

State Vs. J.D. Daroga and ors.

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Court : Mumbai

Decided On : Oct-25-1957

Reported in : AIR1959Bom314; (1959)61BOMLR118; 1959CriLJ959; ILR1959Bom340

Judge : Miabhoy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154(1), 161(3), 164, 173(4), 207A, 207A(3), 241, 242, 244, 244(1), 251A, 251A(1), 438, 439 and 540

Appeal No. : Criminal Ref. No. 138 of 1957

Appellant : State

Respondent : J.D. Daroga and ors.

Advocate for Def. : E.B. Ghaswala and ;Y.S. Murudkar, Advs.

Advocate for Pet/Ap. : Y.V. Chandrachud, Asst. Govt. Pleader

Judgement :

ORDER

1. This is a reference under Section 438. Criminal Procedure Code, by the learned Sessions Judge, Thana, for revising the order passed by the Judicial Magistrate, First Class, Shahapur, by which order the learned Magistrate held that the prosecution was debarred from tendering the evidence of four witnesses whom the

prosecution intended to examine as additional witnesses.

2. The facts necessary to be stated in order to dispose of the present reference are as follows: The prosecution alleged that on or about 10-3-1956, several offences were committed by five persons who were picnicking in the compound of the Special Bungalow at Tansa reserved for the Special Engineer, Bombay Corporation. The police raided the aforesaid premises at about 8 P.M. on the aforesaid date and the prosecution case is that at that time those five persons were found in possession of a bottle of whisky and some glasses. The prosecution also alleged that two of the aforesaid five persons, who held permits for liquor, abetted each other by permitting one or the other of them to consume liquor in respect of which they held permits. On these allegations, several charge-sheets were sent against the aforesaid five persons. Out of them, seven cases were consolidated by the learned Magistrate and ordered to be tried as one case. It is not necessary for me at the present stage to mention the case number, the persons named as the accused in those cases and the sections under which they were being prosecuted by the prosecution. It is only enough for me to state that the consolidated case was being tried as a summons case. The plea of all the five accused persons was recorded on 4-9-1956 under Section 242, Criminal Procedure Code, all the five accused persons pleaded not guilty to the charges and claimed to be tried. The evidence of those persons whose names were mentioned as witnesses in the charge sheets was thereafter recorded. However, on 26-9-1956, the prosecution presented an application Ex. 22, by which it prayed for permission to examine the witnesses named therein. However, no orders were passed by the learned Magistrate on the aforesaid application. The defence urges that it had no knowledge about the presentation of the application Ex. 22 on the date on which it was presented and that it came to know about the existence of the aforesaid application only on or about 15-1-1957 on which date another application, to be presently mentioned, was presented by the prosecution. It appears that the learned Magistrate did not pass any orders on the aforesaid application on 26-9-1956. However the case was taken up for hearing on some subsequent dates and it appears that three out of the aforesaid new witnesses came to be examined during the course of the trial. These three additional witnesses were --

(1) Raje, Police Photographer

(2) Shah, and

(3) Demello. Raje was examined in chief on 27-10-1956 and cross-examined on 21-11-1956. The other two witnesses Shah and Demello were examined on 15-1-1957 and there was no cross-examination. On 15-1-1957, the prosecution presented another application by which it sought permission to examine one Shah. It appears that the prosecution when this application was presented, also prayed that the three remaining witnesses mentioned in the previous application Ex. 22 should also be examined by the learned Magistrate. On this an objection was raised by the defence. The ground of objection have been embodied in the reply dated 22-1-1957 which was given by the defence. On this the learned Magistrate fixed the case for hearing the arguments of both the sides regarding the examination of the aforesaid four additional witnesses. The arguments were heard on 29-1-1957 and the learned Magistrate decided on that day that the prosecution had no right to examine the aforesaid additional four witness. The defence attacked the prayer of the prosecution for an examination of the aforesaid four additional witnesses mainly on two grounds. The first ground was that having regard to the provisions contained in Sub-section

(4) of Section 173 Cri.P.C., the prosecution had lost the right of examining all the aforesaid four witnesses. It is common ground that before the commencement of the trial, i.e. before 4-9-1956, the defence had not been supplied with copies of the police statements of the aforesaid four additional witnesses. The names of all the four additional witnesses who were sought to be examined by the prosecution are :

(1) Salunke,

(2) Subramanian,

(3) Pandit and

(4) Shah. It appears that no police statement of Salunke was ever recorded by the police. However, he was one of the panchas who accompanied the police at the

time of the raid which resulted in the present case. Mr. Ghaswalla, the learned counsel for the accused stated to me that he had no objection to the examination of Salunke by the prosecution, and he stated that, at no stage in the present case he had ever objected to the examination of this witness. He conceded that a copy of the panchanama, which was made at the time when the aforesaid raid was effected, of which Salunke was the panch, had already been supplied to him before the commencement of the present trial. It appears that the police statements of Subramanyan were recorded on 30-8-1956 and 31-8-1956. Application Ex. 22 contained a statement that the police statements of this witness had been supplied to the learned counsel for the defence. However, this statement is being challenged by the defence. It does not appear quite clearly from the record as to on what date copies of the police statements of Subramanyan were given by the prosecution to the learned counsel for the defence. However, it is admitted by Mr. Ghaswalla that the copies of the police statement were given in any case before 29-1-1957, the date on which the learned Magistrate passed the impugned order. It is clear from the record that the police statement of Pandit was recorded on 10-9-1956. It is also not disputed that a copy of his police statement was supplied to the learned counsel for the defence 29-1-1957. The police statement of Shah appears to have been recorded on 21-11-1956. Mr. Ghaswalla states that a copy of the police statement of Shah has not still been supplied by the prosecution to the defence. On the aforesaid facts the defence raised two contentions. The first contention was that, as the copies of the police statements of two out of the four additional witnesses were supplied after the commencement of the trial and the copy of the police statement of one of the witnesses has not been supplied at all, the prosecution is debarred from tendering the evidence of the aforesaid three witnesses. The second contention was that the evidence which the aforesaid witnesses proposed to give was irrelevant, and, therefore, no permission should be granted to the prosecution to examine the aforesaid witnesses. Mr. Ghaswalla has distinctly admitted in this Court that he has no objection to Salunke being examined by the prosecution. But he contends that, on the two grounds mentioned by the learned Magistrate the learned Magistrate was right in holding that the prosecution was not entitled to tender in evidence the statements of the additional three witnesses.

3. The prosecution feeling aggrieved by the aforesaid order of the learned Magistrate went in revision to the learned Sessions Judge at Thana. The learned Sessions Judge considered the aforesaid two objections raised by the defence. He disagreed with the finding of the learned Magistrate that under Section 173(4), the prosecution was debarred from tendering the aforesaid additional evidence. He also disagreed with the finding of the learned Magistrate that the evidence which the aforesaid four witnesses proposed to give was irrelevant. A third point was also raised before the learned Sessions Judge, and that was that the aforesaid impugned order having been passed by the learned Magistrate, at an interlocutory stage, even if the learned Sessions Judge disagreed with the view expressed by the learned Magistrate, he should not make a reference to the High Court on the ground that the High Court normally would not interfere with an order passed at an interlocutory stage even if the order was wrong. The learned Sessions Judge, however, came to the conclusion that the point relating to Section 173 (4) of the Criminal Procedure Code was of general importance, and that the learned Magistrate having treated the point relating to the admissibility of evidence in a causal manner, this was a fit case in which reference should be made to the High Court for revising the order of the learned Magistrate. Accordingly the learned Sessions Judge has made the present reference.

4. The first point which arises for consideration is whether the submission of the learned counsel for the accused that the copies of the police statements of the aforesaid additional witnesses not having been supplied on or before 4-9-1956, the prosecution is debarred from tendering the aforesaid evidence as a matter of law is correct. Sub-section (4) of Section 173 of the Criminal Procedure Code has been recently substituted for the original Sub-section (4) by Act XXVI of 1955. That Sub-section is as follows:

'(4) After forwarding a report under this section the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under Sub-section (1), and of the first information report recorded under Section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under

Section 164 and the statements recorded under Sub-section (3) of Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.'

Reading this sub-section, it is quite clear that it imposes an obligation on the officer in charge of a police station to supply free of cost to the defence copies of the police statements of persons whom the prosecution proposes to examine as witnesses. It is also quite clear from the aforesaid Sub-section (4) that this obligation has got to be discharged by the officer incharge of the police station 'before the commencement of the inquiry or trial'. Therefore, on the facts aforesaid, there is no doubt whatsoever that the officer in charge of the police station concerned in the present case has committed a breach of the duty cast upon him by the aforesaid Sub-section (4) of Section 173. This is not disputed by the prosecution. But while this is so, the question which has got to be considered and answered in the present reference is one an answer to which is not to be found in the present Sub-section (4). The question which has got to be considered is as to what is the effect of a breach of the duty cast upon the police officer under Sub-section (4) of Section 173. The contention of the defence is that the consequence of the breach of this duty is that the prosecution is debarred for ever from examining any person, a copy of whose police statement has not been supplied to the defence. The question for consideration is whether this contention is correct. The learned counsel for the accused frankly admitted that the aforesaid Sub-section (4) or any other part of Section 173 did not state in terms that such is the effect of the breach of duty on the part of the officer in charge of a police station. But the contention was that having regard to the mandatory provisions contained in Sub-section (4) aforesaid, the legislature intended that such should be the effect. The contention was that if effect was not given to the aforesaid contention of the defence, then the provisions contained in Sub-section (4) would be rendered nugatory and would become a dead letter. In my opinion, before reaching a conclusion on the aforesaid subject, it is necessary to bear in mind the position of Section 173 in the scheme of the Code. The aforesaid Section 173 finds a place in Part V of the Code of Criminal Procedure and the heading of the Chapter is : 'Information to the police and their powers to investigate.' Section 173 is to be found in Chapter XIV. All the sections under this Chapter deal with the powers and the duties of the police Officer. Having regard to these two important

facts, it is quite clear to my mind that the Legislature, when it enacted Section 173, was not dealing with the powers and the duties of the Court in relation to a trial or an inquiry, but it dealt only with the powers and the duties of the police officers during the stage of investigation. Therefore, ordinarily it would not be proper to look to this particular part of the Code and the aforesaid Chapter for an answer to the question as to what are the powers and the duties which the Court possesses where a prayer is made for the examination of additional witnesses. The learned counsel for the defence contended that the object of amending Sub-section (4) of Section 173 was to put the defence in possession of all the facts on which the prosecution wanted to rely and thereby prevent additional evidence being led against the defence. It was contended that the main object of the aforesaid sub-section was that the prosecution must, before the commencement of an inquiry or trial, make up its mind as to what evidence it wanted to lead against the defence, and having once made up that mind, it was not open to the prosecution to change it and to lead any additional evidence. It is difficult to generalise as to what was the object of the Legislature in introducing the amendment, that it has done, in Sub-section (4) of Section 173. The Supreme Court has made some remarks on this subject in *Gurubachan Singh v. State of Punjab*, : 1957 CriLJ1009 . The relevant remarks are to be found at page 544 (of SCJ): (at p. 627 of AIR). The remarks are :

'The object of this provisions is to put the accused on notice of what he has to meet at the time of the inquiry or trial.'

It appears that before the aforesaid amendment, the defence had no access to the police statements, recorded in the course of investigation. Under the old law, the defence had to wait for having access to the police statements till the witness was examined and the stage of cross-examination was reached. This entailed delay as very often the cross-examining counsel were either not ready to cross-examine as they either wanted the police statement of the witness concerned, or wanted some time for studying the police statement, and in the interval the Court had to wait till the cross-examining counsel perused the police statement. Therefore, one of the objects of the Legislature in undertaking amendment to Section 173 also appears to be to prevent an inquiry or trial from being protracted it as would naturally be if

the defence were not placed in possession of all the materials on which the prosecution intended to rely at the time of the inquiry or trial. Having regard to these two objects, it is impossible, therefore, to say that the Legislature could have intended such a far-reaching effect as to prevent the prosecution from tendering additional evidence altogether provided the evidence was found to be either relevant or in the interest of justice. In my opinion, having regard to the position of Section 173 in the scheme of the Code of Criminal Procedure, the proper sections which are to be looked to decide the aforesaid matter is not Section 173 alone, but also the sections which deal with the powers of the Court relating to inquiries and trials. In the present case, I propose to deal first with those sections which deal with the powers of the Court in relation to summons cases. In my opinion, if one reads the sections which deal with the powers of the Court during the course of a trial in a summons case, then there are clear indications that the Legislature did not intend to debar the prosecution from tendering additional evidence altogether. Section 241, Criminal Procedure Code, says that the procedure laid down in the subsequent sections shall be observed by the Magistrates in the trial of summons cases. Then Section 244 is in the following terms :

'244 (1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3).....'

Therefore, so far as Sub-section (1) of Section 244 is concerned, it clearly provides that after the plea has been recorded, the Magistrate shall take all such evidence as may be produced in support of the prosecution. In this particular section, there is nothing which enjoins that the prosecution shall necessarily be confined only to the examination of those witnesses copies of whose statements

have been given by the officer in charge of the police station. On the contrary, the words are wide enough to include the examination of event hose witnesses copies of whose statements have not been recorded. In this connection, it is important to bear in mind that an investigation does not necessarily end when a charge-sheet is sent to a Magistrate. It is open to the investigating officer to collect evidence in support of a charge even after the charge-sheet has been sent to the Magistrate. Some times important and additional evidence may be brought to light even after the charge-sheet has been sent to the Magistrate. Having regard to this important fact, in my opinion, it would be doing violence to the language of Sub-section (1) if it were interpreted to mean that the prosecution was necessarily circumscribed by what the police officer had omitted to do under Sub-section (4) of Section 173, Criminal Procedure Code. It is true that if the prosecution intends to lead evidence copies of which have not been supplied to the defence having regard to the intention underlying Sub-section (4) of Section 173, the learned Magistrate might put the prosecution on terms and insist that the additional evidence should not be allowed to go on record unless and until copies of the police statements of the witnesses were supplied in advance so that the defence may know all the full facts of the case, and may be ready to cross-examine the additional witnesses. It may be that, in some cases, where the learned Magistrate might feel that prejudice is likely to be caused to the defence by reason of the fact that the witnesses, who have already been examined, could not thereafter be examined with a view to falsify the additional evidence, which was about to be tendered the learned Magistrate in his discretion might disallow the prosecution to tender the additional evidence. But it is one thing to say that the prosecution is totally debarred from leading additional evidence and it is entirely another thing to say that the learned Magistrate has a discretion in the matter as to whether additional evidence should or should not be allowed. If we examine some other sections of the Criminal Procedure Code, we find that the same result follows. Sub-section (4) of Section 173 deals not only with the cases of trial but also with cases of inquiry. Section 207A has been introduced by the Legislature by the same amendment by which it amended Sub-section (4) aforesaid. Sub-section (3) of Section 207A is important in connection with the point which requires to be decided That Sub-section (3) is in the following terms :

'(3) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in Section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them he shall cause the same to be so furnished.' In this connection it is important to notice that whereas Sub-section (4) of Section 173 speaks of a duty which is to be performed before the commencement of an inquiry or trial, Sub-section (3) of Section 207A speaks of the duty which is to be performed by the Court 'at the commencement of the inquiry'. Therefore, it is quite clear from Sub-section (3) of Section 207A that even if the officer in charge of the police station has not supplied the necessary copies to the defence before the commencement of the inquiry, the learned Magistrate has got the power of ordering the prosecution to supply the necessary copies to the defence 'at the commencement of the inquiry.' If the submission which the learned counsel for the defence makes were correct, then no such power could have been conferred upon the Magistrate under Section 207A (3). If the submission of the defence counsel were correct then the moment the police officer failed in his duty of supplying the necessary copies before the commencement of the inquiry, then, no evidence whatsoever could be led by the prosecution. In that case, no power could be given to the Magistrate to make an order calling upon the prosecution to supply the necessary copies to the defence. Exactly the same provisions are to be found in respect of trials of warrant cases. Section 251A of the Criminal Procedure Code has been recently introduced at the same time when Sub-section (4) of Section 173 was substituted. Section 251A (1) is in the following terms :

'(1) when, in any case instituted on a police report the accused appears or is brought before a Magistrate at the commencement of the trial, such Magistrate shall satisfy himself that the documents referred to in Section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.'

In addition to this we have also to bear in mind the provisions of Section 540. That section confers power upon the Court to summon a material witness or to examine a person present in Court at any stage of an inquiry, trial or other

proceeding. Therefore, examining the argument of the learned defence counsel in the light of the provisions contained in Sections 244, 207A and 251A, it is quite clear that, if Sub-section (4) of Section 173 were to be interpreted in the manner suggested by the defence counsel, then, that interpretation would be in conflict with the aforesaid Section 244, 207A and 251A of the Criminal Procedure Code. It is well known that a section in a statute is to be so interpreted as to harmonise with the rest of the statute. Under the aforesaid circumstances, in my opinion, the view taken by the learned Magistrate that the breach of the obligation imposed upon a police officer under Sub-section (4) of Section 173, entails the consequence that the prosecution is debarred from tendering any additional evidence, is wrong and the view taken by the learned Sessions Judge is correct and that view must be upheld. In my opinion, the proper way in which the learned Magistrate should have dealt with the question was from the point of view of the prejudice which the breach of the aforesaid obligation had caused or was likely to cause to the defence. I do not propose to say anything on this aspect of the case because, in my opinion, that aspect will have to be dealt with by the learned Magistrate hereafter. The learned counsel for the defence urged that having regard to the fact that some of the witnesses have already been examined and cross-examined and that their evidence is over the defence would be prejudiced inasmuch as the dependence had lost the right of eliciting from the witnesses already examined materials which would have been useful in appreciating the additional evidence which is sought to be tendered by the prosecution. In my opinion, this is a proper stand-point from which the application of the prosecution requires to be considered. The learned Sessions Judge has discussed this question, but having regard to the fact that this point has not been dealt with by the learned Magistrate, I do not propose to express any opinion on the same. In my opinion, the learned Magistrate will have to consider this aspect of the case and pass such satiable orders as he may deem fit in the circumstances of the case.

5. The second point which was urged was that the evidence of the aforesaid additional witnesses was not relevant. This argument has to be considered subject to the concession made by the learned defence Counsel that he had no objection if witness Salunke was examined in the case. In view of this concession, I do not propose to say anything more so far as the evidence of Salunke is concerned.

Therefore, I propose to deal with the question of relevancy only in regard to the evidence proposed to be given by the other three witnesses, namely, Subramanyan, Pandit and Shah. As regard the evidence of Pandit, there is no doubt whatsoever that his evidence is perfectly relevant. This witness is the office superintendent of the Special Engineer's Department. The prosecution case is that the present offence was committed in the compound of the Special Engineer's Bungalow at Tansa. This witness is expected to state that that bungalow is exclusively under the control of the Special Engineer and that it was made available on 10-3-1956 to the accused Daroga at his request. One of the charges which the prosecution has levelled against the five accused persons is that on the relevant date they were in possession of prohibited liquor, and that the place where they were in possession of such liquor was the aforesaid compound. Therefore, one of the points which the prosecution has to prove in order to establish the charge is that Daroga had been permitted to occupy the bungalow of the Special Engineer where the offence was committed. I am unable to see how the aforesaid evidence of the witness can be characterised as irrelevant. The argument of the defence Counsel was that there was lot of evidence on the aforesaid point and that the same was not challenged by the defence. I have no full materials before me from which I can say that the aforesaid point is not one of the points in dispute between the parties. But, however, even assuming that there is such evidence already on the record, that would not make the evidence of Pandit irrelevant. The argument really is that the aforesaid evidence is superfluous. At the stage at which the case is it is dangerous to state that a particular piece of evidence is superfluous, because nobody knows as to what view the Magistrate is likely to take regarding the evidence about the possession of the Special Engineer's bungalow which has already been tendered by the prosecution.

6. The learned defence Counsel, however, was very vehement in urging that the evidence proposed to be given by Subramanyan was absolutely irrelevant on this subject. The police statement of Subramanyan has been read before me both by the learned defence Counsel and the learned Assistant Government Pleader. The learned Sessions Judge has taken the view that the evidence which is proposed to be given by Subramanyan is relevant. I am in agreement with this view of the

learned Sessions Judge. If appears that Subramanyan is in charge of the Special Bungalow reserved for the special Engineer and some other bungalows which are adjacent to that bungalow. His police statement shows that according to him he had received orders that daroga was to occupy the special bungalow on 10-3-1956 and the next two subsequent dates, and that he took steps to clean the bungalow. His police statement further is that on 10-3-1-56, he had actually received Daroga who came there in the company of the other four accused, and that thereafter he left the place because he was on casual leave. The evidence shows that there is another bungalow which is adjacent to this Special Engineer's bungalow which is known as 'Inspection Bungalow' or 'Lower Bungalow'. The prosecution case is that the bungalow was also raided on the day in question and that no incriminating liquor was found from that bungalow. The police statement of Subramanyan is that a Visitors' book is being maintained by him which entries relating to the occupation of the Inspection or the Lower bungalow are being made. According to him, on 10-3-1956, there was no entry relating to the occupation of that Inspection bungalow. He further states that he joined his duty on termination of his casual leave on 19-3-1956, and that, at that time, there was no entry relating to the occupation of the aforesaid bungalow on 10-3-1956. His further police statement is that the aforesaid visitors' book was called for by one Mr. Lawyer and that subsequently it was returned to him, and at that time, he noticed that there was an entry in that register relating to the occupation of the lower Bungalow on 10-3-1956 in the name of the accused Nanji. The prosecution case is that this entry relating to the occupation of the bungalow by Nanji was subsequently fabricated by the accused Daroga. In order to prove all the aforesaid points, the prosecution wants to examine Subramanyan. The argument of the defence Counsel was that the prosecution intends to examine Subramanyan with an ulterior end in view. The defence contention is that the prosecution has started proceedings against Daroga and some others on the allegation that they had fabricated the aforesaid register, and that instead of examining Subramanyan and some other witnesses in that case arising out of the allegation of forgery, the prosecution wants to lead evidence on the same subject in the present case in order to know what line of cross-examination was being adopted by the defence. I am not convinced about the correctness of this submission. The question for my

consideration is whether the evidence which Subramanyan intends to give is relevant or not. Having regard to the aforesaid facts it appears to be crystal clear that Subramanyan is one of the most important witnesses who can throw light on the subject of the occupation of the Special Engineer's bungalow on 10-3-1956, and who could also throw light on the subject of occupation of the Inspection or the lower bungalow on the same date. The defence Counsel urged, as already stated, that there was lot of evidence on the subject and that the defence was not challenging this particular point at all. In my opinion, having regard to the fact that the prosecution case is that the entry relating to Nanji has been subsequently interpolated, if the prosecution apprehends that the defence is likely to make a point out of the existence of the aforesaid entry relating to the occupation of the Inspection bungalow by Nanji, the apprehension entertained by the prosecution cannot be regarded as unreasonable. The learned Assistant Government Pleader rightly contended that it is not improbable that the defence might hereafter argue that Nanji was not in the Company of Daroga, that Daroga and Nanji had separately come at the aforesaid bungalow, and that, therefore, there was a doubt as to whether the prohibited liquor had been brought at the scene either by one or the other. Having regard to the aforesaid consideration. I am in agreement with the view taken by the learned Sessions Judge that the evidence which the proposed witness Subramanyan intends to give is relevant. The prosecution case is that a register is kept by the Bombay Corporation of all the applications for the occupation of the Inspection bungalow. There case is that there is an entry in that book that Shah had made an application for the occupation of the aforesaid bungalow on 10-3-1956, and that the same had been reserved for him. The prosecution case is that this entry also has been subsequently interpolated, and that, in fact, the aforesaid Shah and never applied for the reservation of the bungalow on 10-3-1956, and the bungalow had never been reserved by him. It is contended that this interpolation was made at the instance of the accused Daroga. For the reasons which I have already given, while discussing the evidence proposed to be given by Subramanyan, I have also come to the conclusion that this evidence is quite relevant inasmuch as it relates to the subsequent conduct of one of the accused which has connection with the facts in issue in the present case.

7. The argument of the learned defence Counsel, however, was that even if the aforesaid evidence was relevant and had been wrongly excluded by the learned Magistrate, it was not a good ground for interference. Ordinarily this is so. But in the present case there are some peculiar features, which demand consideration. The order of the learned Magistrate shows that he has not applied his mind to the question of relevancy of the aforesaid evidence at all. In my opinion, if really he had applied his mind, he would not have, in my case, held that the whole of the evidence was irrelevant. I agree with the view of the learned Sessions Judge that, having come to the conclusion that the prosecution was debarred under Section 173(4) of the Criminal Procedure Code, the learned Magistrate gave by way of an additional ground the ground of irrelevancy without having considered the aspect of relevancy on its own merits at all. The learned Magistrate has not given any reasons in the body of his order for reaching the aforesaid conclusion. It is true that ordinarily when questions of relevancy are being considered detailed reasons are not being given. But at the same time in my opinion, when no reasons whatsoever are given, the High Court is entitled to take the view that the conclusion has been arrived at without proper application of his mind by the learned Magistrate. Therefore, in my opinion, the impugned order appears to have been passed really not on the ground that the additional evidence was irrelevant but it has been passed really on the ground that the additional evidence was barred under Sub-section (4) of Section 173 of the Criminal Procedure Code.

8. The third point urged by the learned defence Counsel was that the High Court ought not to interfere at an interlocutory stage. No exception can be taken to the principle propounded by the learned Counsel. It is true that the High Court does not ordinarily interfere at an interlocutory stage even if a serious error of law is committed by the lower Court. It interferes only even in the latter class of cases where it finds that the point involved is one of general importance. In my opinion, the point which is raised in the present matter is one of general importance and having regard to the fact that it arises out of a recent amendment, it is likely that the point must have been raised in some other cases and is likely to be raised in other cases hereafter. Under the circumstances, in my opinion, it is necessary that the impugned order should be revised even though it happens to be passed at an interlocutory stage. The argument of the defence Counsel, however, was that the

impugned order is not merely based upon the view of the learned Magistrate that the prosecution is debarred under Sub-section (4). Section 173. but is also partly based upon the learned Magistrate's view that the additional evidence was irrelevant. Therefore, the argument was that even if one ignores the point under Section 173(4) aforesaid, it cannot be totally ignored that the order is based upon the view that the additional evidence was irrelevant, and, therefore I should not interfere at this stage. However, for the reasons which I have already given, the question of relevancy has been treated by the learned Magistrate in a casual and rather cavalier manner and that conclusion has been reached by the learned Magistrate without having applied his mind to the subject. In my opinion, inf act, the present impugned order is based upon the view of the learned Magistrate regarding the interpretation of Sub-section (4) of Section 173 of the Criminal Procedure Code and, therefore, the same deserves to be revised.

9. However, before I part with this judgment, I propose to make one point clear and that is in respect of the evidence proposed to be given by Shah. The prosecution has not still supplied a copy of the police statement of Shah. The learned Magistrate ought not to allow the prosecution to lead evidence of Shah unless first of all the prosecution supplies a copy of the police statement of Shah. As regards the evidence of all the additionally four witnesses, I also want to make it clear to the learned Magistrate that if the point happens to be raised before him viz. that the defence is likely to be prejudiced by the tendering of the additional evidence, he should consider the same and pass such suitable orders as he may deem proper in the circumstances.

10. For the aforesaid reasons, I set aside the orders of the learned Magistrate dated 26-1-1957 passed below application Exh. 22, dated 26-9-1956 and the application Exh. 36 dated 15-1-1957. I further order that the learned Magistrate shall reconsider those applications in the light of the present judgment and pass such orders as he may deem proper in the circumstances. The reference is accepted and the rule is made absolute. Papers to be sent to the lower Court without least delay.

11. Reference accepted.

