

**DIRECTOR OF PUBLIC PROSECUTIONS**

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v.

1. **VIKASH SHARMA**
2. **ATISH PRASAD**
3. **RAKESH LAL**

[HIGH COURT, 1994 (Pain J), 1st November]

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Appellate Jurisdiction

*Crime-procedure-prosecution application for adjournment in the Magistrates Court-procedure to be followed. Criminal Procedure Code (Cap 21) section 210.*

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On an appeal against acquittals in the Magistrates Court following refusal of a request for an adjournment the High Court clarified the procedure to be followed after such a refusal.

No cases were cited.

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Appeal against acquittals entered in the Magistrates Court.

*Ms. E. Rice* for Appellant

*A. Seru* for Respondents

**Pain J:**

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The three Respondents were involved in an incident on the 3rd of October, 1993. As a result they were jointly charged with the offences of being drunk and disorderly in a public place and resisting arrest.

They appeared in the Magistrates Court on the 15th of October 1993 represented by Counsel. Each entered pleas of not guilty to the charges. The case was adjourned for hearing as a fixture on the 13th of December, 1993. On that date the record shows that Inspector Prasad appeared for the Prosecution. Each of the three accused was present and they were all represented by Mr. Seru. The Prosecutor clearly sought an adjournment although this is not specifically stated in the record. The note in the record says that the Prosecutor stated "File called by DCO. Southern. Need long mentioned date say February 1994." Any adjournment was opposed by Counsel for the Respondents at that hearing. The Learned Magistrate said:

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"This case specially set for hearing today. Police not ready. Not satisfied with reason for not being ready. DCO. Southern could have made his mind within two months. It is long time to decide matters. The Prosecution should have been ready, if

## HIGH COURT

not it is unfortunate. The accused are all acquitted, because of lack of evidence.”

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The State has appealed these acquittals.

It is submitted that the Magistrate had no jurisdiction under the Criminal Procedure Code to acquit the Respondents in these circumstances. I agree with Counsel for the Appellant that there must be some statutory authority for a Magistrate to take such a step. I also accept that Sections 198, 201 and 205 of the Criminal Procedure Code have no application whatsoever to this particular situation. Section 210 is the only section that could possibly apply.

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The situation in this case was that the case had been set down for hearing as a special fixture. Court time had been allotted for the hearing. The due despatch of court business requires fixtures to proceed on the allotted day unless there are very compelling reasons for adjournment. This is in the control of the Magistrate in each particular case. The Prosecutor advised the court that the file was not available and he needed a long mention date and suggested approximately two months. It is implicit in what is recorded that he was seeking an adjournment. Counsel for the Defendants opposed the adjournment. In this situation the Magistrate has a discretion. In this case he would have been quite entitled to refuse the application for an adjournment in the exercise of that discretion.

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The first problem I have is that the Magistrate did not explicitly deal with the application for an adjournment. Implicitly it was refused. However there should have been an explicit ruling recorded in the record.

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If an adjournment is refused then this means that the hearing is to proceed. In this particular case both parties appeared at the hearing. The Defendants in person and represented by Counsel. The complainant appeared by the Police Prosecutor. That is provided for in terms of Section 198 and the definition of “Public Prosecutor” in Section 2 which includes any Police Officer. Therefore in accordance with Section 200 the time had been appointed for the hearing, both parties appeared and (as the application for an adjournment had been refused) the court “shall proceed to hear the case”.

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The procedure for the hearing is contained in Section 209. It provides that the court “shall proceed to hear the witnesses for the prosecution and any other witnesses”. In this case the Magistrate should have advised the parties that he was proceeding with the hearing and called upon the prosecutor to begin. If the prosecutor then called no evidence Section 210 would apply. There would be no evidence to make out a case against the Defendants and the court in terms of Section 210 “shall dismiss the case and shall forthwith acquit the accused”.

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It has been suggested by Counsel for the Appellant that if this procedure had

been adopted, the Prosecutor may have called witnesses because some were present in Court. However, the Prosecutor had made it quite clear that his file was not available. He in effect asked for a very long adjournment. These facts indicate that he was not ready to proceed with the trial. He did not state that the witnesses were present and defence counsel advises that he had not been told that the witnesses were available in court. In this situation a clear inference must have arisen that the prosecutor was not intending to proceed with the hearing on this particular day. Such an inference would be a reasonable assumption on the Magistrates part. He was present and may not have recorded everything that was said. He did say that the police were not ready and he was not satisfied with the reason for them not being ready. Clearly whatever transpired at the hearing caused him to believe that the police were not in a position to proceed with the charges on that day. Accordingly if the proper procedures had been followed, it seems most unlikely that the prosecution would have called evidence. In that event the Magistrate would have been obliged to acquit the accused.

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It may be that there were some irregularities in the procedure on this occasion, especially as the Magistrate did not record that the application for an adjournment had been refused and did not advise that he was proceeding with the hearing and call upon the prosecutor to proceed. However, if proper procedures have been followed, the result I have outlined would have occurred and in that situation the Magistrate would have had power to acquit the Respondents. For this reason and as Section 319 gives this court a discretion on an appeal (bearing in mind that these are minor charges and it is now twelve months since the incident occurred), I consider that it would be inappropriate to allow the appeal for any irregularity that occurred. In the particular circumstances, I do not see that any miscarriage of justice occurred. If proper procedures had been followed the result would have been the same.

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For clarity I record the formal steps that should be taken by a Magistrate in this situation. These rulings by him must be formally noted in the record.

- (i) The application for an adjournment is refused;
- (ii) The hearing then proceeds by the Magistrate calling upon the Defendants to plead (if they have not already done so) and then calling upon the prosecutor to begin;
- (iii) If no evidence is called by the Prosecutor, then the Defendant or Defendants can be acquitted under Section 210 of the Criminal Procedure Code.

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In this particular case for the reasons given the appeal is dismissed.

*(Appeal dismissed.)*