

**State Vs. Masasingh Chandasingh**

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**Court :** Mumbai

**Decided On :** Nov-07-1957

**Reported in :** AIR1959Bom368; 1959CriLJ1062

**Judge :** Kotval, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 251-A(9); [Indian Penal Code \(IPC\), 1860](#) - Sections 506(2)

**Appeal No. :** Criminal Ref. No. 222 of 1957

**Appellant :** State

**Respondent :** Masasingh Chandasingh

**Advocate for Def. :** Nisarali, Adv.

**Advocate for Pet/Ap. :** W.B. Pendharkar, Spl. Govt. Pleader

**Judgement :**

ORDER

1. This is a reference by the Session Judge, Nagpur, recommending that an order D/-1-5-1957 passed by the Judge-Magistrate Mr. K.W. Kathalay, in Criminal Case No. 74 of 1957, should be set aside.

2. The non-applicant Masasingh was being prosecuted under Section 506(2), Indian Penal Code, and after certain witnesses were examined for the prosecution

a charge was framed under that section against him. After the charge prosecution witnesses were called for cross-examination, including these witnesses Harnamsingh, Triloksingh and Balwant Singh Setty. It appears that the accused did not avail of the opportunity to cross-examine them which was offered to him. Later, on 26-2-1957 the accused entered upon his defence and put in a list of defence witnesses. A month later, on 26-3-1957, the accused put in an application praying that the three witnesses should be called and he should be permitted to cross-examine them, but the trying Magistrate rejected this application. Thereafter the accused applied to call them as his defence witnesses and the Magistrate allowed that application and summoned the three persons named above as defence witnesses. What happened while they were examined as Defence witnesses has given rise to the present reference.

3. It appears that counsel on behalf of the accused commenced cross-examining these witnesses and the Magistrate intervened and ordered that he could not cross-examine them and since they were merely defence witnesses he could examine them, on behalf of the accused.

4. The learned Sessions Judge has pointed out, and in my opinion rightly, that since the amendments incorporated in the Code of Criminal Procedure by Act XXVI of 1955, and in view of the amended Section 251-A, Sub-section (9), the accused had a right to cross-examine these witnesses. Sub-section (9) of Section 251-A runs as follows:

'If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing.

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is

satisfied that it is necessary for the purposes of justice.'

5. The section refers without distinction to 'any witness' and permit the accused even after he has entered upon his defence, to apply to the Magistrate to compel attendance of the purpose of examination or cross-examination. The only ground upon which the right to cross-examine 'any witness' could be negated is the ground stated in the Sub-section itself, namely, that the Magistrate 'considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.' The trying Magistrate in the instant case did not give a finding or come to any conclusion that the accused was making the application for the purpose of vexation or delay or fro defeating the ends of justice, and therefore the right of the accused to cross examine the witnesses even though he had entered upon the defence was clear in the terms of Sub-section (9) of Section 251-A of the Code of Criminal Procedure. The Proviso to the Sub-section it was conceded was not attracted in the instant case.

6. I accept the reference, set aside the order of the trying Magistrate, dated 1-5-1957, nad send the case back for further trial in compliance with this order.

7. Reference accepted.

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