(11) The decision of the suit is being delayed by the defendants for one reason or the other. Defendants No. 2 to 9 have yet to file written statements. Suit was filed as far back as in July, 1984 and even after seven years the suit is at the initial stage.

(12) The learned trial Court is, therefore, directed to give only one opportunity to defendants No. 2 to 9 for filing written statement and in case they fail to file the written statement, trial Court shall proceed to decide the suit in accordance with law.

(13) Consequently, the revision petition is dismissed. Costs are quantified at Rs. 2,000.

R.N.R.

Before : H. S. Rai & A. P. Chowdhri, JJ.

SHYAM LAL,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Criminal Misc. No. 237-M of 1989.

22nd August, 1990.

Code of Criminal Procedure, 1973 (II of 1974)—Ss. 216 & 482—Prevention of Food Adulteration Act, 1954—S. 16(a), 16(1) Second proviso—Trial of accused according to procedure of warrant case—Charge framed under S. 15(1)(c)—Opinion that accused deserves greater sentence and ought to be tried in accordance with the Cr. P.C. not recorded by Magistrate—Magistrate thereafter curing defect by recording requisite opinion and fixing case for pre-charge evidence—Thereafter fresh charge framed—Correction of error of procedure permissible—Second proviso to S. 16(a) authorises the Magistrate to switch over from summary procedure to warrant procedure—Such switching over does not vitiate trial—No automatic discharge or acquittal by merely framing charge again by way of rectification of procedural mistake—Accused has no vested right to trial by particular procedure.

Held, that it is axiomatic that summary procedure is less favourable to the accused than procedure for the trial of a warrant

case. This is the reason why only offences punishable upto two years imprisonment and certain less serious offences specified in various clauses of Section 260 of the Code have been made summarily triable. Offences under the prevention of Food Adulteration Act, though punishable with higher punishment, have been expressly made triable according to summary procedure by enacting Section 16-A in the Act. Section 16-A of the Act mandates that all offences under section 16(1) of the Act shall be tried in a summary way. The second proviso of the said section further lays down that if at the commencement of, or in the course of a summary trial, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code. The above proviso makes it abundantly clear that it is open to the Magistrate *in the course of the trial* to switch over from summary procedure to a warrant procedure in terms of the said provision. It is well-settled that no one has a vested right in any one procedure. It is equally well-settled that power to alter the charge at any stage vesting in the Court under Section 216 of the Code is very wide. The rule that once charge is framed the case, must end either in acquittal or conviction is subject to well recognised exceptions. Rectification of a procedural mistake is in our view one such exception.

(Para 8)

Pawan Kumar v. *State of Haryana and others* 1989 (II) F.A.C. 36 does not lay down good law.

Petition under Section 482 Cr. P.C. praying that the petition may kindly be accepted, the complaint filed against the petitioner and charge framed against him on 26th September, 1988 complaint and the proceedings pending against him may kindly be quashed:

In Complaint dated 18th May, 1984, Under Section 7/16(1)(c) of the Prevention of Food Adulteration Act and the charge framed against the petitioner on 26th September, 1988 under section 16(1)(c) read with section 7 of the Prevention of Food Adulteration Act.

In the Court of Judicial Magistrate Ist Class, Karnal.

H. N. Mehtani, Advocate, *for the Petitioner.*

Arvind Singh, A.A.G. Haryana, *for the Respondents.*

JUDGMENT

A. P. Chowdhri, J.

(1) The present petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') initially came up for hearing before J. S. Sekhon, J. It was contended by the learned counsel for the petitioner that once the trial Court came to the conclusion that the procedure adopted for the trial, whether as a warrant case or summary case, was found to be unwarranted, the only course open was to acquit the accused and rectification of mistake in choosing one procedure against another and further trial would be abuse of the process of Court. Reliance in support of the above proposition was placed by the learned counsel on certain observations made by a learned Single Judge of this Court in *Pawan Kumar* v. *State of Haryana and others* (1). J. S. Sekhon, J., was of the view that it was always open to the trial Court to correct any defect of procedure and such a course *ipso facto* did not justify an order of acquittal. The learned Judge expressed his disagreement with the dicta in *Pawan Kumar's case* (supra) and referred the matter to a larger Bench for an authoritative pronouncement. This is how this case has been placed before us.

(2) To appreciate the question, it is necessary to give the factual background. The Food Inspector Assandh, filed a complaint against the petitioner under section 16(1)(c) of the Prevention of Food Adulteration Act, 1954 (hereinafter called 'the Act') on 18th May, 1984. It was stated that the petitioner had prevented the Food Inspector from taking sample of *Haldi* powder on 16th May, 1984. The Chief Judicial Magistrate started the trial of the case according to procedure prescribed for a warrant case instituted on a complaint in sections 244 to 248 of the Code. After recording pre-charge evidence, a charge Annexure P-2 was framed under section 16(1) (c) of the Act against the petitioner on 7th October, 1985. It will be convenient at this stage to refer to a Full Bench decision of this Court in *Budh Ram and another* v. *State of Haryana* (2). Question No. 4 before the Full Bench was in the following terms:—

> "4. Whether the provisions of Section 16-A of the Act envisaging trial of offences under Section 16(1) of the Act in the first instance in a summary case is mandatory in character ?"

(1) 1989 (II) F.A.C. 36.

(2) 1984 (II) F.A.C. 179.

It was held that "the Legislature intended that all offences under Section 16(1) of the Act be tried summarily by specially authorised Magistrate, *unless such a Magistrate in writing opines that the accused deserved greater dose of sentence* and so he be tried in accordance with the procedure prescribed by Criminal Procedure Code" (emphasis added). It appears that in view of the above-noted Full Bench decision, Shri Bharat Bhushan Parsoon, who had in the meantime taken over as Chief Judicial Magistrate, Karnal, proceeded to pass the order Annexure P-3 dated 14th March, 1988. He observed that the trial of the accused had proceeded as a warrant case without recording the aforesaid opinion and, therefore, purported to cure the defect by recording the requisite opinion and fixing the case for pre-charge evidence. After recording pre-charge evidence, he framed a charge (Annexure P-4) on 26th September, 1988. The accused felt aggrieved and through the present petition moved this Court for quashing the entire proceedings against him and particularly the order Annexures P-3 and P-4.

(3) In order to appreciate the true import of the observations in *Pawan Kumar's case* (supra), it is necessary to give facts of that case. The Food Inspector filed a complaint under section 16(1)(a)(i) of the Act against P on August 13, 1984. The trial commenced according to procedure for a warrant case. During the pendency of the trial, the trial Magistrate ordered that the case would be tried according to summary procedure. On August 2, 1988, P filed a petition under section 482 of the code contending that "*the only* course open to it was to order acquittal and not retrial as per procedure prescribed for the trial of summary cases (emphasis supplied). The above contention prevailed with the learned Single Judge and the material observations on which reliance has been placed are as under:—

> "The proposition now convassed in this court by Shri H. N. Mehtani, learned counsel for the petitioner, came to be considered earlier in *Ram Chander* v. *State of Hary* 1982 (II) Prevention of Food Adulteration Cases 331 : *Chatter Bhuj* v. *State of Haryana*, 1985 (II) Prevention of Food Adulteration Cases 205, *Ram Kishan* v. *State of Haryana*, 1986 (II) Prevention of Food Adulteration Cases 150 and *Nand Lal* v. *State of Haryana*, 1987 (II) Prevention of Food Adulteration Cases 95 wherein it was repeatedly held that appropriate order to be passsed by the learned trial Court in such circumstances would be of acquittal of the accused and not

of retrial according to summary procedure as ordained by the learned trial Court in its impugned order of August 2, 1988."

(4) The result was (i) the order dated August 2, 1988 was quashed (ii) P was acquitted of the charge framed against him.

(5) The learned counsel for the petitioner while strongly relying on the above observations further submitted that similar view was taken in the various decisions cited in *Pawan Kumar's case* (supra) and thus there was weight of precedent in favour of the view. He pointed out that it was beyond the jurisdiction of the Magistrate to review the earlier order commencing trial as a warrant case. It was also contended that once charge is framed, the only course open to the trial Magistrate is either to convict or to acquit the accused and not to order a fresh trial. Even a discharge in such circumstances amounts to acquittal.

(6) The contention of the learned counsel for the State, on the other hand, is that it is always open to the Magistrate to correct any error of procedure at any time before the final disposal of the case and it cannot be laid down as a proposition of law that doing so would vitiate the entire proceedings.

(7) We have given our anxious consideration to the above contentions.

(8) It is axiomatic that summary procedure is less favourable to the accused than procedure for the trial of a warrant case. This is the reason why only offences punishable upto two years imprisonment and certain less serious offences specified in various clauses of section 260 of the Code have been made summarily triable. Offences under the Prevention of Food Adultertion Act, though punishable with higher punishment, have been expressly made triable according to summary procedure by enacting Section 16-A in the Act. Section 16-A of the Act mandates that all offences under section 16(1) of the Act shall be tried in a summary way. The second proviso of the said section further lays down that if at the commencement of, or in the course of a summary trial, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall

any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code. The above proviso makes it abundantly clear that it is open to the Magistrate *in the course of the trial* to switch over from summary procedure to a warrant procedure in terms of the said provision. It is well-settled that no one has a vested right in any one procedure. It is equally well-settled that power to alter the charge at any stage vesting in the Court under section 216 of the Code is very wide. The rule that once charge is framed the case must end either in acquittal or conviction is subject to well recognised exceptions. Rectification of a procedural mistake is in our view one such exception.

(9) In any case, the proposition laid down in *Pawan Kumar's case* (supra), in so far as the same lays down that such an order vitiates the whole trial resulting in acquittal is too wide to be accepted as a correct statement of law. There might be cases, depending on their own facts and circumstances, in which the High Court may in its wisdom quash the proceedings in exercise of its inherent power, it cannot be laid down that on the passing of the order changing one procedure for another would by itself result in the proceedings being vitiated. We may further point out that even if a certain order which is impugned is quashed, acquittal does not follow as a natural consequence. What normally follows is a trial from the stage at which the impugned order was passed or a fresh trial without the defect which was impugned. It is only on a consideration of the totality of the facts and circumstances of a given case that the High Court may be pursuaded to quash the entire proceedings and order acquittal. This does not follow as a corollary to the quashing of an order by which the accused may feel aggrieved.

(10) With regard to various decision noted in *Pawan Kumar's case* (supra), the learned Judge assiduously noticed in the referring order that they were distinguishable. We hardly need to add anything more. In other words, we do not find any precedent to support the proposition contained in the observation extracted from *Pawan Kumar's case* (supra).

(11) We, therefore, hold that the observations in question, in *Pawan Kumar's case* (supra), do not contain a correct statement of law. The said observations must be deemed to have been made in the facts and circumstances of *Pawan Kumar's case* (supra) and the same cannot be taken to lay down a rule of general application.

(12) The case will now go back to the learned Single Judge for decision on merits. A copy of this judgment may be sent to all the Districts & Sessions Judges in the States of Punjab & Haryana and Chandigarh to be circulated amongst all judicial officers working under them for their information.

R.N.R.

Before : G. R. Majithia, J.

DES RAJ ARORA,—*Petitioner.*

versus

UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Revision No. 3268 of 1982.

21st November, 1990.

Arbitration Act (X of 1940)—Ss. 14(2) & 17—Limitation Act (XXXVI of 1963)—Ss. 5, 29(2) & 37(1)—Application for making award rule of the Court filed in Delhi Court—Delhi Court returning application on the ground of lack of territorial jurisdiction—Application subsequently filed in competent Court at Ambala—Period spent in pursuing remedies in wrong court but with due diligence and good faith has to be excluded from the period of limitation—Held, Arbitration Act does not exclude applicability of Ss. 4 to 24 of the Limitation Act.

Held, that under the present Section 29(2) of the Limitation Act, 1963, all the provisions contained in Sections 4 to 24 of the Limitation Act are made applicable to the special or local law in the absence of exclusion of such provision by the special or local law. There is no provision in the Act that the applicability of Sections 4 to 24 of the Limitation Act has been excluded. Sub-section (2) of Section 29 of the Limitation Act is supplemental in its character insofar as it provides for the application of sections 4 to 24 to such cases as would not come within the purview of those provisions. The real effect of the provisions contained in Section 14 of the Limitation Act is to extend the period of limitation prescribed by the period during which the suit/proceeding has been prosecuted with due diligence and good faith in court, which from defect of jurisdiction or other cause of a like nature is unable to entertain.

(Para 6)