

**(1965) 01 CAL CK 0024**

**Calcutta High Court**

**Case No:** Criminal Reference No. 36 of 1964

The State

APPELLANT

Vs

Madan Mohan Jana

RESPONDENT

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**Date of Decision:** Jan. 5, 1965

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 438, 526, 526(9)

**Citation:** 70 CWN 52

**Hon'ble Judges:** D.N. Das Gupta, J

**Bench:** Single Bench

**Advocate:** S.S. Mukherji and Samar Roy Choudhury, for the Appellant; Dilip Kumar Dutta for the State, for the Respondent

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### **Judgement**

D.N. Das Gupta, J.

This is a reference u/s 438 of the Code of Criminal Procedure made by the learned Sessions Judge of Midnapore recommending that the order of a learned Magistrate directing the accused to pay costs and the subsequent orders for recovering the same should be set aside. It appears that on the 15th January, 1963 a petition was filed by the accused u/s 526 of the Code of Criminal Procedure for transfer of the case. The learned Magistrate adjourned the case but on certain terms. He directed that "the applicant should pay the expenditure incurred by all the witnesses present today (total Rs. 80/-).....". In passing the order for costs of adjournment the learned Magistrate relied upon the explanation to section 526(9) of the Code of Criminal Procedure which provides, "Nothing contained in Sub-section (8) or sub-section (9) restricts the power of a court u/s 344." The order of the learned Magistrate is wholly improper and cannot be supported. An order for costs of adjournment should not be passed in the case of an application for transfer. The order is accordingly set aside, and all orders passed in pursuance of the order for adjournment costs are set aside.

The reference is accepted as above.