

SATVINDER SINGH @ SATVINDER SINGH SALUJA & ORS. A

v.

THE STATE OF BIHAR

(Criminal Appeal No. 951 of 2019)

JULY 01, 2019 B

[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]

Bihar Excise Act, 1915:

ss. 2(17A) and 53(a) [as inserted by Bihar Excise (Amendment) Act, 2016] – Offence of Consumption of liquor in public place – Cognizance taken – Application u/s. 482 Cr.P.C. for quashing the proceedings – Dismissal of – Appeal to Supreme Court – Held: The vehicle in which the accused were travelling would come within definition of ‘Public Place’ as defined in s. 2(17A) – However, whether the charge that consumption of liquor took place within the State of Bihar, needs to be decided by the Magistrate – The accused shall be at liberty to file application for discharge before the Magistrate – Bihar Prohibition and Excise Act, 2016 – s. 37(b). C D

Disposing of the appeal, the Court

HELD : 1.1 Definition of ‘place’ as contained in Section 2(17) of Bihar Excise Act, 1915, is the inclusive definition which specifically includes “vehicle”. When word ‘place’ includes vehicle the words ‘public place’ have to be interpreted in the same light. What Section 2(17A) defines is that a ‘public place’ means any place to which public have access, whether as a matter of right or not and includes all places visited by general public and also includes any open space. The key words are ‘any place to which public have access’, which phrase is further qualified by phrase “whether as a matter of right or not”. [Para 21] [820-A-C] E F

1.2 Under the Bihar Excise Act, 1915 prior to Bihar Excise (Amendment) Act, 2016 there was no definition of ‘public place’. In the notification dated 29.07.1978 issued by the State of Bihar in exercise of power under Section 19(4) word ‘public place’ was defined. The same definition of public place was contained in G

- A subsequent notifications dated 27.03.1979 and 19.09.1980. The State Government in the above notifications defined ‘public place’ as “any place intended for use by or accessible to the public and shall include any public conveyance”. It is clear that private conveyance was not included in the notification and State did not prohibit possession and consumption of any intoxicant in a ‘private conveyance’ under the aforesaid notifications. But the above notifications are no more relevant after the Bihar Excise (Amendment) Act, 2016 which Amendment was brought in the statute to implement the Bihar Excise Policy, 2015. The Bihar Excise Policy, 2015 was framed by the State to implement prohibition effectively. [Paras 23, 24] [820-F-G; 821-B-D]

- 1.3 The private vehicle of the appellants was intercepted when it was on the public road. When private vehicle is passing through a public road it cannot be accepted that public have no access. It is true that public may not have access to private vehicle as a matter of right but definitely public have opportunity to approach the private vehicle while it is on the public road. Hence, it cannot be said that vehicle in which appellants were travelling was not covered by definition of ‘public place’ as defined in Section 2(17A) of Bihar Excise Act, 1915 as inserted by the Bihar Excise (Amendment) Act, 2016. [Para 22] [820-E]

- 1.4 The omission of public conveyance in the definition of Section 2(17A) brought by the Bihar Excise (Amendment) Act, 2016 also indicates that the difference between public conveyance and private conveyance was done away in the statutory amendment. Therefore, it cannot be said that private conveyance will be excluded from the definition of ‘public place’ as contained in Section 2(17A). [Para 25] [821-D-E]

Manikandan v. State of Kerala (1999) 2 KLT 592
– referred to.

- G *Black Law’s Dictionary* – referred to.

2. The word ‘consumes’ is a verb transitive. When the word ‘consumes’ is followed by liquor, the action denoted by verb passes over from the doer to object i.e. liquor to constitute the offences within the meaning of Section 53(a). The action of

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consumption of liquor has to happen within the State of Bihar. A person who consumes liquor in a different State cannot be fastened with a penalty under Section 53(a) unless there is some evidence to prove that consumption of liquor by the accused has taken place in the State of Bihar. As per Bihar Prohibition and Excise Act, 2016 even if a person consumes liquor outside the State of Bihar and enter into the territory of Bihar and is found drunk or is in a state of drunkenness, he can be charged with offences under Section 37(b). But no offence as now contemplated by Section 37(b) was provided for in Bihar Excise (Amendment) Act, 2016. Thus, the consumption of liquor has to be in the State of Bihar. However, whether the charge that consumption of liquor has taken place within the State of Bihar is made out in the facts of the present case are questions which need to be decided by the Magistrate after looking into the materials brought on record by means of the chargesheet. The ends of justice will be served in providing that appellants shall be at liberty to file an application to discharge before the Magistrate who after considering the materials on record shall decide the said application of discharge in accordance with law. [Paras 27, 28] [822-F; 823-A-E]

Confederation of India Alcoholic Beverage Companies & Anr. v. Manoj Kumar & Ors. 2016 (4) PLJR 369 – referred to.

Case Law Reference

2016 (4) PLJR 369	referred to	Para 8
(1999) 2 KLT 592	referred to	Para 25

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 951 of 2019.

From the Judgment and Order dated 16.02.2018 of the High Court of Judicature at Patna in Criminal Miscellaneous Application No. 23009 of 2017.

Rahul Shyam Bhandari, Akash Sinha, Ms. Bhavya Vijay Tangri, A. Siva, Advs. for the Appellants.

Shivam Singh, Gopal Singh, Advs. for the Respondent.

A The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Leave granted.

2. This appeal has been filed against the judgment dated 16.02.2018 of the High Court of Patna dismissing the application of the appellants filed under Section 482 Cr.P.C. for setting aside the order dated 30.04.2016 passed by the Judicial Magistrate, Nawada in Rajauli Excise Case No.316 of 2016 by which he has taken cognizance of the offence punishable under Section 53(a) of the Bihar Excise (Amendment) Act, 2016. The appellants aggrieved by the order of the High Court have come up in this appeal.

C 3. Brief facts of the case necessary to be noticed for deciding this appeal are:

The appellants, all Rotarians, were travelling from Giridih, Jharkhand to Patna, Bihar to attend a meeting of Rotary Club on 25.06.2016. The appellants were travelling by vehicle No.JH-11K/8146. The vehicle was stopped for routine checkup at Rajauli Check Post, District Nawada, State of Bihar by one Sachidanand, Bharati, Sup-Inspector Excise. Nothing incriminating nor any liquor was found in the vehicle in which appellants were travelling. The appellants were subjected to breath analyser test in which test as per the prosecution case certain quantity of alcohol was found. The appellants were arrested and remained in custody for two days. First Information Report was lodged on 25.06.2016 on which Excise Case No.316 of 2016 was registered. The Chief Judicial Magistrate, Nawada took cognizance by order dated 30.07.2016. The appellants filed application under Section 482 Cr.P.C. praying for setting aside the order dated 30.07.2016 passed by the Chief Judicial Magistrate taking cognizance. The High Court vide its order dated 16.02.2018 dismissed the application under Section 482 Cr.P.C. aggrieved by which order this appeal has been filed.

4. We have heard learned counsel for the appellants as well as Shri Shivam Singh, appearing for the State of Bihar.

G 5. Learned counsel for the appellants submits that no offence was made out under Section 53(a) of the Bihar Excise (Amendment) Act, 2016. The Chief Judicial Magistrate committed an error in taking cognizance of the offence. It is submitted that the appellants were travelling in their vehicle from Giridih, State of Jharkhand to Patna, State of Bihar to attend a Rotary Club meeting. The vehicle in which they

were travelling cannot be said to be public place within the meaning of Section 2(17A) of Bihar Excise (Amendment) Act, 2016. Further, ingredient of Section 53(a) regarding consumption of liquor in a public place is not satisfied. It is further submitted that in the search no liquor bottles or any other incriminating materials were found which is also mentioned in the report. Hence, ingredient of offence that liquor is consumed is not satisfied.

6. Learned counsel for the appellants has referred to provision of Section 2(54) of Bihar Prohibition and Excise Act, 2016 in which public place has been defined which includes any transport, whether public or private. Thus, as per definition under Section 2(54) of Bihar Prohibition and Excise Act, 2016 a private vehicle is also a public place which definition was not there in Bihar Excise (Amendment) Act, 2016. It is further submitted Section 37 provides for penalty for consumption of liquor where now it is also an offence if a person is found drunk or in a state of drunkenness at any place, whereas under Bihar Excise (Amendment) Act, 2016 there was no such offence in Section 53 of the Act. The word 'consumed' shall be interpreted in the present continuous tense.

7. Learned counsel for the State of Bihar refuting the submission of the learned counsel for the appellants contends that Bihar is a State where prohibition is imposed under Section 19(4) of the Bihar Excise (Amendment) Act, 2016, there being prohibition in the entire State of Bihar anyone found violating the prohibition has to be treated as having committed offence. It is submitted that vehicle of the appellants was intercepted at a public road, hence, the appellants are not correct in their submission that they were not intercepted at a public place. It is submitted that ingredients of Section 53(a) of the Bihar Excise (Amendment) Act, 2016 are fully satisfied and no error has been committed by the Chief Judicial Magistrate in taking cognizance.

8. It is further submitted by the learned counsel for the State that the notification dated 05.04.2016 imposing prohibition issued under Section 19(4) of Bihar Excise (Amendment) Act, 2016 was challenged in the High Court and the Division Bench of the Patna High Court vide its judgment dated 30.09.2016 set aside the notification dated 05.04.2016 in **Confederation of India Alcoholic Beverage Companies & Anr. vs. Manoj Kumar & Ors., 2016(4) PLJR 369**, which judgment has been stayed by this Court by order dated 07.10.2016 in SLP(C)No. 29749-

A 29763 of 2016, **State of Bihar and ors. etc.etc. vs. Confederation of Indian Alcoholic Beverage Companies and Anr. etc.etc.**, which restored back the legal position as existed after Bihar Excise(Amendment) Act, 2016.

B 9. Learned counsel for the State submits that before the High Court the appellants had made only submission regarding competence of Chief Judicial Magistrate to take cognizance which submission was rejected.

10. We have considered the submissions of the learned counsel for the parties and have perused the records.

C 11. We recapitulate the facts again. The appellants were enroute by vehicle No. JH-11K/8146 from Giridih, State of Jharkhand to Patna, State of Bihar. Their vehicle was stopped and searched in Rajauli, Nawada. In the search of the vehicle no kind of excise article was recovered but the persons who were sitting inside the vehicle were subjected to breath analyser test and with regard to driver and two other persons alcohol was not found but with regard to appellants alcohol was found and they were taken into custody. A chargesheet was filed by the Additional Inspector, Excise under Section 53(a) of Bihar Excise(Amendment) Act, 2016 and cognizance was taken on 30.07.2016.

E 12. We may now refer to the relevant statutory provisions which were in force at the relevant time, i.e., 25.06.2016. The Legislation which was current at the time of incident was the Bihar Excise Act, 1915. The word 'place' was defined under Section 2(17) of the Act, 1915 which is to the following effect:

F "Section 2(17) "place" includes building, house, shop, booth, vessel, raft, vehicle or tent;"

G 13. In the State of Bihar although Bihar Prohibition Act, 1938 had been enacted but the said Act had not been enforced. The State Government introduced in the year 2015 an Excise Policy known as New Excise Policy, 2015. The New Excise Policy contemplated implementation of total prohibition in a phased manner. To achieve the objective of New Excise Policy, 2015 amendments were made in Bihar Excise Act, 2015 by Bihar Excise(Amendment) Act, 2016 (Bihar Act 3 of 2016) Gazetted on 31.03.2016. By Section 2(17A) definition of 'Public Place' was inserted in the following manner:

“Section 2(17A)- Public Place means any place to which public have access, whether as a matter of right or not and includes all places visited by general public and also includes any open space.” A

14. In Section 19 of the Act, sub-section (4) was substituted in the following manner:

“sub-section(4)- Notwithstanding anything contained in this Act and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the State Government may by notification, absolutely prohibit the manufacture, bottling, distribution, sale, possession or consumption by any manufactory, bottling plant, license holder or any person in the whole State of Bihar or in any specified local area in respect of all or any of the intoxicants either totally or subject to such conditions as it may prescribe.” B C

15. Chapter VIII of the Bihar Excise Act, 1915 dealt with “Offences and Penalties”, by Bihar Excise(Amendment) Act, 2016 a new Section 53- ‘Penalty for consumption of liquor in public place’ has been inserted. Section 53 of the Bihar Excise(Amendment) Act, 2016 is as follows: D

“53- Penalty for consumption of liquor in public place. –
Whoever, in contravention of this Act or the rules, notification or order made there under - E

(a) consumes liquor in a public place or an unauthorized place; or
(b) consumes liquor in a public place or an unauthorized place or an authorized place and creates nuisance; or

(c) permits drunkenness or allows assembly of unsocial elements in his premises or on the premises of liquor establishment; F

shall be punishable,

(1) in case of an offence falling under clause (a), with a term which shall not be less than five years but which may extend to seven years and with fine, which shall not be less than one lakh rupees which may extend to ten lakh rupees. G

(2) In case of an offence falling under clause (b) with a term which shall not be less than seven years but which may extend to ten years and with fine, which shall not be less than one lakh rupees which may extend to ten lakh rupees. H

A (3) In case of an offence falling under clause (c), with a term which shall not be less than ten years but which may extend to imprisonment for life and with fine, which shall not be less than one lakh rupees which may extend to ten lakh rupees.”

B 16. It is also relevant to note that under Section 19 sub-Section (4) a notification dated 05.04.2016 was issued by the State of Bihar imposing total prohibition on foreign liquor. By notification dated 01.04.2016 prohibition on country liquor was already enforced.

C 17. The State Legislature enacted Bihar Prohibition and Excise Act, 2016 to enforce, implement and promote complete Prohibition of liquor and intoxicants in the territory of the State of Bihar. The preamble of the Act is as follows:

“AN ACT to enforce, implement and promote complete Prohibition of liquor and intoxicants in the territory of the State of Bihar and for matters connected therewith or incidental thereto.

D Whereas it is expedient to provide for a uniform law relating to Prohibition and regulation of liquor and intoxicants, the levy of duties thereon and punishment for the violation of law in the State of Bihar;”

E 18. In the Bihar Prohibition and Excise Act, 2016, the definition of ‘place’ and ‘Public Place’ has been changed to the following effect:

“Section 2(53) “place” includes building, house, shop, boat, booth, vessel, raft, vehicle, conveyance or tent enclosure;

F (54) “Public Place” means any place to which public has access whether as a matter of right or not and includes all places visited by public and also includes any open space or any transport, whether public or private;”

G 19. In the definition clause 2(54) specific inclusion of “any transport, whether public or private” has been made. In place of Section 53 which provided for penalty for consumption of liquor in public place, a new section, namely, Section 37 providing for ‘penalty for consumption of liquor’ has been introduced. Section 37 of the Act, 2016 is as follows:

“Section 37. **Penalty for consumption of liquor.**—Whoever, in contravention of this Act or the rules, notification or order made there under -

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- (a) consumes liquor or intoxicant in any place; or A
- (b) is found drunk or in a state of drunkenness at any place; or
- (c) drinks and creates nuisance or violence at any place including in his own house or premises; or
- (d) permits or facilitates drunkenness or allows assembly of drunken elements in his own house or premises; B

shall be punishable,

- (1) in case of an offence falling under clause (a) and (b), with a term which shall not be less than five years but which may extend to seven years and with fine, which shall not be less than one lakh rupees which may extend to ten lakh rupees. C
- (2) In case of an offence falling under clause (c) and (d), with a term which shall not be less than ten years but which may extend to imprisonment for life and with fine, which shall not be less than one lakh rupees which may extend to ten lakh rupees. D

Explanation (a)– “Consuming intoxicant” includes consumption of any medicine or any ingredient of a medicine or medicinal preparation that may have an intoxicating effect.

Explanation (b)- “drunkenness” includes drunkenness due to any medicine or medicinal preparation.” E

20. We now proceed to consider the submissions made by the learned counsel for the parties in support of their respective cases.

21. The first submission which has been raised by the learned counsel for the appellants is that even if it is presumed that they were found intoxicated on 25.06.2016 while travelling by their private vehicle, their vehicle cannot be treated to be a public place hence, Section 53(a) shall not be applicable. Learned counsel has emphasised on the specific inclusion of “any transport, whether public or private” in definition clause of Section 2(54) of the Bihar Prohibition and Excise Act, 2016 which clearly indicates that said concept was not present in the definition of ‘public place’ introduced by Section 2(17A) by Amendment Act, 2016. On first blush, the submission of the appellants seems to be correct but on a closer scrutiny we are unable to subscribe to the above submission. It is true that the earlier definition of ‘public ‘place’ as contained in F
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- A Section 2(17A) did not include any transport, whether public or private, but we have to examine as to whether the definition of ‘public place’ as introduced by Section 2(17A) shall include a private vehicle. We have noticed that definition of ‘place’ as contained in Bihar Excise Act, 1915, Section 2(17) is the inclusive definition which specifically includes “vehicle”. When word ‘place’ includes vehicle the words ‘public place’
- B have to be interpreted in the same light. What Section 2(17A) defines is that a ‘public place’ means any place to which public have access, whether as a matter of right or not and includes all places visited by general public and also includes any open space. The key words are ‘any place to which public have access’, which phrase is further qualified
- C by phrase “whether as a matter of right or not”. Whether public have access to private vehicle or not is a question to be answered. The word ‘access’ is defined in Black Law Dictionary Dictionary in the following words:

- D “**access** – A right, opportunity, or ability to enter, approach, pass to and from, or communicate with access to the courts.”

- E 22. We have to further take into notice that private vehicle of the appellants was intercepted when it was on the public road. When private vehicle is passing through a public road it cannot be accepted that public have no access. It is true that public may not have access to private vehicle as matter of right but definitely public have opportunity to approach the private vehicle while it is on the public road. Hence, we are not able to accept the submission that vehicle in which appellants are travelling is not covered by definition of ‘public place’ as defined in Section 2(17A) of the Bihar Excise (Amendment) Act, 2016.

- F 23. We may notice that under the Bihar Excise Act, 1915 prior to Bihar Excise (Amendment) Act, 2016 there was no definition of ‘public place’. Although, in the notification dated 29.07.1978 issued by the State of Bihar in exercise of power under Section 19(4) word ‘public place’ was defined. Notification dated 29.07.1978 issued by the State of Bihar in exercise of power under Section 19(4) provided:

- G “(S.O. 941 dated the 29th July, 1978 (Published in Bihar Gazette Extra-ordinary dated the 29th July, 19789).- The Governor of Bihar, in exercise of the powers conferred by sub-section (4) of section 19 of the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act II of 1915), is pleased to make the following
- H orders:-

1.(a) No person while being in a public place shall possess and consume any intoxicant in a public place not licenced for consumption of the same. For this purpose a “public place” shall mean “any place intended for use by or accessible to the public and shall include any public conveyance.” A

24. The same definition of public place was contained in subsequent notifications dated 27.03.1979 and 19.09.1980. It is to be noted that the State Government in the above notifications defined ‘public place’ as “any place intended for use by or accessible to the public and shall include any public conveyance”. It is clear that private conveyance was not included in the notification and State did not prohibit possession and consumption of any intoxicant in a ‘private conveyance’ under the aforesaid notifications. But the above notifications are no more relevant after the Bihar Excise (Amendment) Act, 2016 which Amendment was brought in the statute to implement the Bihar Excise Policy, 2015. The Bihar Excise Policy, 2015 was framed by the State to implement prohibition effectively. B
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25. The omission of public conveyance in the definition of Section 2(17A) brought by the Bihar Excise (Amendment) Act, 2016 also indicates that the difference between public conveyance and private conveyance was done away in the statutory amendment. We, thus, cannot accept the submission of the learned counsel for the appellant that private conveyance will be excluded from the definition of ‘public place’ as contained in Section 2(17A). In this reference, we may also notice a judgment of learned Single Judge of the Kerala High Court cited before us i.e. **Manikandan vs. State of Kerala, (1999) 2 KLT 592**. In the above case the Assistant Sub Inspector of Police found a Maruti car parked on the road, accused Nos.2 and 3 were inside the car and consuming liquor. The case of the accused was that alleged offence was not committed in a public place, hence, the provisions of Section 15C were not attracted. In paragraphs 3 and 4 of the judgment following was held: E
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“3. The charge sheet in this case is produced as Annexure B. The first information statement and the charge sheet show that on 22-12.1998 the Assistant Sub Inspector of Police, Wadakkancherry found a maruthi car parked on the road near the Vyasa College Bus Stop. Accused 2 and 3 were inside the car. The first accused was outside. They were consuming liquor. G
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A The case is registered on the basis of this report. Now, it is
 B contended for the petitioners that the alleged offence was not
 committed in a public place and hence the provisions in S.15C of
 the Act were not attracted. The argument has to be accepted as
 regards petitioners 2 and 3 who were found inside the car only.
 Explanation 1 to S.15C defines a “public place” as “a street Court,
 Police Station etc.”

4. It includes a public passenger vehicle. Explanation II makes
 it clear that the term “public passenger vehicle” does not include
 a “vehicle which carries passengers for hire or reward under a
 contract.” So even taxi vehicles will be excluded. A private car
 even on the road apparently cannot come within the definition.
 Hence, a private car even parked by the side of a road cannot be
 treated as a “public place”. So the charge as against petitioners 2
 and 3 (accused 2 and 3) will not lie. It is liable to be quashed.
 However, the allegation is that the first accused was found on the
 road itself. So, he has necessarily to stand trial. He can take up
 his defences before the trial court.”

26. It is to be noted that after the above judgment of the learned
 Single Judge delivered on 21.06.1999, Section 15C was amended to take
 away the basis of the aforesaid judgment by including the private vehicles
 also. The Kerala judgment was, thus, on the statutory provisions applicable
 in the State of Kerala and is clearly distinguishable.

27. Now, we come to other submission of the appellants that
 offence under Section 53(a) can be committed only when appellant
 consumes liquor in a public place. It is submitted that words ‘consumes
 liquor’ have to be given meaning and substance for constituting the
 offence. The word ‘consumes’ is a verb transitive. The word ‘consume’
 has been defined in Black Law Dictionary in the following words:

“**consume** – 1. To destroy the substance of, esp.by fire; to use
 up or wear out gradually, as by burning or eating the house was
 consumed by fire. 2. To expend wastefully; to waste; to squander
 he consumed all his resources within four months. 3. To use up
 (time, resources, etc.), whether fruitfully or fruitlessly 45% of the
 paper we consume is recycled. 4. To eat or drink; to devour no
 alcohol may be consumed on these premises. 5. To engage the
 attention or interest of fully; to obsess she was consumed with
 guilt after her father’s death.”

28. When the word ‘consumes’ is followed by liquor, the action denoted by verb passes over from the doer to object i.e. liquor to constitute the offences within the meaning of Section 53(a). The action of consumption of liquor has to happen within the State of Bihar. A person who consumes liquor in a different State cannot be fastened with a penalty under Section 53(a) unless there is some evidence to prove that consumption of liquor by the accused has taken place in the State of Bihar. We may at this juncture further notice that now as per Bihar Prohibition and Excise Act, 2016 another category of offences which has been included in Section 37 is Section 37 sub-section (b) which “is found drunk or in a state of drunkenness at any place; or”, thus, as per Bihar Prohibition and Excise Act, 2016 even a person consumes liquor outside the State of Bihar and enter into the territory of Bihar and is found drunk or in a state of drunkenness, he can be charged with offences under Section 37(b). But no offence as now contemplated by Section 37(b) was provided for in Bihar Excise (Amendment) Act, 2016, thus, the consumption of liquor has to be in the State of Bihar. We, however, cannot take a decision on the above issue in this appeal. Whether charge that consumption of liquor has taken place within the State of Bihar is made out in the facts of the present case are questions which need to be decided by the learned Magistrate after looking into the materials brought on record by means of the chargesheet. We, in the facts of the present case, are of the view that the ends of justice be served in providing that appellants shall be at liberty to file an application to discharge before the learned Magistrate who after considering the materials on record shall decide the said application of discharge in accordance with law.

29. In result, we, dispose of this appeal by providing that the appellants shall be at liberty to file an application for discharge before the learned Magistrate, who shall decide the said application taking into consideration the materials on record, in accordance with law.