year 1962. It is said there, "As regards the exclusion of his name from the Select List this year, it may be stated that Select Committee which met on 15th January, 1962, recommended only six officers for inclusion in the promotion quota which may occur and also for officiating appointment until the matter is examined by the next Selection Committee (A copy of the Selection Committee's minutes, dated 15th January, 1962 appended at Annexure 'C'). Among the six officers included in the Select List, Shri Vijai Singh, who was at serial No. 11 in the Select List prepared in 1960, is the juniormost in the order of seniority in the State Administrative Service. Thus, Shri S. D. Gupta (S. No. 13 in the 1959 Select List) and other officers of the R.A.S., who are junior to Shri Vijai Singh have not been considered by the Selection Committee which met in January, 1962. Shri S. D. Gupta has not, therefore, been superseded by any officer junior to him in the R.A.S. This Select List was approved by the Union Public Service Commission on 3rd August, 1962 .....". My conclusion, therefore, is that since name of the appellant was not excluded as a result of special review of the Select List under the proviso to regulation 7, the exclusion was a natural consequence of review and revision of the Select List in the year 1962 prepared under sub-regulation (4) of regulation 5. There does not appear, therefore, to be any merit in this contention of the appellant as well.

In the result, this appeal fails and is dismissed. Having regard, however, to the circumstances of the case, the parties are left to bear their own costs.

S. S. DULAT, J.—I agree.

B. R .T.

CRIMINAL REVISION

Before S. K. Kapur, J.

P. C. GULATI,—*Petitioner*

versus

LAJYA RAM KAPUR AND OTHERS,—*Respondents*

Criminal Revision No. 347-D of 1965

April 20, 1966

Code of Criminal Procedure (Act V of 1898)—Ss. 252 to 256, 271 and 526—Case instituted on private complaint transferred from the Court of magistrate

to the Court of Session—Sesions Judge—Whether competent to hold inquiry before framing charge—Interpretation of Statutes—Difference between 'interpretation' and 'construction' of a statute—Principles of interpretation relating to penal statutes stated.

Held, that where a case instituted on a private complaint is transferred by the High Court from the Court of a magistrate to the Court of Session under section 526 of the Code of Criminal Procedure, the Sessions Judge is to continue the proceedings in the same manner as they would have continued in the Court from which the case is transferred. If the Court from which a case is transferred was at inquiry stage, the transferee Court must also hold and/or complete the inquiry. The Sessions Judge is not obliged to frame the charge if the case is at the inquiry stage; he is to frame the charge after completing the inquiry in accordance with sections 252 to 256 of the Code of Criminal Procedure. The inquiry stage provides a substantial safeguard to an accused person and it is not without reluctance that the Courts will announce a rule against safeguards.

Held, that the words interpretation and construction of statutes, though used interchangeably, have different connotations. Courts resort to interpretation when they endeavour to ascertain the meaning of a word found in a statute, which, when considered in the light of other words in the statute, may reveal a meaning different from that apparent when the word is considered abstractly or when given its usual meaning. But when Courts travel beyond the language of the statute and seek the assistance of extrinsic aids in order to determine whether a given case falls within the statute, they resort to construction.

Held, that it is settled rule that penal statutes must be construed in such a manner as to carefully guard the rights of the accused and at the same time preserve the obvious intention of the Legislature, but whenever there exists an ambiguity it must be resolved in favour of protection of rights and safeguards rather than their destruction.

Petition for revision under section 435 *of the Code of Criminal Procedure of the order of Shri C. G. Suri, Additional Session Judge, Delhi, dated 7th October,* 1965, *directing that witnesses Nos.* 1, 3 *and* 4 *mentioned in the complainant's list, dated 2nd November,* 1964, *may be summoned in the first instance.*

Bipan Behari Lal, Advocate, for the Petitioner.

S. S. Chadha, Advocate, for the Respondents.

JUDGMENT

KAPUR, J.—P. C. Gulati filed a complaint against Lajya Ram Kapur and Dewan Chand Kapur in the Court of a Magistarte, Delhi, and the High Court was moved by P. C. Gulati to transfer the case, which was, in exercise of powers under section 526(1)(c)(ii), Criminal Procedure Code, transferred to the Sessions Judge for disposal. P. C. Gulati came to this Court under section 561-A, Criminal Procedure Code, saying that the case could not have been transferred to the Court of Session. That petition was dismissed on 12th March, 1965, and the matter was taken to the Supreme Court and disposed of by their Lordships (Criminal Appeals Nos. 86 to 88 of 1965) on 19th August, 1965. The Supreme Court held that the High Court was competent to transfer the case to the Sessions Judge in exercise of its powers under section 526, Criminal Procedure Code. The matter then went before the Sessions Judge for trial and a question arose there whether the Sessions Judge was obliged to frame or not to frame a charge against the accused persons on the basis of the allegations in the complaint or he was competent to call upon the complainant to produce evidence *prima facie* justifying the framing of the charge. The learned Additional Sessions Judge by his order, dated 7th October, 1965, decided that the provisions of sections 252 onwards of the Criminal Procedure Code were attracted in this case which was instituted on a private complaint and, therefore, he was competent to call for evidence before deciding whether a charge should be framed or not as contemplated by section 254, Criminal Procedure Code. It is against this order of the learned Additional Sessions Judge that the present criminal revision petition has been filed.

Mr. Bipan Behari Lal, the learned counsel for the petitioner, has mainly based his argument on what he calls the mandate of their Lordships of the Supreme Court in their judgment in Criminal Appeals Nos. 86 to 88 of 1965, referred to above. According to the learned counsel, there is a direction by the Supreme Court to consider the question of framing a charge on the allegations contained in the complaint itself. He has sought to support that direction also by reference to certain provisions of the Criminal Pfocedure Code, to which I shall advert a little later. It appears that before their Lordships of the Supreme Court an argument was made on behalf of P. C. Gulati, the petitioner in this Court, that a case could not be transferred to the Sessions Court as in view of section 271 of the

Criminal Procedure Code the Sessions Court has to read the charge framed against the accused by the committing court and then that Court has to ask the accused whether he pleads guilty to the offence charged or claims to be tried, and in case a matter is directly transferred to the Sessions Court, it becomes impossible either to comply with the provisions dealing with the inquiry or to frame a charge. While dealing with this argument, their Lordships of the Supreme Court said—

> "Section 271 provides that when the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried. It does not say that the charge to be read must be the charge framed by the Magistrate who commits the case. It is the Sessions Judge who is to read out the charge on which the accused is to be tried by him. It may be that in the cases committed to the Court of Session the Sessions Judge mostly reads the same charge which has been framed by the Magistrate. It is, however, open to him to re-frame the charge and read out the charge as framed by him. In practice the Sessions Court does amend and add to the charge before proceeding with such cases and it is the charge as amended by him which is read out to the accused, the whole object of the charge being that the accused should know what offence he has to meet at the trial. The Sessions Juldge can follow a similar procedure when a case is transferred to his Court after the Magistrate has framed the charge. When the Magistrate has not framed a charge, the Sessions Judge can do so on the basis of the prosecution allegations."

It is on the above observations that the main reliance has been placed by the learned counsel for the petitioner who has asked me to hold that in accord with the directions of the Supreme Court, the Sessions Court has to frame a charge on the basis of the prosecution allegations. There is another observation in the later part of the judgment which I would like to quote—

> "When the Sessions Court receives a case on transfer by the High Court, it is not to consider whether it should proceed or not with the case. It has to proceed with the case as it

has been transferred to it by the High Court. There is, therefore, no occasion for the Court of Session to take cognizance of the offence in the sense that it has to determine whether the proceedings should be initiated in connection with the offence or not. The proceedings have been already initiated by the Magistrate and have been simply transferred to it. It has simply to proceed with the inquiry or trial as the case may be as the case has been made over to it by the High Court."

The learned counsel for the respondents has relied on the said observations to mean that the Sessions Judge is competent to proceed with the inquiry from the stage from which the case had been transferred. Mr. Bipen Behari Lal seeks to overcome this difficulty by saying that the words "inquiry" or "trial" have been used by the Supreme Court because in certain types of cases the Court of Session is competent to take cognizance without the accused being committed to it for trial. He refers to section 198-B of the Criminal Procedure Code in this connection as provision which authorises the Court of Session to hold an inquiry. The learned counsel for the petitioner also relies on the provisions of the Code of Criminal Procedure, apart from the judgment of the Supreme Court, in aid of his arguments. He refers firstly to sections 252 to 256 and points out that these provisions, which contemplate inquiry before the commencement of the trial, apply only to proceedings before Magistrates and not the Court of Session. The latter Court, according to the learned counsel, has to abide by section 271 and either read the charge as framed by the Magistrate or as reframed by him, but there is no provision in the Code of Criminal Procedure, apart from certain exceptional cases and the present case is not one of those, according to which the Court of Session can hold an inquiry. In other words, the suggestion of the learned counsel for the petitioner is that in this type of cases the only procedure available before the Court of Session is section 271 and, therefore, such Court must start proceedings by framing the charge which can be done only on the allegations of the prosecution and it is not competent to hold an inquiry as has been ordered by the learned Additional Sessions Judge. It is further said that it is in view of the above position that the Supreme Court observed—

"There is no difficulty in our opinion in the Court of Session trying the case transferred to it in accordance with the

provisions of Chapter XXIII which deals with the procedure of trials before High Court and Court of Session. The Court of Session has to follow the procedure laid down in this Chapter so far as that be applicable to the cases to be tried by it."

This observation, according to the learned counsel for the petitioner, is in accord with the provisions of section 271 and it is suggested that the words "so for as that be applicable" have been used because certain sections of Chapter XXIII, by their very nature, are not applicable when the trial is before the Court of Session. Section 287 is stated to be one of such sections. The argument proceeds that the above extracted passage read in the context of section 271 of the Code of Criminal Procedure leaves no scope for the Additional Sessions Judge to hold an inquiry and he must under section 271 proceed to frame or not frame a charge on the allegations made in the complaint. It is then suggested that Chapter XXIII being the only Chapter providing for procedure in a trial before the Court of Session, the said Court can under no circumstances invoke the provisions of sections 252 onwards and embark upon a pretrial inquiry. Relying then on section 526(2) it is suggested that wherever, on transfer of a case, an inquiry is contemplated, a special provision has been made to that effect. It is rather interesting that no special provision has been made when a case is withdrawn by the High Court from the Court of the Presidency Magistrate. Am I to understand then that where a case is withdrawn from the Court of a Magistrate, an inquiry is permissible and not when it is withdrawn from the Court of a Presidency Magistrate ? This is a matter which seems to lack logic. It is significant to note that Chapter XXIII deals with the procedure at trial and not inquiry and though the term 'trial' has not been expressly defined in the Code, yet the definition of 'inquiry' impliedly defines trial. Section 271 also starts by saying—"When the Court is ready to commence the 'trial' ". It is, in the circumstances, not unreasonable to suggest that Chapter XXIII would at the most come in when the trial starts and there is nothing in the said Chapter to forbid an inquiry. The difficulty, however, arises by reason of the absence of any express provision for inquiry by the Sessions Judge in a case like the present. It cannot be denied that the inquiry stage provides a substantial safeguard to an accused person and it is not without reluctance that the Courts will announce a rule against safeguards. It is again a settled rule that penal statutes must be construed in such a manner as to carefully guard

the rights of the accused and at the same time preserve the obvious intention of the Legislature, but whenever there exists an ambiguity it must be resolved in favour of protection of rights and safeguards rather than their destruction. Keeping this principle before me it is hard to think that where a case is transferred to the Court of Session, the inquiry stage is dispensed with and the accused deprived of that safeguard. In my opinion implicit in the word 'transfer' in section 526 is the prescription for continuance of the proceedings in the same manner as they would have continued in the Court from which the case is transferred. If the Court from which a case is transferred was at inquiry stage, the transferee Court must laso hold and/or complete the inquiry. In the process of deciding the controversy I am interpreting and not construing the Criminal Procedure Code. The two terms, though used interchangeably, have different connotations. Courts resort to interpretation when they endeavour to ascertain the meaning of a word found in a statute, which, when considered in the light of other words in the statute, may reveal a meaning different from that apparent when the word is considered abstractly or when given its usual meaning. But when Courts travel beyond the language of the statute and seek the assistance of extrinsic aids in order to determine whether a given case falls within the statute, they resort to construction. It is really on the interpretation that I am inclined to hold that the word 'transfer' has certain implications. In the absence of specific intent, it may be assumed that the law-makers intended that the statute should promote justice. If this concept is ignored, one might begin to wonder, how long our legal system is going to exist. I am not prepared to subscribe to the view that the law-makers enacting the Code, intended even for a moment that in such circumstances the Court of Session has to bid good-bye to safeguards inherent in the inquiry proceedings, when a case instituted on a private complaint is transferred to it. I have still to answer the argument of the petitioner that section 526(2) in terms obliges the High Court to follow the procedure which the Court for which the case is transferred would have followed. May be the provision is introduced by way of abundant caution or may be the prescription of section 526(2) is limited to trials only. In other words, Chapter XXIII talks of 'trials' before the High Court or the Court of Session, and when the case reaches the trial stage, the procedure laid down in the said Chapter is normally required to be followed by the High Court or the Court of Session and section 526(2) by way of exception provides that there is a transfer of case to the High Court, it would follow,

not the procedure prescribed by Chapter XXIII, but the one prescribed by section 526(2). A bare look at section 271(1) shows that Chapter XXIII, deals with trials and that is why the section starts with "when the Court is ready to commence the trial....." Section 526(2) does not appear to use the expression 'trial' in a loose sense for sections 526(1) (i) and 526(8) use both the terms 'inquiry' and 'trial'. I am, however, not directly concerned with this problem, as it may if at all arise only later. It is sufficient to say that section 526(2) provides no indication that on such transfer there is a dispensation of the inquiry proceedings. I do not find any direction in the judgment of the Supreme Court as has been suggested on behalf of the petitioner. In the result I must hold that the learned Additional Sessions Judge was right in the view he took. The petition, therefore, fails and is dismissed. Parties will appear before the trial Court on May 3, 1966.

B. R. T.

LETTERS PATENT APPEAL

Before R. P. Khosla and Inder Dev Dua, JJ.

PRITHVI CHAND,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

L.P.A. No. 58-D of 1962.

April 21, 1966.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 40(3)—Central Government—Whether can make or amend rules with restrospective effect—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 49—Explanation added in 1960 with retrospective effect—Whether valid.

Held, that the Displaced Persons (Compensation and Rehabilitation) Act, 1954, has not only laid down the general outline of the statutory policy, purpose and scheme, but the Parliament has also retained an effective legislative control over the rule-making authority by enacting sub-section (3) of section 40. This control must remove all apprehensions—if at all there be any—that the delegation in question amounts in substance to abdication. There are several methods of retaining legislative control but the one adopted in this case brings the rules in close proximity to the provisions of the Act themselves. The Central Government, therefore, has the power to make or amend the rules with retrospective operation. The Explanation added to rule 49 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, is therefore, valid.