

**Mohanlal Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/755535](http://sooperkanoon.com/755535)

**Court :** Rajasthan

**Decided On :** May-14-1952

**Reported in :** 1954CriLJ357

**Judge :** Wanchoo, C.J.

**Appellant :** Mohanlal

**Respondent :** The State

**Judgement :**

ORDER

Wanchoo, C.J.

1. This is a reference by the District Magistrate of Jodhpur, and has arisen in the following circumstances.

2. A case under Section 353, I. P.C., was pending against Mohanlal in the Court of the Tahsildar Magistrate, Bilara. As the Tahsildar Magistrate had only powers of a third class Magistrate, the case was ordered to be transferred to the Court of the Sub-divisional Magistrate at Jodhpur. When the case came to the Sub-divisional Magistrate, the accused applied under proviso (a) to Section 350, Sub-section (1), Criminal P. C., that the witnesses, who had been examined by the Tahsildar Magistrate, should be resummoned and re-heard. The Sub-divisional Magistrate, however, without assigning any reasons, dismissed the application saying that he did not consider it desirable to start the trial de novo. Thereupon, there was a

revision by Mohanlal before the District Magistrate, and he has recommended that the witnesses should be re-summoned and re-heard, as the Magistrate was not justified in refusing to re-summon and re-hear the witnesses.

3. I am of the opinion that the District Magistrate is right. Provisions of Section 350 (1) are quite clear. There are two possibilities open to a Magistrate to whom a case has been transferred. He may act on the evidence recorded by his predecessor, or partly recorded by his predecessor and partly by himself, or he may resubmit the witnesses and recommence the enquiry or trial. This is entirely within his discretion. If he follows the first course, the proceedings, which have taken place before the previous Magistrate, stand, and he proceeds from where the previous Magistrate left off. If he follows the second course, the proceedings before the previous Magistrate are wiped out, and he begins a fresh trial from the very beginning.

Then comes proviso (a) which applies when the Magistrate follows the first course, namely, when he proceeds on the evidence recorded by his predecessor, or partly recorded by his predecessor or partly by himself. In that case the accused has a right to ask the Magistrate to resubmit and rehear all or any of the witnesses examined by the first Magistrate. In such a case, the proceedings before the first magistrate stand, but the succeeding Magistrate is bound to re-summon and re-hear such witnesses as the accused wants him to re-summon and re-hear. In this case Mohanlal accused wanted the succeeding Magistrate to re-summon and re-hear all the prosecution witnesses, and it was his duty to re-summon and re-hear these witnesses, even though the proceedings, which had taken place before the first Magistrate, would stand, and the Sub-divisional Magistrate could use the evidence that had been given before the first Magistrate.

4. I, therefore, accept the reference, and order the Sub-divisional Magistrate concerned to re-summon and re-hear the witnesses whom the accused wants to be re-summoned and re-heard.