

The State Vs. Laxman Bhimappa Tyapi and ors.

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Court : Karnataka

Decided On : Mar-23-1959

Reported in : AIR1959Kant260; AIR1959Mys260; 1959CriLJ1454; ILR1959KAR407

Judge : H. Hombe Gowda and ;S.S. Malimath, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 161(3), 164, 173, 173(1), 173(2), 173(3), 207-A, 207-A(3), 207A(4) and 438; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 147, 148, 149, 302, 323, 324 and 326; Indian Arms Act - Sections 19; Code of Criminal Procedure (CrPC) (Amendment) Act, 1955

Appeal No. : Criminal Revision Case No. 69 of 1958

Appellant : The State

Respondent : Laxman Bhimappa Tyapi and ors.

Advocate for Def. : B.V. Deshpande, Adv.

Advocate for Pet/Ap. : A.B. Mariappa, Govt. Pleader

Judgement :

ORDER

1. This is a reference made by the Additional Sessions Judge, Belgaum under Section 438 of the Code of Criminal Procedure for quashing the order passed by

the Judicial Magistrals, First Class, Ramdrug in C. C. No. 331 of 1957. By the afore-said order the learned Magistrate committed the four respondents and nine others to take their trial on charges under Sections 120-B, 147, 148, 149, 302, 323, 324 and 326 of the Indian Penal Code and 19(e) and (f) of the Indian Arms Act in the Court of the Sessions Judge at Belgaum. The learned Additional Sessions Judge who perused the records and heard the arguments addressed to him on behalf of the respondents, is of the opinion that the order passed by the learned Magistrate committing the accused in C.C. No. 331 of 1957 to take their trial in the Court of Session without examining all the witnesses who had been cited in the charge-sheet as witnesses for the incident is illegal and therefore the order should be quashed.

The learned Additional Sessions Judge is of the opinion that it was obligatory on the part of the prosecution to produce and examine all such witnesses in the committal Court under Sub-section (4) of Section 207-A of the Code of Criminal Procedure. Reliance is placed on some observations made by this Court in *Pawalappa v. State of Mysore*, 35 Mys. LJ 64 : ((S) AIR 1957 Mys. 61J and *Krishna v. State of Mysore*, (S) AIR 1957 Mys. 5 in support of the said view. Having come to the conclusion that the committal order is bad, the learned Additional Sessions Judge has made his reference to this Court for quashing the same and sending back the records to the learned Magistrate directing him to examine all the witnesses cited in the case as witnesses to the actual commission of the offence and then proceed with it according to law.

2. This reference involves an important question of law regarding the interpretation of Sub-section . (4) of Section 207A of the Code of Criminal Procedure. Section 207-A was inserted by Section 29 of the Code of Criminal Procedure Amendment Act (Act XXVJ of 1955) with a view to avoid unnecessary delay in proceedings before the committal Court and speed up the trial of cases instituted on police report triable exclusively by a Court of Session.

Under Sub-section (1) a Magistrate receiving a police report should fix a date for holding an enquiry within fourteen days from its receipt. Under Sub-section (2) the Magistrate is bound to issue process for the attendance of any witness or, the

production of any documents applied for by the prosecution before the date fixed for holding the enquiry. Under Sub-section (3) the Magistrate should satisfy himself that all the documents referred to under Section 173 Cr. P. C. have been furnished to the accused before commencing the enquiry. Sub-section (4) of Section 207-A of the Code of Criminal Procedure reads as follows :

'The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of the opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also.'

Though this sub-section was inserted recently and came into force from 1-1-1956 there has been diversity of opinion amongst the various High Courts in India on the question whether or not it is obligatory for the prosecution to examine all the eye-witnesses cited by them in the charge-sheet before an accused person is committed to take his trial before a Court of Session. Doubtless, on a strictly grammatical construction, the wording of Sub-section (4) vests the discretion entirely with the prosecution to produce witnesses for the actual commission of the offence or not to produce them.

But some of the High Courts have held that there is no such discretion and that the prosecution is bound to produce and examine all such witnesses. Some other High Courts have taken the contrary view. The line of reasoning adopted by the High Courts that hold the former view is that the word 'may' used in the expression 'as may be produced by the prosecution as witnesses to the actual commission of the offence alleged' has the force of 'shall' in its context and therefore, the prosecution was bound under Sub-section (4) of Section 207-A Cr. P.O, to produce them and that the Magistrate 'shall' record their evidence (See *State v. Ramratan* : AIR 1957 MP7 ; *State v. Govindan Thampi*, (S) AIR 1957 Trav-Co. 29 and *In re Kunjan Ragha-van*, : AIR1957 Ker32 .

The other line of reasoning adopted by some High Courts is that the use of the word 'may' clearly indicates that the Legislature intended to vest the discretion with the prosecution to examine such witnesses or not to examine them. (See

State v. Dhirajlal Maneklal, 59 Bom LR 645; Manikchand Chowdhury v. State, : AIR1958 Cal324 , In re Thirumal Thevar, AIR 1958 Mad 135; In re Chervirala Narayan, AIR 1958 Andh. Pra. 235; In re Kotta Narayan, AIR 1958 Andh. Pra. 651; State v. Yasia, : AIR1958 All861 and Charnpabai v. The State, : AIR 1958 MP280).

3. Some of the High Courts hold the view that the Magistrate has got a right under the latter part of Section 207-A (4) to examine the witnesses other than the eye witnesses for the incident, if he so desires, before he proceeds to consider the documents referred to in Section 173 and that he has no right to examine the witnesses for the incident suo motu, while some other High Courts have held that the right of the Magistrate to examine witnesses for the incident, if he feels that it is necessary in the interests of justice is recognised in the latter part of Sub-section (4) of Section 207-A of the Code of Criminal Procedure.

Some of the High Courts and the subordinate Courts appear to hold the view that . . . this High Court has expressed its clear opinion to the effect that it is obligatory for the prosecution to examine all the eye witnesses for the incident in 35 Mys LT 64 : ((S) AIR 1957 Mys 61 & in (S) AIR 1957 Mys 5. We will presently show that the construction put on the abovesaid decisions of this High Court by the several learned Judges and the subordinate Courts in this State is not correct.

4. It is now a well-recognised rule of construction that unless there is any ambiguity in the wording of the Statute it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they stand to be examined and construed in the light of the surrounding circumstances and constitutional principle and practice. In *Bengal Immunity Co. Ltd. v. State of Bihar* : [1955]2SCR603 , His Lordship Das C. J. enunciated the principles that should govern the interpretation or construction of the statutes in the following words :

'It is a sound rule of construction, of a statute firmly established in England as far back as 1584 when *Heydon's case* ((1584) 3 Co Ron 7a) was decided for the sure and true interpretation of all the statutes in general (be they penal or

beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act,

2nd. What was the mischief and defect for which the common law did not provide,

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th. The true reason of the remedy; and then the office of all judges is always to make such construction as shall suppress the mischief, and advance the remedy; and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.'

His Lordship also referred to the following observations of Earl of Halsbury in *Eastman Photographic Materials Company v. Comptroller General of Patents, Designs and Trade Marks*, 1898 A.C.571:

'My Lords, it appears to me that to construe the statute now in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise and to the later Act which provided the remedy. These three things being compared. I cannot doubt the conclusion.

5. As already stated Section 207-A of the Code-of Criminal Procedure was inserted by Act XXVI of 1955 with the avowed object of expediting committal proceedings by providing a simplified procedure in criminal cases that are triable exclusively by a Court of Session. Therefore, any interpretation that we may put on any sub-section or clause of Section 207-A of the Code of Criminal Procedure should subserve the object of the amendment.

If the construction put by some of the High Courts that the Magistrate is bound to examine all the witnesses for the incident is accepted the object of the amendment cannot be achieved and on the other hand the evil or mischief that the Legislature

intended to avoid is perpetuated. The learned Judges who took the view that it is obligatory upon the prosecution to produce before the Magistrate at the stage of enquiry all or any of the persons who might be witnesses to the actual commission of the offence have missed to notice the fact that such interpretation will instead of suppressing the mischief, will help its continuance, if, therefore, the words of the section are such as to admit of the construction which will aid as to achieve the object. Courts should construe it in that manner.

6. In : AIR1958 Cal324 His Lordship Chakravarti C. J., who rendered the judgment of the Division Bench repelled an argument pressed on him that it is necessary to read the word 'may' as 'shall' in the first part of Section 207-A of the Code of Criminal Procedure and observed that it will serve no purpose. His Lordship further observed that it was not obligatory on the part of the prosecution to produce all the witnesses for the incident nor was the Magistrate bound to examine all or any one of them if they are not produced and that the committal order passed by the Magistrate without examining all the witnesses is not bad in law. His Lordship observed as under : .

'The petitioners contend that even if Section 207-A applies to the present case, the prosecution were bound, under the first part of Sub-section (4) of the section, to examine all the witnesses of the actual commission of the offence and that if they failed to do so, the learned Magistrate was bound, under the second part of the same sub-section, to examine them or at least he ought to have examined them in the interest of justice.

In support of these contentions, the petitioners relied on 1957 Cr. LT 245 : (S) AIR 1957 Trav-Co. 29--decision of the Travancore-Cochin High Court; : AIR 1957 MP7 a Single Judge decision of the Madhya Bharat High Court and 1957 Cri. LJ 76: (S) AIR 1957 Mys. 5--a decision of the Mysore High Court. In my view, the contentions are not correct and indeed Mr. Dutt, who appeared for the petitioners, stated that his personal opinion was that the cases he was citing had not been rightly decided.'

His Lordship proceeded to observe as follows :

'I am unable to see how the obligations contended for by the petitioners can be read into the language of the sub-section. The first part undoubtedly lays an obligation but it is only an obligation on the Magistrate to examine such witnesses of the actual commission of the offence alleged as the prosecution may produce before him. Primarily and directly, the second part lays no obligation at all, but only confers a power and discretion on the Magistrate to examine on his own account witnesses other than those examined by the prosecution, if he considers it to be in the interests of justice to do so.

The Magistrate must undoubtedly apply his mind to the question as to whether some more of the prosecution witnesses than the prosecution have produced ought to be examined in the interest of justice and he must exercise the power and the discretion conferred on him to examine such witnesses judicially. His power may become a duty and his discretion an obligation if he takes such a view of the evidence of the witnesses whom the prosecution have examined that there are matters in it which remain to be clarified and on which other witnesses, if examined, may throw some light.

In such a case, he cannot decline to examine for himself such other witnesses on some extraneous ground such as that the matters may be cleared up in the Sessions Court or that a considerable number of witnesses having been examined by the prosecution, it is not desirable to prolong the proceedings further by examining more witnesses. If he does so, he may not fail in discharging any obligation directly laid on him by the sub-section, but he fails in discharging an obligation arising under it on his findings.

If again, he fails to apply his mind at all to the question of examining more witnesses or fails to examine more witnesses on an erroneous view that it is not justly necessary in the circumstances of the case to do so, he may be corrected by a superior Court. But he is under no absolute duty to examine in every case all such witnesses of the actual commission of the alleged offence as the prosecution have not examined. Nor does the sub-section impose any absolute duty on the prosecution to produce before the committing Magistrate all their witnesses of the actual commission of the offence alleged.

'In holding that under the first part of Section 207-A (4) the prosecution are bound to examine all their witnesses of the actual commission of the offence alleged, the Travancore-Cochin and Madhya Pradesh decisions rely on the rule of interpretation that the word 'may' as used in a statute, has sometimes the compulsory force of 'shall'. The first decision refers to the discussion in Craies on Statute Law and cites the cases there cited, while the second quotes Maxwell on the Interpretation of Statutes and some of the decisions cited in that treatise.

The Mysore decision is really concerned with the second part of S. 207-A (4) and only contains a passing observation that what is obligatory on the Magistrate under the section is only the recording of the evidence of witnesses to the actual occurrence. It does not say that the prosecution are bound to produce all their witnesses of the actual commission of the offence alleged but says on the other hand that the Legislature which was trying to shorten and simplify the commitment proceedings could not have contemplated examination of all witnesses for the prosecution at the enquiry stage.

'With great respect, I may entirely be unable to see how the rule of interpretation invoked by the Travancore-Cochin and Madhya Pradesh High Courts -can have any possible application in the construction of Section 207A(4). It is true that legislative provision expressed in a permissive form is sometimes construed as really mandatory and the word 'may' is taken as if, it read 'must' or 'shall'. But that is only when a power is conferred on a person by saying that he may do a certain thing, giving him liberty to do it so far as the form of expression goes, while, on the other hand, it appears either from the nature of the thing to be done or from other indications in the provision that the Legislature intended to make it the duty of the person concerned to exercise the power.

In such a case it is said that the effect of the word 'may' is not to make it optional or discretionary with the donee of the power to exercise it or not, but the effect is to enable him to exercise it which is otherwise made his duty to do. That principle of construction cannot apply in a case where the word 'may' is not used with a verb which confers a power on a certain person and enables or permits him to exercise it, but is used with a verb in the passive voice which occurs in an adjectival phrase,

describing a fact and occurs in conjunction with other words which completely exclude implications of an obligation.'

It is clear from the above that his Lordship held that the second part of Sub-section (4) lays no obligation at all, but only confers a power and a discretion on the Magistrate to examine on his own account witnesses other than those examined by the prosecution if he considers it to be in the interests of justice to do so.; and that the Magistrate must undoubtedly apply his mind to the question as to whether some more of the prosecution witnesses than the prosecution have produced ought to be examined in the interests of justice and he must exercise the power and the discretion conferred on him to examine such witnesses judicially; that his power may become a duty and his discretion an obligation if he takes such a view of the evidence of the witnesses whom the prosecution have examined that there are matters in it which remain to be clarified and on which other witnesses, if examined, may throw some light, and that the Magistrate is under no absolute duty to examine in every case all such witnesses to the actual commission of the offence alleged as the prosecution have not examined and that Sub-section (4) did not impose any absolute duty on the prosecution to produce before the committing Magistrate all their witnesses of the actual commission of the offence alleged.

7. In 59 Bom LR 645, a Division Bench of the Bombay High Court dealing with the question whether it was obligatory upon the prosecution to produce before the Magistrate all the eye witnesses observed thus :

'that under Section 207-A of the Code of Criminal Procedure, 1898, it is not obligatory upon the prosecution to produce before the Magistrate at the stage of the committal enquiry all or any of the witnesses who might have witnessed the actual commission of the offence. The discretion conferred upon the prosecution in this respect is absolute and the words 'persons, if any, as may be produced' in Section 207-A (4), of the Code must mean that the prosecution cannot be compelled to produce any 'eye witnesses' of the offence at that stage if it does not wish to do so.

If it wishes to produce all the 'eye witnesses' before the Magistrate, it may do so. If it wishes to produce only some of them or none of them, that also would be within

its competence to do. The words 'other witnesses for the prosecution' in the latter part of Section 207-A (4) of the Code of Criminal Procedure mean 'other persons whose statements under Sections 164 and 161 (3) of the Code; of Criminal Procedure were recorded by the police during investigation and whom the prosecution proposes to examine as its witnesses minus the persons already produced by the prosecution before the Magistrate under the earlier part of the sub-section as witnesses to the actual commission of the offence.'

It is clear from the above discussion that their Lordships of the High Courts of Bombay and Calcutta have dissented from the view taken by the Kerala and Madhya Bharat High Courts in the oases referred to above. A Division Bench of the Madras High Court also took the same view in AIR 1958 Mad. 135 and held that -the relevant Section 207-A (4) Cr. P, C. merely states that the Court shall examine witnesses produced by the prosecution as witnesses to the actual commission of the offence alleged. Although the spirit of the section is that it is better that the witnesses to the occurrence are examined, there is no statutory obligation cast on the Court to compel the examination of those witnesses.' Reference may also be made to a decision of the Allahabad High Court reported in : AIR1958 All861 in which a Division' Bench considered the scope of Section 207-A(4) of the Code of Criminal Procedure and observed that under Section 207-A (4) of the Code of Criminal Procedure the Magistrate is only bound to record the evidence of such witnesses to the actual commission of the offence alleged as may be produced by the prosecution and that the committal order based upon examination of only some of such witnesses, provided they are the only witnesses tendered by the prosecution for that purpose, does not suffer from any infirmity or illegality and that the prosecution also is not debarred from examining in the Sessions Court witnesses other than those examined before the committing Court.

In the course of the Judgment their Lordships observed that the first part of the sub-section which deals with evidence or the witnesses to the actual commission of the offence enjoined the Magistrate to examine those witnesses who are produced by the prosecution and that if the prosecution do not produce some of the eye witnesses the Magistrate cannot compel them to examine those witnesses; but so that the accused may not be prejudiced by the non-examination

of witnesses whether direct or circumstantial, the Legislature has vested the Magistrate with discretion to examine any witness suo motu or on the application of the accused. The learned Judges reached such a conclusion bearing in mind that the object underlying the amendment of the Code in 1955 was to simplify and speed up criminal trials and consistent with that object Section 173 was also amended to obviate the necessity of recording the evidence of all the eye witnesses in the committal proceedings and observed thus :

'The idea underlying the amendment of that section was not only to inform the accused of the case against him but also of the evidence on which it is proposed to base it. That being so the recording of the evidence for the prosecution in the court of enquiry would be futile unless the justice of the case demanded it In that view of the matter Sub-section (4) of Section 207-A contains all the necessary safeguards for the accused while at the same time simplifying and speeding up the trial itself.'

A plain reading of the first part of the sub-section clearly indicates that the discretion of producing eye witnesses rests entirely with the prosecution and if they do not choose to produce any such witness they cannot be compelled to do so. This question as to whether the non-examination of all the eye witnesses cited in the charge-sheet will vitiate the committal order in law has not yet come up for consideration before the Supreme Court. But their Lordships had an occasion to deal with the scope and construction of Section 207-A(3) wherein the word 'shall' has been used in *Narayan Rao v. State of Andhra Pradesh*, : 1957 CriLJ1320 . The point for consideration in that case was whether the word 'shall' occurring in Sub-section (2) of Section 173 read with Sub-section (3) of Sec 207-A of the Code of Criminal Procedure is mandatory or only directory. Their Lordships observed as follows :

'There is no doubt that those provisions have been introduced by the amending Act of 1955 in order to simplify the procedure in respect of inquiries leading upto a sessions trial, and at the same time to safeguard the interests of accused persons by enjoining upon police officers concerned and Magistrate before whom such proceedings are brought to see that all the documents necessary to give the

accused persons all the information for the proper conduct of their defence, are furnished, It has rightly been contended on behalf of the appellant that it was the duty of the Magistrate to see that the provisions aforesaid of the Code have been duly complied with. Magistrates, therefore, have to be circumspect while conducting such proceedings to see to it that accused persons are not handicapped in their defence by any omission on the part of police officers concerned to supply the necessary copies.

But we are not prepared to hold that non-compliance with these provisions has necessarily the result of vitiating those proceedings and sub-sequent trial. The word 'shall' occurring both In Sub-section (2) of Section 173 and Sub-section (3) of Section 207-A is not mandatory but only directory because an omission by a police Officer to fully comply with the provisions of Section 173 should not be allowed to have such a far reaching effect as to render the proceedings including the trial before the Court of Session wholly ineffective. Instead of simplifying the procedure as was intended by the amending Act as indicated above, the result contended for on behalf of the appellant will necessarily result in re-opening the proceedings and trials which may have been concluded long ago. Such a result will be neither conducive to expeditious justice nor in the interest of accused persons themselves.'

8. It is thus clear that the construction put by the several High Courts on the first part of Section 207-A (4) of the Code of Criminal Procedure on the assumption that the word 'may' used herein is not permissive and should be read as 'shall' and therefore, there is an obligation on the part of the prosecution to produce all the witnesses is clearly untenable and cannot be accepted.

9. Having carefully examined all the decisions of the several High Courts we have no hesitation to hold that it is not necessary to read the word 'may' in the first part of Section 207-A (4) of the Code of Criminal Procedure as 'shall'; that there is no injustice likely to result by not construing it to mean 'shall' because in a particular case if the court feels that injustice may result on account of the improper exercise of discretion by the prosecution, the Magistrate is entitled to act in exercise of his inherent power and the second part of Section 207-A (4) does refer to that power.

We have no doubt in our mind that the view taken by the Madhya Bharat, Kerala and Orissa High Courts that it is obligatory upon the prosecution to produce all the witnesses for the actual commission of the offence and the committal order passed without examining all such witnesses is bad in law or vitiated is not sound. On the other hand, the view taken by the Bombay, Calcutta, Allahabad and Madras High Courts is based on proper construction of Section 207-A(4) of the Code of Criminal Procedure and aims or aids to achieve the avowed object of the Legislature in inserting Section 207-A by the amending Act of 1955.

10. We may now refer to the two decisions of this High Court which are inferred to in the judgments of the several High Courts, viz.. (S) AIR 1957 Mys. 5 and (S) AIR 1957 Mys. 61. We may at once state that the learned judges of the several High Courts and the subordinate Judges of this State have wrongly construed these decisions and have read much more into them than what was intended by this Court. If only the facts of the two cases had been properly examined by the learned Judges, we are sure they would not have reached the conclusion that this Court had held that unless all the eye-witnesses are produced and examined before the Magistrate the order committing an accused to take his trial before a Court of Sessions is vitiated.

In (S) AIR 1957 Mys. 5 there were no eye-witnesses. The learned Magistrate had committed the accused to take their trial after framing charges against them on perusing the documents produced by the prosecution under Section 173 of the Code of Criminal Procedure. The accused challenged the legality of that order before this Court. Therefore, the question as to whether it was obligatory on the part of the prosecution to produce and examine all the witnesses who have witnessed the incident did not at all arise for consideration in that case. The point for consideration was whether, the Magistrate was not bound to examine the witnesses who speak to the circumstantial evidence in the case. This Court held after examining Sub-section (4) of Section 207-A Cr. P. C. that so long as there were no witnesses who have witnessed the incident, it was not obligatory for the Magistrate to examine the other witnesses.

The decision in that case can only be an authority for the proposition that under the second part of Section 207-A (4) the Magistrate is not bound to examine witnesses other than the eye witnesses' before committing the accused to take their trial. In (S) AIR 1957 Mys. 61 there were witnesses for the actual commission of the offence cited in the charge-sheet. The prosecution did not produce any of those witnesses for examination before the Magistrate. The prosecutor, made a statement to the effect that he did not intend to examine any of those witnesses for the actual commission of the offence and that the Magistrate may peruse the documents filed under Section 173 Cr. P. C. and commit the accused to take their trial.

Thereafter the accused made an application to the Court to examine the witnesses to the actual commission of the offence by exercising its power and discretion under the second part of Section 207-A (4) of the Code of Criminal Procedure. The learned Magistrate took the view that the second part of Sub-section (4) conferred no power and discretion on him to examine on his own motion the witnesses to the actual commission of the offence and rejected the application and committed the accused to take their trial in the Court of Sessions. It was the legality of the order rejecting the application made by the accused to the Magistrate to exercise his power and discretion under the latter part of Section 207-A (4) Cr. P. C. that came up for consideration before this Court.

This Court held that the learned Magistrate was not right in holding that he had no power and discretion under Section 207-A (4) of the Code of Criminal Procedure to summon and examine witnesses for the actual commission of the offence and that he had undoubtedly such power and in the circumstances of that case he had not exercised his discretion properly. Accordingly this Court set aside the order of committal and remanded the case for examining the witnesses for the occurrence and then proceeded to pass orders in accordance with law.

As already stated, some of the observations made by the Division Bench in Pavalappa's case, (S) AIR 1957 Mys. 61 have been wrongly construed by the learned Judges of the several High Courts. The question whether it was obligatory on the part of the prosecution to examine all the witnesses cited in the charge-

sheet as witnesses to the actual commission of the offence did not specifically arise in that case. Therefore the subordinate courts are wrong in holding the view that this Court had expressed its considered view on the point and had hold that it is obligatory on the part of the prosecution to examine all the witnesses.

11. For the reasons stated above, we hold the committal order passed in the present case is correct and the reference made by the learned Sessions Judge must consequently be rejected. It is accordingly rejected.

12. Reference rejected.

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