

**(1957) 03 MP CK 0011**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Criminal Miscellaneous C. No. 5 of 1957

Pyarelal

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** March 9, 1957

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 347
- Penal Code, 1860 (IPC) - Section 409

**Citation:** (1957) JLJ 751

**Hon'ble Judges:** A.H. Khan, J

**Bench:** Single Bench

**Advocate:** Shivdayal, Dy. Govt. Advocate for State, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Khan, J.

This is a reference by the learned Additional Sessions Judge, Bhilsa, recommending that the committal order made by the First Class Magistrate, Biaora be quashed.

2. The facts giving rise to this reference are that two separate charge-sheets were put up by the Police before the Magistrate u/s 409, I.P.C. for two offences alleged to have been committed in the course of a single year. Both the Challans were consolidated and from the record put up before him, the Magistrate was satisfied that there were sufficient grounds for committing the accused to the Court of Sessions because the accused had been previously convicted of an offence under Chapter 17 of the Indian Penal Code. When the case was sent to the Additional Sessions Judge, Bhilsa, he took objection to it on the ground that the Magistrate had not complied with the formalities of section 347, Cr, P. Code and that as such the order of committal was bad. The learned Additional Sessions Judge has undoubtedly taken great pains in referring this case to the High Court and he has cited a number of authorities in support of the view he has taken, But the proper

section applicable in this case is not section 347 but it is section 348 of the Criminal Procedure Code.

3. In committing a case u/s 348, the committing Magistrate should consider whether in the circumstances of the case, his powers enable him to try and pass an adequate sentence or not. If they do not permit him to pass a sufficient severe sentence, and, he is *prima facie* satisfied that the case calls for a deterrent sentence, which he is unable to award, he should commit the case.

4. This section 348 has been enacted in order to aid the requirements of section 75 of the Indian Penal Code which provides for enhanced punishment in certain cases where the accused has been previously convicted of a similar offence. The object really is that an old offender should be tried by a person, who could inflict such adequate punishment, as the circumstances of the case may demand.

5. In this view of the matter, the committal by the Magistrate cannot be said to be wrong and this reference would have been unnecessary if the learned Additional Sessions Judge had not merely confined his attention to section 347, but had also perused a section ahead of it, namely, section 348. On perusal of the committal order, the learned Magistrate has referred to section 347 of the Criminal Procedure Code. That also is wrong and appears to have misled the learned Additional Sessions Judge. But the order of committal is in Itself right and the mere error of quoting a wrong section does not matter.

6. For reasons stated above, the reference Is rejected.