

## Panna Lal And Ors. vs State on 9 August, 1951

**Equivalent citations: AIR1952ALL657, AIR 1952 ALLAHABAD 657**

### JUDGMENT

Desai, J.

1. This is a reference by the Additional Sessions Judge of Aligarh recommending that an order passed by a Magistrate of the First Class be set aside and he be directed to try the case de novo.
2. The case was under Sections 323 and 506 triable by a Second Class Magistrate. A Bench of Magistrates, invested with Second Class Powers, took cognisance of the offence and recorded some evidence and also framed a charge against the applicants. Subsequently the Bench of Magistrates thought that the case was triable by a First Class Magistrate and stayed proceedings and referred the case to the City Magistrate. The City Magistrate transferred the case to the Court of the First Class Magistrate whose order is in question. When the applicants appeared before the First Class Magistrate, they prayed that the trial should be de novo and that the witnesses should be recalled. The learned Magistrate rejected the application, stating that the applicants did not explain why they wanted a de novo trial. That is the order sought to be revised by this reference.
3. The case was undoubtedly transferred under Section 346, Criminal P. C., by the Bench of Magistrates to the First Class Magistrate through the City Magistrate. It does not matter if the Bench of Magistrates erroneously thought that they had no jurisdiction over the case, whereas in fact they had. Section 346 does not deal only with transfers on the ground of want of jurisdiction; it deals with transfers on all grounds. The Bench of Magistrates could have stayed the proceedings and referred the case to the City Magistrate, even if they thought that they had the power to try the case, if they had some other reason for not trying it.
4. It is stated in Section 346 (2) itself that "the Magistrate to whom the case is submitted may, himself try the case or refer it to any Magistrate for trial."

This means that the Magistrate has to try the case from the very beginning. The procedure for the trial of a warrant case is laid down in Section 252, et seq. Had the Legislature intended that the Magistrate could try the case from the stage at which it came in his Court, it would have used appropriate words to confer this power. When it simply said that the Magistrate could "try" the case, it meant that he could try it as laid down in the Code, i. e., from the stage mentioned in Section 252. In *Sher Khan v. Emperor*, 34 Cr. L. J. 749 (Sind), the Sind Judicial Commissioner's Court held that the meaning of the words "try the case himself" is that he must try it de novo. The Court relied upon the general principle of law that the evidence taken by one Magistrate is no evidence in a trial before the other Magistrate, unless the law expressly makes it so. In *Gura v. Emperor*, A.I.R. 1943 Lab. 27, the Lahore High Court observed that the plain meaning of Section 346 (2) is that there is to be a trial

de novo before the Magistrate to whom the case is submitted or the Magistrate to whom the case has been assigned for trial. In *Sridhar Jha v. Emperor*, A.I.R. 1947 pat. 234, *Sashti Gopal v. Haridas Bagdi*, 39 Cri. L. J. 606 (2) (cal.), *Budhu Tatwa v. Emperor*, 29 ori. L. J. 464(2) (cal.), *Ambica Singh v. Emperor*, 19 cri. L.J. 625 (pat.) and *Mohammad v. Emperor*, 2 Cr. L. J. 369 (Lah), also it was held that when a case goes before another Magistrate under Section 346 (2), he must try the case afresh and recall and rehear all witnesses.

5. It is only by Section 350, Criminal P. C. that a succeeding Magistrate is empowered in certain circumstances to try the case from the stage at which it reaches him. The receipt by him of a case under Section 346 (2) is expressly excluded from those circumstances. Consequently when a Magistrate receives a case for trial under Section 346 (2), he cannot apply Section 350 and elect to act on the evidence already recorded by the previous Magistrate. The exclusion of a case transferred under Section 346 from the applicability of Section 350 means only this that the option granted to the Magistrate under Section 350 is not to be exercised by him. When the Magistrate has no right to exercise his option, it can only mean that he must try the case from the very beginning because it cannot mean that he must try it from the stage at which it was left by the previous Magistrate. The provisions in Section 350 are by way of an exception to the general rule that when a Magistrate is required to try a case he must try it from the very beginning, that is, from the stage mentioned in Section 252 of the Code. As the exception is expressly made not applicable in the present case, the lower Court was bound by the general rule to try the case afresh.

6. The reference is, therefore, accepted and the lower Court is directed to try the case afresh by recalling and rehearing all the witnesses.