANA, for the respondent.

JUDGMENT

B. S. DHILLON, J.—Jaipal Singh has been convicted by the learned Additional Sessions Judge, Rohtak, under section 302 of the Indian Penal Code, on each count, for causing death of six persons namely, Bhartu, Balwan, Hawa Singh, Smt. Kamli, Smt. Sunehri and Smt. Murti. The learned Additional Sessions Judge directed that Jaipal Singh accused be hanged by the neck till he is dead. This Murder Reference is for confirmation of the death sentence of Jaipal Singh accused. The accused has also filed an appeal against his conviction which has been registered as Criminal Appeal No. 341 of 1970.

(2) The prosecution case, as disclosed in the statement of Om Parkash (P.W. 2), made to Assistant Sub-Inspector Vidya Parkash (P.W. 14), which became the basis of the first information report lodged at Police Station Meham on the 26th of June, 1969, at 6.30 a.m., is that Bhartu, father of Om Parkash, and Khem Singh, father of Jaipal Singh accused had quarrelled with each other 25 years ago. Bhartu deceased had given Jelly blow to Khem Singh, but

subsequently there was a compromise between the parties. Thereafter small children of the families of the parties had been quarreling with each other. About 20 days ago, Om Parkash and Deputy, brother of Jaipal Singh, had quarrelled with each other in the field on the passage when both of them received minor injuries. This further strained the relations between the two families. On the night intervening 25th and 26th of June, 1969, it is alleged that Om Parkash, his father Bhartu deceased, and his brother Balwan deceased were sleeping outside in their enclosure on separate cots. At about midnight there was drizzling when all the three took their cots inside the *Kotha*. After a while, when the drizzling stopped, Bhartu and Balwan, deceased took out their cots from the *Kotha*, but Om Parkash continued to lie on the cot inside the room. It is alleged that after about an hour, Jaipal Singh, accused armed with a double barrelled gun and a bandolier containing cartridges came to their enclosure and fired first shot in the chest of Bhartu deceased and also shot at Balwan deceased. Om Parkash witnessed the occurrence from inside the *Kotha*. The prosecution case is that after having murdered Bhartu and Balwan, Jaipal Singh accused rushed towards the house of the deceased party inside the village Abadi and Om Parkash followed the accused hiding himself. In the house in the village Abadi, the accused is alleged to have fired shots at Hawa Singh deceased, brother of Om Parkash, who was sleeping in the Poli, i.e., the outer room of the house. Smt. Kamli, mother of Om Parkash got up and came towards Hawa Singh, when the accused is alleged to have fired bullet shot on the left side of her breast as a result of which she fell down. He then fired at Smt. Sunehri and Smt. Murti, the sisters of Om Parkash; whereas Mst. Chotto sister-in-law of Om Parkash got herself hidden behind a small wall and was saved. It is mentioned in the first information report that after killing all these persons, the accused went away with his gun. Dhoop Singh and Jangli P.Ws. reached the spot and witnessed the accused coming out from the house of the deceased persons armed with gun Exhibit P. 1 to which was tied a torch Exhibit P. 2 and the accused was wearing a bandolier Exhibit P. 3. Thus it would be seen that the allegation against the accused is that he killed 6 persons of the family of Bhartu and went away along with the gun Exhibit P. 1, which was fitted with a torch, Exhibit P. 2.

(3) The prosecution in order to establish the guilt of the accused, examined Om Parkash (P.W. 2) and Smt. Chhoto (P.W 3), as eye-witnesses of the occurrence, Jangli (P.W. 5) and Dhoop Singh (P.W. 6)

as the witnesses, who saw the accused armed with the gun Exhibit P. 1 on which a torch Exhibit P. 2 was fitted and a bandolier Exhibit P. 3 round his waist, coming out of the Abadi house of the deceased immediately after the occurrence. Gurcharan Singh (P.W. 7) proved that the accused purchased 23 cartridges made of Indian Ordinance Factory on 29th April, 1969, for Rs. 35.20 paise and again on 6th June, 1969, the accused purchased 25 cartridges out of which five were of L. G. Elley of English make and five L. G. of Indian make and 15 cartridges were made of Indian Ordinance Factory, the cost of which was Rs. 85.79 paise. Shanti Lal (P.W. 8), proved Exhibit P.Z./1, an application of the accused sent to the Superintendent of Police, Rohtak, complaining against Bhartu, Balwan and Hawa Singh, deceased, and some other persons of the village apprehending danger to the lives of the members of the family of the accused and Exhibit P. Z., a forwarding letter of complaint Exhibit P.Z./1, from the Officer Commanding to the District Collector, Rohtak. Ude Ram, Assistant Sub-Inspector, (P.W. 9), who was entrusted with the enquiry of the complaint Exhibit P.Z./1, got the compromise Exhibit P.Z./2 effected. Kashmiri Lal (P.W. 10) is the draftsman, who prepared the site plan Exhibit P.A.A. Jai Narain, Assistant Sub-Inspector, (P.W. 11), recorded the formal first information report Exhibit P.Q./1: Rameshwar (P.W. 12), Sarpanch of village Mokhra Kheri Roz, attested the inquest reports prepared by A.S.I., Vidya Parkash (P. W. 14) and he again joined the investigation with the Sub-Inspector Ajit Singh (P.W. 15) and in his presence four empty cartridges were recovered from the Poli, i.e., the outer room of the house of the deceased. Blood-stained earth from the Poli of Bhartu was taken into possession in his presence. Two more empty cartridges were recovered from the court-yard of the Abadi house of Bhartu and blood stained clothes were also recovered from the court-yard. Two empty cartridges were recovered from the court-yard of the Gher, i.e., the outer house of Bhartu deceased in his presence. Prem Kumar (P.W. 13), constable, had taken the statement of Om Parkash P.W. from village Mokhra Kheri Roz to Police Station Meham on the basis of which the first information report was recorded. He had then taken the copies of the special reports to the Superintendent of Police, Deputy Superintendent of Police and the Ilaqa Magistrate on 26th June, 1969. A.S.I. Vidya Parkash (P.W. 14) recorded the statement of Om Parkash P.W. on 26th June, 1969 at 4.30 a.m. and partly investigated the case. He arrested the accused on 26th June, 1969 and took into possession the gun Exhibit P. 1, Torch Exhibit P. 2 and bandolier Exhibit P. 3 with 14 cartridges. He also took into possession a shirt, a *Dhoti* and a *Chadra* which the accused was wearing at the time of

arrest. All these clothes were blood-stained. Sub-Inspector Ajit Singh, Station House Officer (P.W. 15), also partly investigated the case. He also recovered empty cartridges from the outer as well as interior house of Bhartu deceased.

(4) The accused in his statement recorded under section 342 of the Code of Criminal Procedure, admitted that he was the uncle of Om Parkash P.W. in the 3rd degree and that his house adjoins the house of Om Parkash P. W. outside the Abadi of village Mokhra Kheri Roz and that he had another house in the village Abadi, which also adjoins the Abadi house of Om Parkash P.W. The accused also admitted to have made an application Exhibit P.Z./1, but stated that he did not remember the names of the persons against whom the application was made. He admitted that a compromise Exhibit P.Z./2 between the accused on the one side and Bhartu, Balwan, Hawa Singh, deceased, and some other persons on the other side, was entered into. He also admitted the purchase of the cartridges as suggested by the prosecution but he denied the prosecution story. In reply to the question as to why was this case against him, he stated that on the night of occurrence, he was sleeping in his Abadi house with his gun Exhibit P. 1. At about mid-night, somebody accompanied by another person came there, and pulled his gun on which he woke up. When he woke up, that other person gave a Lathi injury on his head and he fell unconscious. His gun was taken away by those persons and when he regained consciousness in the morning, he went to the Assistant Sub-Inspector Vidya Parkash, who was staying in village Chaupal, and narrated him the whole incident and requested him to register a case. The Assistant Sub-Inspector kept the accused with him for some time and then the gun Exhibit P. 1 was found at the place of occurrence, and he was implicated falsely in the case. He further explained that his clothes, the shirt, the Dhoti and the Chadar, had received blood stains because of the injuries sustained by him and that due to darkness, he could not identify the two persons who had come while he was sleeping. He further stated that Balwan and Hawa Singh were married in village Loa Majra with the sister of Raj Singh and that Raj Singh and the wives of Balwan and Hawa Singh were implicated in a murder case. The enemies of Raj Singh and these two ladies have committed these murders.

(5) The learned Additional Sessions Judge believing the prosecution evidence came to the conclusion that the accused is connected

with the alleged crimes and convicted him of the charge of murder of six persons and sentenced him accordingly.

(6) We have heard the learned counsel for the appellant, Mr. U.D. Gaur, and Mr. J.S. Malik, Advocate, for the State of Haryana, at great length. Shri U. D. Gaur, the learned counsel for the appellant, argued the case on merits at great length. The learned counsel further contended that on 5th March, 1970, an application was made by the accused before the learned Additional Sessions Judge, who was trying the case, to the effect that the accused had come to know that the Court was siding with the opposite party. A grievance was made that even the counsel for the accused was not allowed to prosecute case and the State counsel was freely allowed to take illegal proceedings. A prayer was made in that application that the trial of the case be adjourned as the accused wanted to move an application for the transfer of the case in the High Court. The contention of the learned counsel is that this application was illegally rejected by the learned Additional Sessions Judge,— *vide* his order, dated 5th March, 1970 and according to the submission of the learned counsel the order of the learned Additional Sessions Judge is clearly without jurisdiction. The contention of the learned counsel is that the provisions of sub-section (8) of section 526 of the Code of Criminal Procedure are mandatory and any proceedings recorded after the accused has notified his intention for moving an application for the transfer of the case, are illegal and without jurisdiction. The learned counsel contended that the trial is vitiated on this ground. The learned counsel for the State, on the other hand, contended that the accused was never serious in pursuing the transfer application and the case was adjourned after the 5th of March, 1970, and subsequent adjournment were also granted when ultimately the decision of the case was announced by the learned Additional Sessions Judge on 20th March, 1970. No steps were taken by the accused to file any such application in the High Court for the transfer of the case. Therefore, he contended that the allegation of the accused was not *bona fide* but was a mere excuse to get the adjournment.

(7) Before averting to the merits of the case, it would be proper to dispose of the contention of the learned counsel for the appellant regarding the validity of the trial in this case, because this is a point which goes to the root of the matter. If we come to the conclusion that the trial is vitiated because of the violation of the mandatory provisions of sub-section (8) of section 526 of the Code of Criminal

Procedure, no necessity will arise for recording the findings on the merits of the case.

(8) The provisions of sub-section (8) of section 526, of the Code of Criminal Procedure, are in the following terms :—

"526(8). If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section or under section 528, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees, that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon:

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party if the application is intended to be made to the same Court to which the party has been given an opportunity of making such an application, or, where an adjournment under this sub-section has already been obtained by one of several accused upon a subsequent intimation by any other accused."

(9) Sub-section (9) of section 526 of the Code of Criminal Procedure provides that :—

"Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it."

(10) Thus it would be seen that the learned Additional Sessions Judge had jurisdiction to refuse to adjourn the trial of the case if he was of the opinion that the accused had reasonable opportunity of making such an application earlier and had failed without sufficient cause to take advantage of it.

(11) In the present case, the Session trial started on 3rd March, 1970 when three prosecution witnesses were examined and the case was adjourned to 4th March, 1970. On 4th March, 1970, the evidence of Ballistic Expert, P.W. 4, was concluded, the statements of seven more witnesses were recorded and the case was adjourned to 5th March, 1970. On 5th of March, 1970, before the start of the evidence, an application was presented by the accused with the prayer that the case be adjourned so as to enable the accused to move an application for the transfer of the case. The contents of the application are as follows :—

> "1. That the accused wants to file an application in the High Court for transfer of his case as the Court is very much against him which is evident from the file. The accused came to know that the Court is siding with the opposite party.
>
> (2) That even the counsel for the accused is not allowed to prosecute the case and the State counsel is freely allowed to take illegal proceedings.
>
> Therefore, the accused prays that he may be granted time to move an application, for the transfer of his case, in the High Court and further proceedings stayed."

(12) The learned Additional Sessions Judge disposed of the application by passing the following order :—

> "Before the start of the evidence today, the accused has made an application for adjourning the proceedings as he wanted to move the High Court, for the transfer of the case. In the application it is stated that the counsel for the accused is not permitted to prosecute defence and that the P.P. is given unwarranted liberty to prosecute the case. The allegations are entirely unfound. This case has continued for two-days and the counsel for the accused were given full liberty to cross-examine the P.Ws. The other allegations are also false. I see no ground to adjourn the proceedings of the trial and decline to stop the trial. Let the evidence be recorded."

Thereafter, the learned Additional Sessions Judge recorded the evidence of the remaining witnesses and adjourned the case to 7th

March, 1970. It is to be noted that 6th of March, 1970, was a public holiday. On 7th March, 1970 the statement of the accused under section 342 of the Code of Criminal Procedure was recorded wherein he stated that he did not want to produce the defence evidence and the case was adjourned to 12th March, 1970, for arguments. On 12th March, 1970, the counsel for the accused requested for adjournment because he was busy in conducting another murder case in the Court of 1st Additional Sessions Judge. This request was granted and the case was adjourned to 18th March, 1970. Part arguments were heard on 18th of March, 1970, and the arguments were concluded on 19th March, 1970. The Judgment of this case was pronounced on the 20th of March, 1970. It would be seen that on 5th March, 1970, before the learned Additional Sessions Judge started the recording of the evidence of the prosecution, the accused had notified his intention to make an application under section 526 of the Code of Criminal Procedure for getting the case transferred to some other Court of competent jurisdiction. This intention was notified by the accused before the close of the defence. It is in these circumstances that it has to be decided as to whether the provisions of section 526(8) of the Code of Criminal Procedure have been violated and if so, to what effect.

(13) We have given careful consideration to this aspect of the case. In our view the provisions of sub-section (8) of section 526 of Code of Criminal Procedure are mandatory and have to be complied with. As far as the jurisdiction of a Magistrate is concerned he has no option but to adjourn the case the moment intention is notified by the parties to the proceedings before him for moving the transfer application. He is duty bound to afford sufficient time to the party concerned to make a transfer application and to obtain an order thereon. If the case is covered by the proviso to sub-section (8) of section 526 of the Code of Criminal Procedure, it is only in that exigency that subsequent prayer for adjournment can be refused. The power of the Presiding Judge of Session Court in this regard is somewhat different. Sub-section (9) of section 526 of the Code of Criminal Procedure provides only one contingency, that is, if the Judge presiding over the Court of Session is of the opinion that the person notifying intention of making application under this section has had a reasonable opportunity of making such an application and he had failed, without sufficient cause, to take advantage of it, it can only be in that circumstances that the adjournment can be refused.

In order to decide whether the person concerned had a reasonable opportunity of making such an application, it would be again necessary for the Presiding Judge of the Court of Session to apply his mind to the grounds on which the transfer application is sought to be moved because it is only after the learned Judge is in the know of the grounds on which the intention to get the case transferred is notified that he can form an opinion whether the adjournment should be granted or refused keeping in view the provisions of sub-section (9) of section 526 of the Code of Criminal Procedure.

(14) In the present case, the accused had alleged that the Court was siding with the opposite party and that even the counsel for the accused was not being allowed to prosecute the case and the State-counsel was freely allowed to take illegal proceedings. We are not concerned at this stage with the merits of the allegations levelled in this application. Though the application was made when the evidence was being examined. But the application itself does not disclose as to what time the accused came to know or apprehended that the Court was siding with the opposite party, nor did the learned Additional Sessions Judge elicited this information from the accused before passing the order rejecting the prayer for adjournment. As would be seen from the order passed by the learned Additional Sessions Judge rejecting this application, that the provisions of sub-section (9) of section 526 of the Code of Criminal Procedure, were not present in the mind of the learned Judge. The learned Additional Sessions Judge refused to adjourn the case merely on the ground that the allegations made in the application were false. It may or may not be so, but we have no doubt in our minds that the learned Additional Sessions Judge had absolutely no jurisdiction to reject the application on the ground that the allegations levelled in the application were baseless. It was for the High Court to see, if the accused was given time for making an application for the transfer of the case and if the same would have been filed before the High Court, whether the allegations made in the application to be filed were correct or not or whether any ground for the transfer of the case from the Court of the learned Additional Sessions Judge was made out or not. But certainly it was not for the learned Additional Sessions Judge himself to have become the Judge of the merits of the allegations made in the application. He could refuse to adjourn the case only in one circumstance, that is, if in his opinion there was a reasonable opportunity for the accused to have made a transfer application and he having failed to avail of that without any sufficient cause. In no

other exigency, the learned Additional Sessions Judge could have refused to adjourn the case and grant reasonable time to the accused to move the transfer application. From the facts of the present case, as have been narrated above, it cannot be said that the failure of justice has not been caused to the accused by the refusal of the learned Additional Sessions Judge to adjourn the case. The prosecution evidence was closed on the 5th of March, 1970, and the case was adjourned for the 7th of March, 1970. On 7th March, 1970 the statement of the accused under section 342 of the Code of Criminal Procedure was recorded wherein he stated that he had no intention to adduce defence evidence. Sixth of March, 1970, was a public holiday. The case was then adjourned to 12th March, 1970 on the request of the learned counsel for the accused as he was busy in some other case. On 12th March, 1970, the case was again adjourned to 18th March, 1970 because the learned counsel for the accused was busy in conducting a murder case in another Court. On 18th March, 1970, part of the arguments were heard and on 19th March, 1970, the arguments were concluded and the judgment was announced on 20th March, 1970. No doubt if the accused wanted he could move the transfer application before the judgment was announced he could do so but that he could only do after the 7th of March, 1970, and by that time the prosecution evidence had concluded and the defence had also closed its case. It would be reasonable to think that at that stage the accused might have refrained from moving the transfer application because at that stage even if the transfer application was granted by the High Court, only arguments were to be heard and judgment pronounced. We cannot say for what reasons the accused did not consider it proper to move the transfer application after the defence was closed and before the arguments concluded, but it cannot be said in the circumstances of this case, that the failure of justice has not taken place.

(15) As regards the merits in the grounds for the transfer of the case, suffice it to say that the provisions of sub-section (8) of section 526 of the Code of Criminal Procedure do not postulate that the party notifying its intention for moving a transfer application has to state the grounds before tre Court in detail. Of course, in view of the provisions of sub-section (9) of section 526 of the Code of Criminal Procedure, bare facts have to be disclosed which would enable the Presiding Judge of the Court of Session to form an opinion as to if the party notifying intention, had reasonable time earlier for moving the transfer application, and the same having failed to avail of

the same without any reasonable cause. But nothing more is required to be stated except to satisfy the bare requirements of sub-section (9) of section 526 of the Code of Criminal Procedure. Whether there was any ground made out for the transfer of the case or not, could only be appropriately decided if reasonable opportunity had been provided to the accused to move such an application. It is only then that he was required to give detailed grounds on which he relied for the transfer of the case. That stage never reached in the present case. From what has been stated above, it is difficult to hold that the failure of justice has not occurred to the accused, keeping in view the facts of the present case.

(16) As far as the question whether the provisions of sub-section (8) of section 526 of the Code of Criminal Procedure are mandatory, is concerned, we are supported in our view by a number of decisions. In a case reported as *Ghulam Rasul* v. *Emperor*, (1), it was held that when an accused notifies to the Court before which his case is pending his intention to make an application under section 526, clause (8), for a transfer of his case, it is the duty of the Magistrate to grant adjournment and as such all the subsequent proceedings after his refusal are unwarranted by law and ought to be set aside. Though this was a case which was pending before a Magistrate yet this would support the view that the provisions of clause (8) of section 526 of the Code of Criminal Procedure are mandatory. In this case the High Court ordered re-trial. Similar view was taken in *Luttur and others* v. *Emperor*, (2), wherein it was held that the provisions of section 526, clause (8) of the Code of Criminal Procedure are mandatory and any deviation from these provisions would make the proceedings illegal.

(17) In a case reported as *Yakoob Kassim* v. *Emperor*, (3), a Division Bench held that the provisions of clause (8) of section 526 of the Code of Criminal Procedure were imperative and any proceedings taken after the refusal of adjournment are not justified in law and such an irregularity cannot be condoned under the provisions of section 537 of the Code of Criminal Procedure. This was a case where an intention to move the transfer application was notified to

(1) A.I.R. 1928 Lah. 850.
(2) A.I.R. 1930 All. 263.
(3) A.I.R. 1935 Sind. 27.

the Judge of the Court of Session, who was trying a murder case, but the adjournment was refused without any reason. In this case the conviction of the appellant was also quashed.

(18) Similar view was taken by the Bombay High Court in a case reported in *Pandurang Pundlik Shanbhag* v. *Emperor* (4). It was held that the terms of section 526(8) of the Code of Criminal Procedure are imperative. The Magistrate is bound to adjourn the case, on the application for transfer by the accused, when the accused are within their rights, till such period as would afford a reasonable time for the application for transfer to be made, is afforded to the aggrieved party. In cases reported in *Devi Chand, Occupier, and Amar Nath Manager of the General Mills and Ginning Fartory, Ludhiana* v. *Emperor*, (5), *Bhagwat and others* v. *Emperor*, (6) *and Queen Empress on the prosecution of Palakhadari Mahton and others* v. *Gayitri Probunno Ghosal* (7), it was ruled that the provisions of sub-section (8) of section 526 of the Code of Criminal Procedure, are mandatory.

(19) In our opinion, to hold it otherwise, would not only be violating the plain language of the provisions of sub-section (8) of section 526 of the Code of Criminal Procedure, but it would also cut at the root of the basic principle of jurisprudence wherein it is required that the Courts should not only administer justice without fear or favour but also appear to do so. It is invariably held that it is of paramount importance that the parties arrayed before the Courts should have confidence in the impartiality of the Courts. Moreover, if it is held that the provisions of sub-section (8) of section 526 of the Code of Criminal Procedure, are not mandatory, that would be denying an important right to a party before the Court for moving an application for getting the proceedings transferred from a Court, in which for good or bad reasons the party has lost confidence. This right has been granted by the Legislature and the same cannot be negatived by giving unwarranted construction to the provisions of sub-section (8) of section 527 of the Code of Criminal Procedure.

(4) A.I.R. 1931 Bom. 411.

(5) (1921) 22 Crl. L.J. 717.

(6) A.I.R. 1942 Oudh. 429.

(7) I.L.R. 15 Cal. 455.

(20) However, there are certain other decisions which are quite relevant to the present controversy, but the same, in our opinion, are distinguishable on facts. In a case report as *Hira Mistry* v. *Ram Briksh Singh* (8), an application for adjournment under section 526, clause (8) of the Code of Criminal Procedure, was filed by the accused at the close of the prosecution arguments and the same was rejected on the ground that it was filed too late and the same was merely intended to defeat or delay justice. In revision, the Patna High Court refused to interfere on the ground that the Court would not exercise discretionary jurisdiction of revisional powers when the application was not *bona fide*. This authority is not applicable to the facts of the present case. Here we are dealing with a murder Reference and a Criminal Appeal filed by the accused.

(21) We are not inclined to follow the case reported as *Neamat Sha* v. *Hanuman Buksha Agarwalla,* (9), because in that case the learned Judges sitting in the Division Bench definitely came to the conclusion that in the absence of any amendment in the provisions of section 526 of the Code of Criminal Procedure, the refusal of the Magistrate to adjourn the case was not justified and was contrary to the provisions of this section. Having held that, in our opinion, the provisions of section 537 of the Code of Criminal Procedure, could not be invoked ; and secondly, in that case their Lordships refused to exercise their power of revision which was a discretionary relief. Before us is a Murder Reference and an appeal filed by the accused.

(22) The case reported in *re*: *Pakira Pujari,* (10), is again distinguishable on facts. In that case the accused intimated his intention to the learned Sessions Judge for making an application to the High Court for the transfer of the case and the learned Sessions Judge refused to adjourn the trial on the ground that the accused had already a reasonable opportunity for making an application and had failed without sufficient cause to take advantage of it. This order purports to have been passed by the learned Sessions Judge under sub-section (9) of Section 526 of the Code of Criminal Procedure. The Madras High Court found that

(8) A.I.R. 1950 Patna 542.
(9) A.I.R. 1931 Cal. 626.
(10) A.I.R. 1944 Mad. 78.

the order of the learned Sessions Judge was clearly wrong as the question whether the person notifying his intention to make an application under section 526 of the Code of Criminal Procedure, had a reasonable opportunity or not, would depend on the grounds on which the transfer is sought and on the facts of that case it was held that the ground on which the transfer was sought to be made, did not exist before the intention was notified. In these circumstances, the Court held that even if the learned Sessions Judge formed a wrong opinion it cannot be said that the order was without jurisdiction. It was further held that the only question that has to be seen is whether the wrong opinion and the consequent refusal to grant an adjournment has occasioned a failure of justice, and in these circumstances of the case, the Court was of the opinion that no failure of justice had been caused and consequently the appeal was dismissed. But in the present case, the learned Additional Sessions Judge never adverted to the provisions of sub-section (9) of section 526 of the Code of Criminal Procedure. He had only jurisdiction to refuse an adjournment if he could invoke the provisions of sub-section (9) of section 526 of the Code of Criminal Procedure from the facts before him.

(23) As far as the question of invoking the provisions of section 537 of the Code of Criminal Procedure is concerned, we are of the opinion that the said provisions can only be invoked in order to remove an irregularity which has not occasioned the failure of justice and where the order is irregular but with jurisdiction. But the said provisions cannot be used in order to remove the defect in the jurisdiction of the trial Court. In the present case the learned Additional Sessions Judge had no jurisdiction to refuse to grant adjournment on the ground that there was no merit in the allegations made in the application. As we have already held that it cannot be said in this case that the failure of justice has not occured to the accused on this ground also, the provisions of section 537 of the Code of Criminal Procedure cannot be invoked.

(24) Thus we are inclined to hold that the proceedings and the trial on and after the 5th of March, 1970, are clearly without jurisdiction and are in contravention of the mandatory provisions of sub-section (8) of section 526 of the Code of Criminal Procedure, and a failure of justice has certainly taken place in this case. On this ground, the trial is vitiated. Since we are of the opinion that the trial is vitiated and is without jurisdiction, therefore, it is not

necessary to examine the contentions of the learned counsel for the parties as far as the merits of the case are concerned and we refrain to do so in order to avoid any prejudice at the retrial.

(25) For the reasons recorded above, we decline to confirm the death sentence awarded to the accused but accept the appeal of the accused, set aside the order of the learned Additional Sessions Judge under appeal and direct that his case be retried *de novo* by a Judge of the Court of Session having jurisdiction to try the same.

(26) Criminal Revision No. 29-M of 1970, is also filed against the same judgment of the learned Additional Sessions Judge by Dr. T.R. Bhalla against whom some remarks have been made by the learned Additional Sessions Judge in the judgment. In view of the fact that the judgment of the learned Additional Sessions Judge is being set aside for the reasons recorded in the earlier part of the judgment it is not necessary to deal with the merits of the contentions raised by the learned counsel for Dr. T. R. Bhalla. This revision petition has become infructuous as the main judgment in the murder trial is being set aside and the case is being ordered to be tried afresh. Records be remitted to the Court of Session for expeditious trial.

Gurdev Singh. J.

(27) I entirely agree with my learned brother that the learned trial judge had over-stepped his jurisdiction in continuing the trial in disregard of the provisions contained in sub-section 9 of section 528 Cr. P.C. after the accused had made an application for staying further proceedings to enable him to approach the High Court for the transfer of the case to another Court. The order by which the learned trial Judge disallowed this prayer clearly indicates that instead of applying his mind to the relevant provision and the question whether the accused was entitled to an adjournment, he himself decided that the ground intended to be put forward for transfer of the case from his Court was baseless.

(28) The relevant provisions and the authorities bearing on the point have been elaborately discussed by my learned brother. I am also in agreement with him that the provisions of section 537

Cr. P.C. cannot be invoked in this case to regularise the proceedings taken by the trial Court after the application under sub-section 9 of section 528 Cr. P.C. had been made. Since the ground indicated for transfer was that the learnt trial Judge had allowed undue latitude to the prosecution in the course of examination of the witness and he had conducted the proceedings in such a manner as to raise reasonable apprehension in the mind of the accused that the Court was biased in favour of the prosecution, the continuation of the proceedings after the prayer for stay in voilation of the mandatory provision of law was clearly prejudicial to him. Whether or not there was any substance in the allegations made by the accused could only be determined if the trial Court had acceded to the request of the accused to adjourn the proceedings and had afforded him an opportunity to apply for transfer. The only course open to us is to quash the conviction and order *de novo* trial by a Judge other than the one from which the appellant has come up in appeal.

K.S.K.

APPELLATE CIVIL

Before R. S. Narula and C. G. Suri, JJ.

B. S. NAT,—*Petitioner.*

versus

BACHAN SINGH AND OTHERS,—*Respondents.*

First Appeal from Order No. 48 of 1964

September 2, 1970.

Motor Vehicles Act (IV of 1939)—Sections 110(1), 110A and 110F—Loss of or damage to property sustained in a motor accident—Claims for—Whether entertainable by civil Courts only—Motor Accident Tribunals—Whether have jurisdiction to adjudicate upon such claims—Interpretation of statutes—Language of a statute leading to two equivocal interpretations—Courts—Whether entitled to look to the complementary provisions in the statute to ascertain the intentions of the legislature.

Held, that Motor Accident Claims Tribunals have been set up under the Motor Vehicle Act 1939, to determine and award damages in cases of accidents involving death of or bodily injury to persons, arising out of the use of motor vehicles. In the Statement of Objects and Reasons of the Act, wherever the words "the injury or death" occur, they are used in the same