Legislature to include a Gram Panchayat also as an institution on which a notice has to be served before the filing of the legal suit or proceedings. It is to be observed that between the words "officer or servant of a Gram Panchayat" and "or an Adalti Panchayat", there used to be two other institutions, namely, "Thana" and "Panchayat Union". The first was omitted by Punjab Act No. 30 of 1954 and the other by Punjab Act No. 26 of 1960. Without the amendment, the provision would have read :—

> "No suit or legal proceeding shall be instituted against any officer or servant of a Gram Panchayat, a Thana, Panchayat Union or an Adalti Panchayat or any person acting under their direction.....".

The words "aforesaid body" in such a context would not have been redundant or out of place. It appears that after the deletion of "thana" and "Panchayat Union", the words "aforesaid body" should have been suitably amended also. The failure of the Legislature to have done so cannot lead to the inference that it had intended to include a Gram Panchayat also as an institution on which notice had to be served before the filing of a legal suit or proceeding.

The conclusion reached by the lower appellate Court, therefore, appears to be correct and this appeal, therefore, must fail and is dismissed with costs.

R. N. M.

APPELLATE CRIMINAL

Before S. B. Capoor and Gurdev Singh, JJ.

THE STATE,—*Appellant*

versus

KALI RAM,—*Respondent*

Criminal Appeal No. 88 of 1965.

December 7, 1966.

Code of Criminal Procedure (Act V of 1898)—S. 251-A—Scope of—Warrant case—Prosecution witnesses—Whether to be summoned by Court—Prosecution failing to produce witnesses—Whether entitles the Court to close prosecution evidence.

Held, that under section 251-A of the Code of Criminal Procedure, 1898, the Magistrate is not under an obligation to ascertain the names of the prosecution witnesses and to summon them, but it is for the prosecution to disclose the names of its witnesses and to produce them. This, however, does not tantamount to saying that where the names of the witnesses are disclosed by the prosecution and it requires the assistance of the Magistrate to procure their attendance, the Magistrate has no authority to summon the witnesses and must proceed to acquit the accused notwithstanding the fact that the failure of the prosecution to produce its witnesses is not due to any remissness or default on its part. After the case is instituted the police has no power to summon the witnesses. The duty to summon the witnesses in the course of the trial is that of the Magistrate or the Court concerned. There is nothing in section 251-A or in any other provision of the Code of Criminal Procedure, which debars the Magistrate from summoning the prosecution, witnesses or enforcing their attendance if they refuse to appear on the date fixed for their evidence despite the fact that the prosecution had directed them to attend the Court on that day. This, however, does not mean that the Magistrate conducting the trial under section 251-A of the Code must go on adjoining the trial till it suits the convenience of the prosecution to produce its evidence. Whether or not the Magistrate will proceed to enforce the attendance of the witnesses for the prosecution and grant adjournment for that purpose will depend upon the facts and circumstances of each case. Though it is true that the Magistrate should not be in a hurry to close the prosecution evidence, yet at the same time the Magistrate must be vigilant enough to see that the process of the Court is not abused by the prosecution obtaining unnecessary adjournments resulting in harassment to the accused.

State appeal from the order of Shri G. R. Gogia, Magistrate, 1st Class, Ludhiana, dated 22nd October, 1964, acquitting the accused respondent.

M. R. CHHIBBER, ADVOCATE, for the ADVOCATE-GENERAL, for the Appellant.

BHUPINDER SINGH BINDRA AND S. S. KANG, ADVOCATES, for the Respondents.

JUDGMENT.

GURDEV SINGH, J.—This is a State-appeal against the order of Shri G. R. Gogia, Magistrate, First Class, Ludhiana, dated 22nd October, 1964, acquitting the respondent Kali Ram of charges under sections 324 and 354 of the Indian Penal Code, without having recorded the entire evidence that the prosecution had to produce. The relevant facts are as follows :—

On 8th September, 1963, Gurmit Singh, a resident of Bhangali Kalan, district Amritsar, who had brought a dancing party to the

fair at Raikot in the district of Ludhiana, lodged a report at the local police station complaining that the respondent Kali Ram had attacked him with a knife, and getting hold of Shrimati Nishi, a member of the dancing party, had caught her by the breasts. On due investigation, the respondent was prosecuted, and in accordance with the provisions of sub-section (3) of section 251-A of the Criminal Procedure Code, charges under sections 324 and 354 of the Indian Penal Code were framed against him by a Magistrate, First Class at Ludhiana, on 29th October, 1963. On Kali Ram pleading not guilty, the case was adjourned to 12th November, 1963, with the direction that the prosecution evidence be summoned for that day. The respondent, however, failed to appear at the next hearing. Non-bailable warrants for his arrest were thereupon ordered to issue for 26th November, 1963. Those warrants, however, could not be executed for lack of complete address. The respondent's surety was called upon to furnish the correct address, and the case was transferred to the Court of Shri G. R. Gogia, Magistrate, First Class. On 6th December, 1963, non-bailable warrants at the address given by the surety were issued. They remained unexecuted. Information in the meantime having been received that the accused had joined the army, attempts were made to secure his attendance in Court, but the military authorities informed the Magistrate that he could not be spared due to emergency. This necessitated several adjournments and it was only on 12th September, 1964, that the accused (respondent) appeared in Court. The learned Magistrate happened to be on election duty and, accordingly, the case was not taken up that day and was adjourned to 16th September, 1964. Dr. Dharampal, one of the prosecution witnesses, who was present, was asked to attend the Court on the adjourned hearing, and direction was given by the Duty Magistrate that the remaining prosecution evidence be summoned. On 16th September, 1964, when the case was taken up it was found that the case-property was not available. Accordingly further procetdings were adjourned to 26th September, 1964. Dr. Dharampal, who was in attendance, was directed to appear on that day, and summons were ordered to issue to the remaining witnesses of the prosecution.

On 26th September, 1964, the statement of Dr. Dharam Pal alone was recorded as no other prosecution witness was present and it was found that even summons issued to them had not been received back. The Magistrate thereupon directed fresh summons for the prosecution witnesses to issue for 14th October, 1964. On the adjourned hearing, the case was taken up by Shri Gogia, Magistrate, First Class, to whom it had been transferred in the meantime. As

none of the prosecution witnesses appeared that day, they were ordered to be summoned again for 22nd October, 1964. Again, it was found that the summons have not been received back and the prosecution having failed to produce any witness, the learned Magistrate refused to grant any further adjournment, closed the prosecution evidence and acquitted the accused holding that the prosecution had not established its case against the accused.

In assailing the order of the respondent's acquittal, Mr. M. R. Chhiber, who appears for the State, has contended that the failure of the prosecution to produce its witnesses did not empower the Magistrate to close its evidence and acquit the accused, as it was the duty of the Magistrate to procure the attendance of the witnesses who had been duly summoned. In this connection, he has relied upon sub-section (7) of section 251-A of the Code of Criminal Procedure, which enjoins upon a Magistrate "to take such evidence as may be produced in support of the prosecution," and pointed out that under sub-section (11) of section 251-A, the Magistrate is entitled to acquit an accused-person only if he finds that the accused is not guilty. The short question requiring our consideration is whether the learned Magistrate was justified in ordering the closure of the prosecution evidence and refusing to adjourn the proceedings any further to procure the attendance of the prosecution witnesses. In defending the Magistrate's order, Mr. Bhupinder Singh Bindra, appearing for the respondent, has relied upon the fact that in section 251-A, which admittedly governs the procedure applicable to the respondent's trial, there is no provision requiring a Magistrate to summon prosecution witnesses or enforce their attendance. He contends that in a case brought on a police report triable under section 251-A of the Criminal Procedure Code, it is the duty of the prosecution to produce its witnesses, and it is not for the Magistrate to summon the witnesses or to secure their attendance. In support of this submission, reliance is placed on sub-section (7) of section 251-A, which runs thus :—

> "251-A. (7) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:
>
> Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined, or recall any witness for further cross-examination."

Referring to the trial of a warrant case instituted otherwise than on a police report, to which the procedure detailed in sections 252 to 259 applies, Mr. Bindra has pointed out that unlike the procedure laid down in section 251-A for the trial of warrant cases, instituted on a police report, a duty is cast on the Magistrate under sub-section (2) of section 252 not only to ascertain from the complainant or otherwise the names of any person likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution but also to summon such of those persons as he considers necessary to give evidence before himself. Mr. Bindra argues that the absence of such a provision from section 251-A, which lays down the procedure for trial of warrant cases instituted on police report, clearly indicates that the Magistrate has no power to summon the prosecution witnesses, much less a duty to enforce their attendance.

The authorities cited by learned counsel for the State and the respondent disclose considerable divergence of judicial opinion. For the extreme proposition put forward on behalf of the respondent that no duty is cast upon the Magistrate to summon the prosecution witnesses, *State of Gujarat* v. *Bava Bhadya and another* (1), *State* v. *Ram Lal and others* (2), *and State* v. *John Abraham* (3) have been cited. In *State* v. *Ram Lal and others* (2), a learned Single Judge of the Allahabad High Court, after pointing out that there is no such provision in section 251-A of the Criminal Procedure Code like the one contained in section 252(2) enjoining upon the prosecution to summon the witnesses of the prosecution, observed as follows:—

> "After this amendment, the only procedure applicable to cases instituted on a police report is one provided by section 251-A, Cr. P.C. This section nowhere provides that the public prosecutor may ask the Magistrate to summon his witnesses nor does it authorise the Magistrate to summon the prosecution witnesses either upon an application on behalf of the Public Prosecutor or *suo motu* for any reason.
>
> Section 252 on the other hand imposes a duty upon the Magistrate to ascertain the names of the witnesses who could give evidence on the relevant points and to summon those witnesses in evidence. By providing an entirely new

(1) 1962(2) Cr. L.J. 537(2).
(2) 1961(2) Cr. L.J. 331.
(3) 1961(2) Cr. L.J. 92(1).

procedure under section 251-A, Cr. P.C., in cases instituted by the police, the legislature has deliberately departed from that procedure and in the new procedure has made no provisions for summoning of the prosecution witnesses."

In *State of Gujarat* v. *Bava Bhadya and another* (1), it was ruled that where in a warrant case instituted on a police report, if owing to the failure of the prosecution to produce their witnesses and make full endeavour to serve summonses according to the provisions contained in sections 69, 70 and 71, Cr. P.C., there is no evidence before the Magistrate, the Magistrate can acquit the accused under section 251-A, sub-section (11) of the Criminal Procedure Code. That case is somewhat distinguishable as it was found that after obtaining the summons for the prosecution witnesses the Sub-Inspector, to whose police station the case related, had not made any effort to effect service upon the witnesses concerned. In fact, the learned Judges found that "he was not only indifferent to his duty but showed utter disregard and disrespect to the learned Magistrate's Court", thus prolonging the detention of the accused in judicial custody.

On behalf of the State, reliance has been placed upon *Suresh Chandra Goswami* v. *Suresh Chandra Dev Nath* (4), *The State of Bihar* v. *Polo Mistry and others* (5), *Nathuram Darjee* v. *Pannalal Aggarwala and another* (6), and *Public Prosecutor* v. *M. Sambangi Mudaliar and others* (7). In the Madras case (7), a learned Single Judge after observing that an important duty lay on the Court to see that all the powers available to the Court for the examination of witnesses are exercised for a just decision of the case, irrespective of the laches of the prosecution, observed that even where the prosecution failed to produce its evidence, the Court has to summon the material witnesses in exercise of its powers under section 540 of the Criminal Procedure Code. *Nathuram Darjee* v. *Pannalal Aggarwala and another* (6) is a Division Bench authority in which, after observing that section 258(1) of the Criminal Procedure Code had no application to warrant cases instituted on police report, it was ruled that the Magistrate acted illegally in acquitting the accused and refusing an adjournment to the prosecution when the prosecution witnesses were not present and the prosecutor had asked for an adjournment undertaking to produce the witnesses on the next hearing. In *The State of Bihar* v. *Polo Mistry and others* (5), G. N.

(4) A.I.R. 1965 Tripura 39.
(5) A.I.R. 1964 Patna 351.
(6) A.I.R. 1961 Assam 97.
(7) A.I.R. 1965 Mad. 31.

Prasad, J., ruled that though in cases where the Prosecutor himself undertakes to produce the prosecution witnesses, the entire responsibility for the production of evidence in support of the prosecution is that of the Prosecutor, yet in cases where the Prosecutor has taken recourse to the agency of the Court for securing the attendance of the prosecution witnesses, it is undoubtedly the duty of the Magistrate to take steps for securing the attendance of the prosecution witnesses, and if they fail to attend despite service, the proper course for the Magistrate to take necessary steps is to compel the attendance of the witnesses and not to acquit the accused for lack of evidence. A Division Bench of the Calcutta High Court held in *Shrimati Jyotirmoyee Bose* v. *Birendra Nath Prodhan and others* (8), that sub-section (6) of section 251-A does not enjoin upon the Magistrate any duty to compel the attendance of any witness unless it was applied for. In this view of the matter, the learned Judges refused to interfere with an order of acquittal recorded by the Magistrate for failure of the prosecution to produce its evidence despite ample opportunity. The learned Judges referred to the amendment of the Code of Criminal Procedure in the year 1955 by which section 251-A prescribing a different procedure for trial of warrant cases instituted on police report from that relating to the trial of warrant cases instituted on complaints was introduced.

In *Suresh Chandra Goswami* v. *Suresh Chandra Dev Nath* (4), the learned Judicial Commissioner took the view that where in a case triable under section 251-A of the Criminal Procedure Code, the prosecutor relies on the agency of the Court for securing the attendance of witnesses, the Magistrate cannot pass an order of acquittal on account of want of evidence without taking steps to secure the attendance of the prosecution witnesses.

Speaking with respect, the view taken by the learned Judicial Commissioner of Tripura is correct. While I do not find it possible to subscribe to the opinion that if in the trial of a warrant case instituted on a police report the prosecution fails to produce its witnesses, the Court is neither competent to summon the witnesses nor is under a duty to compel their attendance, at the same time I am unable to accept the other extreme view that the Court has no power to acquit the accused in such cases and is duty bound to summon the prosecution witnesses in exercise of its powers under

(8) A.I.R. 1960 Cal. 203.

section 540 of the Criminal Procedure Code. Before the amendment of the Code of Criminal Procedure in the year 1955, the procedure applicable to the trial of warrant cases, whether instituted on police report or otherwise, was the same. By the Code of Criminal Procedure (Amendment) Act, 1955, section 251-A was introduced laying down a new procedure for the trial of warrant cases instituted on police report. It is well known that the abject of the various amendments introduced in the Criminal Procedure Code in the year 1955 was to expedite criminal trials and enquiries under the Code, and it was with that end in view that a provision was made in sub-section (7) of section 251-A that on the date fixed for examination of prosecution evidence "the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution". The clear intention of the legislature was that to avoid delay the prosecution is to produce its witnesses on the date fixed for their evidence. Before this amendment, under sub-section (2) of section 252, which applied to warrant cases instituted on police report as well as on complaints, a duty was cast upon the Magistrate to "ascertain, from the complainant or otherwise, the names of any person likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution", and to summon "such of them as he thinks necessary". This provision has been retained so far as the trial of warrant cases instituted otherwise than on a police report is concerned, but there is no corresponding provision contained in section 251-A. From this it clearly follows that the Magistrate is not under an obligation to ascertain the names of the prosecution witnesses and to summon them, but it is for the prosecution to disclose the names of its witnesses and to produce them. This, however, is not tantamount to saying that where the names of the witnesses are disclosed by the prosecution and it requires the assistance of the Magistrate to procure their attendance, the Magistrate has no authority to summon the witnesses and must proceed to acquit the accused notwithstanding the fact that the failure of the prosecution to produce its witnesses is not due to any remissness or default on its part. After the case is instituted in Court, the police has no power to summon the witnesses. Apart from this, there may be witnesses like the Government servants who have to be summoned through Head of their Departments, and it is obvious that to secure the attendance of such witnesses it may become necessary for the prosecution to apply to the Court for summoning them, and if need be to compel their attendance by coercive process. The duty to summon the witnesses in the course of the trial is that of the Magistrate or the Court concerned. I do not find anything in section 251-A or in any other provision under the Criminal Procedure Code which debars

the Magistrate from summoning the prosecution witnesses or enforcing their attendance if they refuse to appear on the date fixed for their evidence despite the fact that the prosecution had directed them to attend the Court on that day.

This, however, does not mean that the Magistrate conducting the trial under section 251-A of the Criminal Procedure Code must go on adjourning the trial till it suits the convenience of the prosecution to produce its evidence. Whether or not the Magistrate will proceed to enforce the attendance of the witnesses for the prosecution and grant adjournment for that purpose would depend upon the facts and circumstances of each case. Though it is true that the Magistarte should not be in a hurry to close the prosecution evidence, yet at the same time the Magistrate must be vigilant enough to see that the process of the Court is not abused by the prosecution obtaining unnecessary adjournments resulting in harassment of the accused. As I had occasion to observe in *Krishan Murari and others* v. *State of Punjab* (9), while dealing with a case under sections 107/151 of the Criminal Procedure Code :—

> "In cases where the Magistrate finds that the prosecution is deliberately avoiding production of its evidence and seeks adjournment of the proceedings for no adequate reason, he must act with some firmness, and guard against giving an impression that he is a party to the harassment of the person proceeded against."

Applying the principles set out above to the facts of the case before us, I find that the learned Magistrate was not justified in closing the prosecution evidence and acquitting the respondent. It is true that the trial had been pending for sometime, but as the facts set out above disclose, the prosecution was not to blame for it. The respondent had himself failed to appear before the Magistrate, and then the military authorities expressed their inability to spare him. Summons for the prosecution witnesses were obtained by the prosecution but they were not received back on 22nd October, 1964, when the Magistrate proceeded to acquit the respondent. Only eight days were given to summon these witnesses, and there is nothing on the record to indicate that the police was responsible for non-service. In those circumstances, the Magistrate ought to have granted an adjournment and resummoned the witnesses. I thus find that the

(9) 68 P.L.R. 143.

order of the Magistrate closing the prosecution evidence and acquitting the respondent is illegal and improper. The appeal is, accordingly, accepted, the Magistrate's order acquitting the respondent is set aside, and the case remitted to the trial Court for proceeding with the trial in accordance with law after affording the prosecution an opportunity to produce its evidence, and if necessary to apply for summoning its witnesses.

S. B. CAPOOR, J.—I agree.

R. N. M.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

JUGRAJ SINGH AND ANOTHER,—*Appellants.*

versus

JASWANT SINGH, AND OTHERS,—*Respondents.*

Regular Second Appeal No. 399 of 1966.

December 14, 1966.

Evidence Act (I of 1872)—S. 85—Authentication—Meaning of—Words "Subscribed and sworn to before me"—Whether amount to authentication—Registration Act (XVI of 1908)—S. 32—Attorney executing the document—Whether entitled to present it for registration.

Held, that no specific form of authentication is prescribed under section 85 of the Evidence Act. 'Authentication' ordinarily means 'establish the truth of, establish the authorship of, make valid.' The words 'subscribed and sworn to before me this 23rd day of March, 1964' in Exhibit D/2, clearly show that Vernon Seth Chotia, the executant of this document, had admitted on oath in the presence of the Notary Public that he had executed and signed the document. 'Subscribed' means 'to write one's name at the foot of a document, or sign a document'. This attestation by the Notary Public shows that he had satisfied himself about the identity of Vernon Seth Chotia and also about the fact that the executant had signed the document after having admitted its contents to be correct. This will mean authentication as envisaged in section 85 of the Evidence Act and it was not necessary for the Notary Public to use the particular word 'authentication' in the attestation made by him on the said document.