customary law and an adoption under the Hindu Law is that if the son is appointed under the customary law he does not lose all connections with the family. He retains the right of colatteral succession in his natural family, whereas in the case of an adoption under Hindu Law he is left with no connection with natural family." Thus, it is quite evident that once the appellant-defendant had succeeded to his natural father he could not be divested of the same on the ground that he was subsequently adopted by Mst. Jiwani.

(5) As a result of the above discussion, this appeal succeeds, the judgment and decree of the courts below are set aside, and the suit is dismissed with no order as to costs.

R. N. R.

Before D. S. Tewatia, J.

M. M. S. BEDI,—*Petitioner.*

versus

UNION TERRITORY OF CHANDIGARH and another,—
Respondents.

Criminal Misc. No. 2226-M of 1983.

May 9, 1986.

Code of Criminal Procedure (II of 1974)—Sections 256, 258 and 300—Accused summoned by Magistrate on basis of a complaint—Complainant absent on the date fixed—Magistrate acting under Section 256 dismissing the complaint in default and passing order of discharge of the accused—Complainant filing second complaint in respect of the same allegations—Effect of discharge in the first complaint—Stated—Second complaint—Whether liable to be quashed.

Held, that section 256 of the Code of Criminal Procedure, 1974, provides for the contingencies when the complainant is absent on the date fixed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned. It provides that if on the given date the complainant is absent the Magistrate shall acquit the accused unless for some reason the Magistrate considers it proper to adjourn the hearing of the case to some other date. A perusal of section 300 of the Code further

reveals that once a person is tried by a Court of competent jurisdiction and convicted or acquitted of such offence such person shall not be liable to be tried again *inter alia* for the same offence. Subsection (5) thereof bars the trial even in the case of discharge under section 258 of the Code for the same offence except with the consent of the Court in question. In this view of the matter acquittal in terms of section 256 in a summons case is to be treated as an acquittal after a full trial and as such the second complaint filed by the complainant is liable to be quashed.

(Paras 6, 7, 8 & 14)

Petition under section 482 Cr. P.C. praying that this Hon'ble Court be pleased to quash and set aside the private complaint (Annexure P. 3) filed by respondent No. 2 and the proceedings taken thereupon.

T. P. S. Mann, Advocate, *with the petitioner.*

H. S. Brar, with P. S. Teji, Advocate, *for Respondent No. 1.*

JUDGMENT

D. S. Tewatia, J. (Oral).

(1) This order would dispose of Criminal Misc. No. 2226-M of 1983 and Criminal Misc. No. 363-M of 1986, as a common question of law is involved in both these petitions. For facts, reference is made to the contents of Cr. Misc. No. 2226-M of 1983.

(2) Sham Sunder Sharma, respondent No. 2, filed a complaint under sections 499 and 500 I.P.C. in the Court of Judicial Magistrate First Class, Chandigarh, against Sarvshri M. M. S. Bedi, Rajinder Singh Raj and M. S. Malhotra. The accused were summoned by order dated 14th December, 1982, for 5th February, 1983. On that date, two of the summoned accused, namely, Rajinder Singh Raj and M. S. Malhotra were present. Summons issued to Shri M. M. S. Bedi remained unexecuted. On that date, however, the complainant did not appear. The Magistrate, therefore, in view of the provisions of section 256, Code of Criminal Procedure, 1973, hereinafter referred to as the Code, dismissed the complaint in default of prosecution and passed an order of discharge against the summoned accused.

(3) The complainant filed a second complaint against the said accused on 9th February, 1983, for the same offence and on similar

facts. The Magistrate summoned the accused on 10th February, 1983. The accused moved an application for discharging them in the second complaint. That application was dismissed by the Magistrate by his order dated 5th April, 1983, annexure P. 5. One of the said accused, namely, Shri M. M. S. Bedi has impugned his prosecution on the second complaint on the ground that in view of the provisions of section 300 of the Code second complaint for the same offence and on the same facts is not competent and the Court cannot take cognizance of such a complaint.

(4) In my opinion, this petition deserves to be allowed for reasons hereinafter detailed.

(5) The offience in question was triable as a summons case, in view of the provisions of section 2(w) of the Code which defines a 'summons case' and section 2(x) of the Code which defines a 'warrant case' — the maximum sentence in the event of conviction being only two years for the offences, as per First Schedule of the Code.

(6) Chapter XX of the Code deals with the 'Trial of Summons-cases by Magistrates'. Section 256, the relevant portion of which is in the following terms, provides for the contingency when the complainant is absent on the date fixed for appearance of the accused or on any subsequent date to which bearing is adjourned:

> "256(1). If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the bearing of the case to some other day;
>
> * * * * *."

A perusal of section 256(1) aforementioned would show that if on the given date the complainant is absent, the Magistrate shall acquit the accused unless for some reason the Magistrate considers it proper to adjourn the hearing of the case to some other date. In

the present case, the Magistrate did not think it proper to adjourn the hearing of the case to some other date and dismissed the complaint for want of prosecution and passed an order of discharge.

(7) The relevant provision of section 300 of the Code, which provides that 'person' once convicted or acquitted not to be tried for same offence' is in the following terms :

"300(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

* * * * *."

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

* * * * *."

A perusal of sub-section (1) of section 300 of the Code aforesaid reveals that once a person is tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence and while such conviction or acquittal remains in force, such person was not liable to be tried again, *inter alia,* for the same offence. Sub-section (5) bars trial even in the case of discharge under section 258 of the Code for the same offence, except with the consent of the Court in question.

(8) This Court in two cases viz. *Harbhagwan Dass* v. *Daljit Singh* (1); and the *State of Punjab* v. *Surjit Singh and another*, (2), has held that acquittal in terms of section 256—in a summons case—is to be treated as acquittal after a full trial.

(1) 1972 P.L.R. 489.
(2) 1977 C.L.R. 73.

(9) It has, however, been urged on behalf of the respondent that since, while dismissing the first complaint the order passed *qua* the accused was of 'discharge' and not of 'acquittal', so the second complaint would not be barred by the provision of section 300 of the Code which creates a bar for the second prosecution only when a person is 'convicted' or 'acquitted' and in the case of 'discharge' only if the discharge is under section 258 of the Code and not otherwise.

(10) In my opinion, there is no merit in this contention. Under section 256 of the Code, the accused has to be 'acquitted' and not 'discharged'. The use of wrong expression in the order would be of no consequence and the said order of discharge has to be read as an order of acquittal. If any authority is needed for the said proposition, reference can be made to *Bhim Sain* v. *Pritam Singh* etc. (3), and *Guest Keen William Ltd.* v. *Murari Lal and another*, (4).

(11) It was next contended that in view of the following explanation to section 300 of the Code the discharge of the accused would not amount to acquittal for the purpose of section 300 :

> "The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section"

There is no merit in this contention also, for the simple reason that in the present case one is not deeming an order of discharge to be an order of acquittal as in this case the order is an order of acquittal and, in any case, ought to have been an order of acquittal.

(12) Counsel for the respondent cited two judgements : *Rayappa and others* v. *Shivamma* (5), and *Mohammad Safi* v. *The State of West Bengal* (6), in support of the proposition that the

(3) 1978 C.L.R. (J. & K.) 50.
(4) 1984(11) C.L.R. 285.
(5) A.I.R. 1964 Mysore 1.
(6) A.I.R. 1966 S.C. 69.

discharge of the accused does not bar a second trial for the same offence on the same facts.

(13) The above cited two cases relate to the discharge of the accused in a warrant-case. Hence, these two decisions are of no avail to the respondent.

(14) For the reasons aforementioned, the petition is allowed and the second complaint is quashed.

H. S. B.

Before : S. P. Goyal & Pritpal Singh, JJ.

RAKSHA RANI,—*Appellant.*

versus

RAM LAL,—*Respondent.*

Regular Second Appeal No. 1288 *of* 1982.

May 27, 1986.

Code of Civil Procedure (V of 1908)—Section 96, Order XXIII, Rule 3—Evidence Act (I of 1872)—Section 3—Parties in a Civil Suit entering into a compromise—Statement of the parties recorded in Court and duly signed by them—Decree passed however not strictly in terms of the compromise—Appeal against such a consent decree—Whether maintainable—Consent decree passed within the jurisdiction of the Court and in terms of Order XXIII, Rule 3—No material irregularity pointed out in the order of the Court passing the decree—Appeal filed against the decree—Whether can be treated as a revision instead.

Held, that sub-section (3) of Section 96 of the Code of Civil Procedure, 1908 is categoric in its terms. It lays down in unambiguous words that no appeal shall lie from a decree passed by the Court with the consent of the parties. The only reasonable interpretation of this provision is that against a consent decree no appeal is maintainable in any circumstances. Even when the trial Court erroneously passes a consent decree which is not strictly on the basis of a compromise arrived at between the parties it remains a consent decree and is not appealable. The error if any which crept in at the instance of the Court passing the decree can be