APPELLATE CIVIL

Before Prem Chand Pandit and S. S. Sandhawalia, JJ.

EMPLOYEES STATE INSURANCE CORPORATION,—*Appellant*

versus

A. L. PURI AND ANOTHER,—*Respondents.*

First Appeal from Order No. 39 of 1964.

August 31, 1970.

Employees State Insurance Act (XXXIV of 1948)—Sections 2(8), 2(9) and 2(14)—Workmen's Compensation Act (VIII of 1923)—Section 2(n)—"Employee"—Definition of—Worker being permanent or temporary—Whether relevant for construing the definition—"Insured person"—Tests for determination of—Stated—Factum of actual payment of contribution of insurance premium to the Employees State Insurance Corporation—Whether necessary to hold a person as insured—Injured employee—Whether must also fall within the definition of "workman" in section 2(n) of Workmen's Compensation Act.

Held, that to fall within the ambit of the word "employee" as defined in section 2(9) of Employees State Insurance Act, the consideration whether the worker is either permanent or temporary is not of any relevace whatsoever. The tenure of an employee whether fixed or otherwise does not enter into the issue at all for the purposes of construing the definition of "employee".

(Para 11)

Held, that an analysis of the definition of "insured person" as given in section 2(14) of the Act shows that it envisages three tests for the determination of a person insured. The first is whether such a person is an employee as defined in section 2(9) of the Act. The second test is that the employee must be a person in respect of whom contributions are payable under the Act. The third test is a corollary and entitles the workmen to the benefits provided primarily for him by the Act, if the first two tests are satisfied. The factum of the actual payment of the contributions of insurance premia to the Employees State Insurance Corporation is not germane to the issue. What is crucial is the legal liability accruing under the statute to pay the relevant contributions in respect of the employee. The actual payment of the contributions whether before or after the accident is a consideration which is not called in by the definition.

(Para 13)

Held, that the construction as a whole of the definition of "employment injury" as given in section 2(8) of the Act makes it clear that an employee in the said definition is deemed by the statute to be a "workman" within the

meaning of the Workmen's Compensation Act and he does not have further to satisfy all the requisite tests under the later Act.

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia, on 22nd April, 1970 to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Prem Chand Pandit and Hon'ble Mr. Justice S. S. Sandhawalia, on 31st August, 1970.

First Appeal from the order of the Court of Shri Sarup Chand Goyal, Judge, Employees State Insurance Court, Amritsar, dated the 18th December, 1963 dismissing the application with costs.

K. L. KAPUR, ADVOCATE, for the appellant.

R. K. D. BHANDARI AND I. B. BHANDARI, ADVOCATES, for the respondents.

JUDGMENT

S. S. SANDHAWALIA, J.—This first appeal involving the interpretation of certain provisions of the Employees State Insurance Act, 1948, and the Workmen's Compensation Act of 1923 has been placed before this Bench in pursuance of my referring order dated the 22nd of April, 1970.

(2) The proceedings arise out of an application moved by the Regional Director of the Employees State Insurance Corporation, Amritsar, on behalf of the said Corporation for the recovery of Rs. 7,806.25 P. under section 66 read with section 75(1)(f) of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act) against the respondents. It was alleged therein that the respondents had employed Pritam Singh injured as a mason for the construction of a drawing chamber for their factory and the latter was an "insured person" as defined under the provisions of the Act. Whilst on duty the said Pritam Singh received an acute electric shock on his right hand from a pedestal fan, when he attempted to change its direction and this injury is alleged to have been caused by the negligence of the respondents for having failed to provide the requisite safety provisions required under rule 29 of the Indian Electricity Rules, 1956. The above-said accident and the consequent injury to Pritam Singh on the 12th of August, 1960, was stated to have been caused during the course of his employment and it was averred that the same had

been accepted as an "employment injury" under the relevant provisions of the Act by the applicant-Corporation on the 18th of February, 1961. Consequently Pritam Singh was paid temporary disablement cash benefit amounting to Rs. 497.75 P. for the period from 12th of August, 1960 to the 17th of January, 1961, under section 51 of the Act. Subsequently on an examination conducted by the Medical Board, the injury to the right hand of Pritam Singh was assessed at 45 per cent of his earning capacity. The capitalised value of the periodical payment of permanent partial disablement benefit, which became payable to the said injured insured person worked out to Rs. 7312.50 P. and the total amount was, therefore, alleged to be recoverable from the respondents.

(3) In the written statement filed on behalf of the respondents, the fact of Pritam Singh having been injured was admitted but the other allegations made on behalf of the Corporation were controverted. *Inter alia* it was pleaded by the respondents that Pritam Singh was a casual worker merely employed temporarily for construction work within the factory and that he did not fall within the definition of the "employee" nor the injury caused to him could be termed as an "employment injury". The positive version pleaded on behalf of the respondents was that the injured (Pritam Singh) against the directions and without the permission and the consent of the respondents had of his own brought out a condemned pedestal fan and used the same without any authority, thereby being himself responsible for the injury suffered by his own misconduct.

(4) On the pleadings above-said, the following issues were framed :—

(1) Whether the application is pre-mature ?

(2) Whether the application does not conform to the requirements of rule 13(2) of the Punjab Employees Rules ? If so, with what effect ?

(3) Whether Pritam Singh injured was covered under the definition of "employee" as given in the Employees State Insurance Act ?

(4) Whether Pritam Singh had received injury due to the negligence of the respondents ?

(5) Whether Pritam Singh met the accident on 12th August, 1960 during the course of and out of course of employment with the respondents ?

(6) What was the percentage of permanent disability caused by injury to the hand of Pritam Singh ?

(7) Whether the injury received by Pritam Singh was "employment injury" as defined in section 2(8) of the Employees State Insurance Act ?

(8) To what amount is the petitioner entitled to recover from the respondents ?

The trial Court took up and decided issue Nos. 3, 5 and 7 against the appellant-Corporation and held the findings on these issues to be sufficient for dismissing the petition without adverting to the other issues. Under these heads it was found by the trial Court that Pritam Singh injured was a casual worker employed only 8 or 9 days prior to the accident for the construction of the drawing chamber and he did not fall within the definition of "employee" under section 2(9) of the Act. It was further found that at the time of the accident the injured worker was not insured with the appellant-corporation and in fact the insurance was effected after the accident and also that the employer was not liable to get this worker insured. On these premises it was held that Pritam Singh did not come within the ambit of an "insured person" under the Act. The trial Court then adverted to the definition of a "workman" under the Workmen's Compensation Act and finding that Pritam Singh injured did not fall within that definition and further that the injury was not received by him in the course of his employment in the factory it held that the injury received by him did not satisfy the definition of "employment injury" under section 2(8) of the Act.

(5) Before adverting to the contentions raised by Mr. Kapur on behalf of the appellant, it is best first to dispose of the preliminary objection regarding the competency of the present appeal agitated on behalf of the respondent.

(6) Pressing this preliminary objection, Mr. Bhandari contends that by virtue of section 3(2) of the Act the appellant-Corporation is a body corporate having a perpetual succession and a common seal and can sue and be sued under its name. It is argued that such a body whenever it wishes to file an appeal or to institute any legal proceedings, it should apply its mind to the facts of the particular

case and a special resolution for the filing of the appeal should be passed in pursuance of which alone an appeal would be competent. It is pointed out that in the present case, no such special resolution showing that the body corporate applied its mind to the desirability of instituting the present appeal has been brought on the record and consequently the present appeal instituted by the Regional Director is defective and incompetent. It was vehemently argued that any general resolution of the Corporation authorising persons to institute legal proceedings could not cure this defect as institution was merely a mechanical act and unless there was an express application of mind and pursuant thereto a special resolution, the legal proceedings taken on behalf of the Corporation would be void. Mr. Kapur in reply relies on section 94-A of the Act and the copy of the resolution passed by the Corporation on the 14th of August, 1958, to sustain the competency of the present appeal.

(7) The preliminary objection raised on behalf of the respondents cannot succeed. Reference may first be made to the resolution duly published in the Gazette of India dated the 3rd of January, 1959. The operative part of this resolution is in the following terms :—

> "In Supersession of the resolution passed by the Corporation at its meeting held on the 11th December, 1952, it is :—
>
> (1) resolved that the Director General, the Insurance Commissioner, the Deputy Insurance Commissioner, the Assistant Insurance Commissioner, the Regional Directors, including the Deputy Regional Directors and the Assistant Regional Directors, including the Deputy Regional Directors and the Assistant Regional Directors Incharge of independent Regions, the Managers and Insurance Inspectors, working under the Employees' State Insurance Corporation are hereby authorised to institute in the name of the Corporation, suits and other legal proceedings necessary in the interest of the Corporation and to defend any such proceedings instituted against the Corporation in all Courts and Tribunals including those established under Employees' State Insurance Act, 1948.
>
> (2) resolved further that all the officials described in resolution (1) above, may represent the Corporation in

all Courts or Tribunals in cases to which the Corporation is a party and may act, appear and make application on behalf of the Corporation."

A Reference to the above makes it self-evident that power has been delegated to the persons named in the resolution to institute legal proceedings which may become necessary in the interest of the Corporation and to defend any such similar proceedings. This resolution has to be viewed expressly in the light of section 94-A which is in the following terms :—

94-A. **Delegation of powers.**

"The Corporation, and, subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation."

(8) Mr. Bhandari had fairly conceded that the Corporation was empowered to delegate the power to institute or to defend legal proceedings to its employees. That being so reading section 94-A and the resolution together, it appears patent to us that the resultant effect of both is that there has been a valid delegation of the power to institute legal proceedings in favour of the Regional Director who has presented the present appeal. In fairness to Mr. Bhandari, it deserves notice that he placed reliance on *Punjab Agricultural University and others* v. *Messrs Walia Brothers* (1). That case, however, affords no useful analogy for my learned brother Pandit J. in the said case was construing the specific provisions of the Punjab Agricultural University Act, 1961 read with the particular language of item 27 in Schedule Part 'B' thereof. Obviously no such provision exists or falls for construction here, nor even a remote similarity with the said statute or its schedules can even be suggested in the present case. We thus find no merit in the preliminary objection.

(1) 1969 P.L.R. 257.

(9) Mr. Kapur in support of this appeal assails the triple findings of the trial Court that Pritam Singh injured did not fall within the definition of either an "employee" or an "insured person" under the Act and also that the injury suffered by him was not an "employment injury" under the same. Counsel first contends that in the present case admittedly Pritam Singh had been directly employed by the factory management for specified wages to construct a drawing chamber for the factory. On these facts it is argued that the definition of an "employee" would be clearly applicable to the said worker.

(10) We find merit in this contention. The relevant part of section 2(9) of the Act which is attracted to the present case, defining the word "employee" is in the following terms :—

> "2(9) 'employee' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and—
>
> (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
>
> (ii) * * * * * *
>
> (iii) * * * * * *

A bare reference to the language above-said is sufficient to show that it would be attracted to the admitted facts of the present case. The words "anywork of, or incidental or preliminary to or connected with the work of the factory or establishment", which have been used above are clearly words of the widest amplitude. Therefore when Pritam Singh injured was employed for the construction of the drawing chamber which would be an integral part of the factory, he possibly cannot be beyond the scope of the wide words above-said used by the statute. Indeed the learned counsel for the respondent did not even advance any such contention.

(11) It deserves notice that the trial Court in holding that Pritam Singh was not an employee was primarily influenced by the fact that he was employed 8 or 9 days prior to the accident and was

thus held to be a casual worker. To our mind this is a consideration which is wholly foreign to the issue in view of the specific words of the definition above-quoted. It would appear that to fall within the ambit of the word "employee" the consideration whether the worker is either permanent or temporary may not be of any relevance whatsoever. Indeed the tenure of the employee whether fixed or otherwise does not enter into the issue at all for the purposes of the above definition. Mr. Bhandari for the respondent even though pointedly asked was unable to point to any provision in the Act where the 'casual' or the 'permanent' nature of the employment is made relevant for the purposes of section 2(9). We are consequently of the view that the trial Court fell into an error in arriving at this finding. We hold therefore that the injured worker in the present case fell well within the definition of "employee" under the Act.

(12) Equally cogent is the attack of the learned counsel on the finding that the injured was not an "insured person" under section 2(14) of the Act. The trial Court was primarily led to hold to the contrary on the ground that at the time of the injury Pritam Singh was not insured with the Corporation and it was after the accident that an application to effect the same was given. It was further influenced by its earlier finding that he would fall not within the definition of an "employee". We have already held that Pritam Singh satisfied the definition of an "employee" and all that remains now to be considered is whether he would also be an "insured person" under the Act. The definition is in the following terms :—

> "2(14) 'insured person' means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act."

An analysis of the above-said provision would show that it envisages three tests, all of which stand satisfied in the present case. The first of these is whether such a person was an employee which we have already decided in favour of the appellant-Corporation. A reference to section 39 would show that in respect of such an employee both the employer's and the employee's contributions are made payable to the Employees State Insurance Corporation. By virtue of section 40 it is made incumbent on the principal employer to pay both the above-said contributions to the Corporation, though it empowers the employer to recover the employees contributions from the wages of the

latter. That being so, the second test, namely, the employee must be a person in respect of whom contributions are or were payable under the Act would be satisfied in the present case. The third test or condition is almost a corollary which would make the workmen entitled to the benefits provided primarily for him by the Act, if the first two are satisfied.

(13) In the above context again the trial Court fell into an error when it adverted to the issue of the payment or non-payment of insurance premia and further whether it was done prior to or subsequent to the date of the accident. It was influenced by the fact that on the date of the accident Pritam Singh had not been insured with the Corporation and an application for the same purpose was given after the accident. In our view these were considerations not relevant for the purpose of the provisions above-said. The factum of the payment of the contributions is not germane to the issue. What is crucial is the legal liability accruing under the statute to pay the relevant contributions in respect of the employee. Whether the same were actually paid or whether it was so done before or after the accident were considerations which were not called in by the definition above-said. On the view we take and the construction we have placed above, Pritam Singh injured would, therefore, also fall within the ambit of the words "insured person" as defined in the Act.

(14) We may now examine the respective contentions of the parties whether the injury in the present case did or did not fall within the definition of "employment injury" under section 2(8) of the Act. Mr. Kapur for the appellant assailed the view of the trial Court that the injured employee, must also fall within the definition of "workman" under section 2(n) of the Workmen's Compensation Act, 1923 to be wholly erroneous and untenable. On the other hand Mr. Bhandari reiterated the argument that both the tests of an "employee" under the Act and that of being a "workman" under the Workmen's Compensation Act must be satisfied before the injured can claim compensation under the head of "employment injury".

(15) The relevant provision is in the following terms :—

> "2(8) 'employment injury' means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment in a factory or establishment to which this Act applies, which injury

or occupational disease would entitle such employees to compensation under the Workmen's Compensation Act, 1923, if he were a workman within the meaning of the said Act."

(16) The plain language of the provision of the above-said section runs counter to the contention of the respondent's counsel that the twin test of both being an "employee" under the Act and of being a "workman" within the definition of section 2(n) of the Workmen's Compensation Act must stand satisfied. This is first so in view of the last words of the definition, namely, "if he were a workman within the meaning of the said Act." If Mr. Bhandari's contention were to be accepted, the above-said words would be devoid of any meaning and would become a mere surplusage. It is a settled canon of the interpretation of the statutes that every word used therein is to be attributed a meaning and a purpose and no part of the same is to be construed as redundant. In the light of this rule a meaning and a purpose has to be attached to the words above-quoted. The only purpose and the meaning thereof which is evident is that by the use of these words the legislature intended that an employee under the Act was to be deemed or assumed to be a "workman" within the meaning of the Workmen's Compensation Act, 1923.

(17) We arrive at a similar conclusion on a comparative examination of the definition of the word "employee" under the Act and that of the "workman" under the Workmen's Compensation Act. Comparing the two provisions above-said, it is apparent that the compendious definition of "workman" read with an equally exhaustive schedule 2 of the Workmen's Compensation Act is not in many ways either identical or similar to what is contained in the definition of an "employee" under the Act. Indeed at places the two definitions may be contradictory in a manner that one would exclude the other. To notice only two sharp points of distinction it is apparent that the main consideration of a casual worker is expressly made relevant by the definition of "workman" under section 2(n) whilst the same has no connection with the definition of the "employee" under the Act. Similarly the quantum of the wage, as provided for in section 2(n)(ii) of the Workmen's Compensation Act which excludes employees whose monthly wages exceed Rs. 400 is

again a consideration wholly foreign to the definition of "employee" under the Act. It is unnecessary to multiply the points of divergence. Construing the definition of "employment injury" as a whole we are clearly of the view that an employee in the said definition is deemed by the statute to be a "workman" within the meaning of the Workmen's Compensation Act and he does not have further to satisfy all the requisite tests under the later Act. Before departing from this point we would notice that despite this vehemence with which the respondent's counsel canvassed the same he was unable to cite a single authority in support of his proposition.

(18) Though we have held in favour of the appellant-corporation on the number of legal points aforesaid, nevertheless its case must fail on facts. It is common ground that in order to succeed, the Corporation must show under section 2(8) of the Act that the injury suffered was of a nature which would entitle an employee to compensation under the Workmen's Compensation Act, 1923 if he were a workman within the meaning of the said Act. It is only if this pre-requisite is first satisfied that the Corporation is entitled to recover the amount from the employer in certain cases on fulfilment of the conditions spelled out in section 66 of the Act. It is thus necessary to advert to section 3 of the Workmen's Compensation Act which in terms lay down the liability of the employer for compensation payable to the workman for the personal injuries arising out of and in the course of the employment. It is, therefore, obvious that unless the requirements of the above-said section are first satisfied in favour of the injured workman, the injury would not fall within the meaning of "employment injury" as defined in the Act. The relevant part of section 3 of the Workmen's Compensation Act is in the following terms :—

> "3(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :
>
> Provided that the employer shall not be so liable—
>
> (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

(2) * * * * * *

The crux of the case for the respondents is that the injured workman had disentitled himself to any compensation in view of clause (ii) of the proviso to section 3(1) above-said. It is plausibly argued on behalf of the respondents that Pritam Singh injured in the present case had wilfully disobeyed the express orders given by his employer not to use the pedestal fan and it was in direct violation of these instructions that he unauthorisedly took and used the same and thus suffered the injury as a consequence of his own misconduct. This contention is not devoid of merit as will be apparent on a reference to the testimony of the witnesses examined by the respondents and also from the evidence recorded on behalf of the Corporation.

(19) Whilst appreciating the evidence adduced by the parties, it deserves notice that the respondents at the very first stage in their written statements squarely took up the plea that Pritam Singh injured without their knowledge and consent and against their directions had taken the pedestal fan in question and used the same in defiance of the authorities. It was in terms stated that the injured was guilty of utter negligence, carelessness and misconduct which had occasioned the injury to him. When the injured Pritam Singh appeared as a witness, it was expressly put to him that he had fetched the fan from the workshop even though he was prevented from doing so by Hakam Singh Incharge of the workshop because the fan was out of order but nevertheless he brought the same away against

that direction and used the same. Pritam Singh injured also in his examination-in-chief had admitted that at that time he was accompanied by Mohinder Singh who appeared as a witness for the respondents.

(20) We may now advert to the evidence examined on behalf of the respondents on the point that it was the wilful disobedience of Pritam Singh to an order expressly given which had resulted in the injury. R.W. 1 Mohinder Singh who admittedly was with the injured on his own showing stated as follows in his examination -in-chief :—

> "At about 8.45 a.m. before the work was resumed by us, Pritam Singh asked me to bring the fan from the workshop, situated in the factory premises, though at a little distance. I refused to him saying that the owners would object to it. The injured, however, brought the fan and fixed the same. There was no switch in that shed for fixing the fan but Pritam Singh connected it in a third room . . . . . That fan was lying on one side of the workshop. Hakam Singh mistri of the workshop had asked Pritam Singh not to use the fan as the same was not in a working order."

The above-said testimony remained unshaken in the cross-examination of this witness. Again Hakam Singh R.W. 2, a mechanic who was incharge of the workshop, deposed in the following terms :—

> "The pedestal fan with which the accident took place was lying in my workshop. It was unserviceable. Pritam Singh wanted to take this fan in order to use it inside the shed. I told him that it was not in a working order and that he should not take it. I also told him that the owner would also object to it. Pritam Singh, however, took it away against my wishes. About two days prior to this accident, the construction work was started inside the shed. Pritam Singh was a mason and Mohinder Singh R.W. was a labourer. The fan was never used inside the shed for the masons or labourers before the day of occurrence."

There is then evidence of R.W. 4 Nand Singh, Electrician, who deposed about the unserviceable condition of the fan prior to the accident and about the fact of its lying unused in the workshop and the

estimate which he had been asked to prepare for the repair of the same. R.W. 5 Hari Lal, the supervisor of the respondent factory, again deposed in similar terms as follows :—

> "The owner had not provided the fan in the shed where the work was being carried on. Pritam Singh had fetched the fan from the workshop. Hakim Singh mistri was on duty in the workshop. He and I had prevented Pritam Singh to use the fan without the permission of Puri Sahib."

Lastly R.W. 6 Shri Jai Lal Puri himself stepped in the witness box to depose to the fact that electric fans were not provided to the masons nor the injured Pritam Singh was supplied any fan for his use and that the same had been removed without his knowledge and consent from the workshop and had been plugged unauthorisedly in a distant room by making an opening in the wall.

(21) As against the above-said unimpeachable evidence led by the respondents, there is only the evidence of Pritam Singh injured which is directly on the point of how the incident had occurred. Obviously the testimony of Pritam Singh is of a deeply interested nature as he was primarily concerned to get compensation for the injury suffered by him and consequently to shift the blame of the accident to other shoulders. No other witness on behalf of the applicant appeared to depose as an eye-witness of the incident. In the cross-examination of this witness, inherent blemishes were brought out. It is apparent that Pritam Singh mason and the attendant construction labour had been employed only a few days earlier for the construction of the drawing chamber. There is obvious weight in the argument raised on behalf of the respondents that it is unusual and most unlikely that electric fans would be provided for construction labour. On that premises, the whole story becomes improbable and deserves rejection apart from the fact that it stands wholly repelled by the overwhelming weight of the testimony adduced on behalf of the respondents.

(22) On an overall appreciation of the evidence, we are of the view that the respondents have been able to bring their case within clause (ii) of the proviso to section 3(1) of the Workmen's Compensation Act. That being so, the injured would become disentitled to

any compensation under the above-said section and consequently the claim of the Corporation would also become untenable.

(23) This appeal accordingly fails and is dismissed. There will be no order as to costs.

P. C. Pandit, J.—I agree.

K. S. K.

APPELLATE CRIMINAL.

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

JAIPAL SINGH,—*Appellant*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Appeal No. 341 of 1970.

Murder Reference No. 22 of 1970.

September 1, 1970.

Code of Criminal Procedure (Act V of 1898)—Sections 526(8) *and* 526(9)— *Provisions of section* 526(8)—*Whether* mandatory—*Respective jurisdictions of magistrates and Sessions Judge to adjourn a pending case on being notified of the intention of a party to move for transfer—Stated—Application for adjournment—Whether can be rejected by a Sessions Judge on the ground of the allegations for transfer being baseless.*

Held, that the provisions of sub-section (8) of section 526 of the Code of Criminal Procedure are mandatory and have to be complied with. Any proceedings taken after the refusal of adjournment are not justified in law and such an irregularity cannot be condoned under the provisions of section 537 of the Code. To hold otherwise would not only violate the plain language of sub-section (8) but it would also cut at the root of the basic principle of jurisprudence wherein it is required that the Courts should not only administer justice without fear or favour but also appear to do so. It is of paramount importance that the parties arrayed before the Courts should have confidence in the impartiality of the Courts.

(Paras 13, 17, & 19)

Held, that as far as the jurisdiction of a magistrate under section 528(8) of the Code is concerned, he has no option but to adjourn the case the moment intention is notified by the parties to the porceedings before him for