The Central Government is prohibited from issuing the quota to the Delhi Administration. The petitions are partly allowed to the extent indicated above; but there will be no order as to costs.

M/s Jaswant Sugar Mills Ltd. *v.* Union of India and others

Mahajan, J.

B.R.T.

REVISIONAL CRIMINAL

Before Gurdev Singh, J.

DALIP SINGH,—*Petitioner*

versus

R. P. BISWAS,—*Respondent*

Criminal Revision No: 262-D of 1964:

1965

March, 30th.

Code of Criminal Procedure (Act V of 1898)—Ss. 204 (1-A), 252(2) and 540—Complaint relating to warrant case—Complainant—Whether entitled to examine witnesses other than those mentioned in the list of witnesses filed with the complaint or submitted under section 204(1-A).

Held, that even if a witness is not named in the list which is furnished with the complaint or before the process is issued against the accused, the complainant is entitled to add the names of his witnesses and approach the Court for summoning them when under sub-section (2) of section 252, the names of his witnesses are ascertained from him by the Court. Though after the amendment of the year 1955, a separate procedure is prescribed for cases instituted on private complaint and those on the report of the police, sub-section (1-A) of section 204 of the Criminal Procedure Code, which provides that no summons or warrant shall be issued against the accused under sub-section (1) of section 204, until a list of prosecution witnesses has been filed, applies to both categories of cases, whether instituted on a police report or a private complaint. Thus, so far as the cases instituted on complaints are concerned, the list furnished with the complaint is not the final list and it can be added to at least at the time the complainant, before the framing of charges, is questioned by the Magistrate under sub-section (2) of section 252 of the Criminal Procedure Code to ascertain from the complainant the names of the persons who are acquainted with the facts of the case. But once the prosecution closes its "pre-charge" evidence, it tantamounts to a statement under sub-section (2) of section 252 of the Code of Criminal Procedure, that excepting the witness, named in the list filed with the complaint, there was no other witness who was able to give evidence for the prosecution and thereafter the complainant is not entitled to add to the list of his witnesses. This, however, does not affect the power of the magistrate to examine a witness under section 540 of the Code of Criminal Procedure.

Petition for revision under section 439 of the Code of Criminal Procedure from the order of Shri P.P.R. Sawhney, Sessions Judge, Delhi, dated 17th August, 1964, confirming that of Shri V. K. Kapur, S. D.M., New Delhi, dated 12th May, 1964, permitting the respondent to adduce evidence of 3 additional witnesses.

PURAN CHAND MEHTA, ADVOCATE, for the Petitioner.

K. L. ARORA, ADVOCATE, for the Respondent.

ORDER

Grudev Singh, J. GURDEV SINGH, J.—This is a petition for revision against the order of Shri V. K. Kapur, Sub-Divisional Magistrate, New Delhi, dated the 12th May, 1964, whereby he permitted the respondent (complainant) to examine three witnesses who were not named in the list of prosecution witnesses filed with the complaint.

On 19th October, 1962, Ram Lubhaya, P.W. was examined, who, according to the petitioner's learned counsel, did not support the prosecution. Thereafter the case was transferred to the Court of Shri M. L. Kakkar, Sub-Divisional Magistrate, New Delhi, and it was on 17th May, 1963, that the evidence of Laxman Das, another prosection witness, was taken. The petitioner made an application to summon a file for the purpose of cross-examination of this witness on 7th June, 1963, with the object of bringing out that the witness had been coerced into making a statement favourable to the prosecution as the Customs Authorities had raided his premises on 30th April, 1963, prior to his coming into the witness-box. This application was rejected by the trial Court, and on the petitioner's transfer application, the case was sent to the Court of Shri S. C. Vaish, Sub-Divisional Magistrate, New Delhi. On 8th January, 1964, when the case was taken up by Shri S. C. Vaish, Magistrate First Class, the complainant examined three witnesses, whose names appeared in the list furnished with the complaint, but those witnesses could not be cross-examined as the counsel for the accused was absent. The complainant, however, closed his case, and the learned Magistrate adjourned further proceedings to 21st January, 1964, for consideration of the question of framing the charge.

In the mean time, the accused again moved the Court of Session for transfer. The learned Sessions Judge, Delhi, by his order, dated the 12th March, 1964, however, rejected his prayer for transfer but directed the Magistrate to recall the three witnesses whom the complainant had already examined, so that the accused should have an opportunity to cross-examine them. Before those witnesses could be recalled, or the question of framing the charge considered by the Magistrate the complainant put in an application purporting to be under section 252 of the Criminal Procedure Code on 19th April, 1964, for permission to summon three additional witnesses, namely, Shri G. D. Thapar, Inspector of Customs, Shri B. N. Soni and Shri Trilok Chand (who were never named in the list of witnesses filed with the complaint) on the plea that they had to prove the statement of the accused alleged to have been recorded by the Customs Officer, which was one of the documents filed with the complaint. This belated request for adding to the list of the complainant's witnesses was sought to be justified on the plea that it was an unfortunate omission from the list of witnesses filed with the complaint, and their evidence in the case had become necessary as the order of the learned Sessions Judge directing the recalling of three witnesses, who had already been examined, had brought about a complete change of circumstances, and it necessitated formal proof of his statement".

This application was granted by the learned Magistrate on 12th May, 1964, when he directed that the three witnesses who had already been examined be recalled for cross-examination for 3rd June, 1964, and the three additional witnesses to whom this application related would be summoned on the next hearing. Aggrieved by this order, the accused Dalip Singh moved the Court of Session under Section 435 of the Criminal, Procedure Code, but the learned Sessions Judge refused to forward the case to this Court being of the opinion that the order of the Magistrate was not beyond his competence nor unjust. Thereupon Dalip Singh approached this Court for setting aside the order of the Magistrate, dated 12th May, 1964, whereby he had permitted the complainant to examine three witnesses whose names did not appear in the list filed with the complaint.

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The petitioner's learned counsel, Mehta Puran Chand, has contended that the Magistrate had no power to allow any witness to be summoned at the instance of the complainant whose name did not appear in the list furnished by him under sub-section (1-A) of section 204 of the Criminal Procedure Code, as no such power is given to him under the provisions of that Code, and in any case, he gravely erred in summoning the witnesses when the application for summoning them had been made after an inordinate delay of about three years during which the case has been hanging fire in the Magistrate's Court. It is true, as stated earlier, that the complaint was instituted as far back as 20th July, 1961, and the application for summoning additional witnesses was moved by the complainant on 19th April, 1964, but at the same time it is a fact that during all this time there was no appreciable progress in the case and when the application for examining additional witnesses was moved by the complanant, the case was still at the stage of framing a charge against the petitioner. The facts appearing on the record disclose that this delay in the disposal of the case was not due to any misconduct of the complainant but mostly because of the dilatory tractics resorted to by the accused himself. Thus, if it is once found that the Magistrate had the power to summon and examine witnesses of the complainant apart from those whose names appear in the list furnished with the complaint, the delay in making the application would not stand in his way.

The first question for consideration before me is whether a Magistrate dealing with a complaint relating to a warrant case has power to allow certain witnesses to be examined at the instance of the complainant whose names are not found in the list which the complainant may have furnished with the complaint or which he was called upon to furnish under sub-section (1-A) of section 204 of the Criminal Procedure Code. There is no reported decision of this Court on this point. Reference may here be made to the two decisions cited by the respondent's learned counsel in defence of the Magistrate's order. In *K. Somasundaram V. Gopal and another* (1) a

(1) A.I.R. 1958 Mad. 241.

Division Bench of the Madras High Court held that the list filed under section 204(1-A) can be added to by supplemental lists accompanied by applications to the Court to summon those new witnesses. Such supplemental lists can be in addition to all the witnesses in the primary list filed by the private complainant under section 204(1), Criminal Procedure Code, or in addition only to such of the witnesses in the primary list whom he desides to examine. In dealing with this matter, the learned Judges referred to the provisions of section 252 and 244 of the Criminal Procedure Code. A similar question cropped up before a learned Judge of the Allahabad High Court in *Shubrati Khan* v. *State* (2), in course of the trial of a summons case, to which section 244 of the Criminal Procedure Code applies, and M. C. Desai, J. held that the power of a Magistrate to summon witnesses in summons cases is fully and exhaustively laid down in section 244 and that power is wide enough to include issuing summons against witnesses other than those mentioned in the list prepared under secion 204(1-A) also. The learned Judge further observed that the Magistrate was bound to hear all witnesses produced by the complainant in support of the prosecution, and section 204(1-A) only imposed a condition on the issue of summons against the accused, and once a summons is issued, it ceases to be of any relevancy and does not govern the subsequent procedure.

Later, similar view was expressed by a learned Judge of the Rajasthan High Court in *Nathia and another* V. *Sonia and others* (3). Dealing with the scope of section 244 of the Criminal Procedure Code, Modi, J., expressed himself in these words:—

> "I am unable to hold that section 204(1-A), which, after all is said and done, provides no more than that no summons or warrant shall be issued against the accused under section 204(1) until a list of the prosecution witnesses has been filed, does not and cannot override section 244(1). This last-mentioned section imposes a duty on the Magistrate to take all such evidence as may be produced in support of the prosecution, and it clearly seems to me that where such witnesses

(2) A.I.R. 1960 All. 344.
(3) A.I.R. 1961 Raj. 42.

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are material and are present in Court and are sought to be produced, their evidence cannot be shut out merely on the ground that their names were not mentioned in the list."

A single Bench decision of a learned Judge of the Bombay High Court has come to my notice, which has some bearing on the controversy that has arisen in this case. In *State of Bombay* V. *Janardhan and others* (4). Raju J. expressed the opinion that on combined reading of sections 204(1-A), 252(1) (a) and 256 of the Criminal Procedure Code, it appears that in cases instituted otherwise than on a police report, the complainant is restricted to the examination of witnesses whose names are given in the list under section 204(1-A), but at the same time in a proper case the list can be added to with the permission of the Court and that permission could not be given if it is likely to result in prejudice to the case of the accused or is otherwise not in the interest of justice.

On behalf of the petitioner reliance is placed solely on the Full Bench decision in *Heman Ram alias Hem Raj* v. *Emperor* (5). That was a case prior to the amendment of various provisions of the Code of Criminal Procedure effected by the Parliament by Act 26 of 1955. Prior to this amending Act, there was no distinction between the trial of cases instituted on private complaints and cases started in Court on police reports. The question that arose before the Full Bench was about the meaning of the expression "remaining witnesses" used in sub-section (1) of section 256 of the Criminal Procedure Code, whom the Magistrate was bound to examine for the prosecution after the framing of the charge. Taking note of the fact that according to the form prescribed in Punjab in cases instituted on police report submitted under section 173 of the Code, the police were required to submit a list of all the witnesses for the prosecution alongwith the challan, the learned Judges of the Full Bench ruled that the mere existence of this list did not relieve the Magistrate of the duty to ascertain the names of the witnesses under section 252 (2) of the Criminal Procedure Code, and he was found to question the complainant or the offier-in-charge of the prosecution about the matter. It was further laid down that

(4) A.I.R. 1960 Bom. 513.
(5) A.I.R. 1945 Lah. 201.

where before the charge is framed all the witnesses mentioned in the list examined and the complainant or the officer-in-charge of the prosecution made a statement that he closed his case and had no further witnesses to examine, the Magistrate could treat such statement as tantamount to a statement that there were no other person acquainted with the facts of the case who may be able to give evidence for the prosecution, and he need not specifically question the complainant or the officer-in-charge of the prosecution on the matter. In this view of the matter, it was ruled by the Full Bench that when before the charge is framed, the list of persons who may be able to give evidence for the prosecution has been ascertained under section 252(2), no fresh witnesses can be examined by the prosecution under section 256 after the charge is framed, and the prosecution can only apply to the Magistrate to examine them under section 540, under which provision the Magistrate has a discretion in the matter. Dealing with the powers of the Magistrate under section 254, Munir, J., delivering the opinion of the Full Bench took the view that under that provision of law the Magistrate may examine all those witnesses whose names have been ascertained under section 252(2) and then frame a charge or he may frame a charge before he has examined all these witnesses, but if he adopts the latter course and certain witnesses remain from the list who have not been examined, then those witnesses are the remaining witnesses under section 256(1) and the complainant has a right to produce them after the cross-examination of those witnesses who have been previously examined. Proceeding further, the learned Judge said:—

> "But if the Magistrate has examined all the witnesses for the prosecution in the list under section 252(2) and has then framed a charge sheet there are no witnesses remaining who could come under the description in section 256(1) and the only section under which the prosecution can claim to have the evidence of new witnesses recorded is section 540 under which the Magistrate has a discretion."

The effect of this decision, in my opinion, is that even if a witness is not named in the list which is furnished with the complaint or before the process is issued against the

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accused, the complainant is entitled to add the names of his witnesses and approach the Court for summoning them when under sub-section (2) of section 252 the names of his witnesses are ascertained from him by the Court. Though after the amendment of the year 1955, separate procedure is prescribed for cases instituted on private complaint and those on the report of the police, sub-section (1-A) of section 204 of the Criminal Procedure Code, which provides that no summons or warrant shall be issued against the accused under sub-section (1) of section 204 until a list of prosecution witnesses has been filed, applies to both categories of cases, whether instituted on a police report or a private complaint. Thus, so far as the cases instituted on complaints are concerned, according to the Full Bench decision, on which reliance is placed on behalf of the petitioner, the list furnished with the complaint is not the final list and it can be added to at least at the time the complainant, before the framing of charges, is questioned by the Magistrate under sub-section (2) of section 252 of the Criminal Procedure Code to ascertain from the complainant the names of the persons who are acquainted with the facts of the case. Consequently, it is obvious that the contention of the petitioner's learned counsel that the list of witnesses once submitted by the complainant is final for all times and cannot be added to at any stage is not tenable so far as cases instituted on a complaint are concerned.

It is true that in the year 1945, when the matter was considered by the Full Bench of the Lahore High Court, there was no such provision, as is now contained in sub-section (1-A) of section 204 of the Code of Criminal Procedure, requiring the complainant or the police to put in a list of its witnesses, yet the introduction of this provision by the amending Act 26 of 1955, in my opinion, does not affect the applicability of the rule laid down by the Full Bench in cases instituted on a complaint, as sub-section (2) of section 252 of the Criminal Procedure Code, which enjoins upon a Magistrate to ascertain from the complainant the names of any person likely to be acquainted with the facts of the case and able to give evidence for the prosecution, has remained as it was in the year 1945. The argument that this provision in section 252 of the Criminal Procedure Code was left unamended because of oversight cannot be entertained, and the Court cannot ignore what

is still on the statue book. Of course, as observed by the Full Bench, if before the case was adjourned for framing the charge the complanant had closed his evidence or stated that he did not wish to examine any further evidence in support of his case, that would be treated as a statement that no person other than those named in the list was "acquainted with the facts of the case and to be able to give evidence for the prosecution."

On reference to the record of the trial Court, I find that in the Magistrate's order, dated 18th January, 1964, by which the case was adjourned to 21st January, 1964, to hear arguments on the question of framing the charge, it is expressly recorded that the prosecution had closed its "pre-charge" evidence. This is tantamount to a statement under sub-section (2) of section 252 of the Criminal Procedure Code that excepting the witnesses named in the list filed with the complaint there was no other witness who was able to give evidence for the prosecution. In these circumstances, applying the rule laid down by the Full Bench in *Heman Ram's case,* by which I consider myself bound, I find no escape from the conclusion that the complainant is not entitled to add to the list of his witnesses, and the order of the trial Court summoning G. D. Thappar, B. N. Soni and Tarlok Chand is not sustainable in law. I, accordingly, accept the petition, and setting aside the order, dated the 12th May, 1964, direct that the records be returned to the trial Court for further proceedings in accordance with law. This, however, will not affect the power of the Magistrate to examine a witness under section 540, C.P.C., if any case for exercise of such power is made out at any stage of the case. The proceedings in the trial Court had been unduly protracted, and a part of the blame for the delay in the disposal of the case does rest on the complainant who had not been prompt in producing his evidence. The petitioner who is stated to be residing at a distant place is bound to feel harrassment by frequent adjournments of the case. The learned trial Magistrate shall see that there is no undue adjournment and the trial of the case is completed without further delay.

Before leaving I would like to observe that the view which I have taken with regard to the applicability of the Full Bench decision in *Heman Ram's case,* is confined only

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to the cases instituted on a complaint. At present, I am not called upon to consider, and I am not expressing any opinion on the question whether the same rule applies to cases brought on a police report, for which a different and distinct procedure was introduced by the amendment Act 26 of 1955. In dealing with a similar question, if it arises in a case instituted on a police report, the absence of a provision similar to sub-section (2) of section 252 of the Criminal Procedure Code and the fact that under the amended law the prosecution has to supply copies of the documents upon which it relies and the statement of its witnesses recorded under section 161 of the Criminal Procedure Code will have to be taken into account.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua, J.

JAGIR SINGH,—*Petitioner*

versus

SURJAN SINGH AND 9 OTHERS,—*Respondents*

Civil Revision No. 515 of 1964:

1965

April, 2nd.

Code of Civil Procedure (Act V of 1908)—Order 16 Rule 1—Right of the parties to summon and produce witnesses—Duty of the Court to facilitate production of evidence by the patries to administer justice according to law emphasised—Orders of Courts—Language of.

Held, that Order 16, Rule 1 of the Code of Civil Procedure, 1908, entitles the parties at any time after the suit is instituted to obtain, on an application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents. It is thus clear that a party is, generally speaking, entitled as of right to summonses to witnesses and if an application is made for the purpose, the court has to issue the summonses, though, of course, if the application is belated and the witnesses are for this reason not present, the court is fully competent to decline to adjourn the case for their attendance. Again if the application is not *bona fide* and is an abuse of the process of the Court, then the Court may be held to be possessed of inherent power to refuse to summon the witnesses. The proviso added to