Durga Prasad Vs. the State

Durga Prasad Vs. the State

SooperKanoon Citation : sooperkanoon.com/344080

Court : Mumbai

Decided On : Jan-18-1952

Reported in : 1952CriLJ1225

Judge : Hidayatullah and ;B.K. Choudhuri, JJ.

Appellant : Durga Prasad

Respondent : The State

Judgement :
ORDER

1. This is an application for revision of the order passed by Shri K.L. Pandey, Additional Sessions Judge, Betul, in Criminal Appeal No. 233 of 1950 decided on the 19th March 1951. The revision application was originally before Rao J. who by an order dated the 30th November 1951 referred the case for disposal to a Division Bench. The case thus comes before us under the orders of the Honourable the Chief Justice.

2. By his order now under revision, the Additional Sessions Judge, Betul, has set aside the conviction and sentence passed on the accused (applicant before us) because in his opinion the trial Judge had acted on evidence which was not open to him. For the purpose of determining whether the action of the Additional Sessions Judge was correct or not, it Is necessary to state a few facts.

3. The accused in this case was the plaintiff in Civil Suit No. 59 of 1944 decided on the 2-4-1945. That suit was instituted by him on the allegation that he had advanced Rs. 60 to one Moujilal (P.W. 2) on the 1st November 1941 and that Moujilal had executed a Chithi in his favour. The accused as plaintiff in the suit gave evidence on his own behalf and stated that Moujilal had executed the document in question. Moujilal denied that document and examined a hand-writing expert in the case and the Court decided in that suit that the document was not written by Moujilal and was a forgery.

4. On the application of Moujilal under Section 476 of the Code of Criminal Procedure, the Civil Judge, First Class. Betul decided to prosecute Durga-prasad (applicant) for using a forged document and also for perjury and for setting up a false claim, under Sections 471, 193 and 209 of the Indian Penal Code respectively. A complaint was accordingly filed and the present proceedings arise out of the trial of that criminal case.

5. The case went at first before shri Nisal Magistrate First Class, Bhainsdehi who tried the case upto the stage of cross-examination of the prosecution witnesses after charge. Later the case was transferred from his file to that of Shri G.S.L. Rajput, Judge-Magistrate. Before Shri Rajput, the accused demanded a 'de novo' trial, and Shri Rajput agreed to that request. Before however Shri Rajput could do anything in the matter, the case was retransferred to the file of Shri Nisal Before Shri Nisal, the request for a 'de novo' trial was not made by the accused, nor did Shri Nisal feel called upon to try the case afresh, and acting on the evidence which he had already recorded previously together with such further evidence as was hed in the case, he came to the conclusion that the accused was guilty. He convicted him under Sections 209, 471 and 193 of the Indian Penal Code and sentenced him to one year's rigorous imprisonment on each count, the sentences to run concurrently.

6. Against this sentence, an appeal was filed by the accused, and the appeal' was heard by Shri K.L. Pande. The learned Judge in his order now under revision came to the conclusion that the proceedings before Shri Nisal were 'ultra vires' and without jurisdiction and that there had been no proper trial of the accused at

all. He felt that on the request of the accused for a 'de novo' trial made before Shri Rajput, the record of the Criminal trial which had gone on before, was wiped out with the result that Shri Nisal convicted the accused on no evidence whatever. He therefore set aside the conviction and ordered a re-trial of the case from the beginning.

7. In dealing with this matter, however, the learned Additional Sessions Judge did not confine himself to the point of law involved. He went further and expressed himself strongly in favour of the accused, and a perusal of his order shows that, but for this defect, he would have acquitted the accused of the charge found against him.

8. When the matter came before this Court, the learned single Judge (Rao J.) was faced with conflicting authorities of different Courts. He had however before him Emperor v. Ganpat ILR (1937) Nag 135 in which Gruer j. in somewhat similar circumstances had held that the earlier record gets wiped out as a result of the grant of a 'de novo' trial by a succeeding magistrate and that the original magistrate even if he came to have the case on his file again, cannot use the record prepared earlier by himself. In view of the conflicting authorities and the importance of the point, the learned Judge made the present reference.

9. We have heard the Counsel for the applicant Durgaprasad as also Shri T.B. Pendharkar who represents the State Government. We have come to the conclusion that the action of Shri Nisal was not either improper or 'ultra vires' and that he could act on the record prepared by him. Having come to this conclusion, the question before us was what we should do with the whole case. We accordingly considered whether we should send the appeal for re-hearing to the Additional Sessions Judge after setting aside his order. We felt considerable difficulty in adopting this course because of the expression of opinion already made by the learned Additional Sessions Judge in the order under revision. If the learned Additional Sessions Judge had merely decided this appeal on a preliminary point, it would have been possible to remit the appeal to him for disposal according to law. But in view of the strong expression of opinion by him, the trial of the appeal before him now would be a farce inasmuch as he is bound to

act according to his own earlier decision.

We had the other alternative of remitting the appeal for disposal to another Sessions Judge but we felt that such a course would entail unnecessary hardship upon the accused. There does not appear to be any other Court at Betul competent to hear the appeal and it would necessarily have to go to Hoshangabad for disposal or to some other Sessions division. We suggested to the Counsel for the parties concerned that it would be better if the appeal was taken up and disposed of here. The Counsel did not raise any objection. We are aware that the consent of counsel would not grant us jurisdiction, but we are satisfied that we have the power to withdraw the appeal from the Additional Sessions Judge, Betul, and hear it ourselves. Such a power is available to us under Section 526 of the Code of Criminal Procedure, regard being had to Sub-section (1)(d), (e) read with (iii) and Sub-section (3). We accordingly intimated to the parties our intention of hearing the appeal. As a result, the appeal was argued before us and we shall give our decision after we have dealt with the point of law involved in the reference made by Rao J.

10. Under Section 350(1) of the Code of Criminal Procedure,

Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in any enquiry or trial, ceases to exercise jurisdiction therein, and Is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may resummon the witnesses and recommence the enquiry or trial.

To this provision, there are certain provisos. We are only concerned with the first proviso which is to the following effect:

(a) In any trial the accused, may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard.

11. The question that arises in the present matter is:

Whether a Magistrate who has conducted a prosecution case before himself can, when he cornea in at a later stage on transfer of the case, act on the evidence recorded by himself, when in the interim, though a 'de novo' trial was demanded by the accused before another Magistrate, no further action had been taken on the request inthe case

Authorities on this point are divergent in India. They have all been collected together in the order of reference made by Rao J. and we shall refer to them briefly before stating our own view of the law.

12. Authorities which say that the Magistrate Is not debarred from acting on the evidence previously recorded by himself, are to be found in Shyama Pado Deb v. Sundar Das ILR (1938) All 794; Ghaus Mohammad v. Emperor AIR 1941 Lah 322 and Abdul Hakim v. Pazu Miya 62 Cal 266. As against this, a contrary view has been expressed in Sardar Khan Sahib v. Attaulla AIR 1925 Mad 174; Sriranga Chettiar v. Subramania : AIR1927 Mad81 ; In Re Ramalingam Pillai 57 Mad 1019; Jago Singh v. Emperor 20 Cri LJ 820; Daroga Chowdhury v. Emperor 20 Cri LJ 638 and Emperor v. Ganpat ILR 1937 Nag. We shall now deal with the facts and the decisions in these cases. We shall begin first with the cases which have been cited on behalf of the State Government in support of the contention that the order of the learned Additional Sessions Judge was correct.

13. In Sardar Khan Sahib v. Attatjllah AIR 1925 Mad 174, Madhavan Nair J. following the decision of the Patna High Court in 'Jago Singh v. Emperor 20 Cri LJ 820, stated that, inasmuch as, the old record is wiped off by reason of the grant of the request for a 'de novo' trial by the intervening Magistrate, the original Magistrate even if he happened to succeed, cannot act on the record previously prepared by himself. The learned Judge did not give any reasons in addition to those given in the earlier Patna case and in fact the decision is entirely rested on the opinion expressed by Coutts and Adami JJ. in the Patna case. But in Jago Singh v. Emperor 20 Cri LJ 820, the succeeding Magistrate had already examined some witnesses and on the re-transfer of the case to the original Magistrate, it was held that the original Magistrate could not carry on the case from the point at which he had left it.

14. The first of these cases, which we have cited above from Madras and the Patna case are distinguishable inasmuch as in the Madras case there was no record of any evidence by the intervening Magistrate whereas in the Patna case there was. There may be some ground for decision and (sic) the view taken in the Patna High Court resting on the fact that there would be two sets of evidence before the Magistrate and he would have to elect whether he should act on the evidence recorded by him or by his predecessor. In such an eventuality, other considerations might prevail. But the Patna case decided by Coutts and Adami JJ. is no authority for the proposition which should govern the present matter. If Madhavan Nair J. (and we say it respectfully) has given any reasons for advancing the proposition to cover the facts before him, we might have considered those grounds, but unfortunately the learned Judge has not expressed how that case was covered by the authority on which he relied.

15. In Daroga Chowdhury v. Emperor 20 Cri LJ 638, which was also a case from the Patna High Court, the criminal trial proceeded at first before Shri Tadani. When Shrl Tadani went away, the Sub-Divisional Officer Shri Majid took the case on his own file. At the request of the accused, Shri Majid, the new Magistrate started the case de novo1, witnesses were examined and then Shri Tadani returned to the station and Shri Majid re-transferred the case to Shri Tadani. It was held that Shri Tadani could not take action on the record prepared by himself because by the grant of the trial 'de novo' by Shri Majid, the old proceedings were dead and they could not be revived. There the facts were different. Another trial had already commenced and evidence recorded before the case came back to the first Magistrate. The present case is distinguishable and we do not see any reason to express our opinion on what would happen when such facts exist.

16. In Sriranga Chettiar v. Subramania Ansari : AIR1927 Mad81 , Wallace J. had to deal with the transfer of a case from the Magistrate who had granted a 'de novo' trial to the original Magistrate. The facts were these: There was a Stationary Magistrate at Bhavani before whom a criminal case was started. The Stationary Magistrate Bhavani was transferred as Magistrate to Gopichettipalayam, and a new Magistrate was appointed in his place at Bhavani. That Magistrate ordered a 'de novo' trial. When the District Magistrate was moved for the transfer of the case

to the Magistrate at Gopichettipalayam, and ordered accordingly, the matter was taken to the High Court and it was decided that there was no jurisdiction to transfer the case in which cognizance had been taken by a new Magistrate. No reasons are given in the judgment which is composed of half a dozen lines only.

17. In In Reramaltngam Pillai 57 Mad 1019 Bardswell J. had to deal with a similar matter. In that case, the first Magistrate who was hearing the case had brought the trial almost to completion. Afterwards, that Magistrate was transferred and another Magistrate came in. Before him, a request for 'de novo' trial was made and was granted. The complainant moved the District Magistrate to transfer the case back to the Magistrate who was hearing the case previously, to enable him to try the case from the point at which he left off. Bardswell J. following the decision in Sriranga Chettiar v. Subramania Asari : AIR1927 Mad81 and Sardar Khan Sahib v. Attaulla AIR 1925 Mad 174 held that there was no jurisdiction to order such a transfer. That case again is not an authority for deciding whether the earlier Magistrate must begin the trial 'de novo' and is rested upon the earlier Madras decisions which, as we have shown above, were decided on their own facts.

18. In Emperor v. Ganpat ILR (1937) Nag 135, Gruer J. had to deal with a slightly different case. The criminal trial began originally before Shri Shrivastava, Magistrate, who after examining some witnesses, came to the conclusion that he had no jurisdiction to try the case, and asked for a transfer of the case to another Court. Under the orders of the Sub-Divisional Magistrate, the case was transferred to the file of the Tahsildar and Magistrate First Class before whom a request for 'de novo' trial was made and was granted. Later on when the question arose whether Shri Shrivastava had jurisdiction or not, it was held that there was jurisdiction and the Sub-Divisional Magistrate, thereupon took the case on his own file and. re-transferred the case to Shri Shrivastava. On a request that Shri Shrivastava should act on the old evidence, Shri Shrivastava decided that h would have a trial 'de novo' before him. The question was whether the action of Shri Shrivastava was proper or not. It was held that his action was proper.

19. It is obvious that under Section 350 of the Code of Criminal Procedure which is an enabling section the Court itself is enabled to try the case 'de novo' without any

request from the accused. Whether or not the Magistrate can do so when the only record is the one prepared by him, is a matter which does not fall for consideration here. The case decided by Graer J. was based on the dictum laid down in the Madras High Court that once the Court has elected to try the case 'de novo', no body can have any say in the matter because on the grant of a trial 'de novo' the earlier record gets wiped off. In the present case, a distinguishing feature is that the Court itself did not like to try the case 'de novo' nor did the accused ask for such a privilege. Such a case was not before Gruer J. to decide and we entirely agree with Rao J. that the decision of Gruer J. is distinguishable on facts.

20. As against these cases, we have the authority of four oases three of which have been cited by 113 earlier. We shall begin with the case which we have not cited. That case is reported in Queen-Empress v. Ahobalamatam Jeer 22 Mad 47. In that case, Sir Arthur J.H. Collins, C.J. and Benson J. laid down a proposition of law which not only is the sense of the matter but also the law on the subject. On facts which were analogous to those before us, the learned Chief Justice observed as follows:

The present ease is not provided far by Section 350, nor, as far as we know, by any other section of the Criminal P.C., nor is there anything in that Code to prohibit the proposed procedure, and it is obviously convenient. There is no change of the Magistrate, and consequently no reason for commencing the trial 'de novo'. It is the same judicial mind that is brought to bear on the evidence throughout the case, and the Magistrate has the same Magisterial powers, though his judicial designation and his local jurisdiction are changed. But the change of local jurisdiction does not matter since the want of local jurisdiction is cured by the special jurisdiction given by the order of the District Magistrate transferring the case.

21. A similar view was expressed more pointedly in the three eases to which reference has already been made by us before. In Ghaus Mohammad v. Emperor AIR 1941 Lah 322. Bhide, J. had to deal with a case in which the trial had commenced before Shri Diwan Hukum Chand. Most of the evidence in the ease had been heard by Shri Diwan Hukurn Chand, and then the case went to another

Magistrate on account of the transfer of Diwan Hukum Chand to another district. Subsequently however the case was re-transferred to the Court of Diwan Hukum Chand under the orders of the High Court. This was apparently done with the object of saving the necessity of a 'de novo' trial under Section 350 of the Code of Criminal Procedure.

The Counsel in the case urged that even when a case is re-transferred to the original Magistrate in circumstances which we have stated, it is incumbent to grant a 'de novo' trial if demanded by the accused. This contention was repelled by the learned Judge who did not apparently follow the authority of the Madras Cases to which we have referred elsewhere. It was stated by the learned Judge that:

It is admitted that the second Magistrate, to whom the case had gone on the transfer of Diwan Hukum Chand, had not recorded any evidence at all. All that he had done was to order a 'de novo' trial at the request of the accused. The case was then re-transferred to Diwan Hukurn Chand. Section 350 applies only 'whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial ceases to exercise jurisdiction therein and is succeeded by another Magistrate who has and who exercises such jurisdiction;' etc.

In the present instance, the successor of Diwan Hukum Chand had not heard or recorded any evidence in the case at all. Consequently it seems to me that the condition laid down in Sub-section (1) of Section 350 was not fulfilled and therefore v the proviso to that sub-section was also not applicable.

22. The case before us is stronger because no request is made by the accused for a 'de novo' trial in this case. Neither the Court nor the accused in the case before Shri Nisal resorted to a, 'de novo' trial, and it was possible therefore on the authority cited above to continue the proceedings which had been left off by Shri Nisal when the case went to Shri Rajput.

23. In Shyama Pado Deb v. Sundar Das ILR (1938) All 794, the entire purpose and intent underlying Section 350 were considered. We have already referred to the statement of law made by, Sir Arthur J.H. Collins C.J. and Benson J. in Queen-

Empress v. Ahobalamatam Jeer 22 Mad 47. The Allahabad case also lays down propositions analogous thereto. In that case the trial had commenced in the Court of Shri Asthana who recorded the evidence and the statement of the accused and a charge was framed under Section 406 of the Indian Penal Code, and the cross-examination of the prosecution witnesses after the charge was also taken. Later Shri Asthana was transferred from the district and the case was transferred to Shri Rana Magistrate. No further proceedings took place in the Court of Shri Rana, and Shri Asthana was reposted to the district and the case was re-transferred to his file. When the case came up before Shri Asthana, the accused applied to Shri Asthana that the case should be heard 'de novo' under Section 350, Clause (2) of the Code of Criminal Procedure. Shri Asthana rejected that application.

Mr. Justice Bennet who heard this case upholding the view of Shri Asthana observed as follows:

The argument is that Sub-section (3) of Section 350, applies, which states: 'When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of Sub-section (1)'. Now this sub-section merely states that in the case of a transfer the former Magistrate shall be deemed to cease to exercise jurisdiction and to be succeeded by the latter. Now turning to Sub-section (1), it is stated: 'Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate....

Now there are two Magistrates contrasted by this sub-section. The first Magistrate had two qualifications; (1) he must have heard and recorded the whole or any part of the evidence, and (2) he must have ceased to exercise jurisdiction. The second Magistrate is contrasted with the first as 'another Magistrate'. I understand the word 'another' to mean that the second Magistrate should differ from the first both on point (1) and point (2). Mr. Asthana differs only on point (2). In my opinion therefore Mr. Asthana cannot be considered 'another Magistrate' within the meaning of Section 350(1) because he does not fulfil the two points of difference for the first Magistrate. Therefore it appears to me that Mr. Asthana does not come

under Section 350 at all. I may also point out that the fundamental idea of Section 350 is that the Magistrate who passes judgment in a case should be the Magistrate who has heard the evidence and if he has not heard all the evidence then the accused la given a right to demand resummoning and re-hearing.

In the case of Mr. Asthana, who has heard all the evidence for the prosecution, there is no power in this section for him to re-hear it even if he desired to do so. All the power given to him, by the Code would be under Section 540 to recall and re-examine any person already examined, that is, he could further cross-examine, if he desired to do so the witnesses for the prosecution. But he could not have their examination-in-chief taken again or their cross-examination, and of course the power under Section 540 is entirely at the discretion of the Magistrate and the defence have no right to force him to recall these witnesses for further cross-examination if he does not desire to do so.

The Madras view was expressly dissented from by the learned Judge.

24. In Abdul Hakim v. Pazl Miya 62 Cal 266 the case originally was before Shri L.K. Sen, who transferred it for disposal to the file of two Bench Magistrates who acted together as a Court. Witnesses were examined and cross-examined on both sides, and charges were framed and the trial had reached the stage when a date had been fixed for arguments. Then the Bench was dissolved and the Magistrates were ordered to sit singly. Shri Sen thereupon acting as the superior Magistrate, withdrew the case to his own file and transferred it to the file of Shri B.C. Ghosh who had recorded the depositions.

25. When the proceedings commenced before Shri Ghosh, the accused demanded a new trial under the provisions of Section 350(1), proviso (a). The Magistrate held that he was bound to accede to the demand, and had no discretion to refuse to resummon and re-hear all the witnesses. This contention of the Magistrate was negatived by a Division Bench of Lort-Williams and Khundkar JJ. The learned Judges observed as follows:

Section 350 of the Code of Criminal Procedure does not in terms apply to a case like the present. It refers to cases heard by a Magistrate sitting singly, who is

succeeded by another Magistrate sitting singly. Obviously, it contemplates cases in which the second Magistrate is a person other than the first magistrate, and in which the second magistrate has not had any previous opportunity of hearing the witnesses. The reasons for the provisions contained in the section are not present in a case like the present, especially in view of the fact that Mr. B.C. Ghosh recorded all the evidence given at the hearing before the bench which consisted of himself and Mr. Rahaman. The section refers only to cases in which the whole or any part of the evidence has been recorded by the first magistrate and he is succeeded by another magistrate. Mr. Rahaman did not record any part of the evidence, the whole of it was recorded by Mr. Ghosh, and, so far as he is concerned, he has not been succeeded by an another magistrate but by himself.

26. Considering all these cases we are respectfully in agreement with the authorities cited on behalf of the applicant. The reason for this is very simple. Apart from what has been stated by the learned Judges who decided the above-mentioned cases, it is obvious that Section 350 of the Code of Criminal Procedure would not in terms apply to a Magistrate who having himself recorded all the evidence in a case, succeeds another who has done nothing. A bare perusal of the opening words of Section 350 would show that it is only when a Magistrate, who succeeds another and is faced with the problem of deciding a case on the evidence recorded by the previous Magistrate that Section 350 comes into play. That section may be invoked by the Magistrate and it may equally be invoked by the accused. It is an enabling section which enables a Magistrate to act on the evidence recorded by his predecessor either wholly or partly or to proceed 'de novo.' It enables the accused also to ask for a 'de novo' trial if he feels that the Magistrate should re-hear the witnesses. It is enabling section which enables the Magistrate or the accused to get the witnesses once more before the Court, but if neither seeks to do so, the necessity for invoking the section does not arise. If neither the Magistrate nor the accused invoked the section, it is not open to a third party to do so.

27. Further where the Magistrate succeeds to a record already prepared by him, it cannot be said that he is acting on evidence recorded by 'another' Magistrate. This view found favour with the Allahabad High Court and we respectfully agree that

that is also decisive of the matter. In so far as the accused is concerned, he can invoke the proviso only when he finds that a person who is acting on the evidence is not the one who has recorded that evidence. If it is the same person, then as stated by Bhide, J., in Ghaus Mohammad v. Emperor AIR 1941 Lah 322, the proviso cannot be invoked.

28. Considering all these authorities we respectfully dissent from the wide proposition which Gruer, J., has laid down. We do not say that where both the Magistrates have partly recorded the evidence, the first Magistrate on succeeding to the second cannot order a 'de novo' trial or that the accused cannot compel him to start once again. That case is not before us and it is possible that in that case a 'de novo' trial may be necessary. But where the only record in the case is the one prepared by the first Magistrate and the second Magistrate has done no more than to accede to a 'de novo' trial 'before him', the first Magistrate on succeeding subsequently can act on his own record. We therefore hold that the trial before Shri Nisal was proper.

29. The order of the Additional Sessions Judge is set aside. Having considered that the trial of the appeal by the Additional Sessions Judge, would not be feasible though we feel impelled to set aside his order we have taken this appeal on to our file, and we now proceed to decide it.

30. The prosecution in this case is rested upon the evidence of only two witnesses the first is Shri M.B. Dixit, handwriting expert who was also examined on behalf of the defendant in the civil suit. The other witness is Moujilal' who denies his signature. The accused has examined a large number of witnesses to prove that it is Moujital's signature, but we need not refer to their evidence because in our opinion the prosecution case has not been made out. A prosecution can succeed only on its evidence and in this case the evidence is not sufficient to warrant the conviction of the accused.

31. To begin with (as Moujilal has himself admitted) Moujilal is exceedingly hostile to the accused. He has given evidence of past quarrels and indeed the trial Magistrate also felt that there is long litigation between the parties and their relations are not good. Under such circumstances, his bare denial of his signature

on the document in question would mean nothing more than his oath against the oath of the accused as plaintiff in the suit. The entire case hinges on the evidence of Moujilal corroborated by the handwriting expert. Moujilal's evidence is interested and cannot be a secure foundation for convicting the accused in this case. It is true that Shri M.B. Dixit appeared first as a witness for the defendant in the suit. We do not however attach much importance to this fact because Shri Dixit cannot be dubbed a liar simply because he had appeared in the suit on behalf of the defendant.

However reading the evidence as a whole, and bearing in mind the salutary observations made in Sarkar's Evidence Act, 7th Edn., at page 503, we approach the evidence of Shri M.B. Dixit. We may say here that the best exposition of the law necessary for the decision of this case is to be found in Ladharam v. Crown ILR 1944 Kar 305. Bearing that decision also in mind we find that the evidence of Shri M.B. Dixit, is not entirely acceptable to us. We have seen the document in question and have compared it with the signatures which have been produced in the case as also one other which is to be found on the record of the case at page 47 in the rule. It is true that there are some variations between the writing on the document and the writing made in Court and on the several documents on which the signatures of Moujilal are admitted. All the same, the word 'Moujilal' which is written on the stamp in the document is not so radically different from the other admitted 'Moujilal' written in the document as to lead to the conclusion that the writer is different.

It is the latter part of the writing which appears to be written in a fairly easy and practised hand. The signature 'Moujilal' which is on the stamp has all the tremors which are more pronounced in the admitted signatures of Moujilal. The formation of 'MA' as well as 'JA' is very similar. We may say here that we do not wish to play the role of a handwriting expert. It is not open however to the Court to accept blindly the statement of the handwriting expert. The correct principle of law is that the testimony of the handwriting expert should be taken as a guide and with its assistance the Court should apply its own observation to the disputed writing and reach the conclusion whether the signature which is denied, is or is not the signature of the person denying it. Having done so, we feel considerable hesitation

in accepting the evidence of Shri M.B. Dixit.

In this case, the accused had also applied for examination of another expert which request was very unfortunately rejected by the trial Court. The argument of the Counsel for the accused that his handwriting expert would have been able to prove the errors of Shri M.B. Dixit and that it was the signature of Moujilal, remains to be answered. The learned Additional Sessions Judge was perfectly correct in saying that the trial Judge should have allowed such an opportunity to the accused we considered whether we should take that action here but having realized that any further evidence in this case would not improve that from Moujilal and the handwriting expert, we feel that we should not allow this case to be prolonged any further than what it has been, The case has been pending for nearly six years, and all the evidence there was, has been led by the prosecution. When we find that that evidence is inconclusive and insufficient to warrant a conviction it would be sheer waste of time to allow the examination of another expert even at the instance of the accused.

32. Since we are not satisfied with the evidence led by the prosecution and as we find that the remark of the learned trial Magistrate that even the naked eye can find dis-similarity in the signature, is not justified, we do not see any reason to uphold the conviction of the accused ordered by the trial Magistrate. We find that the learned Additional Sessions Judge was also not satisfied with the evidence in the case.

33. The revision application is therefore allowed. The order of the learned Additional Sessions Judge is set aside as also the conviction, and sentence passed on the accused, and he is acquitted.